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Tax Aviodance and Tax Evasion

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Abstract:
Our research is based on the effect of tax avoidance and evasion and reason for tax avoidance and how we stop the tax avoidance and evasion. Firstly we know about tax avoidance and tax evasion. As is obvious, the focus is on tax losses due to tax evasion and tax avoidance. There is no attempt at theoretical or methodological evaluation, nor any attempt to make fresh estimates, but only to make use of the existing state of knowledge and information to arrive at a cohesive statement that wouldenhance the public awareness of the problem and help civil-society advocacy and mobilization against various forms of tax evasion and tax avoidance.Tax avoidance refers to an attempt to reduce tax payments by legal means, for instance by exploiting tax-loopholes, whereas tax evasion refers to an illegal reduction of tax payments, for instance by underreporting income or by stating higher deduction-rates. Tax flight refers to the relocation of businesses, only in order to save taxes, for instance by making use of offshore tax havens. Tax avoidance which is technically legal (in that it is not evasion which is illegal) but may represent tax planning with the sheer objective of obtaining a tax benefit without any supporting justification in terms of commercial, economic or business purpose. The determination of this separation of objectives comprises a crucial challenge in modern global practices in designing complex corporate structures with good or bad motive.

***Keywords**: Tax Planning, Arm length price, Capital gain, Tax heaven*

1. Introduction

Kautilya in h i 'Artha Sastra' laid down a sound policy of taxation.

He says that "Just as a calf sucks milk from the cow and the cow posts with the milk happily, so should taxation be". The tax payer should not feel the burden of tax he pays to be unduly high. The calf can take milk but cannot suck the cow's blood. The Government must have the right in the public interest, to collect revenues by insisting upon such of the substantive norms and procedure which must control tax processes, decrease tax evasion practices or effectuate collections. The primary concern of the tax planning must be an effective means for collection of revenue by fighting against yet not vanquished evils of tax evasion, w'ncentration of black
money, foreign exchange racketeering smuggling and corruption. Everyone should recognize a duty moral, social and legal to see that the state is not deprived of revenue by the mischievous activities of a few individuals. And the Courts, being the guardian and protectors ofthe social and economic interests of the state should compel the tax payer to do his duty. No doubt, there has been some changes in the
attitude of the Courts, but it has not been enough to check tiff avoidance. This requires a concerted effect, not only by the legislature but the judiciary as wen. These are the reason for tax avoidance and tax evasion:-

- Complexities in the Tax Laws.
- Lack of deterrent punishment.
- The harassment of the payers.
- The lack of publicity of the names d tax evaders.
- Inefficient tax administration.
- Lack of integrity of the income tax staff.
- Shortage of experienced personnel and inadequate staff.
- Inadequate prosecution of machinery.
- Lack of proper system of assessment and collection of
- Absence of co-ordination with other tax departments.
- Lack of adequate legal advice on potential prosecution cases.
- Evasion of other taxes.
- Absence of the legal requirement to keep books and accounts in a standard form and Low public morals and absence of social consciousness. .

due to these problem public tried to saved their tax either by tax avoidance or tax planning. Government for reduce to tax liability allowed tax planning and allowed certain deduction u/s 80C to 80U and allowed deduction u/s 10,11,12 and allowed business expenses U/s 35,36,37 and various section which is allowed expense but this is called tax planning this is totally different from tax avoidance and tax evasion

2. Literature Survey

Since tax avoidance, tax evasion, and tax flight have similar effects, economists suggest not to differentiate between them but to analyze their effects jointly (Cross and Shaw, 1982). However, this line of argumentation – solely focusing on analytical research methods – takes not into account results of empirical evidence on actual tax behavior. The prescriptive power of analytical models of tax evasion (e.g., Allingham and Sandmo, 1972), mainly focussing on exogenous variables like audit-frequency and sanction, lack conclusive empirical evidence (Alm, McClelland and Schulze, 1999; Baldry, 1987; Bosco and Mittone, 1997; Cullis and Lewis, 1997; Kaplan and Reckers, 1985; Webley, Robben, Elffers and Hessing, 1991). Thus, monetary consequences alone seem not sufficient to reliably predict and describe actual tax behavior. However, in formal economic models individuals are considered to solely passively react to exogenous variables, and to pay taxes *only* because they fear audits and sanctions. Intrinsic motives, such as perceived fairness, cooperation or social norms, remain unconsidered. In most countries, however, audit-frequencies are remarkable low and sanctions mostly imply just the payment of unpaid taxes and only a minor fine, indicating that a purely economic analysis of tax evasion is insufficient. If individuals consider tax payments as a gamble, solely specified by exogenous variables, the best choice would be to evade (Alm, McClelland and Schulze, 1992). Yet, in reality compliance rates were found to be relatively high (Fußnote: Zahlen). Thus, it can be assumed that in addition to exogenous variables also intrinsic variables, such as perceived fairness, cooperation or social norms, are of fundamental importance in tax decisions.
A substantial body of literature confirms the importance of psychological factors on the decision-outcome with respect to tax evasion, like framing effects (e.g., Chang, Nichols and Schultz, 1987; Kirchler and Maciejovsky, 2001; Robben, Webley Elffers and Hessing, 1990; Schepanski and Shearer, 1995), perceived justice and fairness (e.g., Dornstein, 1987; Kirchler, 1997; Spicer and Becker, 1980; Spicer and Lundstedt, 1976), the importance of attitudinal aspects (e.g., Kirchler, 1999; Lewis, 1979; Vogel, 1974), the role of opportunity (e.g., Clotfelter, 1983; Groenland and van Veldhoven, 1983; Porcano, 1988; Wärneryd and Walerud, 1982; Wallschutzky, 1984; Weigel, Hessing and Elffers, 1987), etc. There are also other studies focussing on legal tax avoidance, indicating that respondents believe that the "ordinary people" have to bear most of the tax burden (Kinsey, 1984) and that they wish to reduce tax-loopholes (Song and Yarbrough, 1978).

3. Purpose of Study

Purpose of this study to show the effect of tax avoidance and tax evasion on the economy of India and how we reduce the tax evasion and tax avoidance

4. Database

According to various media reports, only 2 to 3 percent of Indians pay any income tax at all. In December, India's finance minister, Palaniappan Chidambaram, said that 2.89 percent of the population (about 36 million people) filed income taxes. (In contrast, in the U.S., about 45 percent of the population pays taxes, which means that, despite India's much-larger population, more Americans than Indians actually pay taxes.)
There are many reasons for this. Part of it has to do with the fact that many Indians do not earn enough annual income to even qualify to pay, but a larger factor has to do with India's huge rural and underground economies, which present severe logistical issues with respect to collecting tax revenues.
And same thing apply in case of vat according to one survey only 13%register for TIN which is very low percentage
As is evident from there has been a compositional change in gross tax revenues of the Central Government since 2007-08.As a proportion of total tax revenue the share of direct taxes has overtaken the share of indirect taxes. Although there is a decline in share of direct taxes in recent years, its share is slightly higher than share of indirect taxes.

Chart-8 Share of Direct and Indirect Taxes in Total Tax Revenue of Central Government
1.7 TAX REVENUE OF CENTRE AND THE STATES: 1990-91 to 2012-13 (CONTD.) *(crore)*

Central taxes			States' own			States' tax Year			Year
			(net)		taxes revenue				
Direct	**Indirect**	**Total**	**Direct**	**Indirect**	**Total**	**Direct**	**Indirect**	**Total**	
6909	36133	43042	1230	28915	30145	5351	39329	44680	1990-91
10249	39915	50164	1304	34533	35837	6408	46626	53034	1991-92
12083	42031	54114	1247	38283	39530	7304	52748	60052	1992-93
12532	40970	53502	1414	44805	46219	9181	59278	68459	1993-94
18413	49041	67454	1905	53647	55552	10465	69930	80395	1994-95
22290	59649	81939	2213	61822	64035	13487	79833	93320	1995-96
25382	69319	94701	2163	69131	71294	15679	90676	106355	1996-97
27180	68492	95672	2256	79183	81439	23358	101629	124987	1997-98
32121	72531	104652	2518	86702	89220	16998	111367	128365	1998-99
41437	86834	128271	2904	99927	102831	19427	126885	146312	1999-00
49652	87008	136660	3457	113260	116717	22112	146550	168662	2000-01
47705	85957	133662	3911	123564	127475	25403	155470	180873	2001-02
61890	97893	159783	4002	136370	140372	25475	171019	196494	2002-03
76599	110382	186982	4455	155281	159736	32947	194155	227102	2003-04
95355	129443	224798	4910	184503	189413	41738	227834	269572	2004-05
117826	152438	270264	5298	216239	221537	49809	267615	317424	2005-06
164591	186591	351182	6331	256864	263195	66785	318740	385526	2006-07
231570	207977	439547	6619	270563	277182	87269	343513	430782	2007-08
234218	209101	443319	8089	302063	310152	93763	378368	472131	2008-09
261684	194851	456536	9400	366917	376316	115311	428997	544308	2009-10
307121	262747	569869	12307	466287	478594	143701	558096	701797	2010-11
345730	296522	642252	12430	560938	573368	162158	670622	832780	2011-12(R.E.)
393609	377462	771071	14020	659491	673511	184755	795297	980052	2012-13(B.E.)

(figure from Indian Public Finance statistics(2013-14))
Note-Figure for 2011-12 is revised estimates and 2012-13 is budget estimates

TAX-GDP RATIOS: 1990-91 TO 2012-13 *(crore)*

Year	Central taxes			States' own Revenue			States' tax		
	Direct	Indirect	Total	Direct	Indirect	Total	Direct	Indirect	Total
1990-91	2.15	13.25	15.40	1.94	8.17	10.11	0.72	1.83	2.55
1991-92	2.54	13.22	15.76	2.34	7.94	10.29	0.78	1.85	2.63
1992-93	2.58	12.59	15.17	2.41	7.51	9.92	0.80	1.92	2.73
1993-94	2.51	11.58	14.09	2.34	6.40	8.75	0.90	1.67	2.57
1994-95	2.84	11.71	14.56	2.66	6.43	9.09	0.84	1.60	2.45
1995-96	3.00	11.70	14.71	2.82	6.52	9.33	0.95	1.51	2.46
1996-97	2.98	11.61	14.58	2.82	6.59	9.41	0.98	1.56	2.54
1997-98	3.31	11.14	14.45	3.16	5.95	9.12	1.38	1.47	2.85
1998-99	2.80	10.50	13.31	2.66	5.55	8.21	0.83	1.41	2.24
1999-2000	3.12	10.95	14.07	2.97	5.83	8.80	0.85	1.38	2.23
2000-01	3.41	11.11	14.52	3.25	5.72	8.97	0.89	1.58	2.47
2001-02	3.11	10.28	13.39	2.95	5.02	7.97	0.92	1.36	2.27
2002-03	3.45	10.63	14.08	3.29	5.24	8.53	0.85	1.37	2.22
2003-04	3.86	10.73	14.59	3.70	5.26	8.96	1.00	1.37	2.37
2004-05	4.23	11.02	15.25	4.08	5.33	9.41	1.14	1.34	2.47
2005-06	4.54	11.37	15.91	4.40	5.52	9.91	1.21	1.39	2.60
2006-07	5.39	11.77	17.15	5.24	5.79	11.03	1.41	1.44	2.85
2007-08	6.39	11.06	17.45	6.26	5.63	11.89	1.62	1.46	3.08
2008-09	5.83	10.43	16.26	5.68	5.07	10.75	1.52	1.36	2.88
2009-10	5.82	9.63	15.45	5.67	3.97	9.64	1.63	0.96	2.59
2010-11	5.78	10.53	16.31	5.63	4.55	10.17	1.69	1.18	2.86
2011-12 (R.E.)	5.66	10.78	16.43	5.52	4.53	10.05	1.67	1.22	2.89
2012-13 (B.E.)	5.69	11.54	17.24	5.55	5.05	10.61	1.68	1.34	3.02

Note: 1 *GDP at current market prices based on CSO's National Accounts 2004-05 series is used.*
2. Article 270 of the Constitution, has been retrospectively amended with effect from April 1, 1996. Under the provisions of the Constitution (80th Amendment) Act, 2000, prescribed share of states in the net proceeds of specified central taxes and duties is not to form part of the Consolidated Fund of India.

Figure from Indian Public Finance statistics (2012-13))

Percentage of tax on GDP is very low indirect taxes are better as compare with direct tax it clearly indicate there is high tax evasion or tax avoidance this can has many reason there is no proper tax administration or person earn more income which is exempt or person make total tax planning

Shadow economy is also result of tax evasion so we can see problem of tax evasion by study of shadow economy

Shadow Economy in Select Asian Countries		
Country	Shadow economy in % of GDP 1999/00	Shadow economy in % of GDP2002/03
China	13.1	15.6
India	23.1	25.6
Cambodia	50.1	52.4
Thailand	52.6	54.1

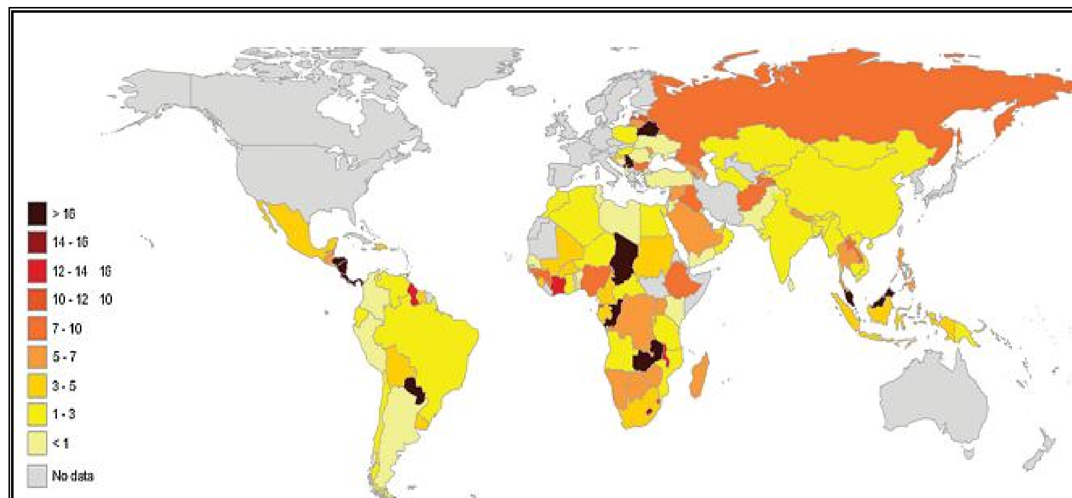
(Source: Schneider as in Martens (2007)

Illicit flows constitute a major source of domestic resource leakage, which drains foreign exchange, reduces tax collections, restricts foreign investments, and worsens poverty in the poorest developing countries. Illicit flows are all unrecorded private financial outflows involving capital that is illegally earned, transferred, or utilized, generally used by residents to accumulate foreign assets in contravention of applicable capital controls and regulatory frameworks. Thus, even if the funds earned are legitimate, such as the profits of a legitimate business, their transfer abroad in violation of exchange control regulations or corporate tax laws would render the capital illicit.

Ten Countries with Highest Average Normalised Illicit Flows 2002-11($billion)		
COUNTRY	**Annual Average**	**Total Amount**
China	10755.7	1075566.0
Russia**	8809.6	880960.0
Mexico*	4618.6	461859.0
Malaysia*	3703.8	370381.0
India*	3439.3	343932.0
Brazil	1926.9	192692.0
Indonesia	1818.3	181827.0
Iraq	787.8	78778.0
Nigeria	1422.7	142274.0
Thailand	1408.8	140877.0

* Trade Mispricing Model
** World Bank Residual Model
Source: Illicit Financial Flows from Developing Countries; Global Financial Integrity (GFI) 2002-11; Dev Kar and D. Cartwright-Smith (2013)

Heat Map of Average Illicit Financial Flows to GDP Ratio for Developing Countries, 2002-2011



(Source: Illicit Financial Flows from Developing Countries; Global Financial Integrity (GFI) 2002-11; Dev Kar and D.)

5. There Are Some Trick which is Use for Tax Evasion or Tax Avoidance

5.1. Tax Evasion

- Deliberately under-reporting or omitting income :- This is self-explanatory: concealing income is fraudulent. Examples include a business owner's failure to report a portion of the day's receipts or a landlord failing to report rent payments.
- Keeping two sets of books and making false entries in books and records;- Engaging in accounting irregularities, such as a business's failure to keep adequate records, or a discrepancy between amounts reported on a corporation's return and amounts reported on its financial statements, generally demonstrates fraudulent intent.
- Claiming false or overstated deductions on a return:-This can include claiming a large charitable deduction without substantiation or making a substantial overstatement of travel expenses. It can also include paying your children or spouse for work that they did not perform. The IRS is always vigilant when it comes to inflated deductions from pass-through entities.
- Claiming personal expenses as business expenses :-This is an easy trap for a sole practitioner to fall into because often assets, such as a car or a computer, will have both business and personal use. Proper record-keeping will go a long way in preventing a finding of tax fraud.
- Hiding or transferring assets or income:- This type of fraud can take a variety of forms, from simple concealment of funds in a bank account to improper allocations between taxpayers. For example, improperly allocating income to a related taxpayer who is in a lower tax bracket, such as where a corporation makes distributions to the controlling shareholder's children, is likely to be considered tax fraud.

- Engaging in a "sham transaction":- You can't reduce or avoid income tax liability simply by labeling a transaction as something it is not. For example, if payments by a corporation to its stockholders are in fact dividends, calling them "interest" or otherwise attempting to disguise the payments as interest will not entitle the corporation to an interest deduction. As discussed below, it is the substance, not the form, of the transaction that determines its taxability.

5.2. Tax Avoidance Tricks

These are illegal transaction and penalty impose if any assessee adjust tax evasion in their book of account but tax avoidance is not illegal in tax avoidance any assessee find loophole in tax and reduce their tax burden so there are various example of tax avoidance:-

(/)Tax avoidance through trust:- A specific trust as a mask for personal business Tax avoidance through family settlements, which assume the form of specific trusts, is sought to be counteracte through section 64 of the Income-tax Act.11 The provisions of this section have been amended repeatedly, but many lacunae still remain. For instance, A can reduce his tax liability, distributing income from a source among as many beneficiaries as he likes, if he can find somebody, say B, to set up a trust for him (i.e., A), his wife and the other members of his family. A can be the trustee with power to commence a business with funds borrowed on behalf of the trust. B should be a person other than the relatives mentioned in section 64, viz., husband, wife, father-inlaw and grandfather. A big initial capital is not required : a nominal amount may serve as the nucleus. The power to borrow will enable the trust to obtain its working capital from A or concerns with which A is connected or the beneficiaries themselves or even banks or other outsiders. The profits of such a business, carried on by the trust, for all practical pur poses, like a proprietary concern or a partnership, can be distributed to the beneficiaries, viz., A and his family members, without attracting the aggregation provisions of section 64. If the concern is treated as A's personal business, it may suffer tax at high rates. If it is held as a "registered firm" in which A and members of his family are partners, it will have to pay the income tax at rates ranging from 5 per cent on income in excess of Rs. 10,000 to 24 per cent in excess of Rs. 1,00,000 in addition to surcharge at 12£ per cent on the income-tax12. A specific trust is the simplest method of lowering one's tax liability. If a business is transferred to a trust as a going concern, the income from the business may become liable to be included in the transferor's own income, if the beneficiaries are either the spouse or minor children or both.13 If, however, the trust conducts a business with the transferred assets, e.g., dealings in shares of companies, it is only the income from the transfer red assets, say dividends from shares, that will be caught by the aggregation provisions of section 64 and not the gains from share-dealings.14 The profits from the business in shares may be taxed to the beneficiaries either directly or through the trustees, but not to the author of the trust. It is the trust corpus that triggers the attribution provisions and its target is limited to the direct yield; a new business founded on loans is outside the firing range. The innovation which dispenses with the annual rituals which firms have to go through for the continuance of their registration with the revenue authorities, has been getting increasingly popular after the courts held that there was nothing legally wrong with it. Since the income is derived by the beneficiary not from any asset entrusted to the trustee but out of the trustee's income-producing skills, the provisions of section60 which seek to nullify transfers of income without transfer of assets, cannot be invoked for assessing the income in the hands of the trustee who conducts the business, though it is obvious that he is deliberately deflating his own income and average tax-rate by this means. The contention that the income from the business belongs to the trust and that it is receivable for or on behalf of the beneficiaries is supported by a court ruling.15 There is also a ruling to the effect that if, under a settlement, a portion of the gains from speculation made with the settled resources is to be made over to the settlor, it cannot be held that the settler is having a portion of the assets or income of the trust retransferred to himself and the trust is, therefore, revocable.An interesting illustration of the extent to which the Revenue is required to suspend its disbelief, is provided by the case of a lady who settled Rs. 5,000 in trust for the benefit of her son, his wife and his two minor sons. The son and his wife were appointed as the trustees. The trust-deed expressly authorised them to undertake a new business or industry. The trustees obediently ventured into business, which included consultancy services based on the professional experience of the son, in the interest of the four beneficiaries including himself, his wife and his two minor children. The revenue authorities sought to tax the son on the- entire income of that business, but this was not approved by the court. The court held that the Revenue had no right to see through the business to ascertain whether it was in reality the son's "show" According to the court, it is not permissible in law, so far as trusts are concerned, to pierce the veil as in the case of a company, with a view to finding out the person behind the scene The trustees have been held to be under a legal obligation to carry out the objects of the trust and follow the directions in the trust-deed subject to the provisions of the Indian TrustsAct. If they fail in their duty they are accountable for their omissions and commissions in their capacity as trustees 17 This It is obvious that it will not be proper to leave the choice of taxable persons to judicial construction alone. If trusts are to have unrestricted freedom to manoeuver, resort to benami transactions will be rendered unnecessary. Tax can be comfort tably avoided within the framework of the trust law.

6. Income of Minor Child

When the accumulated income becomes payable to the beneficiary eventually, he is no longer under the disability of infancy. He is capable of exercising his rights; and the income eases to be includible in the income of the parent who made the settlement under the existing provisions of the Income-tax Act which cover only income accruing or arising to the child, immediately or on deferred basis, while he is still a minor. The value of the property, which is held in trust, is includible, however, in the wealth of the parent who has transferred it to the as long as the beneficiaries are minor sons or minor unmarried daughters in terms of section 4(l)(a) of the Wealth-tax Act.29 Such inclusion may be challengeable whereas public charity is made the sole beneficiary of the income as well as the corpus for the duration of the minority of the settler’s children with the further stipulation that the charity will have the interest in the remainder, if the children do not survive their minority.

Where three separate trusts were created for accumulation of the income from shares in a private company for a period often years, the interest of the beneficiary, though contingent on his being alive beyond ten years, was held to be still includible in his taxable wealth from the vesting date30 The position would be different if the beneficiary had no right to demand that the trustees should spend any particular amount out of the trust fund for any of the purposes mentioned in the trust deed and the trustees had the absolute discretion to expend such part of the corpus as they thought fit for the benefit of the beneficiary. In such a case, the beneficiary's interest which is contingent, say, on his completing a certain age, will not be an asset includible in his or his parent's wealth.81 The interest cannot be taken to be even contingent, if the trustees are empowered to distribute the corpus among the income beneficiary, his wife, and his children in the manner they consider best and on a date of their choice.32(vii) A trust for a Hindu Undivided Family While a discretionary trust has been surviving like a cat with nine lives and the accumulation trust is tied to minors, the specific trust has been widening the range of its service. It impossible to set up a trust exclusively for the benefit of all the members of a family.33 The converse, viz., the creation of trust by a Hindu undivided family for the benefit of its members is, however, disapproved by some of the courts because a trust cannot alter the course of devolution of property under the Hindu law of succession. Trusts can be created only with properties that can be gifted; and the assets of a Hindu undivided family cannot be abstracted from the family estate or gifted even to the members by the karta except in certainspecificcircumstances.34 It may not, therefore, be proper toset up a trust with any assets of the family as the corpus for the benefit of some of the coparceners or even of all of them.30Settlements are not, however, precluded in a case in which there is only one male member. No partial or total partition can be effected in such a family, in the absence of a coparcener entitled to demand partition; but settlements can be made by the karta, distributing assets among the ladies in the family. Shares in firms can be allotted by him to the individual ladies and the income from them cannot be added to the family's. The Hindu undivided family can thus divest itself of some of its sources of income and reduce its tax liability. Even where the karta of a Hindu undivided family that has several coparceners sets up a trust with cash and other movable assets of substantial value, it is not free from controversy whether such a trust which may be void able if the coparceners object, can be taken to be, per se. void36, particularly if the claims of all the members of the family have been given due consideration in devising the trust. A family settlement, in which all the coparceners acquiesce, may sidestep partitions. A Trust of this type offers an alternative to a partial partition, of which the income-tax authorities may refuse to take cognizance under sub-section 9 of section 171 of the Income-tax Act. Apart from by-passing the legal objections to recognition of a partial partition, the creation of a trust safeguarding the interests of all the members of the family and making suitable provisions for them in conformity with the line of devolution prescribed under the Hindu Succession Act, 1956, has the advantage of avoiding the gift tax. Since the instrument of trust will merely define and specify the benefits which the individual members of the family will be entitled to and which they have been enjoying through their dormant rights in the family, there is no transfer, as such, of any property. The coparceners will continue to hold in severalty what they would have obtained by the law of survivorship or on a partition, in the normal course. It is open to a coparcener, who has interest in a trust property, to impress his interest under the trust with the character of Hindu undivided family property. Since section 58of the Trusts Act permits any beneficiary, who is competent, to contract to transfer his interest, the coparcener can throw his right to receive any income from a trust property into the common stock of the joint family by making a unilateral declaration to that effect.37 Section 64(2) of the Income-tax Act and section 4(1 A)of the Wealth-tax Act have been recently amended to frustrate avoidance of tax by an individual's impressing his own property in this way with the character of a "Hindu undivided family" property. However, the amendment can still be made ineffective by creating a trust for the benefit of the members of the family individually, instead of transferring the income or the corpus to the joint family as such. The income and the assets cannot be added to the individual's income or wealth after the creation of the trust, unless the beneficiary is the spouse or a minor child.(viii) A trust for a company or a chamber of commerce There can be a trust of the shares of a company for the company's own benefit. While a company is prohibited from purchasing or holding its own shares by section 77 of the Companies Act in India, there is no bar on a shareholder's bequeathing his shares to the company. If a shareholder sets up a trust, a trustee appointed by the shareholder may hold the shares for the benefit of the company. Where a company holds its own shares directly, the effect is a reduction in its capital to that extent. The position is slightly different where the shares are registered in the name of a trustee; there is no reduction in capital, though the trustee will have to vote in accordance with the company's directions, whenever necessary.38 A trust of this type raises the question of the tax treatment of the dividend declared by the company in respect of the shares in trust. The Companies Act, 1981, in the UK now allows a limited company to buy back its own shares out of distributable profitsor out of the proceeds of fresh issue. Earlier, this was prohibited by section 54 of the Act. Equally intriguing is the case of a trust set up by a chamber of commerce for constructing a building and letting it out for meetings, etc., 75 per cent of the net collections being payable to the chamber. While the Comptroller and Auditor General has taken the view that the trust is liable to the wealth tax, the revenue authorities have assumed that it is saved from the tax, since the chamber, which is the main beneficiary of the trust income, is exempt from the tax. The Comptroller and Auditor General's point is that the ownership of the property does not vest in the chamber and the wealth tax liability, which attaches itself to the trust under section21(1 A), of the Wealth-tax Act, is not affected by the limited interest enjoyed in the income by the chamber.39(ix) Partnership concern for thwarting the gift tax. A trust is a multi-purpose tool. It can secure large savings not merely in the income and wealth taxes, but also in the companion taxes, viz., the gift tax and the estate duty. A gift has been defined to mean the transfer by one person to an otherof any movable or immovable property, made voluntarily andwithout consideration in money or money's worth. Accordingly, any property settled in trust in favour of any person other thana public charitable or religious institution is liable to the gift tax. The tax is avoided, however, by the transfer of a property, in the first instance, to a partnership concern which is formed temporarily. Since one cannot trade with oneself, there is no tax liability when properties which were acquired at a nominal cost years ago are passed on to the firm as part of the partner'scapital.40 As there is no bar under the Partnership Act to a trust's being a partner through a

trustee,41 the settler and the trust that he has created can both be partners in a firm. The partnership may be dissolved after some time, the under-valued assets held by the firm being transferred to the trust at the value
at which they have been transferred to the firm by the settler against his capital in the firm. The transfer of the properties to the trust cannot be subjected to either the capital gains tax or the gift tax, in view of section 47 (ii) of the Income-tax Act and the general trend of opinion in the courts that is there is no tax liability when assets are distributed by a firm to its partners.

7. Market Value of 01-04-1981

Market value of 01-04-1981 is used to calculate capital gain on asset purchase before 01-04-1981 if any asset purchase before 01-04-1981 then for indexing it's cost is purchase price or market value of 01-04-1981 whichever is more so market value of 01-04-1981 become a very crucial issue to find capital gain on asset purchase before 01-04-1981. It become just impossible in case of Land and Building because a similar land and building in similar area which sold on 01-04-1981 is called market value 01-04-1981 but every area is not similar a taxpayer always show higher value on 01-04-1981 for less tax but income tax authority show less value for higher value so there are always contradict between income tax authority and assessee so this become a very complex word to find the market value of similar asset in case of land and building so if we look at decision taken by supreme court in the case of case Sri.R.Vidyadharan vs assessee that market for the purpose of estimating the fair market value as on 01-04- 1981 we have to take into consideration the locality in which the land is situated, the accessability to infrastructure facilities, comparative sale instances in the locality, potentiality for future development, distance between the land and the bus stand, railways station, air port, etc and in the case of Smt. Mizar Anita Pal, Mangalore vs AssesseeWe are of the view that in the matter of valuation of FMV as on 01-04-1981 there is always an element of estimation and guess work as the data available cannot be comparable with the property in question in all aspects. Clearly indicate that we can only estimate the market value of 01-04-1981 but this is impossible to find the market value of 01-04-1981 this is also loophole in the income tax use by person for tax avoidance

8. Forfeiture of Advance Money

This is also a loophole in income tax use by assessee for conversion of black money into white we can understand this by taking an example let A and B are two friend and A has some Capital Gain he want to save tax on it so they make an agreement for sell the property and A make advance to B and on due date A is unable to make a payment so B forfeit his advance so this is capital loss for A and he can set off from B and on the other hand this is not taxable for B because it is capital income and not taxable but this advance money deduct from cost of asset for indexing when sell by B but if B transfer this property through gift or will then for other person we took only original let if B transfer this property to his son C then we took original cost for C while indexing when he sell the property this is clearly a loophole in the income tax

9. Arm Length Price

In tax law there is no provision for arm's length dealings where an arrangement creates rights and obligations, which are not normally created between parties dealing at arm's length. As there are specific transfer pricing regulations (SAAR) applicable to international transactions and certain specified domestic transactions, this tainted element is to be examined only in those transactions which are not covered by TP regulations and where the main purpose of the arrangement is to obtain tax benefit. As current transfer pricing regulations are applicable to international transactions and some specified domestic transactions, a mechanism needs to be provided for the Assessing Officer (AO) to ascertain whether rights, or obligations, created in an arrangement are the same as ordinarily created between persons dealing at arm's length. He should be able to seek expert opinion in this regard from the Transfer Pricing Officer (TPO). For instance, refer to illustration 22 in section 4 of the Report.

10. Conclusion

After analysis the following information we come to conclusion that there is big loss to revenue department due to tax avoidance and tax evasion according to one survey there is huge problem of black money In India, Black money refers to funds earned on the black market, on which income and other taxes has not been paid. The total amount of black money deposited in foreign banks by Indians is unknown. Some reports claim a total exceeding US$14 trillion are stashed in Switzerland. Other reports, including those reported by Swiss Bankers Association and the Government of Switzerland, claim that these reports are false and fabricated, and the total amount held in all Swiss banks by citizens of India is about US$2 billion.
In February 2012, the director of the Central Bureau of Investigation said that Indians have $500 billion of illegal funds in foreign tax havens, more than any other country. In March 2012, the Government of India clarified in its parliament that the CBI Director's statement on $500 billion of illegal money was an estimate based on a statement made to India's Supreme Court in July 2011

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