

## TAX AND RELIGION

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### Abstract

*This article unfolds the actual relationship between tax and religion. We can say that they are inter-related, inter-dependent and still strange to each other. The provision of basic infrastructures is quite necessary for development and growth of any society. These infrastructures actually require a lot of money which just a single individual cannot provide. Therefore, the government shows great concern for a medium through which fund can be made available to achieve their set goals for the society. One of the means by which fund is derived is through taxation. A lot has been written about tax evasion from public finance perspectives, but not many studies focus on the ethics of tax evasion. In the forgoing pages we will see how they have evolved over the period of time and what else could be done for its development.*

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## TAX AND RELIGION

*The income tax law is a lot of bunk. The government can't collect legal taxes from illegal money.*

*- Attributed to Al Capone*

### I. INTRODUCTION

This paper examines the interaction between tax and religion from two points of view. First, legal as well as religious (more particularly ethical) precepts requires people to earn their livelihood by honest means, but when it comes to taxing income, tax laws not only tax income earned by legal means but also by illegal means. In brief, tax is colour blind as far as the source of income to be taxed is concerned. Second, because of this attitude towards morality of taxation is weakened. And when persons do not perceive tax evasion as an ethical issue they are more likely to evade tax.

For this purpose of our enquiry into these aspects of relationship between tax and religion we shall limit the ambit and meaning of religion to its ethical and moral aspect. We shall not take into account the religious practice.

### II. TAX AND RELIGION - A COMPLEX RELATIONSHIP

Tax and religion are very strange friends. Before we get deeper into the problem it makes sense to define the scope of the problem we have set out to examine, so that we do not wander like a wayward child. For this purpose we shall first enquire into meanings of the word involved, namely, 'tax' and 'religion'.

#### A. Tax

A tax is a compulsory contribution to the government, imposed in the common interest of all, for the purpose of defraying the expenses incurred in carrying out the public functions, or imposed for the purpose of regulation, without reference to the special benefits conferred on the one making the payment.<sup>2</sup>

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<sup>2</sup> Rev. Martin T. Crowe, *The Moral Obligation of Paying Just Taxes*, The Catholic University of America Studies in Sacred Theology No. 84 (1944).

Tax, according to Black's Law Dictionary is 'A charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money.' 'Taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.'<sup>3</sup> Taxes are also imposed by many sub-national entities. Taxes consist of direct tax or indirect tax, and may be paid in money or as its labour equivalent (often but not always unpaid). In essence, tax is seen as pecuniary burden put upon individuals or property to support the government in its oversight activities of a nation and exacted by legislative authority.<sup>4</sup>

### *B. Religion*

The Merriam-Webster online dictionary<sup>4</sup> defines 'religion' *inter alia* as 'an interest, a belief, or an activity that is very important to a person or group'. The Black's Law Dictionary, 9<sup>th</sup> edn. defines 'religion' as 'A system of faith and worship usually involving belief in a supreme being and usually containing a moral or ethical code; especially, such a system recognized and practiced by a particular church, sect, or denomination.' We see, thus, religion is a belief or faith system important to a person or a group. This usually contains a moral or ethical code by which the person or group abide.

In our study we are not concerned with the religious practice. We shall focus our attention towards the 'ethic' in religion. The Merriam-Webster online dictionary defines 'ethic' as 'rules of behaviour based on ideas about what is morally good and bad' and the derivative word 'ethics' as 'an area of study that deals with ideas about

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<sup>3</sup> Thomas M. Cooley, *The Law of Taxation* § 1, at 61-63 (Clark A. Nichols ed., 4<sup>th</sup> ed. 1924).

<sup>4</sup> Temitope Olamide Fagbemi, Olayinka Marte Uadiale and Abdurafiu Olaiya Noah, "The Ethics of Tax Evasion: Perceptual Evidence from Nigeria", 17(3) *European Journal of Social Sciences* 360-371, 362 (2010).

what is good and bad behaviour' or 'a branch of philosophy dealing with what is morally right or wrong' and also 'a belief that something is very important'. Black's Law Dictionary, 9<sup>th</sup> edn. defines the word 'ethical' as 'Of or relating to moral obligations that one person owes another; especially, in law, of or relating to legal ethics' and also 'In conformity with moral norms or standards of professional conduct.' The Merriam-Webster online dictionary defines the word 'morality' as 'beliefs about what is right behaviour and what is wrong behaviour' and 'the degree to which something is right and good' and also as 'the moral goodness or badness of something'. The Black's Law Dictionary, 9<sup>th</sup> edn. defines the same word as 'Conformity with recognized rules of correct conduct' and 'A system of duties; ethics.'

The Constitution of India in Article 51A imposes a duty upon every citizen of India amongst other things 'to abide by the Constitution and respect its ideals and institutions', and 'to cherish and follow the noble ideals which inspired our national struggle for freedom' and also 'to safeguard public property and to abjure violence'. Thus the Constitution enjoins upon every citizen to lead a life based upon some established moral and legal principle. This can be reasonably interpreted to mean inculcate respect for laws including various tax laws. There should be some congruity, a point of agreement while people are complying with various laws. However, we will see shortly that tax and religion (or ethics) are strange bed-fellows.

### *C. Problem between Tax and Religion*

The burglar and the swindler, who carry on a trade or business for profit, are as liable to tax as an honest businessman, and, in addition they get their deserts elsewhere.<sup>5</sup> The ease with which the government tax illegal income gives a signal that tax related offences are not serious. This attitude weakens the tax morality. Studies done on the morality of tax evasion shows those persons who perceive tax evasion as an ethical issue are less likely to evade tax regardless of the situation than persons who do not.<sup>6</sup> The present legal regime where there is no differentiation between income from legal and illegal source weakens the morality of taxation and fosters tax evasion. The most dreaded gangster of the prohibition era was held guilty not for his criminal action, but for the fact that he failed to file income tax return and

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<sup>5</sup> *CIT v. K. Thangamani* (2009) 309 ITR 15 (Mad).

pay tax on the income which was illegal. Legally, Capone was not under an obligation to file tax return in respect of his profits from criminal activity until 1927. That year Justice Oliver Wendell Holmes Jr. of the United States Supreme Court ruled that illegally earned income had to be declared.<sup>7</sup>

### *C. Tax Evasion and Ethics*

A lot has been written about tax evasion from public finance perspectives, but not many studies focus on the ethics of tax evasion. In recent times, Robert McGee and colleagues have done study of individuals in various countries around the world focusing on the attitude towards tax evasion. This section would summarize the findings of Messrs McGhee on this aspect.

The earliest and one of the most comprehensive studies on the ethics of tax evasion was undertaken by Martin Crowe, a Catholic priest who surveyed the philosophical and religious (mostly Catholic) literature written over the previous five centuries. Crowe found that three basic positions had emerged over the centuries. Tax evasion was considered to be: never ethical, always ethical, or ethical under certain facts and circumstances.<sup>8</sup> Robert McGee *et al*'s studies expand on Crowe's work. Very few philosophical studies on the ethics of tax evasion are undertaken. The existing studies basically cover all three viewpoints of Crowe.

Scholars have attempted to justify tax evasion (albeit unsuccessfully) on the basis of theories in public finance and social contract. Simultaneously, there exist a few philosophical studies concluding that tax evasion is never justified. For example, the literature of the Baha'i religion strictly prohibits tax evasion. This religion put individuals under a strict duty to obey the laws of the country in which they live. Similarly, by studying the Mormon religious literature one could reach the same conclusion and for the same reason. McGee mentions two philosophical studies of the ethics of tax evasion written from a Jewish perspective. Both the studies concluded that tax evasion is never (almost) ethical. However, a third study, both philosophical and empirical in nature, found that the Jews who were surveyed were more flexible

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<sup>7</sup> [http://en.wikipedia.org/wiki/Al\\_Capone](http://en.wikipedia.org/wiki/Al_Capone) (last visited on

<sup>8</sup> Robert W. McGee (ed.), *The Ethics of Tax Evasion: Perspectives in Theory and Practice* 4 (Springer, New York, 2012).

on the issue though their scriptures indicate to the contrary.<sup>9</sup> A similar empirical study of Mormon views found that many Mormons too were flexible on the issue.

Christian religious literature is very ambivalent on the ethics of tax evasion. Christian scholars do not agree upon the circumstances when tax evasion might be unethical. While some believe that tax evasion is always unethical, others believe that it is not at least sometimes. Jesus's oft-quoted view that we should render unto Caesar what is Caesar's is also subject to differing interpretations.<sup>10</sup>

The tax evasion from Islamic perspective may be studied under two scenarios. First, the state is a pure Islamic state and its ruler is considered Ulul-Amr. Second, the state is not a pure Islamic state i.e. it is a mixed or it is secular or non-Islamic. In case of a pure Islamic state the ruler is considered representative of Allah on earth. The state commands unconditional allegiance to the state and its laws. Therefore, tax evasion in such a state is not only immoral or unethical, but a great sin. In case of a non-Islamic, secular, or mixed societies, Muslims living therein have an obligation to pay taxes if the government's actions and policies are virtuous and noble as measured by the Islamic standards, and are not in direct opposition or violation of Shariah. In the event, the state does not measure up against these standards or it is an evil or corrupt state, Muslims may resort to acts of disobedience and undermining of the government.<sup>11</sup> Some studies have shown that tax evasion might be justified where the effect of the tax is to increase prices (such as value added taxes, sales taxes, use taxes, excise taxes, and custom tariffs) or where the tax is on income.<sup>12</sup>

McGee *et al* conducted a survey on 124 degree students in the College of Business at Hadhramout University, Yemen during 2009-10 to examine their perceptions as to the agreement on the ethics of tax evasion. The results showed that tax evasion is ethical under some circumstances. The majority of the respondents were opposed to

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<sup>9</sup>Ali Reza Jalili, "The Ethics of Tax Evasion: An Islamic Perspective" in Robert W. McGee (ed.), *The Ethics of Tax Evasion: Perspectives in Theory and Practice* 167-200 (Springer, New York, 2012).

<sup>10</sup> Robert McGee et al., "Cheating on Taxes If You Have a Chance: A comparative Study of Tax Evasion Opinion in Turkey and Germany", in Robert W. McGee (ed.), *The Ethics of Tax Evasion: Perspectives in Theory and Practice* 357-369 (Springer, New York, 2012).

<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

the view that tax evasion is always or almost always ethical. As a general rule, students might justify tax evasion by giving stronger support in some circumstance than others. In this study, students considered tax evasion as an ethical practice if the tax system is unfair, the government is corrupt, wasteful, or if the government engages in human rights abuses. The weakest arguments were in cases when tax evasion is viewed from the Islamic perspective. As a Muslim, tax evasion is not justifiable. This indicates that almost all of the students were in agreement with the third view of the Islamic perspective towards tax evasion, which is obeying the Muslim ruler and paying the tax, since it is regulated by him. Furthermore, students were opposed to tax evasion when tax rates are not high, or when the money collected are spent wisely and on worthy project. The findings of this study were in the same vein with some other studies that have been conducted using a similar survey instrument. These findings have policy implications if governments want to collect a higher percentage of taxes. This way, government must change the perceptions of their taxpaying citizenry. They must spend funds wisely. They must not be corrupt and the tax system must be perceived as fair.<sup>13</sup>

Robert McGee *et al* have conducted a few empirical studies on the ethics of tax evasion in Argentina, Armenia, Bosnia & Herzegovina, China, Germany, Guatemala, Hong Kong, Macau, Poland, Romania, Slovakia, Thailand, Ukraine; and on philosophy teachers, and international business academics. All these studies concluded that tax evasion may be ethically justified in certain situations, although they found some arguments were stronger than others. These studies found that tax evasion is more likely to be viewed as justifiable if: the tax system is perceived as being unfair, the government abuses human rights, tax funds wind up in the pockets of corrupt politicians, tax rates are too high, or there is inability to pay.<sup>14</sup> These finding gets support from Martin Crowes' study of Catholic theological literature and a study of Mexican migrant workers who would put their family interest before state's claim for tax. Both studies conclude that support for tax evasion gets weak where individuals get something in return for their money such as access to market in Mexican migrant workers' case.<sup>15</sup>

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<sup>13</sup> Robert McGee, Khaled Salmen Aljaaidi & Anwar Salem Musaibah, "The Ethics of Tax Evasion: A Survey of Administrative Sciences' Students in Yemen", 7(16) *International Journal of Business and Management* 1-12 (2012) (Available at <http://dx.doi.org/10.5539/ijbm.v7n16p1>).

<sup>14</sup> Robert W. McGee and Wendy Gelman, "Opinions on the Ethics of Tax Evasion: A Comparative Study of the USA and Six Latin American Countries", 24 *Akron Tax Journal* 69-91 (2009).

We saw there is no agreement amongst various religious views as to when tax evasion is unethical. This tempts people to choose the most convenient view. This problem gets more complicated as every contradicting view has some literature to back it. The decision is often made regardless of the quality of agreement. The Marxist idea that religion is the opiate of the people gets a new lease of life. The oppressed often do not rise up and challenge their oppressors lest they pay a heavy price in the next world.<sup>16</sup>

Robert McGee et al did a similar study in Guangzhou and Macau. The views of the Guangzhou and Macau samples were similar in 10 of 15 cases but different in five cases. The finding of this study has policy implications for China as well as other countries facing difficulty in collecting taxes because of tax evasion. To collect a larger portion of taxes governments should make concerted efforts to eliminate or reduce the reasons for which people believe tax evasion is ethical. It should eliminate perceived unfairness in the tax system, avoid waste and corruption, spend tax funds on projects that benefit taxpayers and keep tax rates low.<sup>17</sup>

Temitope Olamide Fagbemi *et al* conducted a survey on ethics of tax evasion in Nigeria on a sample population of 127 people. They relied extensively on primary data to achieve the objectives set out for the study.

The study found that there is a widespread ethical support for tax evasion. Though study showed varying degrees of justification for tax evasion, the respondents widely believed that tax evasion is ethical sometimes at ninety percent (90%) confidence level. Furthermore, the study also found that perceived government corruption was major reason why respondents evade tax. Therefore, for eradication of

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<sup>14</sup> Alfonso Morales, "Income Tax Compliance and Alternative Views of Ethics and Human Nature", 1 *Journal of Accounting Ethics and Public Policy* 380-99 (1998).

<sup>16</sup> Robert W. McGee, "Is It Unethical to Evade Taxes in an Evil or Corrupt State? A Look at Jewish, Christian, Muslim, Mormon and Baha'i Perspectives", 2(1) *Journal of Accounting, Ethics & Public Policy* 149-181 (Winter, 1999).

<sup>17</sup> Robert W. McGee and Carlos Noronha, "The Ethics of Tax Evasion: A Comparative Study of Guangzhou (Southern China) and Macau Opinions" Issue 36, Vol. 18, No.2 *Euro Asia Journal of Management* 133-152 (December 2008).

tax evasion the underlying causes have to be addressed which have often ethical bearing.<sup>19</sup>

#### *D. HUF Taxation – An Anomaly*

The Income-Tax Act, 1961 and Wealth Tax Act, 1957, treat an “HUF” (Hindu Undivided Family) as a distinct and separate entity for the purpose of assessment. This gives Hindus in India a statutory tax saving device. A member of an HUF can file two tax returns, one in his individual capacity and as a member of the HUF. He is able to divide his taxable income between two entities and is also able to claim deductions and expenses, thus, bringing down his total taxable income as well as tax liability.

In order to lessen tax liability a Hindu may at any time devolve his self-acquired property into the common stock of an HUF. This way a new HUF is created which was hitherto non-existent. This enables a Hindu to transfer part of his property to his wife and children and consequently circumvent the provisions of Income Tax Act (section 64).

The Hindu attitudes, beliefs, and traditions in respect of tax evasion have been complicated by an almost thousand year long colonial rule, first under Muslim invaders and then under the British. India, as a nation, has not been able to evolve a concrete and clear set of principles regarding the ethics of tax evasion. This is complicated by a fact that this is a nation comprising the world’s major religious groups following different set of civil code as well as income-tax code. Hindus enjoy special status in tax law, which arguably may be interpreted as legalized tax evasion.<sup>18</sup>

## IV. METHODOLOGY

For writing this paper doctrinal research method has been used. I have relied upon primary and secondary materials available in the library and on the internet. No field visit has been made. As regards the issue of taxation of illegal income in India original case reports have been referred to. With regard to illegal income in the USA the US government archive website and Wikipedia has been relied upon. On the issue

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<sup>18</sup> Sanjoy Bose, “Hindu Ethical Considerations in Relation to Tax Evasion”, in Robert W. McGee (ed.),

of ethics of tax evasion I have mostly relied on the earlier findings of Robert McGee *et al* published in various journals and available through SSRN network over the internet and his book *Ethics of Tax Evasion* (Springer 2012) has been and is probably the only source compiling most important writing on the subject.<sup>19</sup>

## V. CONCLUSION

Tax evasion is an intentional payment of less tax than what the law requires. Every taxpayer has a right to arrange his affairs in a manner to minimize the tax incidence within the ambit of tax laws. The arrangement amounts to tax evasion if it is contrary to the provisions of law, and thus, also an offence. Many factors involved behind tax evasion determine people's attitudes towards tax morality. When persons perceive tax evasion as an ethical issue, they are less likely to evade regardless of the situation than persons who do not perceive so. People comply with the tax law because of perceived moral obligations to obey tax laws.<sup>20</sup> However, taxing illegal income in the same manner as any legal income with the benefit of deductions of expenses and exemptions as if it were income from any other business, distorts that perception. It adds to the list of reasons because of which tax evasion is perceived as a non-serious crime. Ultimately, leading to an environment in which tax evasion is not something to be looked down upon or be afraid of (See what Al Capone said "regarding collecting legal taxes from illegal money"). In India the ethics of tax evasion is even more complicated by the fact that in special provisions for taxing income of an HUF, the Indian government provides a legal way to avoid tax for a particular religious group. This might have adverse affect on the tax ethics of the nation as a whole.

Thus, our study proves hypotheses aimed at. One, at par treatment of income from illegal source and income from legal source weakens the morality of taxation. Two, when tax evasion is no longer an ethical issue there is propensity for tax evasion.

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<sup>19</sup> *The Ethics of Tax Evasion: Perspectives in Theory and Practice* 135-147 (Springer, New York, 2012).

<sup>20</sup> Robert McGee, Khaled Salmen Aljaaidi & Anwar Salem Musaibah, "The Ethics of Tax Evasion: A Survey of Administrative Sciences' Students in Yemen", 7(16) *International Journal of Business and Management* 1-12 (2012) (Available at <http://dx.doi.org/10.5539/ijbm.v7n16p1>).

The provision of basic infrastructures is quite necessary for development and growth of any society. These infrastructures actually require a lot of money which just a single individual cannot provide. Therefore, the government shows great concern for a medium through which fund can be made available to achieve their set goals for the society. One of the means by which fund is derived is through taxation. Therefore, the citizens are expected to discharge their civic responsibility by paying their taxes as these contribute to the development and administration of the society at large. However, the basic infrastructures which are supposed to be provided for the entire society are not available and/or are in a worrisome condition. Often times, the government complain and claim that tax evasion contribute in a great extent to this failure. Thus, the research set out to look at the ethical attitude of taxpayers to tax evasion.

In light of the above discussion, we may suggest following measures for improving tax ethics:

- (i) The government should strive at ensuring that they are accountable and transparent in the administration and implementation of various development programmes and projects.
- (ii) The government should also pay particular attention to the tax system by ensuring that it is fair to all the citizens. A good way to start this is by giving adequate consideration to the Direct Taxes Code pending before the Parliament.
- (iii) Efforts should be made at sensitising the populace on the seriousness of tax evasion and the penalties attached.
- (iv) Illegal income should be taxed at higher rates and tax proceedings papers should be allowed as evidence in criminal prosecution.
- (v) Studies should be conducted to explore the influence of ethics in preventing tax evasion across the various strata of populace in India.

- (vi) Tax laws should not give special preference to any particular religious group i.e. there should be common tax code.

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