

COMBATTING TAX EVASION IN MAURITIUS; A COMPARATIVE STUDY WITH THE US

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Abstract: *Offences of tax evasion are becoming recurrent in the Mauritian society and this begs the question as to whether Mauritius laws are effective in reducing or eliminating instances of tax evasion. The aim of this study is to analyse Mauritius laws on tax evasion and to identify loopholes present in the existing legal and regulatory framework. This research will discuss the issues underlying the practice of tax evasion and for this purpose, existing literature on the subject will be examined. The study will also look at initiatives adopted by some selected countries such as the US to combat tax evasion practices. This comparative study will be carried out with the view to provide effective recommendations for Mauritius to achieve an adequate and appropriate legal and regulatory framework that would be more effective in tackling issues of tax evasion. The methodologies for the research are comprised of the black letter approach which will analyse the legal provisions relating to tax evasion in Mauritius and the US. Journals, books, reports among others will be also examined. A comparative study will also be carried out with respect to the laws on tax evasion of the US. The paper aims at responding to the research objectives set out above. It is suggested that the laws of Mauritius should be amended to provide for some measures that have been adopted by the US to help the stakeholders concerned fight against tax evasion. The study is limited only to tax evasion offences set out in the Mauritius Income Tax Act, the other tax laws of Mauritius have not been considered in this research.*

Keywords: Tax Evasion, Tax Laws and Penalties, Tax Evasion Penalties, Tax Evasion Loopholes, Mauritius.

Research Area: Corporate and Tax Law

Paper Type: Research Paper

1. INTRODUCTION

Taxation is essential for the functioning of the country. The government uses revenues obtained from tax for the funding of all the facilities which are provided to the public such as health care, education and public services. This causes taxation to have an impact on all of us, either directly or indirectly. Thus, situations may arise where taxpayers might try to reduce the tax burden by having recourse to numerous means. These can be either by legal or illegal ways; tax avoidance is the legal approach while tax evasion is the illegal non-payment or underpayment of tax. In this paper, the focus will be made on the concept of tax evasion. The history of taxes is based from thousand years into the past (Blankson, 2007). Taxation dates from ancient Egypt, Ancient Chinese, Greece and the Roman Empire before it became the modern taxation of today.

A layman definition of tax can be: Tax is a mandatory payment by individuals and companies to the government in line with the law governing the payment of taxation. The Organization for Economic Cooperation and Development (OCED) defines a tax as a compulsory unrequited payment to general government (Oecd.org, 2018). According to Smith (2015), taxes are compulsory payments to the state, that do not confer any individual entitlement to specific goods or services in return.

From the three definitions above, we note that much emphasis is laid on the word “compulsory”. This means that there is an obligation on the taxpayer to pay such charge. The word “unrequited” can be used to justify the second part of the Smith definition which is true

for the purchase of goods or services which involve receiving the specific good or services for the amount of money paid. This is different for tax where there is no such specific good or services received. Furthermore, the buyer will have an option to purchase or not, compare to taxes which are compulsory. Thus, we can construct a definition by considering three criterions. Firstly, the tax must involve the payment of money. Secondly, the payment must be to the government and lastly, there must be an obligation on the taxpayer to pay, that is, it must be compulsory.

A starting definition of tax evasion can be the illegal evading of tax. An online source classified tax evasion as a criminal offence (Legal Dictionary, 2018). It can be justified as an offence because it is a crime against the state. More light can be brought to this definition by considering three elements (Bhandari, 2018). Firstly, the element of non-compliance. Tax evasion will occur only if there has been underpayment or non-payment of an amount of tax owed. Next is the mental element; there is no tax evasion if such payment failure was not intentional. Thus, the taxpayers must have the intention not to pay. The last one is the legal element. The crime of tax evasion must be clearly established by the law.

Another definition is given by the Royal Commission on the taxation of profit and income as “Tax evasion denotes all those activities undertaken by a person to not pay the tax that the law charges on his income. He is in the wrong, through his wrongdoing may range from the making of a deliberate fraudulent return to mere failure to pay the tax at the proper time.” (Prest, 1956). This definition is in line with the three elements given by Bhandari. Firstly, the act is necessary. Next there must be the law and finally, the act must be deliberate.

The increase in the number of tax evasion around the world has led to a drastic fall in government revenue. Countries where tax evasion is very low, are achieving more economic growth compared to where it is very high due to the high loss of government revenue. Here the challenge that every country face is to find a solution to deter tax evasion. Each country has adopted their own measures against tax evasion. Taxpayers are constantly using new means to evade tax. Legislators are bringing new legislation to cater for those changes. However, the issue is to what extent they will be able to keep the law in line with the new emerging types of tax evasion.

- The research objectives of the study are as follows:
 - To have an overview of the tax evasion law in Mauritius and analyse to what extent these laws have proved to be effective.
 - To critically analyse and evaluate the laws on tax evasion in the United States.
 - To make a detailed comparison of the law on tax evasion and measures taken to combat tax evasion in Mauritius and the United States.
 - To identify the tax evasion laws and remedies in United States which will be more effective to eliminate the loopholes in the law on Tax evasion in Mauritius.
- This study will aim to address the following questions:
 - What is the current situation in Mauritius regarding tax evasion?
 - What are the loopholes in the taxation law of Mauritius with respect to tax evasion?
 - To what extent the law of the United States effective in combating tax evasion?
 - What are the recommendations that Mauritius can inspire from the laws of the United States to enhance its battle against tax evasion?

The first part of this paper has provided a general introduction on the topic followed by a deep study of its historical background and various definitions of tax evasion. The following parts of the paper are structured as follows: part 2 consists of a review of existing literature from international, national, and US sources on tax evasion. Part 3 will analyse the various laws and measures taken in Mauritius to combat the problem of tax evasion. Parts 4 will examine the various laws and measures taken in the US respectively to combat the problem of tax evasion. Part 5 comprises a comparative analysis of the laws and measures from the two jurisdictions and recommend which measures can be taken from the United States to implement in the Mauritian tax system. Part 6 will finally conclude the paper. The study is however limited only to tax evasion offences set out in the Mauritius Income Tax Act, the other tax laws of Mauritius have not been considered in this research.

2. LITERATURE REVIEW

2.1. International

Tax evasion is a worldwide problem. The justice network shows that the loss in the annual revenue of government worldwide is more than \$3.1 trillion due to tax evasion (The Cost of Tax Abuse, 2011). This shows that even if tax evasion is a very old problem, in 2011 it is still showing its devastating impact on the worldwide economy. Werdigier, J. states that if more had been done to control tax evasion, Europe would not have been facing the crisis of 2011 (Werdrigier, 2018). By considering both statements, we can conclude that this devastating effect is due to the human failures to take appropriate actions to solve tax evasion. An attempt to correct this problem is suggested by Mathieson (2012) who brought five steps which he claimed would help to recover \$3.1 trillion of unpaid tax. These five steps are firstly the multilateral automatic tax, next is disclosure followed by the global introduction of country-by-country reporting, fourthly, concerted international action and lastly harmonization and codification of money-laundering laws. Together, these steps would allow combatting tax evasion.

However, some countries have not considered Mathieson's five steps exactly as they are, but rather measures which resemble them. Between 2014-2015, there was a decrease in tax-to-GDP ratio, it was in 2016 that the rate of tax revenue increase to 90% (Ec.europa.eu, 2018). Therefore, the real positive outcome of the measures was achieved in 2016.

2.2. National

The digest of Revenues Statistic 2006-2015 shows that the revenue collected in Mauritius by taxation had increased from Rs34.2 Billion in 2006/07 to Rs67.8 Billion in 2015. This figure is approximately twice that of 2006/07 (Mauritius Revenue Authority, 2016). This huge increase in revenue gives the impression that the MRA has been successful in its tax collection task. Similarly, a report by the director general of the MRA reveals that tax collections for 2013 were in line with the economic growth (Africamoney.info, 2018).

The latest update reveals that for the year 2016/17 the amount of tax revenue collected was Rs76.1 billion which represented an increase of 8.6% from that of the previous year. For the year of 2017/18, the objective fixed is Rs85.5 billion (Bhuckory, 2017). This method of using the amount of revenue collection to measure the performance of MRA shows that MRA is on the right track.

However, in 2013 a study conducted by the MRA targeting shops and supermarkets shows that there has been a shortfall of Rs200 million on a single item of VAT (Business.mega.mu, 2018). A further revelation was that revenue from VAT amount to 40% of the total tax revenue. Such a loss of 40% will have a negative impact on the country if not

remedy now. These in the future can lead to a decrease in annual tax revenue. Another inquiry in 2013 reveals that barristers and the attorneys had annual revenue of Rs2 to 6 million but claimed that they were not liable for any tax payment (Business.mega.mu, 2018). These professionals had luxurious properties which they tended to transfer in the name of their relatives to escape tax liabilities. Similarly, in 2014 the MRA began an investigation which revealed that there has been tax evasion by businessmen for several years whose turnover often appear to be Rs2 million to 5million (Business.mega.mu, 2018). Hence, it is extremely important to note that despite an increase in the trend of the amount of tax revenue, there are still numerous cases of tax evasion. The method of monitoring the amount of tax revenue earned to determine the problem of tax evasion is an unreliable one in the case of Mauritius. To solve the above-mentioned problems, the MRA has opened a further investigation on the specific individual if the MRA has any doubt on them.

Mauritius is continuously engaging in new ways to fight against tax evasion. In 2014, Mauritius has signed the international treaty for the combat of tax evasion created by the Organisation for Economic Co-operation and Development (OECD) which came to effect September 2018 (LUTTE CONTRE L'ÉVASION FISCALE: Maurice se conformera à l'échange automatique de renseignements, 2014). This treaty is known as the Automatic Exchange of information which provides an overview of the OCED and global foreign on transparency and exchange of information for tax purpose (OECD, 2018).

Despite the above measures, during a press conference of 2014, Mr. Sudhamo Lall highlighted that the MRA is still facing difficulties to combat tax evasion (MRA—PAIEMENT DE LA TVA: Une loterie pour empêcher l'évasion fiscale, 2014). Thereupon, the MRA took further initiatives and launched the “VAT lucky draw scheme”. This scheme concerned all the receipts which have a minimum VAT of Rs 75. The main aim of the scheme is to encourage the population to request a receipt for their transaction and the VAT registered person to provide a VAT receipt for all his transactions. In this way, the population will tend to impose on the VAT registered person to provide a receipt thus solving the practice of evading tax by not providing VAT invoice (Mauritius Revenue Authority, 2017).

2.3.The United States

Tax evasion has been a major problem for the Internal Revenue Service (IRS). According to The Fortune, tax evasion costs the government an average of \$ 458 billion per year for 2008 and 2010. This figure previously was \$450 for 2006 (Fortune, 2018). We can conclude that the cost by the government of tax evasion had increased from 2006 to 2010. This indicates that for the US the problem was already present far back to 2006. However, it is important to note, the figures given above is highly biased as many pre-2000 offences of tax evasion were only discovered recently. An example is the Panama papers which are 11.5 million documents containing the financial information for more than 214,488 offshore companies (Panamapapers.icij.org, 2018). These papers, leaked in 2015, enabled authorities to discover tax frauds dated from 1975 and onward.

This leakage of the documents from the world's fourth-biggest offshore law firm Mossack Fonseca reveals extremely important data on tax evasion (Mossfon.com, 2018). Some of this information highlighted by the Guardian revealed countless ways to exploit offshore tax; how Vladimir Putin's best friend Sergei Roldugin hid money in offshore entities and how the British Prime minister David Cameron had avoided tax payment by hiring small armies of Bahamas residents (Harding, 2016). This points out that tax evasions are not only committed by criminals such as drug dealers, or terrorists but it can be by any individual.

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The famous rapper Lil Wayne had three charges of tax evasion against him, \$1.13 million in 2010, \$5.6 million in 2011 and \$7.72 million in 2012 (Efile.com, 2018). Shakira is under investigation for not paying taxes on her income from 2012 to 2014 (PEOPLE.com, 2018). To combat tax evasion, the US recently has come forward with the using of data mining. This involves employing agents to examine the data collected from the Panama papers to trace the offshore accounts shifted to other countries (Scannell, 2017). Additionally, Obama has introduced new banking and tax rules to increase transparency in the offshore accounts (Korte, 2016).

3. TAX EVASION IN MAURITIUS

3.1.Introduction

The body responsible for tax in Mauritius is the Mauritius Revenue Authority (MRA). The latter was established by Section 3 of the Mauritius Revenue Authority Act 2004 with the authority for the collection of tax.

3.2.Laws on Tax Evasion

Mauritius in various of its legislations caters for the crimes of tax evasion. These legislations include the Income Tax Act 1995, the Value Added Tax Act 1998, Customs Act 1988. In any case of tax evasion, the prosecution must prove beyond reasonable doubt that the accused is guilty of tax evasion.

3.2.1. Income Tax Act 1995

Offences relating to returns, books and records (section 147)	<i>Any person who wilfully:</i> <ul style="list-style-type: none"> •submits false return •gives false information •produces false books and documents •refuses to give evidence when required by the Authority •misleads the Director general 	-Liable to a fine not exceeding Rs 50,000 and imprisonment for a term not exceeding 2 years (section 147(1)). Section 147(2) provides that in addition to the above penalties, the court may order the payment of an amount not exceeding 3 times the income tax liable and the income already paid.
Other Offences (section 148)	<i>Any person who:</i> <ul style="list-style-type: none"> •fails to submit a return •fails to obtain a Tax account number •fails to furnish information •fails to keep books •fails to produce books and records for examination 	-Liable to a fine not exceeding Rs 5,000 and to imprisonment not exceeding 6 months. Where a person is convicted for failure to furnish the return in addition to the above penalty shall be ordered to furnish the information.
Offences relating to PAYE (section 145)	<i>Any person who:</i> <ul style="list-style-type: none"> •fails to register as an employer •fails to pay the tax required and tax arrears •fails to give the Statement of Emoluments and Tax Deduction to his employee •submits to his employer an incorrect Employee declaration form 	-Liable to a fine not exceeding Rs 5,000 and imprisonment for a term not exceeding 6 months (section 145(1)).

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	<p><i>Any person who:</i></p> <ul style="list-style-type: none"> •Gives statement of Emolument and tax deduction which is false to his employee 	-Liable to a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding 2 years (section 145(2))
Offences relating to CPS (section 146)	<ul style="list-style-type: none"> •Any person who fails to submit a statement of income. •Where a person furnishes a statement of income which is false. 	<ul style="list-style-type: none"> -Liable to a fine not exceeding Rs 5,000 and to imprisonment for a term not exceeding 6 months (section 146(1)). -Liable to a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding 2 years (section 146(2))
Offences relating to deduction of tax at source (section 146A)	<p><i>Any person who:</i></p> <ul style="list-style-type: none"> •fails to give a statement of an income tax deduction. •fails to submit the statement of an income tax deduction. •submits a statement of income tax deduction which is false. 	-Liable to a fine not exceeding Rs 50,000 and to imprisonment for a term not exceeding 2 years (section 146A).

3.2.2. POLICE V MASTER AND POLAR SERVICES LTD [2010 PL3 149]:

The accused was charged for failure to pay income tax. He had not submitted any return for the years 1996, 1997, 1998 and 1999. Despite that, letters and notices were sent to the accused, he neither responded to the notice nor called at the MRA. The MRA sent letters and four claims to the accused, yet he never submitted further returns. It was held that the accused was found guilty of the offence of having failed to pay tax in breach of sections 148(1) of the ITA 1995.

4. TAX EVASION IN UNITED STATES

4.1.Introduction

The 16th amendment of 1913 gave the Congress the authority to tax. The Congress has charged this duty of tax collection to the Internal Revenue Service(IRS) a part of the Department of the Treasury. Thus, the IRS is a government agency responsible for the tax collection and the enforcement of tax law in the US. The mission of the IRS is to provide the top quality service to taxpayers by helping them to meet their tax responsibilities and to enforce the law with fairness and integrity (Irs.gov, 2018).

4.2.Laws on Tax Evasion

The law relating to taxation is provided for in the Inland revenue code (I.R.C) which are summarised below:

Attempt to evade tax (section 7201)	Any person who wilfully attempts to evade any tax imposed by this code shall commit an offence. Section 7201 creates two types of offences: the evasion of assessment and the evasion of payment. The first consists of the filing of a false return that omits income or includes false deduction. The second	Guilty of a felony and liable to a fine not exceeding \$100,000 (\$500,000 in case of a corporation) or imprisonment for a term not exceeding 5 years or both, with the cost of prosecution.
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	offence consists of the act of concealing of money and asset.	
Wilful failure to collect or pay tax (section 7202)	Any person who is required by this code to collect or pay tax wilfully fails to do so shall commit an offence. Section 7202 is to ensure compliance by third parties who have the obligation to collect and deduct tax from employees.	Guilty of a felony and liable to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both, together with the cost of prosecution.
Failure to file a return, supply information or pay tax (section 7203)	Any person who fails to file a return, keep any record, supply information at the time required by the law.	Guilty of a misdemeanour and liable to a fine not exceeding \$25,000 (\$100,000 in case of a corporation) or imprisonment for a term not exceeding 1 year or both, together with the cost of prosecution.
Fraudulent exemption or failure to supply information (section 7205)	Section 7205 is divided into two parts. Firstly, withholding on wages. Where any employer requests for information, any individual provides false or fraudulent information. Secondly is the withholding on interest and dividend, where any individual wilfully makes the false certification.	Liable to a fine not exceeding \$1,000 or imprisonment for a term not exceeding 1 year, or both.
Fraud and false statement (section 7206)	Any person who wilfully <ul style="list-style-type: none"> •makes any return where he does not believe it to be true and correct •removes, disposes or conceals any goods on which a tax shall be imposed •falsifies and destroys records 	Guilty of a felony and liable to a fine not exceeding \$100,000 (\$500,000 in case of a corporation) or imprisonment for a term not exceeding 3 years or both, together with the cost of prosecution.
Fraudulent returns, statement or another document (section 7207)	Any person who wilfully provides a fraudulent return, statement, or another document.	Liable to a fine not exceeding \$10,000 (\$50,000 in case of a corporation) or imprisonment not exceeding 1 year or both.

4.3. Tax Evasion cases

4.3.1. UNITED STATES V. COPPOLA 425 F.2D 660 (2D CIR. 1969)

The accused was charged for wilfully attempts to evade tax in breach of section 7201 by filing fraudulent income tax return. Mr. P.Coppola tried to evade the income tax payment of \$15,592.84. The court held that he was guilty of tax evasion and sentenced him to two years of imprisonment and to a fine of \$10,000.

4.3.2. Paschen V. United States 70 F.2d 491 (7th Cir. 1934)

In this case, the accused was charged with the offence of tax evasion as he wilfully attempts to evade and defeat US tax in breach of section 7201 of the IRC. Mr. Paschen failed to include deposits of his commercial accounts into his books and into his income tax returns for 1927 and 1928. These deposit total amount to \$468,799.5. The court held that he was guilty of tax evasion and sentenced him to two years of imprisonment and a fine of \$10, 000 for each year fraud.

4.3.3. UNITED STATES V. THAYER (201 F.3d 214, 219-22)

The accused and his wife were convicted of criminal liability for wilfully failed to pay this employee's withholding in breach of section 7202 of the IRC. The accused and his wife were the sole owners of two companies Mobile Inmate Systems Co and Equipment Leasers of Pennsylvania Co. Both companies usually report their employee withholding to the IRS. However, from 1991 to 1993 Mobile Inmate Systems Co had failed to pay the employees' withholding. The court sentences the accused for imprisonment for eighteen months, along with a supervised release of three years and the paying of \$149,355 which was the amount evaded.

4.3.4. UNITED STATES V. NEAL 93 F.3D 219, 223 (6TH CIR. 1996)

The company officer was charged for failure to timely file return in breach of section 7203 of the IRC. The accused had signed all 1989 quarterly tax returns. However, several of those returns were filed late. In this case, the court highlighted that section 7203 imposes penalties on a person who fails to file returns when such is required by the authority.

4.3.5. UNITED STATES V. BISHOP 412 U.S. 346 (1973)

In this case, the court lays emphasis on the word "wilfully". Section 7201 to 7207, which relate to tax evasion, all include the word "wilfully", as such it is critical to consider its meaning. The court held that wilfully means a voluntary and intentional act of violation of a known legal duty.

4.4. Current measures are taken to solve the problem of tax evasion

4.4.1. Creation of the IRS Criminal Investigation Division (CI).

One of the oldest initiative taken by the IRS in 1919 was the creation of an intelligence unit for the investigation of tax fraud allegation. This intelligence unit later in 1978 changed its name to the "Criminal Investigation". In a newsletter of 2017, the IRS states that the CI unit was built up with a group of highly trained professionals who are recognized as the finest financial investigators on the world (Inland Revenue Service, 2017).

Its main task is the investigation of criminal violation of the US Internal Revenue Code and other tax crime to deter violation of the tax law. Soon it became famous nationally for the conviction of Al Capone for tax evasion, the most famous drug dealer. One of the main reason for the success of the unit is due to its specialization in the field of taxation.

4.4.2. Guidance to choose tax preparers

It is not the taxpayers who prepare their tax return but instead the tax preparer. Taxpayers must be very careful and choose tax preparers wisely as taxpayers are the one to be legally responsible for their return. The taxpayer cannot use as a defence that the return was prepared by someone else. To cater for this issue, in 2018 the IRS has provided a guideline to taxpayers on choosing tax preparers.

Its advice was, to begin with the “IRS Directory of Federal Tax Return Preparers with Credentials and Select Qualification” (Ireland Revenue Service, 2018). This directory was launched in 2015, John Koskinen a commissioner of the IRS said that it will be a practical tool for millions of Americans who rely on the service of a paid tax preparer (Inland Revenue Service, 2015a). The directory is a list which allow the searching and sorting of tax preparers registered with the IRS which include the name, state, city and zip code of attorneys, Certified Public Accountants (CPA), Enrolled Agents, Enrolled Retirement Plan agents, Enrolled Actuaries and Annual Filing Season Program participants (Inland Revenue Service, 2015b).

The next steps are to check the history of the preparer by asking the “Better Business Bureau” about the tax preparer. For instance, for CPA check with the national standard setter, for attorney check with the bar association and for enrolled agent check with the Inland Revenue Service. This is more a preventive measure to tax evasion by eliminating dishonest tax preparer.

4.4.3. Tax return preparers fraud

The IRS during a survey conducted in February 2006 found that most cases of tax evasion are committed by the tax preparers by the filing of a false income tax return through the claiming of inflated expenses, unallowable credits, false deductions, excessive exemptions (Irs.gov, 2018). Despite the taxpayer is not aware of this evasion, if the IRS detects this false return, it will be the taxpayer who will be subjected to penalties but not the tax preparers. Thus, the taxpayers will ultimately be responsible for the tax return.

To cater to this problem, the IRS had organized the “IRS Return Preparer Program” which focused on enhancing compliances by tax preparers. This enables measures such as the investigation of tax preparers ’criminal activity and to refer it to the Department of Justice who will determine the appropriate penalty against the tax preparer. In this way, it will not be the taxpayers who will be penalized for the fraud of the tax preparer. This is an excellent measure, in the sense that it also makes the tax preparer legally responsible for the tax evasion.

4.4.4. Fight against offshore tax evasion

To cater for offshore tax evasion, in 2009 the IRS has introduced the Offshore Voluntary Disclosure Program (OVDP). The OVDP is a program which involves the voluntary disclosure of foreign financial assets by taxpayers. Such voluntary disclosure will result in fewer penalties compared to the penalty in case it was discovered by the IRS.

The IRS stated that the OVDP was designed for two purposes, firstly, to protect taxpayers from criminal liability and secondly for resolving taxpayer’s civil liability and penalty obligation (Inland Revenue Service, 2018a). The first OVDP opened in 2009, has resulted in more than 50,000 disclosures and enabled the IRS to collect more than \$7 billion (Inland Revenue Service, 2016). This shows the effectiveness of the OVDP. Thus, it has acted as a successful deterrent factor which has stimulated taxpayer to be more careful. In 2012, the IRS began another OVDP with higher penalty rate and additional options provided to taxpayers when disclosing financial asset (Inland Revenue Service, 2018b). Additionally, the US has already signed the Tax Information Exchange treaty.

5. RECOMMENDATION

5.1. Analysis of the law

5.1.1. Comparative Analysis of the Tax laws

Each jurisdiction’s approaches differ, for instance in Mauritius, each tax acts makes a list of all the different tax evasion offences along with their penalties applied. The US laws only mentioned the categories of tax evasion and penalties and left the judiciary to interpret which type of offences will fall under which category of tax evasion.

The Inland Revenue Code does not provide for an exhaustive list of the offences of tax evasion. This approach makes it more effective compared to Mauritius as the Mauritian tax law limits itself only to those offences that the law makes mention of. It will be more difficult for tax evader in the US to escape liable by claiming that the law does not provide for such particular offences. The judge will try to classify the offence by the categories provided by the law. Once the judge makes such classification, future similar cases will fall on this precedent.

This approach can be adopted by Mauritius to eliminate that limit present on the offenses of tax evasion and thus ensuring that the law will be up to date with new types of offences.

5.1.2. Loopholes in the Mauritius tax system

Current measures being taken in the US	Current measures are taken to solve the problem of tax evasion in Mauritius
1. Creation of the IRS Criminal Investigation Division (CI).	Fiscal Investigation Department (FID)
2. Guidance to choose tax preparers	×
3. Tax return preparers fraud	×
4. Fight against offshore tax evasion	×

5.2. Recommendation from the United States

5.2.1. Guidance to choose tax preparers

The MRA has not provided any guidance to the taxpayer on this matter. Despite that many Mauritians taxpayers do exercise a sufficient degree of care on choosing a tax preparer, the problem is that their judgment is very subjective. For one taxpayer, this tax preparer can be considered to be a reliable one but for another taxpayer, it can be the contrary. To cater to this subjective judgment, the best solution is to set a clear guideline.

For instance, the IRS has provided guidance to choose tax preparers. First, the taxpayer must start with the “IRS directory of Tax Return Prepares with Credentials and selected Qualification”. The next step is to check the history of the tax preparer. The first step provides all the basic information of the tax preparers, consequently, the next step will enable the taxpayer to know if the tax preparer had committed any fraud in the past.

By adopting a similar guidance, it will ensure taxpayers to choose only honest tax preparers. This will have the effect of preventing tax evasion as the potential tax preparers who were likely to commit tax evasion had already been shortlisted at the beginning of the process.

5.2.2. Tax return preparers fraud

In any case of tax fraud in return, the one ultimately responsible will be the taxpayer, despite the fact he was not the one to prepare the return and whether or not he was aware of the fraud.

So as the tax preparers are not left unpunished, section 78 of the Income-tax act 1995 namely “Liability of principal not affected” stipulates that the principal and the agent shall be jointly and severally liable”. This section makes both the tax payer and the tax preparer liable for any tax evasion. To obtain a more reasonable solution we must find a penalty which will make only the one responsible liable.

Such a measure is present in the US tax system through the “IRS Return Preparer Program”. This program enables the investigation of tax preparers and the referring to the Department of Justice when any criminal activity is undertaken by tax preparers. The MRA must set up a similar program to ensure that tax preparers will be penalized for tax evasion committed by them.

5.2.3. Fight against offshore tax evasion

Despite that Mauritius has already signed the international treaty of OCED; that is the Automatic exchange of information to combat tax evasion in 2014, it’s only in September 2018 that it will come into force. Meanwhile, it is reasonable for the MRA to seek additional measures which will have an immediate effect.

The IRS has created the Offshore Voluntary Disclosure Program which involves the voluntary disclosure of foreign asset by the taxpayer. By doing so, the taxpayer can escape the penalty that he would have paid in case it was the authority who had discovered the undeclared asset. Thus, this acts as a deterrent factor. This program has proven to be very successful in the US.

The MRA can create a similar program which will have the same objective. Tax evader will prefer to disclose their asset now so to prevent high penalties. The advantage is that it will have an immediate effect compared to the signing of a treaty.

6. CONCLUSION

The main aim of this study was to analyse the issue of tax evasion in Mauritius and to assess its effectiveness in order to find the loopholes present in Mauritius’ tax system. As we have seen in section 2, tax evasion is a very important problem and cannot be overlooked. To reach a better solution, the laws and practices used in the United States to curb tax evasion were considered. Then a comparative study of laws and practices used in Mauritius and the United States was done, which has allowed us to identify the loopholes present in the Mauritian tax system. Finally, recommendations were taken from these two jurisdictions which were set out in section 6 of the paper. These recommendations will contribute to combat tax evasion and eliminate various loopholes present in Mauritius tax system which will result in a decrease in tax evasion.

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