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TAX EVASION AND ITS EFFECT ON CRIMINAL LIABILITY UNDER UAE TAX LAW

Dr. Humoud Khalifa Almansoori

Abstract:

The following research presents an analysis reflecting on a key issue namely tax evasion. The study reflects an understanding on the concept of tax evasion, the factors that are most likely to result in such evasions, as well as the impacts of such evasions on a country, its people, and its economy. The study analyses the effect of such tax evasions on the criminal liability of the UAE, in specific, and to achieve this, the theoretical understanding and reviews on the concept have been done to effectively understand how evasion works and affects UAE and its economy in the process.

The study has been accomplished based on a secondary research method, where text books, researched journals, news reports, and other online researched articles and publications have been used to conduct the study. The research has been presented systematically, discussing the concept of tax evasion in the beginning, following which gradually, the types of tax evasion, the risks related to such evasions, the reasons and impacts of evasion in a country, the effects on a country’s economy, have been discussed.

Tax evasion is an illegal act that often individuals and organizations attempt, by means of illegal acts, in order not to pay for their due taxes. Tax burdens, ineffective implementation of regulations, and the intentions to save funds on one’s own self for self-interests and expenses, are some of the factors that cause individuals and/or organizations to evade their taxes.
The impacts of tax evasion could be obtained as being extremely negative on the overall economy and growth of a country. Taxes that are evaded are supposed to add to the economy of a country.

With regards to UAE, it could be obtained from the study that UAE has lenient tax policies, with no income tax on individuals, and special tax schemes for the companies that operate in the country, particularly implying the large number of foreign companies that operate through the free trade zones of the country. The European Union has presented a note of concern for the UAE, along with listing the country on the list of tax havens, stating that the companies that operate in the free trade zones are not necessarily making payments for their taxes, and hence indulging in tax evasions.

The country has recently introduced its new tax laws in 2017, which targets stricter implementation of tax policies and payments in the UAE. This has been found to be a key attempt of the country towards preventing tax evasion possibilities in the country, which otherwise could result in increased criminal liability for the country. With the new law being established, the country can be expected to control its tax payments more effectively, however there is a need to implement strict supervision and monetary policies.

1.0 INTRODUCTION

The study aims to reflect an analysis on the issue of tax evasion, considering the case of United Arab Emirates (UAE), where the study throws light on the tax evasion situation in the country. The UAE law that has been established to overcome the negative impacts of tax evasion in the country, particularly with regard to criminal liability that increases with tax evasion in the country\(^\text{(1)}\).

Tax evasion is confused with tax avoidance, and hence the terms are also used interchangeably. However, the two meanings are not the same. While tax avoidance is an attempt to minimize one’s tax payments based on legitimate ways, tax evasion on the other hand presents the act of not paying the due taxes but based on activities and measures that are illegal in nature. Individuals and organizations often indulge in such tax evasions, by misrepresenting their incomes, reporting false claims and information, and thus ignoring the effects of such evasions on the country and its people, or the economy of the region\(^2\).

Tax evasion is analysed based on key three elements which include – (1) there is an existence of the unpaid tax liability; (2) there is an intentional attempt on the part of the evader to evade; and (3) the evader has had their wilfulness towards the act of evasion. It is however not the same if an individual or organization performs a mistake by filing for their tax returns. By this it is meant that a mistake is not considered as an intentional plan to evade the taxes, and hence is also not considered as punishable by the law\(^3\).

### 1.1 EXAMPLES OF TAX EVASION

Some of the most popular cases of tax evasion include\(^4\) –

- Walter Anderson – Anderson, is was a very popular entrepreneur in the United States, is known to have been involved in one of the largest tax scams in the world as he evaded more than $200 million in taxes. In 1998, when his income was reportedly $67,939, he had paid taxes of only $495. This was a clear case of evasion and had landed Walter Anderson in prison for nine long years.

- Lil Wayne – Another extremely popular individual, who has also been the winner of the Grammy Award was known to have been involved in a

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case of tax evasion. While he owed $11,979,365.48 to be paid as his taxes plus penalties, he only made payments for $175,719.

There are other examples too, which involved famous people in tax evasions such as Richard Hatch “Survivor” Fame, Nicolas Cage, Ron Mix, Football Hall of Famer, and Paul Daugardas, among others.(5)

1.2 AIM OF THE STUDY

The aim of the study is to reflect an analysis on tax evasion and its effect on criminal liability in UAE law.

1.3 RESEARCH OBJECTIVES

Following are the research objectives that have been fulfilled with this study:

- To understand the concept of tax evasion, its causes and impacts on a country and its economy;
- To reflect on the theoretical understanding of the concept;
- To determine the criminal liability raised in UAE due to incidences of tax evasion;
- To analyse how UAE is capable of dealing with the tax evasion cases in the country.

2.0 SIGNIFICANCE OF THE RESEARCH

The study conducted is significant because the topic of tax evasion is of prime importance to any country, including the United Arab Emirates (UAE). In general, a country can be realized to have major dependence on the required or due taxes that individuals and/or businesses are supposed to pay. Such taxes have a direct contribution and influence on the economic growth of the country. This is true for UAE as well, as the businesses of the country are required to make payments in the form of taxes, which in turn are added to the economic revenues of the country.

Although tax policies and schemes in the UAE are quite relaxed, and does not provide strict measures to control such practices, such as is evident from the special tax schemes associated with the free trade zones in the country, which in turn attract a large number of foreign companies in the region. However, the concerns are more with the likelihood of many of these companies which can indulge in the acts of tax evasion, thus not paying the required amounts of taxes. Such non-payments not only call for attention of the government since the economy of the country is affected, but also in that if the government fails to prevent tax evasion, there will be increased criminal liability in the country.

This study is significant as it throws light on the concept and meaning of tax evasion, which helps to realize why the topic is so important to the UAE tax authority. The study deliberates theoretical concepts of tax evasions as well, which enables a greater understanding of why individuals and organizations in the first place indulge in such activities, and what the impacts of such activities could be on a country and its economy.

Further, the study evaluates the need to place control and regulatory measures in order to prevent tax evasion in the country, and hence analyses whether the new tax laws as have been introduced by the UAE would be effective for its purpose of preventing tax evasion or not. This study offers a greater understanding of the entire concept and its implications for the country, based on which the country can consider in future regulatory measures to limit tax evasion in the country.

3.0 TAX EVASION AND ITS EFFECT ON CRIMINAL LIABILITY IN UAE LAW

3.1 TAX EVASION: MEANING

By definition, tax evasion involves non-payment of required taxes by an individual or group or organization illegally by not disclosing the actual income or amounts on which taxes are to be levied, or by considering deductions that are not supported by the law. Since the taxes are tried not to be paid, by means of some illegal ways, hence such tax evasions are considered as illegal and punishable by the law. The laws however, tend to differ from country to
country, based on their actions and considerations of the tax and tax based law practices\(^{(6)}\).

As per the Federal Law No. 7 of 2017 (Law No. 7), tax evasion is defined as “the use of illegal means resulting in the reduction of the amount of the due tax, non-payment thereof, or a refund of a tax that a person does not have the right to have refunded under any Tax Law”\(^{(7)}\).

There are a number of ways in which tax evasion is carried out. Most common activities of tax evasion include\(^{(8)}\) –

- Underreporting of income
- Deductions or expenses being inflated
- Hiding funds
- Hiding interest held in offshore accounts

The act of tax evasion clearly reflects a purposeful intent of an individual or group not to pay the right amount of taxes that they are supposed to pay. Since the purpose or intent of the crime is severe, it is considered as a serious crime under the tax law, in most all countries worldwide\(^{(9)}\).

### 3.1.1 Clarity of the Concept

It is important that one must not confuse tax evasion with unintentional mistakes. For instance, since tax payments and related forms and processes can be complicated, genuine mistakes too can occur by someone. This would mean that upon identifying the mistake, they can make the necessary tax payments. Such mistakes are not considered as tax evasions. In order for a non-tax payment to be considered as an intentional invasion, it is important that the


same is investigated by responsible departments and proven that the non-payment has been intentional\(^{(10)}\).

The concept of tax evasion has become more important to understand and analyse since it is not reasonably possible for a government of a country to devise a taxation system for all, and then expect everyone to be dutiful towards their country and their tax payments. There would naturally be some groups of people who would cheat over their payments and hence not make the necessary payments that they must pay as their taxes\(^{(11)}\).

Most importantly, if strict measures are not considered by a country and its law practices, then chances are that, such people would further have the scope and opportunities to keep cheating on their tax responsibilities. Thus, it is important for a country to have laws and measures to ensure that tax evasions are not carried out, or are at their minimum levels\(^{(12)}\).

### 3.1.2 WHO ARE THE EVADERS?

Previous researchers such as Christian (1994), Jeyapalan Kasipillai have tried to determine who the actual tax evaders are, and whether they are the low income or the high income groups of people. According to Christian, it is the low income groups of people who mostly intend to evade taxes, while high income groups of individuals focus on avoiding taxes by means of legal avoidance measures\(^{(13)}\).

However, such studies are not effectively proven since it is the rich and the high income groups of people who actually have a higher income, implying their need or duty to pay higher taxes. Lower income people would have lesser


amounts of taxes to pay. Hence the chances of evasion too, tend to be associated with the high income groups, such as the high income businesses or high income groups of people living in the UAE, as may be assumed, though no significant evidences have been obtained on such inferences as to who are the actual tax evaders are in a country. Also, it is not only individuals, but also big businesses that have the intentions to evade taxes\(^{(14)}\).

### 3.1.3 TAX EVASION: WHY?

The concerns with tax evasions are more because of the existing instability in the norms and regulations that are against tax evasions in a country. For example, the cases of tax evasions are mostly reported in the United States, where the norms prove to be ambiguous and less effective to prevent the act of tax evasions, with young people, male candidates, and businesses such as car dealers reportedly being more into the act\(^{(15)}\). This essentially proves to be true in case of the UAE as well, where the tax evasions are most likely to be performed by the businesses operating in the country.

Further it could be realized that the instability in norms arise more because of the confusion that often exist between what can be considered as legal tax avoidance and what can be called an illegal tax evasion. The underlying conducts too, are often too complex to be undertaken effectively. Tax evasion is an act that presents a lack of willingness among people to understand their responsibilities towards their country or their duty to fulfil what they must\(^{(16)}\).

### 3.1.4 TAX EVASION THEORY

A theory of tax evasion based on a retrospective view could be reviewed. It could be obtained that, an A-S model, representing the structure of the Allingham–Sandmo (A–S) model is applicable on the act of tax evasion. Based on this model, an individual’s gross income is taken into concern and the taxpayer is portrayed at a time when he is about to file his taxes, based on which

the calculation of how much he should pay as taxes, is done. This model also takes into consideration the probability of variation of the amount on which actual taxes would occur from the amount declared by an individual (17).

Further, a cynical view of a taxpayer considers that a taxpayer indeed engages in an act of tax evasion. However, whether the taxpayer always chooses to evade or not, is not clearly evident. Also, it could be reviewed that it is not highly reasonable to think that a taxpayer has not considered plans to evade taxes from before, which implies that the A-S model is not reasonable to consider, and hence a link of the tax evasion with the black market earnings, could also be realized (18).

A political economy model of tax evasion could also be reviewed, which reflects on the fact that politicians tend to offer a scope of tax evasion to those who can indulge in the act, considering that based on such evasions, the taxation incidences would be different in the country. The idea behind such a model is that the burden of a country to pay for public good would be placed on those who cannot intend to evade taxes or those people for whom such an act is not worthy to indulge in. Small government, big government, and tax anarchy are the three forms of equilibrium that can arise in a state in connexion to evasion of taxes (19). There is often tension between the need for the government to increase its revenues and the rights and interests of the individual taxpayer not to have their funds withdrawn in an arbitrary manner. From an economic perspective, lax tax enforcement is an economic cost and taxpayers will try to lower or evade that cost as much as possible. Thus, taxpayers may resort to tax-lowering opportunities such as delaying income to a future time period or shifting income receipts to a different tax unit. Others may avoid compliance by

engaging in illicit activities such as use of false invoices and forged transactions to deceive revenue authorities.(20)

### 3.2 TYPES OF TAX EVASION

Legally, taxpayers have the option to take measures to minimize their taxes. For this, specific countries have offers of specific tax deduction schemes, which taxpayers can take advantage of, as they are legally accepted. But tax evasion is a crime, based on illegal measures of non-payment of taxes. The deductions and avoidance measures considered in the tax evasion act are generally not authorized by a government of taxation authorities of a country.(21)

The most common types of tax evasion are reflected through the following activities:

- Not reporting the true value of one’s cash income;
- Considering deductions on one’s personal expenses in an unauthorized manner, on the tax returns from a business;
- Claiming for deductions based on false declaration on charity, or by increasing the amounts of charitable deductions illegally, at times when the actually value of charitable funds might be zero;
- Value of property that one might donate to charity being overestimated;
- A false tax return being filed, where property and other estate and asset values being underreported intentionally.

In this regard, the factor of ‘attempt’ has been found to be crucial, implying that in spite of an individual knowing their duty to pay taxes, chooses to evade the same, thus failing to pay the taxes willingly.(22)

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3.2.1 TAX EVASION TYPES

There are three common types of tax invasion that people tend to indulge in. These include –

3.2.1.1 False reporting of income

Reporting income falsely is the most common type of evasion in tax payments, which has been found to be considered by millions of people across all countries in the world. Generally, for paying the right amount of taxes, it is important for an individual as well as organization or business to declare their income amounts. It is here that several taxpayers indulge in misrepresenting their income values, particularly if there are no specific records of incomes or additional incomes that they earn. The misrepresentation can also often be a mistake on the part of the taxpayer, but in most cases, it is a planned act which therefore falls under the act of tax evasion(23).

3.2.1.2 Offering false information

In the previous case of false income reporting, chances are that the taxpayer might mistakenly misrepresent their income values. However, there are cases where the tax payers provide information related to their income, assets and other details, which are false, and this implies that the taxpayer purposely has offered the false information as providing one’s information cannot be a mistake on anyone’s end. This essentially involves falsification of documents or activities such as falsely filing an income tax return, and so on, however all of which must also be proved in order to consider the act as being illegal or intentional on the part of the taxpayer(24).


3.2.1.3 Theft of identity

There are instances in which identity theft is also performed by taxpayers, as part of their tax evasion act. For instance, one may file their income tax returns under a social security number which is not true. Individuals have also been found to claim exemptions for their family members or children mentioning about dependencies, whereas in reality such dependent individuals might simply not exist. What happens by claiming for such dependent individuals in addition is that the taxpayer gets the chance of minimizing their tax payment amounts. However, such falsifications are clearly cases of felony and hence are illegal in nature\(^{(25)}\).

3.2.2 TAX EVASION SCHEMES

Tax evaders also apply certain schemes while indulging in the crime of tax evasion. These include –

3.2.2.1 Falsifying tax deduction schemes

Tax deductions essentially include expenses on items which can be deducted from the gross income of an individual. This therefore reduces the taxable amount for the individual, thereby minimizing upon the tax liability of the concerned individual. Deductions are therefore a legal method which offers a scope to taxpayers to reduce their taxes while not indulging in any criminal act. However, individuals who indulge in tax evasion tend to misuse this advantage offered to them, thereby indulging in falsification of the tax deductions, by falsifying expenses, inflating expenses, not providing true information about one’s income and assets, or by classifying the expenses that are non-deductible as being deductible\(^{(26)}\).
3.2.2.2 Tax credit schemes

Tax credits are also offered to taxpayers, as deductions which can be made from the tax liability of an individual, however such amounts are not directly associated with their expenses. The use of tax credits in most instances is allowed to encourage positive tax behaviours, such as for taxation of carbon emissions, as required for certain businesses. However, tax evaders misuse the tax credit schemes too, by misrepresenting their eligibility for obtaining the tax credits, thus indulging in tax evasion in this manner\(^{(27)}\).

3.2.2.3 Consumption tax schemes

By consumption taxes are meant those taxes which are collected for the purpose of sales proceeds, and may include sales tax, and value added tax. There are tax evasion schemes related to consumption taxes too, which evaders try taking advantage of. For instance, they omit transactions from records of taxations, or may deflate the transaction value that are presented in the tax records, present transactions in a disguised manner, and so on, which lead to the scope of tax evasion by the taxpayer\(^{(28)}\).

3.3 RISKS OF TAX EVASION ON THE STATE ECONOMY

3.3.1 ECONOMIC EFFECTS AND TAX EVASION

Tax evasion have been found to have major impacts on the economy of a region. The effects are not only felt on a country but also on the global economic growth and development. The effects are more because of the nature of globalization which tends to connect global countries and hence there are activities in between countries too, such as through trade practices, businesses, as well as employment. Such an interconnection means an interdependence too,


among the countries in connection. Thus, if one country is affected in terms of its economy, chances are that the other countries too, would be affected(29).

The reason why tax evasion tends to affect the economy of a country is because a country depends on the amounts collected in the form of taxes for its growth, development and for purpose of investing in various areas meant for the improvement and development of a country. Thus, the taxes that are collected in a country, are a direct contribution to the economic growth of the country as well. If a large number of people evade taxes, then naturally the revenues that a government is supposed to earn from the taxes does not happen. As a result, the impact is significantly felt on the economy of the region(30).

Further, it is seen that when a country experiences increasing activities of tax evasion, along with tax avoidances, it affects the overall productive investment mix of the country, which in turn implies lower economic growth and also in turn affects the enterprises that are run publicly in a country. Tax evasion has also been found to be associated with unethical practices in businesses where organizations keep looking for loopholes to evade taxes. When businesses are supposed to pay a certain amount as their taxes, and instead of paying that, they elude taxes, their contribution to the economy of the country naturally gets affected(31).

3.3.2 DISTORTION OF DEVELOPMENT DUE TO TAX EVASION AND CORRUPTION

Studies on different countries and their governments have revealed that if tax evasion has not taken place, and hence if governments would have been able to collect all the money that they were supposed to, then their revenues would have been much higher than what they earn now. This clearly implies how

economic development of a country tends to be affected owing to people and organizations being indulged in corruption activities and hence in activities of tax evasion\(^{(32)}\).

It could be reflected upon that such tax evasion tends to portray a leakage or diversion of the available financial resources in a country from the budget that a country plans at its national level to the private expenses and interests of people and groups. The tax evasion acts tend to present the fact that criminal activities related to non-payment of taxes can have major negative impact on the economic growth of a country. more importantly, such finances that are not paid towards the taxes are also not invested in any positive or productive areas by those who prefer the tax evasions, and thus it also cannot be considered that such evasions can have any multiplier effects on the country for benefit of the country and its people\(^{(33)}\).

3.3.2.1 Understanding the underground economy and factors causing tax evasions

In relation to the tax evasion and its effects on the economic development of a country, the critical role of the underground economy adding to such crimes, could be realized. The underground economy has been found to be a universal feature of almost all countries in the world. Its presence have been felt largely across countries, with its impacts also being realized socially and economically on a region, since resources turn out to be scarce and they are misused owing to individuals and organizations attempting to fulfil their sole interests, not considering the interests of the country as a whole. It reflects the presence of a shadow economy which has no positive influence or impact on the economic growth of a country\(^{(34)}\).


Also, it could be found as essential to reflect on the causes and reasons as to why people or organizations tend to indulge in tax evasion. For instance, it is found that too much of burdens being experienced by the tax payers often lead them to evade the taxes. There are instances where a taxpayer feels that the amount of taxes that they are required to pay are much higher in relation to their income. Moreover, there are political and psychological effects too, which tend to affect genuine tax payments among the taxpayers\(^{(35)}\).

For instance, in many cases, there are several adverse reactions that taxpayers are required to experience owing to increases in tax rates, taxes on commercial activities, which taxpayers often consider as burdens on them, and hence look for negative ways to evade the taxes in an attempt to reduce that burden. In this regard therefore, it could be realized that the tax burdens that are experienced by the taxpayers, are often more due to the indirect taxes which they are required to pay, such as by means of sales taxes, and value added taxes. Since it is not possible to evade on these taxes, the taxpayers try finding out ways to evade on their income tax payments, mostly\(^{(36)}\).

### 3.3.3 Taxes and Tax Evasion in the UAE

As for the UAE, it is important to mention that a larger population of the country comprises of expatriates from different countries in the world, who are employees and residents in the country. While in general UAE offers to be a tax-free country, not requiring its people to pay taxes in any form, expatriates seem to feel relieved from the taxes which they are liable to pay in their home countries. In fact, UAE has ties with several countries (70 countries in total) which enable the countries to tax the worldwide income of expatriates working and living overseas\(^{(37)}\).

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\(^{(37)}\) Jones, H. (2017, October 2). *Are you liable for income tax while living in the UAE?* Retrieved February 15, 2018, from The national: https://www.thenational.ae/business/money/are-you-liable-for-income-tax-while-living-in-the-uae-1.663575
The UAE is relatively considered as being low in terms of its corruption levels. The risks are lower for the businesses operating in the UAE from the Emirati tax administration. As the country presents, there are no significant cases of irregular tax payments or bribery with tax payments in the country. Also, the processes of tax filing and dealing with taxes are easier in the country. Since there are no income or profit taxes levied in here, the total amount of taxes that is required to be paid by the businesses, is also relatively less. There are no import and export taxes for the companies that operate from the multiple free trade zones offered by the UAE.

Recent reports issued by the European Union (EU) suggest that there is a lack of transparency as far as the tax policies and payments are concerned with the UAE. Particularly, the highlight has been on the companies operating from the country’s free zones, where the EU believes that a lot of companies, owing to the easy tax policies of the UAE, are also indulging in tax evasions. The country does not apply to the minimum standards associated with BEPS (base erosion and profit sharing), which would have otherwise tackled the issues of tax evasions in the country, which further raises the concerns for the country.

UAE has been classified as a tax haven (since the country offer special tax schemes to the foreign countries operating through the free trade zones), and it is now considered that if businesses such as operating in main financial hub of the country – Dubai, and start moving abroad their money, then it might have a potential impact on the capital flows of the country. The chances of tax evasions in here are more because a large number of foreign companies are operating in the UAE and from its free trade zones. Another key information related to


UAE taxation system is that the country since January 2018 has also launched the VAT or value added tax system (5%), which the people and businesses are supposed to pay on non-essential items. Although tax evasion may not be possible on VAT, however, this could be one way for the country to collect more taxes from the people and businesses in the country\textsuperscript{(41)}.

It should be noted that to-date, the UAE Government has no plans to introduce individual income tax\textsuperscript{(42)}.

3.4 ELEMENTS OF TAX EVASION CRIME

3.4.1 TAX EVASION ELEMENTS

Fundamental to the act of tax evasion, the element of wilfulness has been considered as one of the most critical factors that explains the crime as well as the involvement of the evaders. The other two critical elements that follow include – underpayment and evasion, which in particular are associated with the statute of the tax evasion Act\textsuperscript{(43)}. To list the three critical elements of tax evasion therefore, the list would include\textsuperscript{(44)} –

\begin{itemize}
  \item A deficiency in the payment of the tax;
  \item An attempt of evasion or evasion affirmativeness;
  \item Wilfulness by the defendant.
\end{itemize}

3.4.1.1 Element 1: Deficiency in the payment of the tax

This element of tax evasion suggests that in order for a government to prosecute a taxpayer, it is essential to prove that the taxpayer has additional


dues on taxes. The government therefore needs to identify and provide evidences that the taxpayer was supposed to pay more as required by the tax provisions, than the amount that the taxpayer has paid, although the exact amount of the tax that has been evaded, is not required to be proved (45).

Such evidences are generally required to be proved based on the following requirements, as related to a taxpayer – (i) income values being understated or omitted; (ii) claims made on deductions that are either fictitious or improper; (iii) incomes being allocated falsely and hence misrepresented; and (iv) claims of exemptions or credits being improperly presented. Direct or indirect evidences (indirect evidences such as witnesses testimony of ordinary people, or experts reports) can be used by a government in order to prove such evasions by a taxpayer for the court to make a decision on the taxpayer and their crime (46).

3.4.1.2 Element 2: An attempt of evasion or evasion affirmativeness

The second element reflects the intention and purpose of a taxpayer to attempt for tax evasion and hence not make payments for the taxes that are actually due on them. Such an attempt on the part of the evader, can be in any form or manner, and mostly illegal, which therefore leads to its listing on criminal activities of an individual or organization. If an individual experiences a failure to file their taxes for any reason, or their penalties, such a failure is not considered as an attempt to evasion. Rather, evasion happens when there is a deliberate attempt on the part of the taxpayer not to pay their taxes, by illegal means (47).

3.4.1.3 Element 3: Wilfulness by the defendant

This is the final element in tax evasion act, where it is suggested that an evader has to have a wilfulness of their own self in order to be an evader of taxes. This implies that the intention and purpose with which a taxpayer evades taxes must be wilfully attempted by them. In order to prove such wilfulness of the evader, a government requires to skilfully prove the intent of the evader in court based on collected facts and analysed circumstances. Some of the key evidences might include the taxpayer’s involvement in businesses that are completely or mainly based on cash transactions thus keeping no records of such transactions, or when the evader fails to present records of their transactions, or through the false and misrepresented documents that they present to evade their taxes\(^\text{48}\).

3.4.1.4 Mens Rea Component of Tax Evasion

This component is in relation to the above mentioned three key elements of the act, where the *mens rea* component reflects the presence of a ‘guilty mind’ of the taxpayer in attempting to evade their taxes. This guilty mind is considered in addition to the criminal act performed by the individual or organization which is reflected through this component. When the term wilfulness of the taxpayer is mentioned or termed, it actually refers to this factor of mens rea or guilty mind of the evader\(^\text{49}\). One of the rules established in criminal law is non-responsibility for the actions of another person. Therefore, a lawsuit can only be raised against a person considered to be either guilty of a crime or responsible for having contributed to the crime through their personal actions\(^\text{50}\). This is provided in the Article (26) of the Law No. 7 of 2017 " any Person who is proven to have been directly involved or instrumental in Tax

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Evasion pursuant to Clause (3) of this Article shall be jointly and severally liable with the Person whom he has assisted, to pay the Payable Tax and Administrative Penalties pursuant to this Law or any other Tax Law”.

3.4.2 TYPES OF TAX EVASION

While the three elements suggest the extreme nature of the act of tax evasion, it is also important to realize that the tax evasion can be of two different types. These include – evasion of assessment, and evasion of payment.

3.4.2.1 Evasion of assessment

This essentially involves tactics which a taxpayer attempts to use so that the assessment on their documents and tax requirements can be avoided, and hence the actual amounts of taxes required to be paid by them, cannot be revealed with the assessments. This type of evasion therefore, is focused on the assessment factor of the taxation process.

3.4.2.2 Evasion of payment

Evasion of payment however implies the acts considered to specifically evade taxes and hence not pay the required amount of taxes that one is supposed to pay. This therefore includes activities such as concealment of assets or money on which the tax amounts would otherwise be raised. One can also indulge in removing their assets so that tax authorities or investigation teams are unable to reach such assets, and hence the tax value remains reduced against the actual value, to be paid by the taxpayer (51).

Based on these two types of tax non-compliance, the different forms of evasion include (52) –

- Filing a false return
- Keeping a double set of books

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- Making false invoices
- Concealing sources of income
- Destruction of records
- Holding property in another person’s name
- Overstating deductions

3.4.3 WHEN TAX IS TERMED AS FRAUD

Tax fraud is also another term which is directly related to the act of tax evasion. This is primarily so because the basic element or foundation in the act of tax evasion involves an act of fraud, since the evaders indulge in misrepresentation of documents, trying to mislead authorities in assessments and tax payments, and hence clearly involving a fraudulent activity on their part. Even for those who are involved in businesses based mainly on case transactions, they are supposed to declare their transactions in the form of some genuine records, which if they do not perform, would imply an act of fraud\(^{(53)}\).

3.4.3.1 Tax evasion as white collar fraud

A white collar crime is generally referred to “any illegal act committed by nonphysical means and by concealment or guile, to obtain money or property … or to obtain business or personal advantage”\(^{(54)}\).

Going by the above definition therefore, if an individual or organization cheats on their due tax payments, the same is a crime which can be listed under the white collar offense. It is important to note here that such a crime does not involve any forms of violence, or collisions, but rather involves transfer of properties or assets in an attempt to save oneself from paying the due taxes. The act is however a crime and deserves punishment under law, as the act is not


legal by nature, and results in losses for a country and its people, implying an indirect negative impact based on a deliberate act\(^{(55)}\).

The same is the case with the UAE law too, where the tax evasion is considered as a crime, and hence not supported by the government and the law. Realizing the negative impacts of tax evasions, the country also has established its laws to punish those who violate the tax laws in the country, implying that the country does consider such acts as criminal activities\(^{(56)}\).

### 3.4.4 Who Benefits from Tax Evasion?

The fact that there are benefits from tax evasion for some, is true in case of the UAE as well as in other countries. In this regard, a general assumption is that the evader mainly benefits from the act of tax evasion. However, detailed analysis reflects that there are other aspects to analysing the evasion benefits. For instance, with evasion being in place in a country, UAE or others, there occurs a number of adjustments since individuals and organizations tend to react and adjust accordingly to such crime effects on their country. As a result, there are changes in prices and other factors in a country’s economy, enabling distributional effects, which therefore are required to be analysed to understand the actual effects or benefits from tax evasion. With such adjustments, it is also realized that the evader does not necessarily fully benefit from their acts of evasions\(^{(57)}\).


3.5 UAE TAX LIABILITIES MENTIONED IN THE SECTION TWO OF THE LAW NO. 7 OF 2017

In the UAE, a Federal Law No. 7 of 2017 (Law No. 7) has been promulgated, which covers the rules and regulations related to the tax procedures of the country. Based on this law, the country has established a new set of rules for the tax system that is followed in the country. This new law aims to improve the regulation and administration of the taxes collection within the country and has also therefore clearly expressed the role of the Federal Tax Authority (FTA) in this regard\(^{(58)}\).

As per this new law, there will be an administrative basis for the taxes such as for applying for the laws on Excise Tax (a tax levied on certain goods and commodities) and Value Added Taxes. Once this law is in place, it will also be necessary for businesses operating in the country to maintain all their business records post the date, as stated in Article 4 of the law under the name of Record Keeping\(^{(59)}\). A tax agent regime is being established in the country based on this law. Several administrative and tax evasion penalties have been set as part of the new law which will be regulating taxes and tax related crimes in the country now\(^{(60)}\).

When penalties will be included, it would be no less than AED 500 ($136) for the wrongdoer, which too has been clearly declared under this new law. As far as the penalties are concerned, the government has now empowered the FTA to be able to impose a prison sentence along with monetary fines on those who

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violate the laws. Also, the country has taken concern to establish a regime for the purpose of dispute resolution\(^{(61)}\).

It has been declared that taxpayers would be required to submit their records related to tax returns and other documents in their genuineness and in the Arabic language, which is mentioned in Article 5 of the law under the name of ‘language’\(^{(62)}\). Other languages too shall be accepted however there must be a translated copy provided with the same. All taxpayers would also have their specific tax registration numbers, which shall be used for correspondence between the taxpayers and the tax authorities, as declared in Article 6 of the law\(^{(63)}\). In case where a taxpayer notices any incorrect information being submitted from their end by mistake, they must provide a voluntary disclosure to the authority stating the same with details, which is mentioned in Article 10 of the law\(^{(64)}\). These rules are part of the new compliances and tax regulations that the country is considering\(^{(65)}\).

For analysing non-compliances among the taxpayers, audits would be performed, which has been empowered to FTA as well (Article 17 of the law) "The Authority may perform a Tax Audit on any Person to verify the extent of that Person’s compliance

With the provisions of this Law and the Tax Law”\(^{(66)}\). The FTA has the power to decide on administrative penalties, and can issue further assessments.


on specific taxpayers, as mentioned in Article 24 of the law “The Authority shall issue a Tax Assessment to determine the Payable Tax and notify the Taxable Person within five business days of its issuance, in any of the following cases:

a. The failure of the Taxable Person to apply for registration within the timeframe specified by the Tax Law.

b. The failure of the Registrant to submit a Tax Return within the timeframe specified by the Tax Law.

c. The failure of the Registrant to settle the Payable Tax stated as such on the Tax Return that was submitted within the time limit specified by the Tax Law.

d. The submittal of an incorrect Tax Return by the Taxable Person.

e. The failure of the Registrant to account for Tax on behalf of another Person when he is obligated to do so under the Tax Law.

f. In case of a shortfall in the Payable Tax as a result of a Person’s Tax Evasion, or as a result of a Tax Evasion in which such Person was involved”(67). Tax Disputes Resolution Committees shall be operating to deal with tax disputes, requests for consideration, and tax refunds. Also, in cases where a taxpayer offers justified reasoning for their actions, the FTA has the right to reduce their burden of taxes as well(68).

3.6 UAE CRIMINAL PENALTY PRESCRIBED IN THE ARTICLE (26) OF THE LAW NO. 7 OF 2017

The Article (26) of the Law No. 7 of 2017 presents the penalties that the law has established for criminal activities of taxpayers in the country, related to the tax procedures. The Article (26) has established that, the FTA can now “impose a prison sentence and monetary penalty not exceeding five times the amount of evaded Tax or either of the two, shall be imposed on:

a. a Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.

b. a Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold.

c. a Person who charges and collects amounts from his clients claiming them to be Tax without being registered.

d. a Person who deliberately provides false information and data and incorrect documents to the Authority.

e. a Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.

f. a Person who deliberately steals, mis-uses or causes the destruction of documents or other materials that are in the possession of the Authority.

g. a Person who prevents or hinders the Authority’s employees from performing their duties.

h. a Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax", depending on the specific taxpayers and their activities thereof. Such imposes would be on those who\textsuperscript{(69)} –

Fails deliberately to settle taxes or administrative issues with their specific tax payments;
Intentionally understate their earnings and revenues from business and other sources, based on which the tax amounts are calculated;
Claims based on false statements made on their assets, documents, earnings, and other information which can affect their genuine tax payments;
Destroy documents, or steal important information, or shifts their assets, so that tax assessments can be evaded, along with evasion of tax payments.

This law and the penalties as have been agreed upon, are applicable to all taxpayers in the country, irrespective of the fact that their tax payments are covered under any other tax law in the country.(70) As these laws and regulations can be realized, they significantly attempt a better control on the issues of tax evasion in the country.

3.7 EFFECTS OF TAX EVASION ON CRIMINAL LIABILITY IN UAE: LAW ANALYSIS

As for the legal system in the UAE, it is observed that a civil law system is followed in the country. This is operated by means of a federal court system which comprises of civil court, criminal court, and the Shari’ah court. The Supreme Court is the highest degree of court operating in the country. The Supreme Court operates from the Abu Dhabi, while other emirates such as Dubai and Ras Al Khaimah in particular have their own judicial systems to follow.(71)

What is important to note here in regard to the tax procedures of the country is that the country has a number of free trade zones, wherein a large number of
foreign companies are operating as well. The free trade zones offer the companies with special tax schemes, imports and customs policies which are regulated by their own regulatory measures. An example of this is the Dubai International Financial Centre (DIFC), which is a free trade zone and has a law of its own to regulate measures and taxes\(^{(72)}\).

The issue of criminal liability arises in relation to taxes and frauds in the country because there are reportedly offenses under the activities of businesses in particular. For instance, business organizations tend to indulge in fraudulent activities misrepresenting information and assets which belong to them, falsifying on data, and thus attempting to evade taxes in the country. Under the law of the country, such concealments of data, misrepresentations and falsifications are considered as against the law and hence punishable under law as well\(^{(73)}\).

The role of the Police and the Public Prosecution could be found as extremely important in executing actions to review criminal activities in the country, which include the tax related criminal activities as well. The police in the country considers the role of protecting the general public, address complaints and issues, and take matters to courts based on investigations, and hence execute orders as per the decisions considered by a court, depending on specific cases and issues. The prosecutor also has a key role to play in this regard, as it guides the directions based on which crimes are investigated in the country, review the allegations and complaints as have been raised, and assessing the crime to decide on respective punishments\(^{(74)}\).

Further, it could be reviewed and analysed that the country has developed new tax laws recently, which defines more specific set of tax-related processes, activities, regulations and administrations, as also mentioned in the previous sections of the report. As discussed earlier, the Federal Law No. 7 of 2017 for Tax Procedures has


been established by the country to improve the tax proceedings, the execution of investigations and trials so that the negative acts such as of tax evasions can be controlled in the country. Based on this new law, the country also aims to fulfil the international standards of tax laws(75).

There are concerns as the EU has listed UAE as tax haven, implying a lack of tax transparency in the country, particularly reflected through the special tax schemes that companies operate in free trade zones. From this it could be realized that if UAE fails to prevent tax evasions in the country, it can have an overall negative impact on the country and its economic growth and development.

4.0 RECOMMENDATIONS

This study makes a few recommendations to the UAE tax authority, which should help the country further to ensure that it can minimise tax evasion within the country(76).

- The country can consider introducing multilateral automatic tax information exchange for the tax agencies operating in the country. With this, the tax authorities would be able to ensure more effectively, that the tax amounts are rightly being paid by the taxpayers.
- Secondly, it is recommended that the taxation policy and system that the country follows, be made a little more transparent in nature, making it clear to the taxpayers as to what the implications are for them and the country for their non-payment of taxes purposely. Such transparency is also essential in order to ensure that there are no sub-versions of the tax bases, based on which the country operates its taxation processes.
- Thirdly, the reporting system for businesses operating in the country could be improved, and it be ensured that the public companies provide financial details and are declared clearly to the government. Supervisory


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teams be established to ensure that such data are not being misrepresented by the companies.

- The country should focus on harmonizing its tax policies and departments working on tax laws and procedures more effectively. Such harmonization would enable the country to achieve a broader picture of the tax system in terms of its effects, and hence be able to ensure that taxes are not being evaded, with the authorities sharing responsibilities towards auditing, analysing, and hence identifying evasion cases.

It can be said that stricter taxation system and measures, high penalties, along with imprisonment, would deter tax evasion among the business community. It will be important for the country to comply with the international standards and practices, and hence offer stricter supervisory policies, and coordination among the departments to work on positive tax payments by all taxpayers in the country, allowing the country to overcome all types of tax evasion and contribute to the country’s economic growth as well.

**4.1 CONCLUSION**

This study provides an analysis on the concept of tax evasion, and its effect on the criminal liability in the UAE. The meaning of tax evasion, the factors that tend to influence such an act, and its impacts on the economy and growth of a country are deliberated in the paper. The study enables a key understanding on the different types of tax evasion that can occur and the elements of evasion which allows an understanding on how an evasion can be detected.

Tax evasion negative impacts the economic growth of a country. This is a key reason why any country, including UAE should be concerned with taking measures to prevent such acts, which are illegal and hence considered as crime, punishable under the law. Applying the theories and understanding of the concept and its impacts, in the case of the UAE, the study obtained that UAE has till now been flexible and relaxed in terms of its tax processes, although issues are addressed in the court of law.
However, the EU has listed UAE on the list of tax havens, stating that there is lack of transparency in the country’s tax schemes, particularly since the country offer special tax schemes to the foreign countries operating through the free trade zones in the country. It is here therefore that it could be realized from the study that the country is faced with the concerns of its liability being increased, if it fails to prevent the acts of tax evasion.

It is concluded that UAE certainly requires stricter measures to be implemented in order to ensure that tax evasions are prevented in the country. The study also obtained that new tax laws have been initiated in the UAE recently in 2017, the rules and regulations under which are attempting to make it stricter and more systematic in obtaining taxes from all taxpayers on the country. The FTA too, could be realized as being given the necessary power and empowerment which it can use to obtain taxes, as well as to decide punishments for those who evade taxes in the country. It can certainly be expected therefore that the new tax laws would be able to enable the government of the UAE to prevent tax evasions to a greater extent than its current times.

Future study is necessary to address the special tax schemes of free trade zone and the possibility of changing these schemes to avoid tax evasion from companies operate in free trade zones, and to see if the proposed chaning for those schemes might have a significant impact on the economic growth of the UAE?

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التهرب الضريبي وتأثيره على المسؤولية الجنائية

بموجب قانون الضرائب الإماراتي لعام 2017

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ملخص البحث باللغة العربية

يتناول البحث التالي تحليلاً تقيحاً لمسألة أساسية وهي التهرب من دفع الضرائب، من خلال تبيان مفهوم التهرب الضريبي، والعمليات التي من المرجح أن تؤدي إلى مثل هذه التهربات، وكذلك آثار عمليات التهرب الضريبي على البلد واقتصاده. كما تطرق الدراسة إلى تحليل تأثير عمليات التهرب الضريبي على المسؤولية الجنائية في دولة الإمارات العربية المتحدة على وجه الخصوص، وتتأكد ذلك من تناول كيفية أسلوب القيام بعملية التهرب الضريبي وتأثيره على دولة الإمارات العربية المتحدة واقتصادها من خلال ذلك التهرب.

التهرب الضريبي هو عمل غير قانوني، وغالباً ما يحاول الأفراد والمنظمات عن طريق أعمال غير قانونية، عدم دفع الضرائب المستحقة عليهم. إن الأعباء الضريبية والتنفيذ غير الفعال للقواعد ونوايا توفير الأموال للمصالح والنقاط الشخصية، هي بعض العوامل التي تجعل الأفراد أو المنظمات تهرب من دفع الضرائب، والتي من المفترض أن تضاف هذه الضرائب التي يتم التهرب منها إلى اقتصاد البلد. فيها يتعلق دولة الإمارات العربية المتحدة، بين لنا من خلال الدراسة أن لديها سياسات ضريبية متساهمة مع عدم وجود ضريبة دخل على الأفراد، وخططات ضريبية خاصة للمشاريع التي تعمل في البلاد، حيث العدد الكبير منها هي شركات أجنبية تعمل من خلال مناطق التجارة الحرة في البلاد.

دخلت دولة الإمارات العربية المتحدة مؤخراً قوانين ضريبية جديدة في عام 2017، والتي تهدف إلى تطبيق أكثر صرامة للسياسات والمدفوعات الضريبية في الدولة. ووضع القانون الجديد، يمكن توقع أن تتحكم الدولة في مدفوعاتها الضريبية بشكل أكثر فعالية، ولكن هناك حاجة لتطبيق سياسات رقابة صارمة وسياسات تدقيقية.