Improving Compliance of Income Tax in Developing Countries: Bangladesh Perspective

Thesis submitted in fulfilment of the requirements for the degree of
Doctor of Philosophy

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Dedication

This work is dedicated to

My parents,

Sultan Uddin Ahmed, Advocate
and Asiya Sultan

who passed away unexpectedly, leaving me alone and helpless, before I was able to finish this thesis.
Acknowledgements

At the outset, I am privileged to thank profusely my principal supervisor, Dr John Morss, without whom my journey towards this project could not even have begun. He never stopped trusting in my ability to carry on the pursuit. God has given ability to people, but we need the opportunity to demonstrate it. For me, that opportunity was created by my supervisor. Thank you ever so much, John. I cannot repay your debt, and your contribution to my life is precious and goes without saying. I also give my profuse thanks to Professor Julie Cassidy, who kindly consented to assist me during the final year of my candidature. She aptly guided me and made useful comments on my thesis to work it into its final shape.

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Along with the joy and pride of pursuing my academic journey at Deakin Law School, I also faced the most grievous and frustrating time of my life. During this time, I lost both of my parents—my mother, Asiya Sultan, and my father, Advocate Sultan Uddin Ahmed. I am so wretched and unfortunate that I was unable to be beside them during their sad demise. With a heavy heart, I acknowledge this failure on my behalf and profusely thank my brothers and sisters who were with them. Dear parents, you gave me the chance to come to this world, but did not give me the opportunity to repay your debt, even in the slightest. My success is not success without your presence, my joy is grief without you, and my life is meaningless without you. May you rest with peace in Heaven.
Abstract

Tax noncompliance is a problem that is inherent in the taxation system itself—the history of tax evasion is as old as the history of taxation. While tax evasion is a problem for both developed and developing countries, it is more acute in developing countries, which have high rates of tax noncompliance. Several theories and models have been presented in an attempt to analyse the problem of tax compliance, with the main three theories being the economic deterrence theory of tax compliance, psychological theory and sociological models. The deterrence theory emphasises punishment for noncompliance, while the psychological theory emphasises persuasion, rather than deterrence. In contrast, sociological models tend to view compliance behaviour within the structure of the social system, considering tax evasion a social phenomenon. However, no single theory has been able to explain the phenomenon in its entirety. Thus, a comprehensive approach that combines all theories is considered necessary to improve compliance. The Australian Taxation Office (ATO) model is based on the responsive regulatory theory. It offers a comprehensive approach that combines persuasion and punishment in a pyramidal manner, given that empirical research has found that persuasion alone does not work—it must be accompanied by deterrence.

Against this backdrop, the purpose of this thesis is to suggest a comprehensive approach for Bangladesh based on the ATO compliance model, and to argue that the relationship between taxpayers and the state is a fiduciary one. While doing so, this thesis aims to critically discuss different theories of tax compliance, including the ATO enforcement pyramid. It also examines some legal tools employed by the income tax administration of Bangladesh to ensure compliance. These tools include tax amnesty and the third-party tax information reporting system. This thesis argues that tax amnesty has failed to be an effective legal mechanism to prevent tax evasion. In addition, this thesis argues that the current law regarding third-party information reporting is insufficient. By examining tax information reporting regimes in different countries, such as Australia, India, New Zealand and the United States, this thesis suggests best practice for Bangladesh. In the context of Bangladesh, no temporary solution to the problem of tax compliance will work effectively. Rather, a sustainable and pragmatic approach is necessary to improve compliance in the long term. In
consideration of that goal, this thesis also presents some policy suggestions for the income tax administration of Bangladesh.
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List of Abbreviations

ABN  Australian Business Number
ACC  Anti-Corruption Commission
ADB  Asian Development Bank
ADR  alternative dispute resolution
AIIR  Annual Investment Income Report
AIR  annual information return
BNP  Bangladesh Nationalist Party
CIC  Central Intelligence Cell
CIP  Commercially Important Person
CRA  Canada Revenue Agency
FATCA  *Foreign Account Tax Compliance Act*
FBAR  Foreign Bank Account Report
FFI  foreign financial institution
GAO  Government Accountability Office
GDP  gross domestic product
ICT  information and communication technology
IMF  International Monetary Fund
IRD  Inland Revenue Department
ITDB  Income Tax Department of Bangladesh
ITO  Income Tax Ordinance
ITP  income tax practitioner
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>LTU</td>
<td>large taxpayer unit</td>
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<tr>
<td>NBR</td>
<td>National Board of Revenue</td>
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<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
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<tr>
<td>OVDI</td>
<td>Offshore Voluntary Disclosure Initiative</td>
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<tr>
<td>RIRA</td>
<td>Reforms in Revenue Administration</td>
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<tr>
<td>TFN</td>
<td>Tax File Number</td>
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<tr>
<td>TIB</td>
<td>Transparency International Bangladesh</td>
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<tr>
<td>TIN</td>
<td>taxpayer identification number</td>
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<tr>
<td>TIRS</td>
<td>tax information reporting system</td>
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<tr>
<td>UK</td>
<td>United Kingdom</td>
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<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>US</td>
<td>United States</td>
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Chapter 1: Introduction

1.1 Background to the Research

The main purpose of taxation is to finance government expenditure,¹ with taxation being fundamental to sustainable economic development. In a classic articulation of this point Kaldor states, ‘Indeed the importance of public revenue from the point of view of accelerated economic development could hardly be exaggerated’.² Taxation determines a government’s control over society’s wealth, and the amount of wealth left with the discretionary control of private citizens.³ Taxation also plays a role as a catalyst for more responsive and accountable governments, and for expanding state capacity.⁴ Taxation is essential for the effective functioning of the state because of the contractual relationship between the state and taxpayers.⁵ Taxation also helps to increase efficiency when markets fail to price factors such as pollution or congestion, or the health costs of particular types of behaviour, such as tobacco consumption.⁶

Developed countries have been using taxation for centuries as a generally effective means of collecting much-needed revenue to fund government expenditure and increase state capacity to achieve fiscal freedom.⁷ In contrast, developing countries, such as Bangladesh, have thus far been unable to collect sufficient revenue through taxation for economic development. It is generally accepted that this is due to widespread tax evasion⁸ and other forms of noncompliance. For example, a joint report

⁶ Warburton and Handy, above n 1, 22.
of the International Monetary Fund (IMF), Organisation for Economic Co-operation
and Development (OECD) and World Bank states:

Significant progress has been made by many developing countries but weak
capacity, corruption and the missing reciprocal link between tax and public
and social expenditures remain as challenges. The vicious circle of low tax
morale and compliance—which reduces the lifeblood for funding public
services—needs to be broken.9

While tax noncompliance is more serious in developing countries, it is not specific to
developing countries alone—it is also a problem for developed countries10 and is an
issue encountered worldwide.11 However, it remains most acute in developing
countries. For example, in Bangladesh, of the 145 million people in the population,
only 3.5 million are income taxpayers (holders of a taxpayer identification number
[TIN]) and only 1.8 million people submit an income tax return. Thus, less than one
per cent of the population pays income tax in Bangladesh. It however transpires that
the number of people paying taxes as against total persons having Taxpayers
Identification Number (TIN) remains around 47 percent. But the number of taxpayers
should be more as compared to the people eligible to pay tax. Against the total
population of about 160 million more than 30 million people are capable to pay income
tax. But the NBR statistics show that more than 80% of the people capable of paying
taxes are not doing so. Another alarming situation is that out of 35 million
businessmen in the country, only 1.34 million have electronic TINs.12 As such, tax
noncompliance is a formidable problem in this country.

There are multiple causes for tax noncompliance, and several theories of tax
compliance that deserve attention. The main causes of tax noncompliance in
Bangladesh include corruption in the income tax department,13 lack of political will to

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9 OECD, above n 4, 10.
11 Jeyapalan Kasipillai, ‘Malaysia’s Hidden Economy and Tax Evasion’ in Chris Evans and Abe
Greenbaum (eds), Tax Administration: Facing the Challenge of the Future (Prospect Media, 1998)
115.
12 Syed Md Aminul Karim and Md Alauddin, ‘Emerging Tax Issues in Asian Countries’ (Paper
presented at the IMF Japan High Level Tax Conference for Asian and Pacific Countries 31, 3
Also Shafiqul Islam, Only 1% of Bangladeshis pay taxes, Dhaka Tribune 31 March, 2105
13 Mohammad Mohabbat Khan, Political and Administrative Corruption: Concepts, Comparative
Experiences and Bangladesh Case (A paper prepared for Transparency International—Bangladesh
Chapter) <unpan1.un.org/intradoc/groups/public/documents/.../UNPAN019105.pdf>; Habib
Zafarullah and Noore Alam Siddiquee, ‘Dissecting Public Sector Corruption in Bangladesh: Issues
enforce tax compliance, prevalence of an informal economy, inefficiency of the tax administration and lack of proper enforcement of the tax law. Against this backdrop, this thesis attempts to systematically identify and discuss the different causes of noncompliance in the context of the income tax regime of Bangladesh. This research focuses on personal income tax issues in Bangladesh. It examines a variety of conceptual approaches to tax compliance, and seeks to determine whether tax compliance in Bangladesh would be improved through tax law reform and the enforcement of tax laws. In order to do so, this thesis focuses specifically on two issues. The first is the role of the state–taxpayer relationship in shaping tax compliance behaviour. Specifically, this thesis endeavours to define the state–taxpayer relationship as a ‘fiduciary’ relationship. The government is a fiduciary for taxpayers, while taxpayers are the beneficiaries, in recognition of paying tax to the government. In light of the above, the second issue examined in this thesis is the best strategy to improve the current poor state of income tax compliance in Bangladesh.

Following the analysis of the taxation system as a fiduciary relationship, this thesis examines the possibility of adopting the Australian Taxation Office (ATO) enforcement pyramid of compliance in Bangladesh’s income tax administration. The ATO compliance model is based on the responsive regulation theory of compliance proposed by Ayres and Braithwaite in 1992. Thus, this theory is critically discussed. In addition, this thesis investigates the applicability of the ATO regulatory pyramid model of compliance in the context of the tax administration of a developing country, such as Bangladesh. The problems of the regulatory pyramid are also discussed in detail to consider whether the model can be replicated in Bangladesh.

The responsive regulatory model of compliance—particularly in the field of taxation—is a relatively recent theory of regulation that offers a comprehensive approach that combines both instrumental and non-instrumental psychological and

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16 IMF et al, above n 5.
18 Ian Ayres and John Braithwaite, Responsive Regulation: Transcending the Deregulation Debate (Oxford University Press, 1992).
social factors to secure satisfactory tax compliance. A critical analysis reveals that this theory retains the traditional deterrence model of tax compliance that emphasises punishment as an effective means of ensuring tax compliance. At the same time, the responsive regulation theory recognises the validity of other compliance theories in the field, such as social and psychological models of tax compliance, and thus presents a pragmatic model. The responsive regulatory theory, as adopted by the ATO, is suggested by researchers as an alternative solution to the problem of tax noncompliance. However, the perspective of developing countries has largely been overlooked. This thesis argues that, despite the limitations of the regulatory pyramid model, it is the most useful instrument in understanding and seeking to influence tax regulation. Thus, it may be the best available option to conceptualise and seek to facilitate suitable tax administration in Bangladesh.

The final focus of this thesis is to analyse the probable effectiveness of some specific legal tools that could be better used by the government of Bangladesh. The specific legal tools discussed are tax amnesty programs and the tax information reporting regime under the income tax law of Bangladesh. In addition, this thesis examines the current practices and laws regarding tax information return systems in different developed countries, such as Australia, New Zealand, Canada, the United States (US) and other OECD countries. These are compared to those employed in Bangladesh, and their relevance and applicability to Bangladesh is examined.

This research employs a novel approach in the field of taxation research by examining the state–taxpayer fiduciary relationship. Although important contributions have previously been made in relation to the general state–citizen fiduciary relationship, insufficient attention has been given to the specific state–taxpayer fiduciary relationship. Thus, this research is important to enable better understanding of tax administrations around the world. In addition, this research examines tax

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20 Ibid.
noncompliance in the field of personal income tax in Bangladesh. It investigates why there is widespread tax noncompliance in developing countries such as Bangladesh, and how the situation can be improved. Tax noncompliance remains central to the fiscal problems in Bangladesh, and demands thorough analysis. Understandings of noncompliance in developing countries such as Bangladesh remain severely limited, while the occurrence of noncompliance in developed countries such as Australia and New Zealand has generated substantial research.22 It should be noted that the National Board of Revenue (NBR) of Bangladesh has thus far not undertaken or supported any substantial study on the subject of tax compliance in Bangladesh,23 and academic research is lacking. Against this backdrop, this research is believed to be the first of its kind.

1.2 Literature Review

Taxpayer compliance can be thought of as an example of general obedience to the law.24 In an attempt to explain why people obey the law, and particularly why people pay tax, legal scholars, social scientists and economists have proffered many theories and models. However, no single theory has been able to explain the dynamics of people’s compliance behaviour in their entirety. The burgeoning tax compliance literature discusses economic, social and psychological aspects of tax compliance behaviour.25 However, one important aspect appears to have been neglected, or at least underemphasised, in the approaches deriving from these various disciplines. This study argues that the state–taxpayer relationship has not been adequately examined,
even though it appears to be vital to shaping taxpayers’ compliance behaviour. However, there have been important recent developments in the examination of the state–citizen relationship as a fiduciary relationship. These recent developments are complex and present a range of contesting theories, yet, generally, they propose a novel theory of the state–taxpayer fiduciary relationship. Before discussing this in more depth, it is first necessary to review the more general theories of obedience to the law.

Fox-Decent argues that constituent elements of state discretionary power inevitably lead to a free-standing and overarching fiduciary relationship between the state and each person, subject to its powers. This relationship is actual, rather than hypothetical. It shapes the state’s capacity to make and enforce laws, and thereby maintain the rule of law in society. Although Fox-Decent propounds a free-standing fiduciary relationship between state and citizens, the claim is yet to be substantiated and more examinations are imperative. Riddle and Fox-Decent argue that the state exercises sovereign power as a fiduciary of the people who are nationals of the state. They contend that, as a fiduciary, the state must abide by the norms of public international law that are ‘peremptory’ (or *jus cogens*). Similarly, Wood argues that government officials have trust duties related to handling natural resources. This duty is considerably heightened by their general duty to be performed in line with their oaths of office—this is the fiduciary duty of public trust, which is owed to the people as beneficiaries.

Wake argues that the fiduciary theory commands the government to respect citizens’ rights to improve their lives. Accordingly, the state must refrain from taking actions that infringe individuals’ liberties and proprietary interests. Fox-Decent argues that, under the fiduciary theory of public authority, all states are obliged to guarantee a healthy environment for their citizens. States are joint trustees for the global atmosphere, and citizens are the beneficiaries. However, Clark argues that, in the area

26 Fox-Decent, 'The Fiduciary Nature', above n 21, 259, 310.
27 Criddle and Fox-Decent, above n 21, 331, 349. *Jus Cogens* suffers from structural infirmities. It is an ad hoc morality process affecting the legitimacy of the notion itself. Robert P. Barnidge, Jr, Questioning the Legitimacy of *Jus Cogens* in the Global Legal Order, *38 Israeli Year Book on Human Rights*, 199.
30 Fox-Decent, ‘From Fiduciary States’, above n 21, 253.
of climate change, a legally binding fiduciary duty is unlikely to be effective and may even violate the principles of the rule of law.\textsuperscript{31} However, Clark’s arguments should be evaluated in the context of Australian law because they are presented from the Australian perspective, in which fiduciary law has somewhat limited application; is proscriptive rather than prescriptive,\textsuperscript{32} and sets its face against extension of the doctrine, even though such extension is not impossible. According to the proscriptive principle, no positive duties are imposed on the fiduciary in relation to the beneficiaries; rather, it must maintain loyalty to the beneficiaries. The principle is only triggered when the fiduciary tries to take advantage of the relationship, to the detriment of the beneficiaries’ interest.\textsuperscript{33} In contrast, prescriptive obligations require the fiduciary to produce definite beneficial outcomes for the beneficiaries.\textsuperscript{34}

Regarding the state–citizen relationship, Fox-Decent argues that there is an overarching fiduciary relationship between the state and its citizens. Traditionally, in a domain of private law settings, the fiduciary relationship is imported to public law settings when explaining the state–citizen relationship. It is contended that the government in power is the trustee for the people.\textsuperscript{35} Leib, Ponet and Serota contend that, despite having its roots in private law, the fiduciary principle can be used to provide a descriptive explanation and normative frame to explain the state–citizen relationship.\textsuperscript{36} Gold observes that fiduciary law presents a rich set of principles to address legal questions—one that has gained recognition for its relevance to multiple settings, including the state–citizen fiduciary relationship.\textsuperscript{37} The fiduciary principle has also been applied in administrative law, election law, and the practice of judging, among other fields.\textsuperscript{38} However, the application of the fiduciary principle in public settings—rather than private settings—is yet to be established and recognised by jurisdictions around the world. Though the legal luminaries as mentioned above made


\textsuperscript{32} \textit{Breen v Williams} (1996) 138 ALR 259 20.


\textsuperscript{34} Darryn Jensen, ‘Prescription and Proscription in Fiduciary Obligations’ (2010) 21 \textit{King’s Law Journal} 333.

\textsuperscript{35} Fox-Decent, above n 21.


\textsuperscript{38} Andrew S Gold and Paul B Miller (eds), \textit{Philosophical Foundations of Fiduciary Law} (Oxford University Press, 2014).
a commendable attempt to import the private fiduciary into the public domain, it would be difficult, particularly in jurisdictions that stick to the proscriptive theory of fiduciary law, to sell the concept since it would open a new era of governmental obligations towards the citizens calling for new mechanism of standing to enforce that law.

It is unclear why people choose to obey the law, and the sociologist of deviance, Becker, argues that obedience to the law must not be taken for granted. For example, Becker argues that criminals behave rationally— they commit a crime if the expected utility from doing so exceeds the utility they could obtain by using the same time and other resources in the pursuit of other activities. Consequently, it is evident that some people indulge in criminal activities not because their basic motivation differs to that of other people, but because they have a different view regarding the benefits and costs of criminal acts. Becker’s theory offers an economic analysis of why people obey the law. It ignores the psychological, moral and social factors that also explain why people obey the law. People do not always think about costs and benefits from the criminal acts but other factors contribute to the commission of such acts. For example, one might kill his wife being enraged after altercations at the heat of the moment. Again some people obey law because they think that law should be followed since it is law and it behests order and discipline in the societal system.

Smith observes that people obey the law because they have consented to the obligation to obey the law. Raz states that people have moral and prudential reasons to obey the law; however, Raz argues that there is no prima facie obligation to do so. Raz states:

I shall argue that there is no obligation to obey the law. It is generally agreed that there is no absolute or conclusive obligation to obey the law. I shall suggest that there is not even a prima facie obligation to obey it … I shall argue that there is no obligation to obey the law even in a good society whose legal system is just. In other words, whatever ones view of the nature of the good society or the desirable shape of the law it does not follow from those or indeed from any other reasonable moral principle that there is an obligation to obey the law.

Philosophically, it is argued that the obligation to obey the law is based on the proposition that the government is essential to safeguard society from such evils as the

39 Becker, above n 25, 169.
40 Ibid.
42 Raz, above n 24, 233.
violation of human rights and the obstruction of personal freedom.\(^{43}\) The argument might be true philosophically, but opposite view can be put forward since some governments, particularly in the third world countries governments are accused of violating human rights and impeding personal liberties of citizens for various reasons.

Tyler offers two main explanations as to why people obey the law. One explanation derives from an instrumental perspective (forced compliance) and the other from a normative perspective (procedural justice).\(^{44}\) According to Tyler, deterrence theory forms the basis of the instrumental perspective. This theory considers that people mould their conduct to be responsive to incentives and punishments in order to obey the law. Under this theory, executive authority acts on the belief that an increase in the certainty and severity of punishment for committing crimes will reduce the rate of crime in the community. Consequently, executive authority favours the instrumental perspective.\(^{45}\) In contrast, Klosko argues that citizens have a moral obligation to obey the law. It is people’s consent that lays the foundation of a strong moral obligation to obey the law.\(^{46}\) The debate between instrumentality and morality however, appears to be never ending each having its own merits though not holistic in explicating the law abiding behaviour of people.

There are two main schools of thought in the research literature regarding tax compliance. One school is based on the theory of crime and punishment, which posits that taxpayers make decisions to comply or not comply based on the probability of being caught, and on the benefit achieved through noncompliance. The other school is based on theories of psychology and sociology that attempt to explain the varying levels of taxpayer compliance.

Based on the neoclassical theory of crime and punishment proffered by Becker in 1968,\(^{47}\) Allingham and Sandmo\(^{48}\) state that tax noncompliance is a rational decision taken by defiant taxpayers who weigh profit and gain against punishment in the event of being caught, and successful escape from detection. Consequently, a rational


\(^{45}\) Ibid.


\(^{47}\) Becker, above n 25.

\(^{48}\) Allingham and Sandmo, above n 25, 323.
taxpayer attempts to evade or avoid tax if the gain outweighs the probable punishment for this law-defying, undesired demeanour. A number of researchers find support for this theory, including Srinivasan; Kolm; Yitzhaki; Spicer and Becker; Clotfelter; Beck and Jung; Klepper and Nagin; Beck, Davis and Jung; and Hasseldine and Bebbington. Although there are theoretical arguments and empirical evidence that deterrence works, the economic deterrent theory has its limitations. First, Skinner and Slemrod observe that this model ignores the number of honest taxpayers. Second, Sheffrin and Triest argue that the theory fails to provide strong predictions about the socioeconomic determinants of tax evasion. Third, Weigel, Hessing and Elffers state that the absence of a motivational concept remains one of the weaknesses of the economic deterrence model. Finally, Lederman argues that, although the economic model of tax compliance is important in expounding some variables of the tax compliance behaviour of taxpayers, it cannot explain all tax compliance issues that encompass income from all sources. This is somewhat true that some taxpayers base their compliance on the probability of being caught and the cost of punishment, it seems that not all patterns of tax compliance behaviour can be explicated by this deterrent theory. There are taxpayers who pay tax considering that as their duty without

preference to profit and loss from tax evasion. The following theories try to explain tax compliance behaviour from perspective other than deterrent theory.

The social and psychological theories of tax compliance view compliance from a social and psychological perspective, rather than an economic perspective. According to Lederman, research on taxpayers’ behaviour reveals that taxpayers’ compliance occurs in response to a norm.62 According to Wenzel, perceived social norms about tax compliance affect taxpayers’ compliance decisions, and misperceptions about the social norm of compliance might generate a detrimental effect on taxpaying behaviour.63 Scholz argues that there is a contract between taxpayers and the state. Taxpayers contribute to the government treasury, and the government provides benefits and services to the people.64 This is the tax contractarian theory of tax compliance. Feld and Frey extend the contractual obligation to what they call the ‘psychological contract’.65 Some of the offshoots of social and psychological theories are the shame and guilt theory, procedural fairness model, motivational posture model, organisational culture model, social identity theory, positive incentive theory, prospect theory and religious theory.66

Alm, Sanchez and Juan67 use an experimental method to determine the major economic and non-economic factors that influence tax compliance behaviour. While acknowledging that reliable data on individual income tax compliance cannot be easily procured, they report strong evidence that both economic and non-economic factors play a vital role in shaping compliance behaviour. Factors such as detection and punishment, the burden of taxation, public good provision, overweighting of low probabilities, and social norms influence compliance decisions. However, the authors acknowledge that these identified factors do not form an exhaustive list of the influences outside the laboratory. Many other factors may play an important role in compliance behaviour, such as religion, morality and guilt. Alm, Sanchez and Juan

62 Ibid.
65 Feld and Frey, above n 25, 102.
conclude by suggesting that governments create a multifaceted compliance strategy that embraces both economic and non-economic factors, including detection, punishment and social and psychological considerations.68

Ayres and Braithwaite developed the responsive regulation model of compliance, which is a blend of the economic and social–psychological theories of compliance.69 In 1998, the ATO developed a tax compliance framework based on the responsive regulatory theory. Ayres and Braithwaite argue that responsive regulation requires regulators to be responsive to the conduct of those they seek to regulate in deciding whether a more or less interventionist response is required.70 Heimer comments that responsive regulatory theory suggests that a regulator will be most successful in inducing a regulated party to comply with regulations by beginning with dialogue, and only escalating pressure in response to apparent reluctance or resistance by the regulated party.71 Parker states that a responsive regulation model builds a moral commitment to comply with the law.72 For the ATO, this model prescribes a new method of regulation in addition to the existing traditional or conventional method of regulatory responses.73 Critics are quick to comment on the responsive regulatory theory. For example, Gunningham, Grabosky and Sinclair argue that responsive regulation is too focused on state regulation.74 In addition, Freigang contends that responsive regulation is not compatible with the rule of law, and has inherent constitutional problems that cause judicial and doctrinal challenges.75 Freedman argues that it is difficult to apply to corporate taxpayers, and that it encourages tax corruption and creates disequilibrium in treatments.76

For the responsive regulation model to succeed, Waller argues that institutional integrity, fairness in the tax system, trust and respect for the tax authority, and

68 Ibid.
69 Ayres and Braithwaite, above n 18.
70 Ibid.
73 Ibid.
detection of noncompliance are essential. Mendeloff states that the success of responsive regulation depends on a number of factors, including the tax agency’s resources, size of the regulated population, types of standard imposed, observability of noncompliance, costs of compliance, financial assistance available for compliance and penalty structure. Kornhauser argues that the responsive regulation theory drives the tax authority to operate in a narrow strait between Scylla and Charybdis—it prevents the authority becoming either too flexible or too strict in its behaviour towards taxpayers. Odinkonigbo argues that this model may not work for developing countries because it is derived from the context of developed economies. Since 1970s research on tax compliance behaviour appears to be booming in the arena though no single theory is capable of explaining the issue in its totality. Each has its merit and demerit calling for extended debate and new theories.

In an attempt to improve compliance in the field of income tax, one widely employed legal tool is the tax amnesty scheme. Previous research argues that tax amnesty improves compliance; however, critics present evidence that compliance gradually diminishes and that the scheme fails to gather sufficient revenue for the government. Alm and Beck find a positive effect of tax amnesty on revenue collection when combined with increased enforcement measures. Parle and Hirlinger observe that amnesty programs are revenue yielding, though in low volume, and appear to be low-cost, low-risk political undertakings that increase compliance and minimise budget shortfall. Through an empirical study, Rakhmindyarto identifies the factors creating a successful tax amnesty program in Indonesia. Rechberger et al. study the influence

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of the perceived justice of tax amnesty on future tax compliance, and find that post-amnesty tax compliance is positively influenced by the perceived justice of tax amnesty. The fairer the tax amnesty was perceived, the more honestly people reported their income in the post-tax amnesty periods.

Luitel argues that tax amnesty augments government revenue and ensures income distribution in society. It creates an opportunity for delinquent taxpayers to change their behaviour and act honestly in terms of tax compliance, which helps alleviate guilt among citizens. Baer and Le Borgne observe that tax amnesty is an efficient tool to generate internal revenue in both the short and long term. Saracoglu and Kasakurlu contend that, in the short term, tax amnesty increases tax compliance by bringing the taxpayers from informal economy through detection. Boise states that tax amnesty can generally lead to a transition to a new tax enforcement regime that features more stringent enforcement activities. Lederman contends that increased enforcement necessitates changes in norms, and that amnesty works as a transition relief. Bose and Jetter find that citizens are motivated to participate in a tax amnesty because the changing circumstances cause taxpayers’ previous noncompliance decisions to become inefficient. The new situation inspires taxpayers to consider it wise to comply through participation in the tax amnesty.

In contrast, Alm, Martinez-Vazquez and Wallace’s study on the tax amnesty implemented by the Russian Federation concludes that tax amnesties produce little short- or long-term effect on revenue. They conclude that, as a policy instrument,
tax amnesty for Russia is not helpful. Torgler, Schaltegger and Schaffner’s cross-cultural comparative study with data from European and Latin American countries reveals that tax compliance increased significantly when people had the opportunity to vote for or against a tax amnesty, independently from whether a tax amnesty was rejected or not. The expectation of further tax amnesties had a negative effect on tax compliance. Through a study of Michigan tax amnesty programs, Fisher, Goddeers and Young find that amnesty programs could not substantially increase the number of taxpayers. Instead, existing taxpayers took advantage of the program by paying their unpaid tax debts. Joufiaian notices the same trend in Massachusetts tax amnesty programs. Christian, Gupta and Young’s study uses data from Michigan state to ascertain the effect of tax amnesty on subsequent return filing. They find that two-thirds of new taxpayers and nine-tenths of previous taxpayers who filed amended tax returns under the amnesty program filed a state income tax return after the amnesty period was over. Meanwhile, Uchitelle finds that tax amnesties have mixed success. Some programs have failed to widen the tax base, while some have succeeded, and some programs could raise revenue, while others could not.

Martinez notes that states without tax amnesty programs also experienced an increase in revenue and compliance rates like the states having same with amnesty programs by implementing enforcement measures. In an analysis with US data, Alm, McKee and Beck find that compliance decreased after the tax amnesty period because of the expectation of further amnesty, and that post-amnesty revenue increased if strong enforcement measures were implemented. Alm argues that tax amnesty produces limited revenue, and there is exaggeration in presenting revenue data collected through amnesty programs. Repeated amnesties are even less effective; consequently, tax

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94 Ibid, 249.
99 Uchitelle, above n 81, 48.
amnesty should not be regarded an efficient revenue raising tool. Gupta and Mookherjee’s study in India examines the effect of revenue collection of tax amnesty programs, and finds an insignificant effect of amnesty on revenue collection, except for one sudden boost in revenue collection.103 Luitel and Sobel present evidence regarding state tax amnesty programs that indicates that repeated amnesty programs reduce state revenue collection.104

Through empirical research, Fox and Murray find that the tax amnesty programs conducted by US states over a long period depend largely on economic, fiscal and political factors.105 They also find that the initial tax amnesty increases revenue collection, while later amnesties produce less revenue. Mikesell and Ross find tax amnesty programs to be the norm for US state tax collection systems.106 Jacques Malherbe et al. contend that, as a result of tax amnesty, honest taxpayers might be encouraged to reduce their compliance because they perceive the amnesty to be an unfair tax concession for delinquent taxpayers, and consequently might perceive tax evasion as a profitable activity.107 Vihanto argues that the decision of taxpayers to evade tax depends on their perception of the fairness of the tax system, and tax amnesty can make the system appear unfair.108 Hasseldine argues that tax amnesty reduces tax evasion guilt among the delinquent taxpayers.109 Torgler, Shaltegger and Schaffner find that an initial tax amnesty increases tax compliance, while recurring amnesties have a negative effect on the compliance rate.110 Stella argues that the enforcement capacities of different US states have made amnesty programs successful, while developing countries lack adequate enforcement capabilities.111 Bayer, Oberhofer and Winner find that the policy of tax amnesty arises first from the government’s fiscal necessity, and second from taxpayers’ expectation

110 Torgler, Shaltegger and Schaffner, above n 95.
of further amnesties.\textsuperscript{112} Since the benefits of tax amnesty remain modest and often below the cost of conducting the programs, governments should consider not offering tax amnesty because it may enhance pressure on future budgets. Under such circumstances, governments should not implement tax amnesty. Rather, appropriate legislation should be introduced to improve compliance. However, Bayer, Oberhofer and Winner do not indicate what the nature and extent of such legislation should encompass.

When a tax system announces a tax amnesty program, it indicates that tax evasion prevails in the country. The government of Bangladesh offers tax amnesty on a regular basis, with the hope of augmenting revenue and gaining more taxpayers. However, no marked improvement has been observed, despite repeated amnesty programs.\textsuperscript{113} Rather, the amnesty program appears to be used as a tool to ‘whiten black money’.\textsuperscript{114} However, no substantial work has been found investigating the effect of tax amnesty programs in Bangladesh.

It is observed that tax amnesty has many faces and impacts on tax compliance in the tax administrations around the world. While it seems to generate revenue in short term, repetitive amnesty programs encourage tax evasion. Particularly in developing countries like Bangladesh such tax amnesty programmes can be one probable means of turning black economy into white one.

Another ‘silver bullet’ legal tool to improve tax compliance is the tax information reporting return system. Although this is widely used in developed countries such as Australia, Canada, New Zealand and the US, in a developing country such as Bangladesh, the legal regime is not sufficiently strong and broad to combat tax noncompliance. Tax experts and tax administrations around the world have expressed consensus about the effectiveness of information reporting systems in tackling the problem of non-compliance. Heiberg identifies third-party tax information reporting

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as a primary tax enforcement tool.\textsuperscript{115} Highfield states that information reporting obligations refer to a statutory requirement on payers of specific categories of income to report to the tax authority relevant information about the taxpayers’ income.\textsuperscript{116} Such obligations might form an important component of a withholding regime or as a separate standalone requirement in relation to prescribed categories of payments made to taxpayers.

Kleven et al. find that the compliance rate is high for income that is subject to third-party reporting, as compared to self-reporting income. They conclude that it was not the unwillingness of taxpayers to evade tax, but the pervasive use of a third-party reporting system, that encouraged taxpayers to more fully comply.\textsuperscript{117} Brookes suggests that an information reporting system is one of the most effective tools to increase voluntary compliance.\textsuperscript{118} According to Brooke, taxpayers tend to ‘cheat’ if they get an opportunity, and a good tax system must seek to deny taxpayers the opportunity to cheat—tax information reporting is a tool that reduces this opportunity. The US Government Accountability Office (GAO) observes that information reporting is a powerful tool that reduces tax evasion and helps taxpayers comply voluntarily.\textsuperscript{119}

Kreiner argues that attempts to declare less income than third-party reported income rarely occur.\textsuperscript{120} Lederman argues that there is always information asymmetry between the tax office and taxpayers. This asymmetry of information between the tax official and taxpayer creates an easy avenue for tax evasion, and an information reporting system can be a solution to this type of information problem.\textsuperscript{121} Olson observes that approximately one-third of the tax gap arises from unreported transactions. She argues


that tax revenues would increase if every taxable transaction was subject to third-party reporting requirements.\textsuperscript{122}

Highfield argues that an efficient and broad information reporting regime can substantially tackle the problem of noncompliance. In regard to the Australian tax information reporting regime,\textsuperscript{123} Highfield notes that the insufficient coverage of an information reporting system in Australia is seriously and negatively affecting the level of compliance.\textsuperscript{124} This remains one of the weaknesses of the Australian taxation system. The more the information reporting regime is broadened and the more income is brought in the purview of the reporting regime, the more positive results can be achieved to increase taxpayers’ voluntary compliance.

The 2009 OECD report finds that New Zealand’s tax information reporting regime is very broad and effective. According to New Zealand’s Inland Revenue Department (IRD), the information regime helps the tax department locate taxpayers who are not in the tax net. Data collected through information reporting is used to pre-fill summary of earnings forms and personal tax summary forms that are provided to taxpayers.\textsuperscript{125} In Canada, the Canada Revenue Agency (CRA) effectively uses the information gathered through the third-party information reporting system to address issues of noncompliance. The CRA has been very successful in combating tax con-compliance through using this system. However, Morse argues that the costs of administering an additional third-party reporting system by the Internal Revenue Service (IRS) might outweigh its benefits.\textsuperscript{126}

Reluctance from politicians to extend the information reporting regime constitutes one of the major obstacles to this system. In addition, public tolerance of an informal economy might be a reason for not introducing a comprehensive information reporting regime.\textsuperscript{127} Kamdar contends that expanding information reporting requirements places an additional burden on the third parties who must file the requisite forms. However,

\textsuperscript{123} Highfield, above n 116.
\textsuperscript{124} Ibid.
\textsuperscript{126} Susan Morse, ‘Using Salience and Influence to Narrow the Tax Gap’ (2009) 40 \textit{Loyola University Chicago Law Journal} 483.
\textsuperscript{127} Ibid.
he does not discuss the long-term benefits of successful tax information reporting. The OECD notes that the costs of administering an information reporting regime might be one of the factors deterring revenue authorities from implementing this. This appears to be particularly true for developing countries that suffer from a lack of resources to introduce reform. Bartlett identifies lack of political will as an impediment to introducing a wide-ranging information reporting regime in the US. This may be even more problematic in developing countries, such as Bangladesh. Political will seems to remain one of the important factors to introduce a broad based tax information reporting system. But this is not the only factor. Lack of expertise, lack of resources and lack of cooperation from the stakeholders can also be identified as factors that limit government capacity to implement such a reform.

Pomeranz, Carrillo and Singhal observe that third-party information is critical for tax enforcement and the growth of state capacity. However, they argue that the effectiveness of third-party reporting may be limited due to taxpayers making offsetting adjustments on less verifiable margins. When the tax authority notifies taxpayers about discrepancies, they report increased revenue, but claim higher expenses. For example, when anomalies in income reporting are revealed in firms, they claim costs of 96 cents for every dollar of revenue adjustment, thereby resulting in minor increases in their total tax collection. The implication is that, even though firms cannot suppress their true income due to information reporting, they avoid paying high tax by claiming high and inflated expenditures, thereby resulting in less taxable income. Pomeranz, Carrillo and Singhal suggest that this margin-offsetting problem can be tackled through proper audits by the tax authority; however, this research was confined to taxpaying firms in Ecuador.

It is observed from the above discussion that there has been a remarkable development in the tax compliance literature. The economic deterrence theory of tax compliance considers the rationality of taxpayers when engaging in a tax evasion game. However,
no single theoretical approach is adequate. Thus, this thesis seeks to suggest a pragmatic approach for Bangladesh. This approach leans towards a version of the responsive regulation theory adopted by the ATO. This thesis also seeks to make a novel contribution to the field of tax compliance based on the state–taxpayer relationship. It argues that the relationship between the state and taxpayers is a fiduciary one, and that any breach of this relationship affects taxpayers’ compliance behaviour in a negative manner. This thesis also observes that the legal tools used by tax administrations are sometimes effective and sometimes ineffective. For example, while there is evidence that the tax amnesty scheme improves compliance, there is conflicting evidence that it reduces compliance in the long term. This thesis proposes that, in Bangladesh, tax amnesty is no longer a useful tool and should not be employed. Instead, Bangladesh should introduce a broad and wide-ranging tax information reporting regime, as have OECD countries and other countries. The tax information reporting system (TIRS) is a very effective legal tool to improve sustainable taxpayer compliance.

1.3 Structure of the Thesis

This thesis focuses on voluntary compliance in the field of personal income tax in Bangladesh—a developing country. It presents a theoretical and legal analysis of the tax law and policy of Bangladesh, with the aim of identifying a route towards sustainable voluntary tax compliance. This thesis identifies the state–taxpayer relationship as a fiduciary one. It adopts an approach that has been termed a ‘comprehensive’, ‘omnibus’ and ‘pragmatic’ approach133 to tax compliance.

Chapter 2 explores the state–taxpayer fiduciary relationship issue. Like the state–citizen fiduciary relationship, this is a novel attempt to import private fiduciary law into the public domain of the state–taxpayer. In this respect, it is argued that the state has a fiduciary relationship to taxpayers because taxpayers pay tax to the government in anticipation of receiving the necessary services that they could not receive other than through the government. Taxpayers trust the government to provide those

133 Professor Neil Brooks suggests the idea of a comprehensive compliance strategy to tackle the problem of tax non-compliance. This study borrows the concept of a comprehensive approach from Brooks. Neil Brooks, ‘The Challenge of Tax Compliance’ in Chris Evans and Abe Greenbaum (eds), Tax Administration: Facing the Challenge of the Future (Prospect Media, 1998) 7, 22. In addition, Odinkonigbo proposes a ‘holistic approach’ to improving tax compliance in Nigeria. Odinkonigbo, above n 80.
services. As a result, there exists a fiduciary relationship between the state and taxpayers. If the government is in breach of that relationship by not using tax money appropriately to provide goods and services, this can affect the tax compliance behaviours of the people of that country. This issue is more important and visible in developing countries such as Bangladesh, where it is alleged that the state regularly defaults in providing goods and services in return for taxpayers’ money. Consequently, this negatively affects the tax compliance behaviour of taxpayers.

This thesis seeks to extend the scope of the fiduciary analysis of legal relationships beyond the traditional established relationships—such as trustee and beneficiary, the law of agency and others—to analyse the state–taxpayer relationship from a new perspective. The law of fiduciary, although belonging primarily to the private law domain, is expanded to the public law domain.

Chapter 3 of this thesis describes the background of the tax system and administration in Bangladesh. It discusses the characteristics of the direct tax system in Bangladesh, and identifies the causes of tax noncompliance. One of the major features of the direct taxation system in Bangladesh is the prevalence of the ‘black economy’. The black economy refers to the business activities performed outside the reach of the government.\(^{134}\) This economy is one of the prime causes of tax evasion, and remains a global problem. For example, in Europe in 2013, the size of the black economy was 2.1 trillion euros,\(^ {135}\) and the situation is graver in developing countries. For example, in Bangladesh in 2011, the black economy grew from comprising 45 per cent to 81 per cent of the gross domestic product (GDP).\(^ {136}\) The reasons for the existence of the black economy are manifold, and the effects are serious. One obvious cause of the black economy is widespread tax evasion in Bangladesh, with tax evasion and avoidance having become a part of the national culture in Bangladesh.\(^ {137}\) This thesis will try to reveal the magnitude of this tax evasion, and the causes thereof. The tax administration

\(^{134}\) Friedrich Schneider, *The Shadow Economy in Europe* (2013) 3

\(^{135}\) Ibid.


of Bangladesh has taken many steps over the years to tackle the problem of tax evasion; thus, some of these adopted measures will also be critically discussed.

Chapter 4 discusses the different tax compliance frameworks and models developed by different international organisations, such as the OECD and ATO’s compliance model. In particular, this chapter discusses the probability of replicating the ATO compliance model to improve tax compliance in Bangladesh. In addition, this chapter critically discusses different theories explaining tax compliance behaviour. It reveals that each theory explaining tax compliance has some positive and negative aspects—no theory is able to address tax compliance in its totality. As a result, each theory deserves attention, and a combination of all theories might work best to respond to tax compliance problems in developing countries, such as Bangladesh.

The theories discussed in this chapter include the:

- economic deterrence theory of tax compliance
- social norm theory
- psychological contract theory
- shame and guilt theory
- procedural fairness model
- motivational posture model
- organisational culture model
- religiosity model
- social identity theory
- positive incentive/reward theory
- prospect theory of tax compliance
- needs preference theory
- poverty and extended family burden theory of tax compliance
- responsive regulation model of tax compliance (the ATO compliance paradigm)
- tax compliance frameworks
- slippery slope framework of tax compliance
- OECD compliance risk management model.

The economic deterrence theory regards taxpayers as rational beings who consider the advantages and consequences of tax evasion or avoidance. According to this theory,
taxpayers are more willing to comply if the chance of being caught and penalised is greater than the consequences of tax evasion. Thus, the theory suggests strict enforcement of tax statutes, along with regular audits and penalties. Social norm theory is an alternative theory of tax compliance that partially explains why people comply and pay tax. According to this theory, taxpayers respond to a compliance norm outside the ambit of legal enforcement or the command-and-control regime of tax authorities. The psychological contract theory of tax compliance views the relationship between taxpayers and the government as a contract. According to this theory, the moral contract between the government and taxpayers is important because any breach of the contract by one of the parties is accompanied by a resultant breach by the other party.

Different to the traditional deterrence-based or actor model is the shame and guilt theory of compliance, which seeks to determine whether taxpayers’ psychological attitudes can be manipulated to create greater negative consequences for noncompliance. Shaming is a deterrent because it reduces propensity to commit the offence. According to the procedural fairness model of tax compliance, taxpayers’ perceptions of the fairness of the tax burden imposed on them are very important in explicating tax compliance behaviour. A perceived unfair tax system might encourage taxpayers to rationalise tax cheating. The motivational posture theory suggests that taxpayers maintain a social distance between themselves and the tax authority, signalling the nature of that distance through different postures that protect them from negative appraisal by the authority. The organisational culture model of tax compliance emphasises the organisational structure and behaviour of tax administrators, rather than focusing on the behaviour of taxpayers. The religiosity model emphasises the religious attitudes of taxpayers in shaping their taxpaying behaviour. According to this theory, partnerships between religious organisations and the government might be a crucial factor in ensuring compliance with tax laws. These types of partnerships have been successful in the US to reduce crime.

None of these theories can provide a complete solution to the problem of tax noncompliance—rather, each theory partially explains the problem. In view of the inadequacies of the existing theories, this thesis argues that a comprehensive approach that combines all theories may be a more successful way to manage the tax compliance problem in Bangladesh. In particular, it is observed that the ATO compliance model—based on the responsive regulatory theory—offers a comprehensive approach that
blends the two principal actors (deterrence and persuasion) to ensure tax compliance. Thus, after critically discussing the responsive regulatory theory and ATO compliance model, Chapter 4 argues that, because the ATO compliance model is currently the best option in the field of regulation, it is appropriate to replicate this model for Bangladesh tax administration, with some modifications.

Chapter 5 discusses one of the most frequently used tools to improve voluntary compliance in the field of income tax in Bangladesh—the tax amnesty program. The tax amnesty program is widely used by both developed and developing countries to improve voluntary compliance. This chapter observes that the repeatedly used tax amnesty programs in Bangladesh have not been able to improve the tax compliance culture to the expected level, and not much revenue has been generated. While developed countries such as Australia, New Zealand, the US and Italy focus on offshore tax compliance programs, Bangladesh is still conducting onshore amnesty programs. In Bangladesh, the motivation is more political, rather than focused on revenue generation. This chapter argues that onshore tax amnesty is not an effective tool for Bangladesh to improve tax compliance. Rather, amnesty programs tarnish the principles of justice and fairness, and create resentment among honest taxpayers. As a result, honest taxpayers are encouraged to evade tax in anticipation of more lenient and repeated amnesty programs. Thus, certain conditions must be met to make these programs successful, and tax administrations should focus on offshore tax amnesty, following in the footsteps of developed countries, such as Australia, New Zealand, the US and other OECD countries.

Chapter 6 presents a detailed discussion of TIRSs. In developed countries such as Australia and New Zealand, information reporting systems are effectively used to ensure voluntary compliance by taxpayers. Research has shown that income that is subject to information reporting is easily visible, which means that evasion can be readily detected. In addition, information gathered through the reporting system is used to supply a prefilled tax return to taxpayers, which saves their time and money. However, thus far, Bangladesh has been unable to use this system effectively to improve personal income tax compliance. This chapter argues that, considering the success of tax information reporting in developed countries such as the US, Australia and other OECD countries, Bangladesh could benefit from the system if appropriate legal provisions are made. This chapter explores the tax information reporting
provisions of developed countries, and suggests the best practice to be adopted for Bangladesh. The existing income tax law of Bangladesh provides for a TIRS, and, in 2011, there was a change of law regarding tax information reporting. Thus, this law will be critically examined to establish its strengths and shortcomings. Finally, this chapter makes suggestions for best practice regarding the tax information reporting regime.

Chapter 7 draws together the major conclusions from the above analysis and suggests some additional policy tools for reforming income tax administration in Bangladesh. To increase taxpayers’ compliance in the field of income tax, the NBR should accept these policy suggestions. While these tools are not all-encompassing, if implemented properly in a pragmatic manner, they will make a substantial contribution to improving the taxpayer culture in Bangladesh.
Chapter 2: The Fiduciary Aspect of the State–Taxpayer Relationship

2.1 Introduction

Much research has sought to determine what causes the tax compliance behaviour of taxpayers in a country, and why some people comply with tax legislation and pay tax, while others do not. Although different theories and models of tax compliance have evolved, particularly since the late 1970s, and offered different explanations regarding tax compliance issues from different perspectives, none of these are completely satisfactory. Thus, it remains a puzzle as to why people comply and pay taxes. The existing tax compliance theories and models can be categorised as economic deterrence models, psychological models, sociological models and the responsive regulatory model of tax compliance.

A brief review of the available theories indicates the range of explanations that have been proffered. Among the theories belonging to the economic models, the economic deterrence theory remains prominent. This theory argues that people, as rational actors, pay tax when they calculate that the expected benefits from evasion are outweighed by the attendant risks, and by the positive benefits of paying tax. Tax evasion is considered a gamble in which taxpayers either pay lower tax by underreporting, or become subject to punishment through detection from the tax authority. Taxpayers calculate the cost–benefit effect when making decisions not to comply, and enforcement is necessary to ensure compliance. This compliance is secured through audit and sanctions. In relation to this, the positive incentive or reward theory emphasises the role of incentives or rewards in affecting compliance from taxpayers. Sociological models of tax compliance argue that social forces also shape taxpayers’ behaviour, such as reward and punishment in economic models. For

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138 Brooks, above n 133, 18.
139 Allingham and Sandmo, above n 25, 323.
example, according to social norm theory, taxpayers respond to compliance norms outside legal enforcement or the command-and-control regime of tax authorities as a response to social norms. The procedural fairness model claims that the fairness of the tax system has a substantial effect in shaping compliance behaviour. The motivational posture theory suggests that taxpayers maintain a social distance between themselves and the tax authority, signalling the nature of that distance through different postures that protect them from negative appraisal by the authority. In contrast, the organisational culture model of tax compliance emphasises the organisational structure and behaviour of tax administrators, rather than focusing on the behaviour of taxpayers. Organisational culture is thought to be important in creating an effective and responsive taxation system. According to the slippery slope framework model of tax compliance, the power of and trust in authorities play a vital role in shaping tax compliance behaviour.

Several theories focus on psychological or subjective processes. The psychological contract theory emphasises the subjective contractual relationship between the state and taxpayers. According to the shame and guilt theory, the psychology of feeling guilt and shame plays a very important role in shaping compliance behaviour. The religiosity model explains that religious affiliation can influence tax compliance behaviour. Among more complex theoretical approaches, the responsive regulation model of compliance articulates an ‘enforcement pyramid’ to explain compliance behaviour. In some ways, the responsive regulation model combines both economic and psychological aspects of punishment and persuasion when seeking to explain tax

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144 Thus far, four constructs of social norms have been identified: injunctive, descriptive, subjective and personal norms. Donna D Bobek et al, ‘The Social Norms of Tax Compliance: Scale Development, Social Desirability, and Presentation Effects’ in Vicky Arnold et al (eds), Advances in Accounting Behavioral Research (Emerald Group Publishing, 2011) 37, 40.
145 Hartner et al, above n 141.
149 Feld and Frey, above n 25, 102.
151 Ibid.
152 Ayres and Braithwaite, above n 18.
payer compliance.\textsuperscript{153} The pragmatic model of tax compliance was suggested by Professor Neil Brooks. According to this theory, to tackle the problem of tax compliance, tax administrations should craft a comprehensive strategy that seeks to reduce the opportunity to evade tax.\textsuperscript{154}

This study seeks to contribute to the theoretical debate on tax compliance by delving into the unexplored aspects of the state–taxpayer relationship, proposing that there is a fiduciary relationship between the state and taxpayers. This relationship influences taxpayers’ behaviour in terms of whether they will comply, and in what way and to what degree. While a state–citizen fiduciary relationship was proposed by Fox-Decent,\textsuperscript{155} the state–taxpayer fiduciary relationship appears to be novel. This thesis borrows from the state–citizen fiduciary relationship theory and applies this in the field of tax compliance. It argues that there exists an overarching fiduciary relationship between the state and taxpayers, and this relationship shapes taxpayers’ compliance behaviour. When the state abides by its fiduciary obligations, taxpayers are more likely to comply with their taxpaying obligations. Conversely, if the state is in breach of its fiduciary duties towards taxpayers, this may affect the taxpaying culture in a society.

\textbf{2.2 The State–Citizen Fiduciary Relationship}

The concept of the fiduciary has its origins in antiquity.\textsuperscript{156} It encompasses a rich and complex legal history that is enlivened by concerns to guard against the interest arising from trust.\textsuperscript{157} Fiduciary duties have both religious and secular roots.\textsuperscript{158} Fiduciary is a concept in search of a principle.\textsuperscript{159} Although numerous attempts have been made to define the fiduciary relationship,\textsuperscript{160} there is a lack of a suitable definition, and no universally accepted definition. According to Frankel, the cause of this lack of any general definition of fiduciary relationships can be ascribed to the various situations and contexts in which these relationships surface.\textsuperscript{161} The legal concept of the fiduciary relationship

\textsuperscript{153} Hartner et al, above n 141, 1.
\textsuperscript{154} Brooks, above n 133, 7.
\textsuperscript{155} Fox-Decent, above n 21. See also Benjamen Franklen Gussen, ‘The State is the Fiduciary of the People’ (2015) 3 Public Law 440.
\textsuperscript{156} Tamar Frankel, Fiduciary Law (Oxford University Press, 2011) 79.
\textsuperscript{157} Ibid.
\textsuperscript{159} AF Mason, ‘Themes and Prospects’ in PD Finn (ed), Essays in Equity (Law Book, 1985) 242, 246.
\textsuperscript{160} Frankel, above n 156, 3.
\textsuperscript{161} Ibid, 2.
relationship originated in the English law of equity, which developed outside the ambit of common law in the fifteenth century and thereafter\textsuperscript{162} in the law of financial relationships, as in the bank–customer fiduciary relationship under banking and finance law.\textsuperscript{163} Fiduciary relationships include those between trustees and their beneficiaries, solicitors and their clients, doctors and their patients and so forth.\textsuperscript{164} Thus, it can be said that fiduciary remains a prominent feature of the English law of equity and common law.\textsuperscript{165} Although the notion of the fiduciary relationship has been incorporated into the common law in England\textsuperscript{166} and beyond during the last two and half centuries,\textsuperscript{167} the law regarding fiduciary relationship remains unclear.\textsuperscript{168} DeMott states:

Described instrumentally, the fiduciary obligation is a device that enables the law to respond to a range of situations in which, for a variety of reasons, one person’s discretion ought to be controlled because of characteristics of that person’s relationship with another.\textsuperscript{169}

In contemporary law, a fiduciary relationship is one in which someone in a position of trust has rights and powers that he or she is bound to exercise for the benefit of another.\textsuperscript{170} According to Miller, ‘a fiduciary relationship is one in which one party (the fiduciary) enjoys discretionary power over the significant practical interests of another (the beneficiary)’.\textsuperscript{171} Frankel suggests that fiduciary duties arise from services that involve entrustment of property or power to the fiduciary, who works for the benefit of the beneficiary.\textsuperscript{172} A fiduciary relationship manifests when one party becomes the

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\textsuperscript{164} Leib, Ponet and Serota, above n 36, 699, 705.
\textsuperscript{165} It is noteworthy that Roman law did not have exactly the same trust institution as English law; however, traces of trust and fiduciary can be found in the words ‘\textit{fideicommissum}’ and ‘\textit{fiducia}’. The first word refers to a trust-like institution, while the latter means ‘fiduciary’. Peter Birks, ‘The Content of Fiduciary Obligation’ (2000) 34 Israel Law Review 3, 8.
\textsuperscript{166} The common law of England developed a law regarding fiduciary relationships in a definite shape through judgement of the famous case of \textit{Keech v Sandford} (1726) 25 Eng Rep 223 (Ch) 223–24 (UK). This was the milestone case on the English law of trust regarding the fiduciary duty of loyalty that trustees have towards beneficiaries.
\textsuperscript{172} Tamar Frankel, ‘Fiduciary Law in the Twenty-first Century’ (2011) 91 Boston University Law Review 1289, 1293.
subject of the ongoing administrative power of another, such as in the trustee–beneficiary relationship. Criddle and Fox-Decent argue that the state exercises sovereign power as a fiduciary of the people who are nationals of the state. They further contend that, as a fiduciary, the state must abide by the norms of public international law that are ‘peremptory’ (or jus cogens). Fox-Decent argues that:

the conditions inherent to sovereignty disclose a free-standing and overarching fiduciary relationship between the state and each person subject to its powers. This relationship in turn supplies the content of the rule of law which both constitutes and constrains the state’s authority to announce and enforce law.

Fox-Decent suggests that the state’s fiduciary duties are actual, rather than hypothetical. He argues:

Thus when the state exercises power in a way that respects the fiduciary requirements of sovereignty, it exercises authority as well. In turn, the state’s conformity to the rule of law and its fiduciary obligations gives us, as subjects, a reason to fulfil our legal obligations. Thus, the fiduciary view of the state is not only of theoretical importance. Rather, as Chief Justice Vanderbilt noted it has practical implications for the ‘soundness’ of government, and indeed, for the integrity of any state committed to the rule of law.

Citizens play a role in electing democratic governments, and place their trust in the government to provide goods and services. Services that individual citizens can provide for themselves might be thought of as outside the scope of this expectation. Citizens repose their faith in the government to act for their welfare and as their agent. Thus, the government can be regarded a trustee who exerts state power on behalf of the people as a whole, and whose duty is to act for the benefit of the people. Arguably, the government cannot act legitimately for any other purpose. The main spirit of a democratic government appears to be implicit in the state–people fiduciary relationship.

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173 Criddle and Fox-Decent, above n 21, 331, 349.
174 Ibid.
175 The notion of jus cogens encompasses the concept of peremptory norms in international law. Although it has its origins in antiquity, it formally achieved recognition in the Vienna Convention of 1969. According to Section 3 of the Vienna Convention, peremptory norms (jus cogens) are those principles of international law from which no departure is allowed by any state while concluding a treaty. Examples of peremptory norms are the prohibition of slavery, genocide, prolonged arbitrary detention, inhumane or degrading treatment or punishment, and systematic racial discrimination. According to Criddle and Fox-Decent, the state must follow some peremptory norms in terms of its fiduciary obligation to the people. The norms they specify are the principles of integrity, formal moral equality and solicitude. Evan J Criddle and Evan Fox-Decent, ‘Deriving Peremptory Norms from Sovereignty’ (2009) 103 American Society of International Law Proceedings 71, 73.
177 Ibid, 310.
relationship. This is the crux of the fiduciary aspect of the state–taxpayer relationship. Unlike members of earlier forms of the state, the citizens of the contemporary state expect the state to deliver effective services, which may include security; justice; stable economic conditions; public services, such as education, health and communication; and so forth.¹⁷⁹ People also expect the state to be publicly accountable for upholding its expected functions.¹⁸⁰ It can be argued that the expectation to receive these services is integral to the culture of paying tax, since these services need to be resourced. Governments must be capable of supplying the services as articulated by the expectations of the population. If the state does not respond adequately to the people’s demands, the relationship between the state and citizenry may become fragile. One consequence may be that taxpayers stop complying with their tax obligations.

In contemporary states, the government is in many ways in a superior position to provide certain types of goods and services, such as infrastructure, health, education, economic policy, military activities and other issues of national interest. For these types of services, the state may enjoy something like a monopoly. Consequently, people have to trust the government. In turn, the government claims the loyalty of taxpayers, whose duty it is to pay their tax according to prevailing law. However, a government can still breach the fiduciary relationship by not properly performing the tasks with which it is entrusted. In such situations, people may find it very difficult to seek remedy for this breach. The available remedy would appear to be via the ballot box, so that people may dethrone a government that fails to meet its obligations under the fiduciary relationship. Wake argues that the fiduciary theory commands the government must respect citizens’ rights to improve their lives.¹⁸¹ Accordingly, the state must refrain from taking actions that would deprive individuals’ liberties and proprietary interests.

### 2.2.1 The State as Real Fiduciary

As noted earlier, fiduciary is a term that primarily derives from the private law domain, such as trust, contract, tort, corporate and financial laws. However, it appears to be no longer limited to that area, and the state is regarded as having fiduciary relationship

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¹⁸⁰ Ibid.
¹⁸¹ Wake, above n 29.
with its people. Leib, Ponet and Serota contend that, ‘Although rooted in private law, the fiduciary principle has also been widely employed to provide a descriptive explanation of—and normative frame for—the relationship between the state and its citizens’.182 Fox-Decent argues that there is an overarching fiduciary relationship between the state and its citizens,183 where the government in power is the trustee of the people. This is ingrained in political theory dating from the time of Aristotle, Cicero and Plato.184 Courts in Anglo-American jurisdictions frequently impose fiduciary obligations in relationships where one person places his or her trust in another, and subsequently remains vulnerable to harm.

The fiduciary relationship does not arise as a matter of chance. In the state–citizen relationship, the fiduciary relationship is a systematic, purposive and clearly visible phenomenon. Miller indicates two types of fiduciary relationship185—the first is status based, and the second is fact based. According to the status-based approach, certain categories of relationship are considered a fiduciary relationship. Examples include trust–beneficiary, doctor–patient and attorney–client relationships. This is the most common and accepted view of a fiduciary relationship. The second approach of the fiduciary relationship suggests that a relationship can be identified as fiduciary if it exhibits certain characteristics of a recognised fiduciary relationship. Miller refers to Justice Wilson, who, in the Frame186 case, identified three elements to be present in the fiduciary relationship. First, a fiduciary is placed in a position where he or she can exert discretionary power. Second, the fiduciary can exert this discretionary power unilaterally, which can affect the beneficiary’s legal or practical interest. Third, the beneficiary or people on whom the discretionary power is exercised are placed in a vulnerable position. These are the three elements of a fiduciary relationship—discretion, vulnerability and trust.187 It should be mentioned that the fact-based approach to the fiduciary relationship is complementary to the first element.

The following considers the two types of fiduciary relationships in the state–citizen relationship. First, in the status-based approach, the government works as a trustee for

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182 Leib, Ponet and Serota, above n 36, 705.
183 Fox-Decent, above n 21, 6.
185 Miller, above n 171, 236, 240–243.
187 Leib, Ponet and Serota, above n 36, 706.
the people, who can be considered beneficiaries. The state in which people are born, live and die is not *terra nullius*. In the famous *Wewaykum Indian Band v. Canada*, the Canadian court held that the relationship between the crown and indigenous people is fiduciary. Thus, the people can be regarded clear beneficiaries of the actions of the government, which conducts state affairs for the ultimate benefit of the people—whether municipal or international. In the same way that trustees remain accountable to beneficiaries for their deeds, the government is expected to remain accountable to the people for its actions. People elect the government through universal franchise, and repose their trust to conduct state affairs and provide the requisite services to the people during the term of trusteeship.

In the second type of fiduciary relationship, the state always has discretionary power regarding state functions, and governments exercise that power while undertaking their work. Obviously, discretionary power has limitations that dictate that this power must be sparingly and prudently exercised. For example, governments can use discretionary power when enforcing the rule of law in the state; however, that discretionary power cannot be used to establish rule of power. The state uses discretionary power to affect the interest of the people. In this respect, it can be argued that the government does exercise its discretionary power, which has the effect of changing or influencing people’s interests.

The government has the authority to act on behalf of the people, and that authority is characterised by discretion by exercising which the government takes decision how to act under that authority. There are many instances in which governments’ decisions can substantially affect people’s interests. For example, when the government decides to allow a tax amnesty to ‘whiten black money’ and gives opportunity to delinquent taxpayers to steer away from any legal actions under the tax statutes, this may have a negative effect on the compliance behaviour of honest taxpayers. It is as a matter of the government’s discretion to decide whether to allow tax amnesty. Likewise, there are numerous situations in which the government exercising its discretionary power can affect the interests of the people, and place people in a vulnerable position. While this vulnerability may not be as visible as it is for individual cases, such as in

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189 Governments use discretionary power, given that they are bound by law to establish and maintain the rule of law. Ignacio Sanchez Guenca, ‘Power, Rules, and Compliance’ in Jose´ Marıa Maravall and Adam Przeworski (eds), *Democracy and the Rule of Law* (Cambridge University Press, 2003) 62.
relationships between trustee–beneficiary, doctor–patient and attorney–client, there may be scope for government actions to place the people in a vulnerable position. For example, if the government of Bangladesh allows a transit facility to its neighbouring country over the land of Bangladesh, this may not appear to create an insecure position for the people. However, in the long term, this might jeopardise the security of the country in numerous ways that will ultimately place the people of Bangladesh in a vulnerable position in terms of environmental degradation, security, liberty and life. Thus, by applying the status-based and fact-based approaches of the fiduciary relationship, it can be said that there is a fiduciary relationship between the state and its citizens.

The effects of this relationship are also noted in terms of protecting human rights and the state’s fiduciary obligation to protect the environment to ensure the health of citizens. Due to human actions at the connivance of the state, there is widespread degradation of the environment, which jeopardises the lives of citizens. Consequently, according to the fiduciary theory of public authority, the state has the prime responsibility to avoid emitting large quantities of greenhouse gas that damage the environment, and to penalise polluters through taxation. Fox-Decent argues that, under the fiduciary theory of public authority, all states are obliged to guarantee a healthy environment for their citizens. States are joint trustees for the global atmosphere, and the people are the beneficiaries. Wood argues that government officials have trust duties related to handling the natural resources. This duty is more important than their general duty that must be performed in line with their oaths of office, and is different to normal bureaucratic jobs. This is the fiduciary duty of public trust that is owed to the people as beneficiaries. However, incorporating private fiduciary in the public domain is a recent development that is still in its embryonic

193 Fox-Decent, above n 21.
194 Wood, above n 28.
stage—public fiduciary is a long way from being a recognised, separate branch of fiduciary law.

2.3 State–Taxpayer Fiduciary Relationship

The relationship between the state and taxpayers can be regarded as a fiduciary one. This relationship exists independent of the knowledge of the citizens of this relationship. In other words, there exists a fiduciary relationship between the state and taxpayers even though the citizens may be unaware of the exact nature of this relationship—the relationship is subliminal. Taxpayers behave in a way that responds to the duty of paying tax, which causes the fiduciary obligation on behalf of the state—an obligation owed to taxpayers. Taxpayers trust the government not to dissipate or waste tax money in a way that would create resentment. For example, for years, taxpayers in the US and Australia have expressed dissatisfaction with the governments’ welfare programs created with the taxpayers’ money. This phenomenon had led to an issue that might undermine the state–taxpayer fiduciary relationship.

The Australian welfare program is criticised based on the belief that the program causes dependence on welfare.\textsuperscript{195} It is argued that the welfare system removes incentives for people to work and become economically self-dependent.\textsuperscript{196} It is usual for taxpayers to want their government to be careful with welfare programs and ensure they are not a waste of taxpayers’ money. This situation creates a community interest conflict, which might jeopardise the state–taxpayer fiduciary relationship. Obviously, the welfare systems in Australia and similar countries ensure equity in society by promoting more equal distribution of wealth. Thus, considering the equity factor propounded by Adam Smith, it can be said that ensuring welfare for every citizen in the country—particularly those with less financial stability—falls within the scope of the fiduciary relationship between the state and taxpayers.


\textsuperscript{196} Ibid, 4.
2.3.1 Entrustment: The Basis of the State–Taxpayer Fiduciary Relationship

Some form of entrustment in the fiduciary can be regarded as the main feature of any fiduciary relationship. Frankel emphasises the entrustment placed on the entrusted by the entrustor.\(^{197}\) According to Frankel, ‘Entrustment is the most important aspect of fiduciary relationship. It greatly affects the existence, nature, and rules of fiduciary relationship’.\(^ {198}\) Ribstein also considers entrustment the core issue in defining a fiduciary relationship.\(^ {199}\) People place their interests, properties or authority in the hands of the fiduciary, and a special type of confidence is placed in the fiduciary. This confidence can be said to be utmost trust and good faith. Edelman contends:

> The argument is that we can only understand when fiduciary duties arise if we conceive of them as obligations based upon manifestations of a voluntary undertaking to another. By examining the corpus of cases involving fiduciary duties we can see that the scope of those obligations depends upon the scope of this express or implied undertaking. Fiduciary duties thus arise in the same manner as any other express or implied term: by construction of the scope of voluntary undertakings. They are not duties which are imposed by law nor are they necessarily referable to a relationship or status. It is time to move from thinking of fiduciary duties as a matter of status to understanding them as based upon consent.\(^ {200}\)

Thus, it can be said that trusting others is an important feature of the fiduciary relationship and seems to be a common feature of all kinds of fiduciary obligations.

The presence of entrustment is identified in the state–taxpayer relationship. Taxpayers pay tax with the trust and hope that the state will fulfil its expectations by using this tax to provide services such as quality education, health, agriculture, job creation, environmental protection and so forth. Taxpayers trust the government that the tax money will be spent for the wellbeing of the citizens of the country, and will not be dissipated or embezzled. The government comes into power through popular vote. According to Manin, through election, rulers gain unsurpassed superiority by virtue of which the rulers remain above than the others.\(^ {201}\) Once a government is elected and takes power, it is in a superior position to exercise discretionary power over the citizens who pay tax to fuel the government machinery to work to fulfil popular expectations.

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\(^{197}\) Frankel, above n 156, 7.

\(^{198}\) Ibid.


Thus, a situation of entrustment is created between the taxpayers and government because the government holds the state power in trust on behalf of the citizens, and uses this to achieve what is needful to further the interests of the people by providing expected and necessary services.

However, there are arguments that entrustment is not the sole indicator of a fiduciary relationship. For example, Leary states:

> It is not simply the fact that public authorities, like many fiduciaries, are entrusted with discretionary powers to be exercised in the interests of public beneficiaries, that justifies treating public duty as fiduciary in nature. A central feature of fiduciary relations is not simply entrustment, but a vertical relationship of power, trust, and confidence between persons … The crucial point is that a duty is owed to the beneficiaries, whether or not this duty arises by delegation or by some other event or circumstance.202

While there are divergences of opinions about the position of entrustment as the sole indicator of a fiduciary relationship, the current study argues that, without some form of entrustment, the fiduciary relationship becomes vulnerable and ill defined. The situation of entrustment leads to the state–taxpayer fiduciary relationship. Since entrustment remains pivotal to the creation of the fiduciary relationship, trusting the government with taxpayers’ money creates a situation of entrustment, which becomes a constituting factor of the state–taxpayer fiduciary relationship.

2.3.2 Constitution as a Source of the State–Taxpayer Fiduciary Relationship

The fiduciary relationship is generally regarded a legal relationship that has leverage in statutes and precedents.203 The courts recognise the fiduciary relationship as legal. For example, in the case of the trust–beneficiary relationship, the relationship is governed by specific rules that impose legal duty on the fiduciary. If there is any breach of these legal duties, courts of law are readily available to seek to redress against this wrongdoing. In the case of the state–taxpayer fiduciary relationship, it may appear unclear and perplexing when considering the legality of the relationship. More

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203 The law of fiduciary has been a hallmark of Anglo-American law and jurisprudence for over 250 years. Most fiduciary law principles have been developed through precedents, although some have been embodied in statutes. Katharina Pistor and Chenggang Xu, ‘Fiduciary Duty in Transitional Civil Law Jurisdictions Lessons from the Incomplete Law Theory’ (ECGI Working Paper N 01/2002) 3 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=343480>.

204 Cooter and Freedman, above n 167, 297.
importantly, if this relationship is breached, it may be unclear how to seek redress against such infringement.

Most countries of the world have constitutions as the source of state power. The constitution is regarded the supreme law of the land, and any other law that appears inconsistent with the provisions of the constitution is regarded null and void.  

Thus, given that the constitution is the supreme law of the land and source of power for the government, it can also be regarded the source of the state–taxpayer fiduciary relationship. The constitution states that, in a country run on democratic principles, all power belongs to the people. The government cannot go beyond the ambit of the constitution—at least theoretically—while making any decisions or implementing any law. The constitution prescribes the system of electing the government through popular vote. The power a government exerts over its citizens emanates from the constitution.

For example, Article 7 of the Constitution of the People’s Republic of Bangladesh says that state power belongs to the people, and the constitution is the expression of the people’s will and supreme law of the land. According to the constitutional provision, power belongs to the people and the constitution is the supreme law of the land as a solemn expression of the will of the people. The government must perform its duty according to the power delegated to it by the provisions of the constitution.

The citizens of a country do not exercise the power that belongs to them according to the constitution—they elect a government and authorise it to exercise power on their behalf for their best interests. The constitution guarantees various rights to the people, including the right to life, freedom of speech, religion, equal treatment before the law and others.

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205 For example, Article 13(1) of the Constitution of India states that any law inconsistent with any provisions of the constitution shall be void to the extent of the inconsistency.

206 Some countries do not have constitutions in the traditional sense of a written, documentary form. The United Kingdom is an example of this. However, while the United Kingdom has no written constitution, the country is run based on parliamentary supremacy, where no difference is made between constitutional laws and ordinary laws. Helmut Weber, ‘Who Guards the Constitution?’ (Humboldt University Working Paper, 1999) <http://www.gbz.hu-berlin.de/publications/working-papers/downloads/pdf/WPS_Weber_Constitution.pdf>.


208 For example, Article 15 of the Constitution of Bangladesh dictates that making provisions for the basic necessities of the people of the country is the fundamental responsibility of the government. Articles 27 to 43 guarantee different rights and freedoms to citizens. Likewise, Articles 14 to 30 of the Constitution of India guarantee different rights and freedoms to the citizens of India.
guarantee any right without any reasonable cause, there is provision in the constitution for filing a writ petition against the actions or failure of the government. These are all indications that the government stands in a fiduciary relationship to its citizens in general,209 and taxpayers more specifically. Section 5 of the Constitution of Australia provides that the Constitution Act:

and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State.

According to Section 109 of the Constitution of Australia: ‘when a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid’. The inconsistent state law is invalid because it is inconsistent with the laws enacted under the authority of the Commonwealth Constitution, which is the highest law of the land. In England, the Magna Carta of 1215210 is the document that upholds the rights of the people. Likewise, the constitutions of different US states assert the rights of the people.211 Given that these constitutions do not specifically mention any term or topic specifically related to fiduciary, it can be presumed to be implied in the relevant provisions of these constitutions—the spirit of the constitution should imply such a relationship.

As aforementioned, in Canada, the constitution and the courts guarantee the rights of the indigenous people of Canada regarding land title, and the Canadian government recognises the responsibility to ensure that the indigenous people live in equality with non-indigenous citizens.212 In Guerin v. R (1984),213 it was held inter alia that the fiduciary relationship is rooted in the concept of the indigenous title. The fiduciary obligation owed to the indigenous people by the crown is sui generis—one of a kind. This relationship was also affirmed in later cases. For example, in R v. Sparrow,214 it


211 For example, Article I of the 1776 Constitution of Maryland states, ‘That all government of right originates from the people, is founded in compact only, and instituted solely for the good of the whole’. <http://www.nhinet.org/ccs/docs/md-1776.htm>.

212 Commonwealth of Australia Constitution Act 1867 (Imp) s 35.

213 [1984] 2 SCR 335.

was held that the Canadian government has the responsibility to act in a fiduciary capacity with respect to the indigenous people. The relationship is based on trust, rather than adversary. These cases were decided in the ambit of Section 35 of the *India Act*, which considers native title.

In *Wewaykum India Band v. Canada*, a case not based on Section 35, the crown–indigenous people fiduciary relationship was reiterated. In the *Wewaykum* case, the court *inter alia* held that the fiduciary duty does not exist in general—not all obligations between the parties to the fiduciary relationship were fiduciary in nature. According to the *Report of the Royal Commission on Aboriginal Peoples*, the fiduciary relationship is the fundamental feature of the Constitution of Canada. The crown is not an ordinary fiduciary to the indigenous people, and the concept of fiduciary relationship and obligations arising from it are still being developed. It is clear that the Canadian Supreme Court labelled the crown–indigenous people relationship a fiduciary one, giving rise to fiduciary obligations in special circumstances. However, the courts regard the duties arising from the fiduciary relationship as not available under all circumstances.

With respect to the state–citizen fiduciary relationship, Fox-Decent and Criddle reiterate that there is a fiduciary relationship between the state and its subjects, and that this relationship gives rise to fiduciary duties. Fox-Decent and Criddle argue that the state has the fiduciary duty to ensure its citizens have secure and equal liberty. The assumption of institutional power by the government gives rise to such fiduciary duties. The authors relate the fiduciary duty to the state’s authority regarding the treatment of human rights by the state. They contend that, to fulfil its fiduciary duties, the state must honour the equal dignity of all its citizens, and must not discriminate among subjects to maximise social welfare, which remains one of the principal purposes of the state. The government holds public power as a trustee of the people, and must use it for the people’s benefit. It cannot be used to deliberately treat subjects as a means to another end.

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215 2002 SCC 79.
216 Hurley, above n 170.
218 Ibid, 555.
2.3.3 Governments’ Law-making Power and Fiduciary Duty

When the state makes any law, it makes it in the capacity of fiduciary. Matthew argues that the state operates as a fiduciary agent as a descriptive matter of history and positive law.219 While discussing the fiduciary position of the US government under the Patient Protection and Affordable Care Act of 2010 (ACA), he emphasises the economic agency theory of the state to analyse the state’s fiduciary relationship.220 He bases his argument on the historical background of how the US states ceded their powers to the federal government as their agent. He states:

The agency relationship is at the core of our democratic form of government. Organized originally to reflect the terms of corporate charters, each of the colonies evolved into sovereigns that ultimately ceded authority to the federal government to act on their behalf as an agent. I therefore extend the economic agency theory of the state, based on these historic facts, to explain that in passing the ACA, Congress acted within its fiduciary capacity as an agent to accomplish what the people of the United States could not accomplish independently, or could not accomplish well apart from their government … that the state operates as a fiduciary agent as a descriptive matter of history and positive law.221

When the Australian states empowered the federal government under Section 51 of the Commonwealth of Australia Constitution Act 1900, the federal government became a fiduciary to the states—and subsequently the people—in terms of performing specific duties, such as collecting taxes and ensuring the security of the state. When the Australian federal government makes any law, it passes that law in a fiduciary capacity. It is worth mentioning that the history of the Australian constitution and federation is a history of a process effectuated through conventions of the different colonies of Australia in phases. The Commonwealth of Australia was created on 1 January 1901, when the Commonwealth of Australia Constitution Act 1900 came into force. The Australian Federation is based partly on the parliamentary supremacy of England, and partly on the US system of federation. The main theme is the protection of the citizens against the power of the government by allocating the power through separation of powers.222 Thus, in line with the US constitution, it is logical to argue

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220 Ibid, 774.
221 Ibid.
222 Tony Blackshield and George Williams, Australian Constitutional Law and Theory (Federation Press, 2002) 2.
that the Australian Commonwealth government remains accountable to the people of Australia and stands in a fiduciary relationship to them.

2.3.4 The Principal–Agent Relationship and State–Taxpayer Fiduciary Relationship

In explicating the nature of the fiduciary relationship and its corresponding obligations, the principal–agent theory of relationship plays a vital role. The fiduciary obligation concept has religious origins, with both the Christian and Muslim religions recognising humans as the agent of god in the world. Szto argues that fiduciary duties have both Christological and secular origins. In tracing the history of fiduciary duties, Szto states:

The origin of fiduciary duties has religious and secular roots. These roots were wed by canon lawyers in the medieval era ... Fiduciary duties in the biblical tradition begin in the Genesis creation account ... God is the world’s eternal owner, and his agents are stewards. Fiduciary duties thus bond God, his creation, and his creatures. Adam and Eve failed in the enterprise, however, and the rest of biblical history is the story of redemption. It is a search for the faithful fiduciary and a permanent inheritance.

Atherton, Blodgett and Atherton contend that fiduciary law has religious origins. It developed as a result of the secularisation of a particular religious tradition, where a shepherd taking care of his or her flock could be compared to a fiduciary (steward or employer) or agent (servant or employee) tending the sheep for the owner of the flock. According to Young, after originating in religion, fiduciary was accepted and applied in the commercial domain. The religion of Islam also recognises the fiduciary obligation of humans who were sent to the world as vicegerents or agents of god. The relationship between humans, angels and Satan clarifies the status of humans among creatures, and highlights their special place as god’s vicegerents.

Thus, the fiduciary relationship theory has religious roots, and has been secularised by the state over time to reach the present condition. People are the agents of god in this world—they are ordered to obey the righteous rulers. Monarchs and rulers are held

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223 Szto, above n 158, 86.
224 Ibid.
226 Ibid.
228 The Quran, Verse 2(30).
responsible for the proper administration of justice, and are considered the holder and dispenser of justice among the citizens, according to religious prescriptions. Thus, monarchs can be regarded a model of godliness to the people by governing in a way that conforms to the requirements of the covenant between god and humans. The English law established stewardship through the Magna Carta of 1215. The king was to serve as a steward with fiduciary rights (ownership) in the management of his property, but was required to place the interests of his subjects (inferior rights) above his own—a fiduciary relationship.229

The agent–principal relationship has been considered a fiduciary one by the English courts for a long time.230 In Armstrong v. Jackson,231 McCardie J states:

The position of principal and agent gives rise to particular and onerous duties on the part of the agent, and the high standard of conduct required from him springs from the fiduciary relationship between his employer and himself. His position is confidential. It readily lends itself to abuse. A strict and salutary rule is required to meet the special situation. The rules of English law as they now exist spring from the strictness originally required by Courts of Equity in cases where the fiduciary relationship exists.232

Thus, an essential characteristic of the principal–agent relationship is fiduciary obligation.233 According to DS Law, the principal–agent relationship remains vital for democracy.234 Law contends:

In a system of constitutional government premised upon popular sovereignty, the government acts as the agent of the people and is supposed to exercise power consistent with the terms and conditions imposed by the people in the form of a constitution.235

In a democratic state, people vote the government to power, thereby becoming principals, with the state as their agent.236 Chief Justice Holmes affirms that the state acts as an agent of the people.237 According to Iredell, ‘Those in power are their servants and agents; and the people, without their consent, may new-model their

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229 Atherton, Blodgett and Atherton, above n 225.
231 [1917] 2 KB 822.
232 Ibid, 826.
235 Ibid, 723.
237 Ibid.
government whenever they think proper’. The principal–agent relationship is termed by modern theorists as the doctrine of popular sovereignty. In the words of Gonzalez:

Thus the essence of popular sovereignty is a principal–agent relationship between a principal/people and their constituted agent/government, under which a sovereign people grant governing power and authority to a government that acts as a trustee over the people's sovereignty.

The Declaration of Arbroath of 1320 is being put forward as the suggestion of popular sovereignty. According to the Declaration of Arbroath, Robert Bruce held the throne of Ireland solely to defend Ireland from English invasion. In the case of his failure, a new king would be chosen by the people to perform this duty on behalf of the people.

When governments are elected by the people as a result of the provisions of the national constitution, they become agents of the people. As agent of the people, their duty is to perform the designated jobs, using the sovereign powers entrusted to them by the principal. That is, people trust the agent in good faith to conform to the norms of behaviour as expected by the principal. Thus, when governments step into the principal–agent relationship, they are expected to honour the trust placed in them in good faith by the principal. This reliance on the government through placing trust and good faith can be regarded as giving rise to the state–citizen fiduciary relationship. People become the beneficiary and are entitled to good governance, according to the democratic norms and principles dictated by the national constitution. Through voting, people delegate their power to the government, whose duty is to act as the agent as a fiduciary for the people. If the government breaches this trust, the relationship is jeopardised and it becomes difficult for the people to respond to this situation. If the government becomes despotic, this poses a challenge for the people to exercise effective control on the government. In such situations, people must overthrow the government via popular uprising, which is very difficult for the ruler to withstand.

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240 Ibid, 637.
242 Law, above n 234, 731.
243 Ibid.
The state–taxpayer fiduciary relationship can be related to the doctrine of popular sovereignty, which is also taken as a basis of the state–citizen fiduciary relationship. According to the doctrine of popular sovereignty, people own the sovereign authority, which they delegate to the government to exercise for the advancement and materialisation of policies regarding public welfare. Benjamin Franklin expresses the concept popular sovereignty: ‘In free governments, the rulers are the servants and the people their superiors and sovereigns’. In the US, the 1776 Pennsylvania Declaration of Rights says, ‘all power [is] … derived from the people; therefore all officers of government, whether legislative or executive, are their trustees and servants, and at all times accountable to them’. The main theme of this concept is that the legitimacy of the rule of law emanates from the consent of the people. Hobbes and Rousseau were the most influential people to advance the theory of popular sovereignty, stating that individuals choose to enter a social contract with one another, thereby voluntarily relinquishing some rights in return for protection from dangers. According to popular sovereignty, people give governments the power to govern them; thus, it is imperative that rulers hold that power as a trustee and stand in a fiduciary relationship to the governed, who are regarded beneficiaries. Thus, the doctrine of popular sovereignty is presented as the basis of the state–citizen fiduciary relationship.

2.4 Limitations of the Governments to Act as Fiduciary

An attempt to establish a fiduciary relationship between the state and taxpayers might cause practical problems that may make it difficult for the government to act as a fiduciary to the people. The concept of the state–taxpayer fiduciary relationship might generally face judicial resistance in the courts of Anglo-American jurisdictions. The courts have not reached consensus about the true nature and effect of fiduciary relationships, and the duties arising from them. There are divergences of opinion among judges about the application of fiduciary principles in cases before them, and they appear to be conservative when dealing with cases involving fiduciary duties. There is agreement among judges and commentators that the concept of fiduciary has not yet been successfully defined. The development of fiduciary law did not follow any principled way, and, in particular, common law jurisdictions have failed to define

244 Thomas Jefferson, The Sovereignty of the People, cited in War, above n 241.
245 Article IV of the Constitution of Pennsylvania 1776, cited in Criddle and Fox-Decent, above n 21, 331, 350.
246 Edelman, above n 200, 304.
the exact nature of the fiduciary relationship, justify fiduciary duties and explain the purpose of fiduciary duties.\footnote{Miller, above n 171, 235.}

However, while, under the common law, judges generally exhibit a cautious attitude in expanding the gyre of the fiduciary relationship, it is not uncommon to find cases where judges leaned towards the view that governments have a fiduciary relationship with taxpayers. For example, in the case of \textit{Roberts v. Hopwood et al.},\footnote{[1925] AC 578.} the House of Lords held \textit{inter alia} that the Poplar Borough Council, while performing its duties, had responsibility as a trustee or manager of the property of others. Consequently, the city council was in breach of that duty if it dissipated taxpayers’ money in the name of charity or other reasons.\footnote{John Glover, ‘Public Officials, Public Trusts and Fiduciary Duties’ in Ken Coghill, Charles Sampford and Tim Smith (eds), \textit{Fiduciary Duty and the Atmospheric Trust} (Ashgate, 2012) 69.} In that case, the Poplar Borough Council paid wages to its employees at an increased rate, which was objected to by the district auditor. The district auditor disallowed the excess wages paid by the council on several grounds, one of which was that the council is a fiduciary body and cannot spend money in excess of the required amount to gain services.\footnote{Harold J Laski, ‘Judicial Review of Social Policy in England: A Study of \textit{Roberts v Hopwood et al.}’ (1926) 39(7) \textit{Harvard Law Review} 832, 834.}

Similarly, in \textit{Prescott v. Birmingham Corporation}, the court held that local corporations owed a fiduciary duty to their ratepayers.\footnote{[1954] 8 WLR 600, 990. See Glover, above n 249, 82.} Again, in 1981, the English court reiterated that city councils owe a fiduciary duty towards their taxpayers. In \textit{Bromley London Borough Council v. Greater London Council},\footnote{[1983] AC 768.} Lord Wilberforce held \textit{inter alia} that the Greater London City Council owed a duty of fiduciary character to its ratepayers, who must provide the money to be spent to provide services to the inhabitants of the council. Lord Diplock reinforced this by saying:

\begin{quote}
A local authority owes a fiduciary duty to the ratepayers from whom it obtains moneys needed to carry out its statutory functions and this includes a duty not to expend those moneys thriftlessly but to deploy the full financial resources available to it to the best advantage … being … the rate fund … and the grants from central government respectively.\footnote{Bromley London Borough Council \textit{v Greater London Council} [1983] AC 768, 829, cited in Glover, above n 249, 83.}
\end{quote}

Courts in New Zealand also agree with the English courts that municipal councils owe a fiduciary duty to ratepayers. Some of the cases in which the courts held that local
councils have a fiduciary duty to ratepayers include *Mackenzie District Council v. Electricity Corporation of New Zealand* [1992] 3 NZLR 41 (CA), *Barton v. Masterton District Council* [1992] 1 NZLR 232 (HC), and *Waitakere City Council v. Lovelock* [1997] 2 NZLR 385 (CA). However, the theory of public fiduciary duty has never been welcomed in Australia.

The courts of the US, Canada and Australia have recognised the existence of a fiduciary relationship between the state and indigenous people. In the US, the court recognised the rights of the indigenous people and the fiduciary relationship between the state and the indigenous people long before Canada and Australia. In Canada, the courts have recognised the fiduciary obligation principle in some specific areas, except the native–crown fiduciary relationship aspect. For example, government decision makers, such as municipal councillors, have been held as fiduciaries in relation to those they serve. Fox-Decent describes:

> Courts have insisted that the claimant show a pre-existent right to the subject matter of the alleged fiduciary obligation. They have also clung fast to a formal private/public distinction according to which fiduciary duties belong almost exclusively to private law. The reasons that explain the dearth of fiduciary doctrine in public law, however, do not justify its absence.

Sossin contends that the emergence of new civil claims makes government administrators liable for breaches of fiduciary obligations, despite the fact that the requirements of trust have not been fulfilled. This happens when government officials have specific statutory obligations to act to protect the interest of a particular class of people. Sossin recounts:

> Canadian jurisprudence has been at the forefront of exploring the many incarnations of fiduciary obligations in private law, and so it is not surprising that Canadian courts have been instrumental in the recognition of public law fiduciary obligations as well.

It is evident that the courts in Canada are willing to expand the private fiduciary obligation law to the public domain, and hold the state as a fiduciary in relation to its...

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254 Glover, above n 249, 83.
255 Ibid, 84.
258 Fox-Decent, above n 21.
259 Sossin, above n 256.
260 Ibid, 130.
citizens. However, it is unclear to what extent the courts will recognise the state–taxpayer fiduciary relationship. Dearth of judicial pronouncements fails to elaborate the issue. However, one case deals with the state–taxpayer fiduciary issue in Canada, which provides very poor fulcrum to support the state–taxpayer fiduciary relationship.

The case is *Harris v. Canada*, in which it was argued by the plaintiff that, when imparting a decision regarding advance tax benefitting a particular family trust, the revenue minister used his discretionary powers illegally, improperly and with ulterior motive. This constituted a breach of the fiduciary duties that the minister owed to the taxpayers to act to further public interest. Harris’s argument was as follows:

The circumstances of the rulings process suggest that all the elements of a fiduciary relationship exist between the Minister and Canadian taxpayers. First, the Minister has a discretion whether or not to issue an advance tax ruling in a given case. There are no statutory criteria guiding the Minister’s discretion ... The exercise of that discretion will affect the practical interests of all income tax filers as a class, particularly when the matter involves a significant transaction which may have a large impact on the tax base. If under-collection or under-assessment of taxes occurs as a result of an advance tax ruling which erroneously interprets the law or permits an avoidance scheme to proceed, this will inevitably increase the load of tax on the shoulders of the rest of tax filers, as Lord Scarman noted in the Inland Revenue Commissioners case. This shortfall in public revenue must be corrected either through higher or newer taxes or through expenditure reductions. Either way, the very real and practical interests of Canadian citizens in general will be adversely affected. Due to the nature of the advance tax ruling process, Canadian taxpayers are peculiarly vulnerable to the Minister’s exercise of discretion. As noted, the process is secret and confidential, there is no right to appeal and taxpayers must place their trust in government officials to collect and assess tax in a fair and proper manner.

However, the court rejected the plaintiff’s argument of breaching the fiduciary obligation of the revenue minister, and held that that there was nothing within or outside the *Income Tax Act* to suggest that the minister was under a fiduciary obligation when exercising the discretion conferred on him by statute. As a result, fiduciary law is and should be restricted within the ambit where there is an identifiable beneficiary.

While delivering judgement, Dawson J *inter alia* held that, in receiving and responding to the ruling request, the minister and his officials did not owe a fiduciary duty, or a duty akin to a fiduciary duty, to the plaintiff and those he represented. The *Income Tax Act* remains the only source of a minister’s actions and obligations, and there is nothing either in the statute or relevant ministerial guidelines to suggest that the minister owed

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261 2001 FCT 758.

a duty in the nature of a private law fiduciary duty. Having discussed the position of
tax fiduciary in Canada, the following will discuss the position in Australia regarding
public fiduciary, particularly in terms of the judicial view.

The Australian judiciary seems reluctant to expand the fiduciary law beyond the
traditional private law domain. Langford states that the High Court of Australia has
narrowed the scope of the fiduciary principle and expressed its reluctance to expand
the fiduciary concept to new categories of fiduciary duties. In Australia, following the
court’s pronouncements in Breen v. William and Pilmer v. The Duke Group Ltd (in
liq), fiduciary duties have become proscriptive, rather than prescriptive, and the
conflict and profit rules are currently the only recognised fiduciary duties. Langford
argues that fiduciary duties in Australia are very limited in scope, given the court’s
conservative constructions of fiduciary obligations; eagerness to limit fiduciary
obligations to being proscriptive, rather than prescriptive; and wish to limit fiduciary
to the conflict and profit rules. While in Bell Group Ltd (in liq) v. Westpac Banking
Corporation (No 9), the court held that, depending on the particular fiduciary
relationship, the fiduciary obligation can be imposed in other areas, it is highly unlikely
that Australian courts will ascribe fiduciary status to fiduciary duties that have not
formerly been viewed as fiduciary. Langford summarises the Australian fiduciary
law as follows:

First, the High Court appears to have rejected the existence of a prescriptive
fiduciary duty to act in the interests of the principal, at least in the context of
non-status based fiduciary relationships.

Second, the preferable view is that the conflicts and profits rules are not the
only remaining accepted fiduciary duties. Certain duties that have previously
been recognised as fiduciary can continue to be so recognised. The High
Court has, however, cautioned against the expansion of fiduciary duties to
new categories.

Third, it appears that fiduciary obligations are required to be proscriptive,
although the application of this requirement has been shown to be unclear.

265 Rosemary Teele Langford, ‘High Court of Australia on Fiduciary Theory’ in Ken Coghill, Charles
266 Ibid.
268 Langford, above n 265, 195.
Thus, considering the present scenario of fiduciary law in Australia, it is evident that it would be difficult to establish any fiduciary obligation of the government based on the state–taxpayer fiduciary relationship.

In the US, the fiduciary relationship between the state and indigenous people has been recognised in several court cases, such as the *Cherokee Nation* case, where Justice Marshall recognised and reiterated the relationship between the state and indigenous people.270 More recently, the US Supreme Court reiterated the fiduciary relationship between the state and indigenous people in *Cobell v. Norton*,271 *Confederated Tribes v. United States*,272 *White Mountain Apachee Tribe v. United States*273 and *Navajo Nations v. United States*.274 In Canada, the crown is not generally held responsible for the management of indigenous bands (governing units of Indians in Canada instituted by the Indian Act, 1876). The relationship is viewed as one of political trust, rather than legally enforceable trust.275 In *R v. Guerin*,276 the Canadian court acknowledged that Canada (the federal government) has a trust-like relationship—or ‘fiduciary duty’—towards First Nations, specifically in regard to reserve lands. In other words, the federal government has the obligation to act in the best interest of the indigenous people.277 Chief Justices Wilson and Dickson interpret this fiduciary duty as stemming from an indigenous interest and title to the land, and the crown’s relationship to indigenous people. In Australia, although the courts do not directly recognise the existence of the fiduciary relationship between the indigenous people and state, they recognise the native title to land of the indigenous people, as in Canadian courts. Australian writer, however, recognised the fiduciary relationship between the state and the indigenous people.278 It is observed that, in all countries mentioned here, the courts directly or indirectly recognise the existence of a fiduciary obligation of the state only towards indigenous people. This is a special phenomenon where the court has identified the existence of a fiduciary relationship. However, it remains uncertain to

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276 [1884] 3 SCR 335.
278 Reynolds, above n 275, 368.
what extent the court will uphold the existence of the state–citizen fiduciary relationship. It is to be examined whether citizens have any power to bring an action against the state for the breach of a fiduciary obligation. Aside from judicial uncertainty, there are other factors relevant to mention here while discussing the state–citizen fiduciary relationship.

Certain factors can be identified that might impede the willingness of the government to act as a fiduciary in relation to its citizens. The government may be failing to undertake its fiduciary duties to the people as a result of certain factors, which tend to be more particularly applicable to developing countries. First, corruption among the governments of developing and transition countries remains a major impediment to the development of these countries. Taxes largely enter the pockets of corrupt politicians and bureaucrats, which reduces the capacity of the government to spend generously and appropriately for development and other work aimed at bettering the lives of citizens and eradicating poverty. According to a report by the United Nations Secretariat, governments have a responsibility to provide services of vital importance for development, including education services, health services, water and sewerage facilities, roads, public transport and essential housing.279

It could be argued that the citizens of developing countries pay little or no tax, and that governments subsequently lack the necessary finances to complete their work as expected. However, it can also be argued that these governments receive annual donations from donor countries and loans on soft terms from the IMF and other international financial organisations. This money should be spent for the development of the country and welfare of the people; however, in most cases, it disappears due to rampant political and bureaucratic corruption. Specific examples exist in developing countries such as Bangladesh and India. In Bangladesh in 2012, the World Bank ceased disbursing a large loan for the construction of a bridge (the Padma Bridge) because of a corruption charge against one of the government’s ministers.280 Political parties in developing countries appear to have lost public credibility and the mandate

to function as a result of their own mismanagement of the political system.\textsuperscript{281} For example, in Pakistan, political parties have lost credibility to such an extent that the military’s overthrow of the established political order was accepted, if not welcomed, by the general public.\textsuperscript{282}

Political parties in developing countries no longer enjoy people’s trust. A survey of the people of Latin America, Europe and Africa showed that political parties ranked sixth in terms of enjoying popular support and trust.\textsuperscript{283} Due to constitutional provisions, governments are in a position to own, hold and manage public properties, such as the environment, hospitals, public transport and others. While holding and managing those public properties as a fiduciary of the public trust, the government employs substantial powers and discretion. This power can be used undeterred if laws do not establish any limitations on their use. However, Professor Torres argues that this type of power to control and manage public property is not limitless, and that a danger is that government officials can convert public property to private use through corruption.\textsuperscript{284} It can be concluded from the above that political parties in developing countries have failed to undertake the fiduciary duties that they owe to the citizenry in general, and taxpayers in particular.

The government might compromise its fiduciary obligations owed to taxpayers by supporting the party’s interest over the welfare of the citizens. In developing countries such as Bangladesh, when undertaking infrastructure development—including constructing roads, highways, bridges, hospitals and power stations—the government allocates the work to contractors that belong to the political party. These contractors focus on profit, rather than on ensuring the quality of the work. At times, these contractors take money from the government without actually completing any work. In such situations, the government breaches its fiduciary duties by compromising the quality of work, and by dissipating taxpayers’ money without any outcomes being achieved.


\textsuperscript{282} Ibid.

\textsuperscript{283} Ibid.

2.5 Remedies for the Breach of Relationship

The fiduciary relationship calls for the use of discretionary power by the fiduciary. At the same time, there is a risk of this power being abused by the fiduciary to the detriment of the beneficiaries. According to Young, in every aspect of the fiduciary relationship, there remains danger of power abuse by the fiduciary, which can range from simple negligence or misunderstanding to intentional fraud and theft.285 Young clarifies this in terms of the agent–principal relationship, and identifies this risk as a cost associated with the agency relationship. In the case of the state–taxpayer fiduciary relationship, the risk of abuse of power can be identified, where the government might ignore its duties to the people by not doing a proper job or supplying necessary quality services to citizens. In that case, the government might be in breach of the fiduciary relationship. Thus, the question arises of how to remedy this breach.

In financial and corporate or trust law, if the person in the capacity of fiduciary breaches the fiduciary duty, the person affected can seek a remedy of that breach by filing suits to enforce his or her rights in an ordinary court of law. However, the situation is not as clear when a government is in breach of a fiduciary duty. One solution to this is that people can file writ petition against the government for not performing its duties, thereby leading to breach of fiduciary duties. This then raises questions regarding applying the law of standing. According to the law of standing, before an individual can bring any action in a court of law, he or she must have some standing to bring that proceeding.286 Justice Brian J Preston suggests that the three prerogative writs—writ of prohibition, certiorari and mandamus—can be used in environmental cases.287 In the case of breach of fiduciary duties by the government, it seems logical to suggest that the prerogative writs can be employed by any taxpayer, and a public interest litigation proceeding can be brought before the court. Applying the traditional common law of standing in the state–taxpayer fiduciary relationship case might create some inevitable and established issues—the most important being that, as per common law traditions, to have standing to bring a proceeding before a court, an individual must prove that some harm or damage has been suffered as a result.

285 Young, above n 227, 2.
of the violation of constitutional provisions. For standing, the individual must show that he or she has a special interest in the subject of the litigation.

In environmental law cases, it is difficult for individuals to prove special interest, and courts have not always accepted that the people bringing the proceeding do have standing. For example, in *Australia Conservation Foundation v. Commonwealth*, the court held that the Australian Conservation Foundation had no standing to bring action against the decision of the Australian government to allow a company to establish and operate a resort and tourist area in Central Queensland, to the detriment of the environment. Thus, this can be one of the most frustrating impediments to the taxpayer having any standing to prove special interest, and successfully bring any proceeding before the courts. However, the filing of suits against governments in developing countries by the people is becoming more frequent. For example, recently in the Philippines, some citizens of the Llocos Pangasiana coast filed a writ—called ‘writ kalikasana’—against a large-scale mining operation along the coast. The writ was granted to effectively control the environmental degradation. In addition, recently in Bangladesh, a writ petition was filed against the government’s attempt to establish a power plant in Sundarban, based on its environmental degradation.

Ultimately, if a government fails to perform its expected duties, it can be ousted by the people in a general election. In a democracy, election remains the most effective and vital tool to reward or punish elected representatives for their acts. However, it is difficult to identify the state–taxpayer fiduciary relationship based on strong and distinct legal foundations as fiduciary obligations under private laws are. The constitutional basis of the state–taxpayer fiduciary relationship is sufficiently broad and general to render it incapable of being monitored by any individual citizen, as is possible in the established fields of fiduciary obligations, such as trust, torts and contracts.

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288 Geoff Holland, ‘Standing As a Barrier To Constitutional Justice—Can We Create a New “Public Law Paradigm”?’ (2011) 22(3) Bond Law Review 78, 79.
2.6 Autocratic Governments as Fiduciary

The state–citizen fiduciary relationship exists in democratic societies where the government is accountable to the people for its acts. However, in autocratic societies where people do not have voting rights, or when a constitution is suspended, the state–citizen fiduciary relationship may not be visible. In such regimes, the rulers do not consider themselves accountable to the people because they are not voted to power. However, Fox-Decent suggests that the fiduciary doctrines can still be applicable in dictatorships, and that fiduciary doctrines apply to both democratic and autocratic or authoritarian situations. However, in authoritarian countries, the ruler may not be willing to abide by the fiduciary obligations. Consequently, in such states, the activities of rulers cannot be scrutinised through a fiduciary lens. For example, allegations of human rights violations in China are common, with China being a country under one-party authoritarian rule, where the government appears to care little about the rule of law or human rights. Thus, the indices of fiduciary obligations may not be as visible as in a multi-party democratic society.

In a democracy, governments are elected through popular vote, and become the representatives and agents of the people. They are expected to work for the best interests of the voters who place trust in them, depending on their commitments of accountability and election manifesto. However, for such an accountable government, elections must be free and fair, citizens’ participation must be widespread and citizens must have political freedom. In many countries—particularly in developing countries of Asia and Africa—people have voting rights and countries are known as democratic states. However, many elections are not free and fair, and votes are purchased from voters. In such circumstances, it is difficult to uphold a true democracy that will ensure the accountability of the government to the people. Due to a lack of accountability and commitment to the people, the governments of such countries with apparent democracy might lack the traits of a fiduciary relationship.

293 Fox-Decent, above n 21, 286.
294 An example of this is the trial of Liu Xianbin—a human rights activist in China, who was taken to trial by the Chinese authoritarian government for speaking in favour of human rights. Liu Xianbin, ‘To Live and Fight as a Person or as a Citizen! Trial Statement by Liu Xianbin’, China Rights Forum <http://www.hrichina.org/crf/article/5657>.
Taxpayers contribute tax to the government to finance the necessary work that cannot be executed through individual effort. It is the duty of the government to complete this work on behalf of the people. People trust that the government will govern well and undertake work with tax money in terms of providing goods and services that cannot be achieved by individual efforts. Researchers tend to consider fiduciary obligation and good faith as separate domains; however, the relationship between good faith and fiduciary obligation remains largely unexplored. In case of contract good faith and fiduciary duties work as a complement to each other. Good faith appears to be an important element of the state–taxpayer fiduciary relationship. People pay tax to the government in good faith in anticipation of the government’s honesty in providing goods and services, based on the people’s social exchange relationship with the government. When the government rules well, it can be considered in compliance with the fiduciary obligations. When there is good governance, the quality of the services supplied to the people is ensured. When the government provides the expected benefits to the people, taxpayers become compliant. In support of this, Alm and Gomez find a positive relationship between the supply of goods and services to the people, and the rate of tax compliance.

2.7 Contractual Aspect of the State–Taxpayer Relationship

According to Levy, there is a vertical contractual relationship between the taxpayer and state, and this contract shapes taxpayers’ compliance behaviour. The essence of a contractual relationship is *quid pro quo*—something is received in exchange for giving something else. From this perspective, paying taxes can be regarded a consideration for the government, and the government completing the expected work can be regarded as *quid pro quo* for the citizens. Levy argues that the vertical contract between the taxpayer and government is the *quid pro quo* of taxation and, under this vertical contract, taxpayers expect to receive public goods in exchange for taxes.

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297 Ibid.
When taxpayers believe that the government has failed in its promise under the contract, they will not comply.

Lassen contends that, if the government fails to provide benefit to taxpayers as expected, if benefits have been provided to a group of people with whom taxpayers do not identify, or if the flow of service is slow because of corruption, the *quid pro quo* on behalf of the taxpayers gradually disappears. Lassen suggests the concept of a horizontal contract between the taxpayer and government, although he does not define the term ‘horizontal contract’. However, according to this horizontal contract, when people trust others in their society to pay the correct amount of tax, they are encouraged to comply. Conversely, if people do not trust others to comply, they also choose not to comply and evade tax. To support his argument, Lassen refers to Laurin, who finds through a survey with Swedish taxpayers that, when people find that other people underreport their income, they also try to do the same.

It has been suggested that there is a social contract between the state and taxpayers. This social contract presupposes the effective supply of political goods—that is, the expected public services from the government to taxpayers. According to Scholz, there is a contract between taxpayers and the state. Taxpayers contribute to the government treasury, and the government provides benefits and services to the people. This is the tax contractarian theory of tax compliance, where citizens’ compliance with paying taxes is contingent on the government’s performance of its obligations. Feld and Frey extend the contractual obligation to what they called the ‘psychological contract’. They argue that there is an implied psychological contract between taxpayers and the government to which taxes are paid. This contract shows that tax morale tends to expound the complicated tax compliance behaviours of taxpayers towards governments, and tax morale is endogenous and not residual while explaining

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302 Ibid, 53.
305 Lassen, above n 303.
307 Ibid.
308 Scholz, above n 64, 139.
309 Feld and Frey, above n 25, 102.
tax compliance behaviour. Given that the psychological contract—like an ordinary contract—connotes the rights and duties to which taxpayers and the tax-collecting state must adhere, each side is expected to perform duties under the contract in order to morally assert their right, and expect the other side to comply. Failure to perform the expected duties or noncompliance with the taxpaying obligation will trigger noncompliance with the contractual provisions from one of the parties—particularly from taxpayers. According to Feld and Frey:

A contractual relationship implies duties and rights for each contract party. This is looked at from an exchange perspective according to which the government should provide public services to citizens in exchange for their tax payments. If the benefit principle of taxation, which implies a fiscal equivalence between public goods and tax prices, is violated by setting those prices too high, citizens think they have a justification for evading taxes.310

It transpires from the above discussion that there is a contractual relationship between taxpayers and the state. However, this contract may not have the characteristics of a private contract executed by private citizens among themselves. Yet, if there does exist a contract in the relationship between taxpayers and the state, it can be argued that this type of contractual relationship is based on trust and good faith, which leads to a fiduciary relationship between taxpayers and the state. Ribstein argues that necessity fiduciaries are contractual because they arise from contractual relationships that entail default fiduciary duties.311 Thus, the contractarian theory of the state–taxpayer relationship clearly indicates that the relationship between the state and taxpayer is a fiduciary one that moulds the tax compliance behaviour of citizens.

2.8 Conclusion

Many factors shape the compliance behaviour of taxpayers, which may vary across countries and cultures. This chapter has sought to contribute to the compliance literature by arguing that governments stand in a fiduciary relationship with taxpayers. If governments fail or show incapacity to provide the necessary services to taxpayers as per their commitment, taxpayers may feel discouraged to comply with their tax liability. This theory can be regarded an ambitious extension of the state–citizen fiduciary duties into the tax compliance literature. This chapter has argued that the

310 Ibid, 104.
311 Ribstein, above n 199, 899, 902.
state has a fiduciary relationship with its citizens in terms of maintaining the rule of law, applying laws to citizens, and protecting the environment for future generations. Likewise, states stand in a fiduciary relationship to taxpayers. If they fail to undertake their fiduciary duties, this might negatively affect the tax compliance behaviour of taxpayers. This chapter also observed that the relationship between the state and citizens is based on agency and a contractual relationship. It further revealed that the state–citizen fiduciary has religious origin, which speaks for the state–citizen and god’s fiduciary relationship. All these established theories countenance the present state–taxpayer fiduciary relationship aspect. This may not be as important in developed countries as in developing countries, where governments continuously breach the trust of the people.

This is a novel idea and attempt to add to the existing tax compliance theories. The researcher is aware of the risk involved in propounding a new theory such as this, particularly in a legal system where fiduciary law has limited application; is proscriptive, rather than prescriptive; and has improbable extension. Such a theory can be lampooned and face scathing criticism from legal scholars. The main arguments against this theory are that it is unrealistic, idealistic and optimistic, and may fail to generate positive discussion. However, today’s theory can become tomorrow’s reality, as shown throughout history. Thus, it is argued that research should embrace the reality and accept the extension of the fiduciary law into the field of tax compliance, as it has been in the state–citizen relationship. While this proposition is ambitious, apparently unrealistic and marked with the aforementioned problems, these issues are not insurmountable, although they may appear difficult to resolve. Further research in this field will enable greater development in analysing tax compliance behaviour based on the proposed state–taxpayer fiduciary relationship theory.
Chapter 3: Background to the Tax System and Administration in Bangladesh

3.1 Introduction

This chapter examines the history, background and development of the taxation system in Bangladesh—particularly income tax. The focus is on Bangladesh’s tax structure and reforms in direct taxation in order to present a picture of the direct taxation system in this country. Given that this research concentrates on tax compliance issues in Bangladesh, it is important to provide background information about income tax administration in Bangladesh.

3.2 History and Development of the Income Tax System in Bangladesh

The history of taxation in Bangladesh can be traced back to the early Hindu period, which was characterised by a complete system of taxation, where kings had the authority to impose taxes on citizens’ income. Taxes during ancient times can be classified as tax on land produce, tax on personal wealth of various kinds, poll tax and succession duties. Sarkar states that ancient India had a very comprehensive and sophisticated taxation system. Among the principal sources of revenue were land tax, irrigation cess, octroi, customs duty, excise duty, salt tax, sales tax, excess profit tax, professional tax, trade tax, income tax, labour tax, poll tax, gambling tax,


313 Ibid, 112.

314 The poll tax was levied during Ancient Rome and in other countries on the head of the population. In Rome, the people of conquered provinces had to pay the poll tax. John J Lalor (ed), Cyclopedia of Political Science, Political Economy, and the Political History of the United States (Maynard, Merrill and Co, 1881) vol 3 <http://www.econlib.org/library/YPDBooks/Lalor/lfcy843.html#LF-BK0216-03pt02ch050>.


316 ‘Irrigation cess’ was a type of tax realised from the cultivators of ancient India for the use of water for irrigation purposes. Ibid, 90.

317 ‘Octroi’ or ‘Shulka’ was a type of tax in ancient India that was levied on various articles of consumption at the entrance of a town or any part of the country. Sarker, above n 260, 92.
Income tax was imposed on people of different professions. The citizens of the state would give tax to the king, and the king would give protection to the citizens. What is now defined as tax was considered a fee due to the king in return for service rendered by the king to the people.

This older system of taxation was further developed during the Mughal rule. This system continued up to 1860, when the term ‘income tax’ was coined and used by the then English ruler. In the Indian subcontinent, income tax was introduced in the context of war, as in England, the US, Australia and other countries. Before the introduction of income tax in 1860, British colonial rulers raised revenue through ‘tax farming’ by the ‘zamindars’. In 1860, income tax was introduced to the Indian subcontinent for the first time via the Income Tax Act. This was designed to make up the deficit caused by the Sepoy Mutiny of 1857.

In 1922, the Income Tax Act was enacted, which resulted from recommendations of the All India Income Tax Committee formed in 1921. This Act was a milestone in the evolution of direct tax laws in British India—the foundation of a comprehensive system of income tax administration was laid for the first time. The Act stayed in force until 1984, when, based on recommendations of the Final Report of the Taxation Enquiry Commission, submitted in April 1979, the Income Tax Ordinance 1984 was promulgated.

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318 ‘Bali’ was a gift or offering made to the gods by the people of ancient India to obtain spiritual benefit. Kunwar Deo Prasad, *Taxation in Ancient India: From the Earliest Times Up to the Guptas* (Mittal Publication, 1987) 15.
319 Sarkar, above n 315, 86.
326 Tax farming is a system of tax collection in which governments transfer the right to collect tax from the citizens. Tax farming was common in Ancient Egypt and Europe, including in Rome and England. Levi, above n 301, 71.
329 Ibid.
331 Banglapedia, above n 328.
3.3 Income Tax Administration in Bangladesh

The Income Tax Department of Bangladesh (ITDB) is a continuation of the British colonial legacy. The contemporary organisational structure of the ITDB arose from the *Income Tax Act* of 1922. In 1924, the *Central Board of Revenue Act* constituted the board as a statutory body with functional responsibilities for the administration of the *Income Tax Act*. The central board of revenue later became the NBR, which is the apex revenue body and administers income tax administration. Some of the most important functions of the NBR remain collecting direct and indirect tax revenue for the government of Bangladesh; each year, preparing finance bills and issuing different statutory rules and orders, as well as other orders regarding direct and indirect tax; drafting and signing double taxation agreements regarding avoidance of double taxation; and reforming the direct and indirect tax system.

3.4 Characteristics of the Income Tax Administration of Bangladesh

The ITDB shares common characteristics with other tax administrations in developing countries. The tax base is narrow, with fewer than one million income tax filers, and tax evasion is rampant. The ITDB collects the amount of tax that taxpayers pay voluntarily, not the amount that taxpayers are supposed to pay as per the income tax law. Withholding tax gyre and information reporting are not wide enough to determine the true income of taxpayers. As a result, compliance remains very low.

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3.4.1 Tax Evasion in the ITDB

Tax evasion involves the violation of tax law, where taxpayers do not report their exact taxable income or tax to be paid on that income, as per the law.\(^{337}\) It is a premeditated and deliberate failure by taxpayers to comply with their tax obligations.\(^ {338}\) Every tax system faces the problem of tax evasion and avoidance.\(^ {339}\) Minimising tax evasion creates a challenge for the tax administrations\(^ {340}\) of both developed and developing countries.\(^ {341}\) In the US, 17 per cent of income taxes are unpaid each year.\(^ {342}\) In Europe, $1.3 trillion is lost every year due to tax evasion.\(^ {343}\) In Australia, there is tax evasion.\(^ {344}\) Schneider finds that the average value of the underground economy in Australia, Canada, Japan, New Zealand and the US in 2010 was 9.7 per cent, and, in 2013, was 8.6 per cent.\(^ {345}\)

While all countries experience tax evasion, the problem is more serious in developing countries, such as Bangladesh. Systematic large-scale tax evasion is omnipresent in many developing countries.\(^ {346}\) Buehn and Schneider estimate that the average size of the shadow economy in developing countries in 2007 comprised 37.4 per cent of the GDP.\(^ {347}\) Government estimation in Bangladesh reveals that the black economy


comprised 80 per cent of the GDP—some $110 billion. Hasen finds the size of the shadow economy in Bangladesh to be 38.1 per cent. Thus, in Bangladesh, the famous saying that ‘there is nothing certain in the world except death and taxes’ appears to be a myth, given that tax can be evaded with ease.

3.4.1.1 Causes of Tax Evasion in Bangladesh

The causes of tax evasion in Bangladesh are multiple, with evasion motivated by many factors. These factors have been found by various researchers as being related to peer effect, age, gender, level of income, status, economic position, education, source of income, the probability of being caught and punished, the marginal tax rate, the complexities of the tax system, high compliance costs, inefficiencies in tax collection, weak enforcement of the law, low tax morale and many others. No single factor is solely responsible for tax evasion in a given society. Against this backdrop, the main reasons for tax evasion in Bangladesh are discussed below.

3.4.1.1.1 High Tax Rate

A high tax rate is generally thought to be one of the main causes of tax evasion. Alingham and Sandmo, Clotfelter, Wallschutzky and Bayer find a positive relationship between tax evasion and tax rate. Fisman and Wei found that any increase in tax rate is likely to produce a reduction, rather than an increase, in tax revenue. Likewise, the high rate of tax in Bangladesh is thought to be one of the main reasons for tax evasion.

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349 Benjamin Franklin stated this in 1789, in a letter to Jean-Baptiste Leroy that was reprinted in The Works of Benjamin Franklin (1817).
353 Alingham and Sandmo, above n 25.
354 Clotfelter, above n 53.
357 Fisman and Wei, above n 342, 471,493.
for tax evasion,\textsuperscript{358} and survey evidence supports this claim.\textsuperscript{359} Waresi argues that the corporate tax rate is high compared to the rates in other countries,\textsuperscript{360} while the average tax rate in Bangladesh is 35 per cent, which is considered high.\textsuperscript{361} Thus, the tax rate should be adjusted as a measure to reduce tax evasion in the country.

3.4.1.1.2 Corruption in the Income Tax Department

It is argued that corruption encourages tax evasion.\textsuperscript{362} Corruption is generally perceived as the misuse of public power for private gain.\textsuperscript{363} Schneider observes that high levels of corruption among bureaucrats and government officials create a larger informal economy.\textsuperscript{364} Corruption reduces the size of the GDP, increases the size of the informal economy, distorts the tax structure, and destroys the morality of taxpayers, thereby eventually attenuating the revenue collection capacity of the economy.\textsuperscript{365} Tanzi and Davoodi find a statistically significant negative correlation between corruption and personal income taxes, where a one per cent increase in corruption causes a 0.63 per cent reduction in income tax.\textsuperscript{366}

The situation is more alarming in developing countries such as Bangladesh,\textsuperscript{367} where corruption in the ITDB is another cause of tax evasion. Average taxpayers believe that tax officials are corrupt, and taxpayers must pay bribes to tax officials in order to complete their tax assessments. Survey evidence supports this claim—previous research has found that more than 50 per cent of the taxpayers surveyed stated that they had been asked by tax officers to pay bribes, while 58.5 per cent of the survey

\begin{itemize}
\item \textsuperscript{359} Reforms in Revenue Administration (RIRA), \textit{Taxpayer Survey Report} (October 2003) 5.
\item \textsuperscript{360} Shawkat Ali Waresi, ‘Interpretation of Taxing Statutes and the Role of Professional Accountants’ (2012) \textit{The Cost and Management} 85.
\item \textsuperscript{364} Ibid, 6.
\item \textsuperscript{366} Tanzi and Davoodi, above n 362, 18.
\item \textsuperscript{367} Ibid, 20.
\end{itemize}
respondents thought that corruption in the tax department was a cause of tax evasion.\textsuperscript{368}

3.4.1.1.3 Political Intentions

Kim argues that tax evasion is positively related to the political intentions of the government.\textsuperscript{369} In developing countries, politicians try to control the tax administration for political gain. In Bangladesh, governments often influence tax policies to gain political support from the influential and wealthy members of society. For example, during the 1980s, the government pressured the income tax administration to pass a law so that politicians could receive gifts from relatives, without paying tax. As such, these politicians received millions of dollars of ‘gifts’ from fictitious relatives, with no questions asked. These provisions of the law allowed black money holders to launder their black money and evade a huge amount of tax.\textsuperscript{370}

3.4.1.1.4 Lack of Information

Information is vital to detect tax evasion\textsuperscript{371} and improve voluntary compliance. According to Lederman, the main problem encountered by tax administrations is information asymmetry.\textsuperscript{372} In most cases, the authority must depend on the taxpayer to provide information about the taxpayer’s income. Likewise, the ITDB faces the problem of asymmetric information on taxpayers’ financial transactions. Due to the lack of an effective information reporting regime, the ITDB is in no position to gather information about taxpayers. Therefore, taxpayers are able to misrepresent or conceal the true state of their affairs in order to reduce their tax liability.

3.4.1.1.5 Inefficient Tax Administration

The effectiveness of a tax system not only depends on proper tax legislation, but also on the efficiency of the tax administration.\textsuperscript{373} Kaldor observes that the tax

\textsuperscript{368} RIRA, above n 359.
\textsuperscript{369} Kim, above n 15.
\textsuperscript{370} Waresi, above n 14, 16, 17.
\textsuperscript{372} Lederman, above n 121.
\textsuperscript{373} Nicholas Kaldor, \textit{The Role of Taxation in Economic Development} (Duckworth, 1964) 253.
administrations of developing countries are generally inefficient and ineffective, although some have been more successful in recent years. As a developing country, Bangladesh shares this common feature. Thus, inefficiency of the tax administration remains another cause of tax evasion in Bangladesh. This is evident from the poor level of enforcement, which encourages tax evasion. Complex regulations and the inefficiencies of tax officers are identified as causes of the large shadow economy in Bangladesh.

3.4.1.1.6 Inadequacies and Complexities of the Tax Law

Tax law complexities and inadequacies provide opportunities for tax evasion by discouraging honest taxpayers to be noncompliant, and encouraging dishonest taxpayers to create ways to evade tax by passing laws with the help of tax advisers and big law firms. The present tax statute of Bangladesh is complex and full of rebates and exemptions. A tax statute is complex if, under the law, compliance becomes difficult, requires a significant amount of money, and is not easy to comprehend by taxpayers.

Hussain and Akhand state that the income tax law of Bangladesh is complex. This is demonstrated by the Income Tax Manual, which is divided into two parts, with Part I alone containing 184 sections and eight schedules. These sections are again divided into numerous subsections, while the schedules are divided into several parts. In addition, every year, the parliament passes finance acts that cause various changes in

374 Ibid, 253.
376 G Richardson ‘The Relationship between Culture and Tax Evasion across Countries: Additional Evidence and Extensions’ 17(2) Journal of International Accounting, Auditing, and Taxation 67.
380 Waresi, above n 14.
382 Hussain, above n 358.
the income tax law. To apply these finance acts, the NBR issues circulars, statutory rules and orders, and various clarifications. This frequent change to the law is another major cause of complexity. The income tax law also depends on various other laws of the land for proper implementation; thus, the income tax laws of Bangladesh are complex and exacerbate the problem of noncompliance.

3.4.1.1.7 Lack of Knowledge

Eriksen and Fallan highlight that tax knowledge has a relationship with tax compliance, and taxpayers’ lack of knowledge is another cause of noncompliance in Bangladesh. This lack of knowledge may be caused by taxpayers’ inability to understand the law, or by the lack of tax information available from the tax department. In a survey, 23.9 per cent of the taxpayers stated that lack of knowledge is a cause of tax evasion in Bangladesh.

3.4.1.2 Effect of Tax Evasion

3.4.1.2.1 The Informal Economy

In developing countries, tax evasion and avoidance cause a loss of revenue of approximately $385 billion a year. Kim finds that, when tax evasion increases, the size of the informal economy also increases, while Hug and Spörri observe that tax evasion seriously diminishes the state’s capacity to provide basic public goods. In Bangladesh, tax evasion erodes a huge amount of government revenue every year. It is estimated by the NBR that approximately Tk 40,000 crore is lost each year because of tax evasion and avoidance.

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3.4.1.2.2 Distortion of the Tax Law

Tax evasion causes the tax law to become distorted. It is activity undertaken by wealthy individuals and large corporations that frustrates the tax law by engineering new avenues to evade tax. Ingenious tax advisers develop products to evade and avoid tax. To counter the efforts, tax authorities amend tax laws. The tax law is compared with a ship to which wholes are made constantly by the taxpayers and tax advisers and the tax authorities constantly repair the ship resulting in numerous patches that has the effect of distorting the tax law. The same process holds good in case of developing countries like Bangladesh. Tanzi and Shome comment that tax evasions are numerous and that taxpayers continuously engineer new ways to reduce their tax burden. This is an accurate representation of the situation in Bangladesh.

3.4.1.2.3 Erosion of the Tax Base

It is well recognised that illegal tax evasion erodes the tax base in developing countries. As a result of such erosion, revenue is reduced, administrative costs increase, tax policy goals are not achieved and social equity is affected. In Bangladesh, widespread tax evasion is gradually eroding the tax base. For example, in terms of revenue loss due to transfer mispricing from 1990 to 2008, Bangladesh lost $34.08 billion, placing Bangladesh at the top of the list.

3.4.1.2.4 Credibility of the Tax Administration

As a result of tax evasion, the burden of taxes falls disproportionately on low-income earners. This makes people dubious about the efficiency and fairness of the tax administration. The reduction of state capacity due to tax evasion also affects the tax...
The tax administration loses credibility if it is not fair and, if there is tax evasion, the tax administration is perceived to be unfair.

3.4.1.3 Remedial Measures to Curb Tax Evasion

Bangladesh must urgently address the tax evasion problem by taking appropriate measures. During a taxpayer’s survey conducted by the Reforms in Revenue Administration (RIRA) in 2003, taxpayers were asked about measures to curb tax evasion. According to 88.5 per cent of the respondents, publicity, media reporting and better coverage of tax evasion cases would have a positive effect on preventing tax evasion. Eighty-nine per cent of the respondents said that the NBR needs to improve the quantity of publicity, publicise how to file a tax return properly and make tax payments, and adequately describe the penalties involved in evasion. Eighty per cent of the respondents stated that awareness about the responsibilities of paying tax must be improved through publicity, public seminars, and school and university participation in awareness campaigns. Around 40 per cent of the taxpayers said that the existing penal provisions in the tax statute regarding tax evasion are insufficient, and that stricter penalties and punishment provisions should be incorporated in the tax law. However, the NBR has undertaken some commendable measures, some of which are discussed below.

3.4.1.3.1 Tax Amnesty Scheme

Tax amnesty is a type of temporary incentive provided to taxpayers to let them pay tax at a reduced rate, so they can be within the tax net. This is known as a ‘black money whitening’ scheme and is highly controversial. During the past 40 years, such tax amnesties have been allowed on many occasions; however, the NBR has failed to access the underground economy. Rather, this scheme has encouraged honest
taxpayers to pay tax incorrectly, or resort to evading practices.\footnote{Gani, above n 394.} This thesis has a separate chapter about the tax amnesty programs in Bangladesh.

3.4.1.3.2 Reward Incentives for Income Tax Officials

The ITDB has provisions to reward income tax officers who unearth income tax evasion—Section 184B of the \textit{Income Tax Ordinance 1984} deals with this. This reward is aimed at encouraging tax officials to more seriously seek to detect tax evasion. The reward system in the civil servant is part of the New Public Management theories which is in fact not widely used in Bangladesh.\footnote{Ibid.} The NBR has only recently begun using this tool to curb tax evasion. In addition, the extent to which this tool will prove effective has not yet been studied empirically.

3.4.1.3.3 Income Tax Fair

To encourage taxpayers’ voluntary compliance, from 2010, the ITDB has held an annual income tax fair. At this fair, taxpayers can submit their return and pay their tax easily and without harassment. The income tax fair is considered successful to improve compliance,\footnote{Hisham Bin Mustafa, ‘Home. Income Tax Fair Draws Huge Crowd on Second Day’, \textit{Priyo News} (online), 18 September 2013 <http://news.priyo.com/2013/09/18/income-tax-fair-draws-huge-crowd-second-day-85939.html>}. and taxpayers’ reactions have been very positive.

3.4.1.3.4 Central Intelligence Cell in the NBR

In 2004, a Central Intelligence Cell (CIC) was established in the NBR as a part of the NBR modernisation project.\footnote{Karim and Alauddin, above n 12.} According to the IMF, the establishment of the CIC was a bold step to improve the weaknesses of the tax administration in Bangladesh.\footnote{Almekinders et al, \textit{Bangladesh Selected Issues} (IMF, 2009) 31.} The CIC is an integrated unit comprising officials from both the direct and indirect tax wings of the NBR. The CIC performs a tax intelligence function and investigates tax evasion and fraud cases in the areas of income tax, customs and value-added tax. The CIC, headed by a director general, is working hard to improve taxpayer compliance, for both direct and indirect taxes. Information and data are held confidentially by the
CIC and are not readily accessible; however, the CIC works under strong monitoring from the NBR to negotiate with potential tax evaders to pay the correct amount of tax. Thus far, the CIC has been able to create a positive effect on taxpayer compliance.\footnote{Karim and Alauddin, above n 12.} Since its establishment, the CIC has undertaken 1,750 investigations related to tax evasion for income tax, value-added tax and customs. Substantial tax evasion cases have been detected, and, in the majority of cases, the evaders paid their taxes.\footnote{Syed Md Aminul Karim, ‘Enforcement Trends and Compliance Challenges: Bangladesh Perspective’ (Paper presented at the Fourth IMF–Japan High-Level Tax Conference, 4 April 2013) <http://www.imf.org/external/np/seminars/eng/2013/asiatax/pdfs/bangladesh.pdf>.

\footnote{E Walters and M Aurio, \textit{The Marginal Cost of Public Funds in Africa} (World Bank, 2005).


\footnote{Md Abdul Based Mondal, ‘Tax Evasion and Avoidance: A Real Challenge for Bangladesh to Achieve Millennium Goal’ (2010) \textit{The Cost and Management} 15.}}}

\subsection*{3.4.2 Low Tax–GDP Ratio}

The tax–GDP ratio in developing countries is typically much lower than that in developed countries because of the weakness of direct taxation in developing nations.\footnote{E Walters and M Aurio, \textit{The Marginal Cost of Public Funds in Africa} (World Bank, 2005).} As a developing country, Bangladesh has a poor tax–GDP ratio. In the 1999 to 2000 financial year, the tax–GDP ratio was 8.47 per cent, which gradually rose to 10.79 per cent in 2005 to 2006. In the 2007 to 2008 financial year, the tax–GDP further rose to 11.17 per cent, and further enhanced to 11.24 per cent in 2008 to 2009. Although the tax–GDP ratio has risen from five per cent in the early 1980s, it is still very low compared to even the neighbouring country of India, where the tax–GDP ratio is 10 per cent.\footnote{‘India’s Tax–GDP Ratio Still Less than Half OECD’s’, \textit{The Economic Times} (online), 21 April 2011 <http://economictimes.indiatimes.com/opinion/indias-tax-gdp-ratio-still-less-than-half-oecds/articleshow/8043778.cms>.


\footnote{Md Abdul Based Mondal, ‘Tax Evasion and Avoidance: A Real Challenge for Bangladesh to Achieve Millennium Goal’ (2010) \textit{The Cost and Management} 15.}} The OECD average is around 36 per cent, with true welfare states such as Norway and Sweden having tax–GDP ratios as high as 43.6 and 49 per cent, respectively.\footnote{‘Improving Pakistan’s Tax to GDP Ratio: A Social Perspective’, \textit{Pakistan Defence} (online), 3 April 2010 <http://www.defence.pk/forums/economy-development/52900-improving-pakistans-tax-gdp-ratio-social-perspective.html>.

\footnote{Md Abdul Based Mondal, ‘Tax Evasion and Avoidance: A Real Challenge for Bangladesh to Achieve Millennium Goal’ (2010) \textit{The Cost and Management} 15.}}

\subsection*{3.4.3 Narrow Tax Base}

The income tax base of Bangladesh is narrow.\footnote{Md Abdul Based Mondal, ‘Tax Evasion and Avoidance: A Real Challenge for Bangladesh to Achieve Millennium Goal’ (2010) \textit{The Cost and Management} 15.} McCarten finds that, in direct taxes, agricultural land is not a buoyant source of revenue. Begum shows that a significant number of tax expenditure measures exist for both direct and indirect taxes, which adversely affects overall revenue. It is also argued that the large number of tax
exemptions, incentives and special provisions erode the tax base, thereby causing the existing tax base to narrow.\textsuperscript{407} Thus, Bangladesh needs to explore how the tax base can be broadened, and how people in the informal sector can be brought into the tax base.

3.4.4 Dependency on Indirect Tax

Developing countries’ tax administrations depend heavily on indirect taxes, such as customs duty and value-added tax.\textsuperscript{408} In the 1970s, the percentage of collection of income tax in developed countries was 35.5 per cent, while, in 2000, this rose to 53.8 per cent. In contrast, in developing countries, the ratio was 29.6 per cent and 28.3 per cent. In the 1970s, the ratio of indirect tax in developing countries was 25.2 per cent and, in 2000, it was 40.1 per cent.\textsuperscript{409} Likewise, in Bangladesh, the contribution of direct taxes is not very robust. Up to the 1990s, the share of direct taxes (income tax) was below 15 per cent of the total tax revenues. It began to increase and surpassed 20 per cent during the 2006 to 2008 financial years. However, it remains the lowest in the south Asian region, with a ratio of approximately 34 per cent of the tax collected and three per cent of the GDP in the 2009 to 2010 financial year.\textsuperscript{410}

3.4.5 Lack of Taxpayer Education

Better tax knowledge is vital for sustained compliance behaviour.\textsuperscript{411} Without this, any effort to enforce compliance will have limited success and render enforcement efforts futile.\textsuperscript{412} Song and Yarbrough find that taxpayers with a high level of education and

knowledge have high tax ethics.413 Thus, taxpayers must be provided with sufficient knowledge to have a clear understanding of the fairness of the system, tax ethics and tax evasion.414 Taxpayers must be properly educated so they can understand the complicated tax laws. For example, in Australia, the ATO provides education and advice to taxpayers.415 In contrast, in Bangladesh, poor taxpayer education is considered an impediment to improving the tax administration.416 To educate taxpayers, there must be sufficient publications, advertisements on the radio and television, leaflets and service centres. In addition, tax-related education should be included in the curriculums of educational institutions at different levels.

3.4.6 Poor Automation System

Bangladesh ranked at 123 in the e-services adoption index.417 E-governance is not considered a priority in the national development agenda, lack of incentives, organisational belongingness, capacity to implement e-governance projects and financial resources.418 However, the income tax department is gradually undergoing an automation process. An income tax calculator is now available on the internet, as are laws, regulations and income tax returns. The government is committed to undertaking the necessary steps to provide e-governance, including providing online submission of tax returns across the country within the next three years.419

3.4.7 Lack of Long-term Planning

There is no research division in the ITDB, yet tax compliance research is an integral part of any contemporary tax administration. The IRS has a strong research, analysis and statistical division.420 According to the IRS, common research strategies can

414 Eriksen and Fallan, above n 384, 387.
418 Ibid.
include taxpayer surveys, behavioural research, analyses of taxpayer characteristics, research with data to identify trends and so forth. The ATO and CRA undertake different types of tax research.

3.4.8 Poor Enforcement Initiatives

In Bangladesh, enforcement initiatives to collect tax and ensure compliance are very poor. The ITDB is characterised by the traditional system of subjective selection and intuitive enforcement, with no measurement criteria for success. The causes of this poor state of enforcement include corruption, lack of departmental shelters and political interference. For example, there is a recent trend to politicise the ITDB. Officers that support the political ideologies of the government receive good positions and are rewarded, while the opposite occurs for those with opposing political ideologies. As a result, officers who are politically suppressed are not encouraged to work properly for the government, which hampers the operation of a smooth and efficient tax administration. Politicisation of the administration is not a new phenomenon internationally, but is having severe effects in Bangladesh.

The enforcement measures followed by the NBR for income tax include imposing penalties by tax officers under the tax law, freezing bank accounts, seizing bank transactions, criminal prosecution and raising risk points. However, as aforementioned, to improve enforcement activities, the NBR established the CIC in 2004. Since its establishment, the CIC has dealt with 1,750 evasion cases and prosecuted 100 taxpayers for tax-related offences.

3.4.9 Corruption Decreasing Revenue Collection

It is alleged that corruption reigns in the ITDB. According to a survey conducted in 2011 by Transparency International in South Asia, 66 per cent of clients pay bribes to
civil bureaucrats to gain services. Corruption in the ITDB reduces revenue by encouraging tax evasion and generating black money. In 2007, black money in Bangladesh was estimated to be at Tk 50,000 to 60,000 crore—or one-fifth of the GDP. In 2011, the amount of black economy stood at Tk 400,000. There are several reasons for corruption in the ITDB, including a poor salary structure, numerous available avenues for corruption, a lack of e-governance, and a lack of morality among tax officers.

3.4.10 Nonprofessional Chairperson of the NBR

The chairperson of the NBR works in the administrative service without having any professional and technical knowledge, such as in Australia, New Zealand and IRS. For example, the commissioner of the ATO is a professional taxation officer with a strong economic and law background, and also the New Zealand Inland Revenue Commissioner Bob Russell. The IRS has tax attorney, William Wilkins, as the IRS Chief. This is not the case in the NBR. To mitigate this problem, the officers of the ITDB recommend that the chairperson of the NBR be a professional with a background in taxation.

3.5 Income Tax Collection and Recovery System

The *Income Tax Ordinance (ITO) 1984* contains provisions for the collection of taxes before and after assessment from taxpayers. There is provision to withhold tax, which remains a major avenue for revenue collection. In the 2008 to 2009 financial year, income tax collection comprised approximately 60 per cent of the total collection.

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430 Karim, above n 387.
435 Chapter VII of the *Income Tax Ordinance 1984* deals with laws regarding withholding tax.
The ITO also has a quarterly advance tax payment system. In addition, another method of tax collection is the provision of payment of tax, as per the admitted liability of tax in the return. This is called the ‘admitted tax liability’ of the taxpayer, which he or she must dispose of before filing the return of income. If there is any default, the assessee will be treated as an assessee by default. Finally, tax is also collected through tax officials making assessments and tax demands, and there are provisions of the law to collect the tax due by taxpayers.

3.6 Tax Expenditures

Tax expenditures are fiscal incentives for taxpayers. Tax incentives promote investment, particularly in developing countries, although the effectiveness of these incentives is frequently debated and questioned because of the lack of empirical evidence to support them. Giving industrialisation the top priority in the age of globalisation and trade liberalisation, the government of Bangladesh has made provisions of different types of incentives in the tax law, as discussed below.

3.6.1 Tax Holiday

A tax holiday is a form of tax incentive in the form of tax exemptions for a certain period. It is offered by the tax authority to certain types of industrial undertakings. However, there is debate that tax holidays lead to erosion of the tax base and motivate firms to find imaginative ways to qualify for the incentive, thereby undermining policies designed to offer it only when the benefits outweigh the costs. This subsequently leads to shrinking tax revenue even further and creates an avenue for

437 Income Tax Ordinance 1984, s 48, 64–73.
438 Ibid, s 74.
439 Ibid.
440 Ibid, s 135.
441 The Treasury, Tax Expenditures Statement 2010 (January 2011) 13
tax corruption. Shahabuddin, Chowdhury and Azam argue that the tax holiday scheme paves the way for tax avoidance because it offers an opportunity for the exempt entities to enter financial transactions and avoid tax through a transfer pricing mechanism. In contrast, other evidence shows that tax holidays have a positive effect on tax policy formulation.

Bangladesh began its tax holiday scheme in 1974, and continues to allow this incentive to specified corporate taxpayers under specific legal requirements. However, over time, the effectiveness of the scheme has been questioned when taxpayers began to misuse the scheme. Research has shown that many of the units established in economically backward sectors show profits during the tax holiday period, and become markedly less profitable after the holiday expires. The owners of the tax holiday concern closes down the unit and establish new unit to get more tax holiday. Thus, the scheme remains prone to abuse to the prejudice of revenue and creates a tax haven for tax evaders.

In addition to the tax holiday, Bangladesh offers other tax incentives, as detailed in Schedule 5 of the 1984 ITO. Considering the misuse of tax incentives and its harmful effect on national revenue, it is proposed that the government remove some of these incentives—particularly the tax holiday. The tax holiday concept should be rethought by considering the competitiveness of the market and effective revenue collection.

446 Easson and Zolt, above n 444, 12.
451 Shahabuddin, Chowdhury and Azam, above n 447, 758.
452 Swire, above n 450.
3.7 Reform in the ITDB

3.7.1 Initiatives to Increase Voluntary Compliance

Since the ITDB is beset with the problem of tax noncompliance, the NBR, as an apex authority, is consistently seeking to find new avenues to increase voluntary compliance in the field of income tax. The NBR is currently pursuing the following compliance framework to ensure voluntary compliance.453

![Figure 3.1: The NBR’s Tax Compliance Framework](image)

The NBR compliance framework indicates that, to seek to ensure voluntary compliance, the NBR emphasises tax policy, tax enforcement, taxpayer service and taxpayer education. With that goal, the NBR has recently undertaken certain initiatives, which are discussed below.

3.7.2 Establishment of a Large Taxpayer Unit

From the early 1980s, the IMF has made recommendations to developing countries to establish large taxpayer units (LTUs) to collect maximum revenue from the highest

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The LTU has proved to be a success in different countries. Accordingly, the LTU (Income Tax) was established in Bangladesh in November 2003. The LTU has been assigned to manage the income tax matters of the largest companies in Bangladesh, and their shareholder directors. The LTU works under an automated system, which has operated successfully to contribute more than one-third of the total revenue collection from these large taxpayers. For example, in the 2010 to 2011 financial year, the LTU (Income Tax) collected Tk 7,525.98 crore, while the total collection from income tax was Tk 23,007.53 crore. The challenges faced by LTU include an insufficient workforce and lack of logistical support. In addition, the LTU has no data bank or research cell.

3.7.3 Establishment of the CIC

To curb tax evasion, the NBR established the CIC in 2003. The CIC can complete investigations to indicate tax evasion, tax concealment or any other tax irregularities. It can collect evidence to demonstrate tax offences or tax fraud in order to recover tax, issue penalties and suggest prosecutions. Since its establishment, the CIC has unearthed significant cases of tax evasion. In 2012, a separate cell—the transfer pricing cell—was established in the CIC to monitor cases of tax fraud among multinational corporations. The CIC is persistently working to improve tax compliance.

3.7.4 Taxpayers’ Service Centre

To reduce tax-related hassle and subsequently encourage compliance, each tax zone has established a one-stop service centre for taxpayers. In addition, two new central taxpayer service centres were established in Dhaka and Chittagong in 2011. These service centres were created with financial support from the United Kingdom (UK)—

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455 Ibid.
458 Ibid.
based Department for International Development under the Tax Administration Capacity and Taxpayers Services Project.459

3.7.5 New Simplified Tax Code

As aforementioned, the income tax law of Bangladesh is old, complicated and not user-friendly. Taxpayers find it difficult to understand the intricate provisions of the law, which creates problems and impediments to voluntary compliance. To remove the complexity of the tax statute, the NBR has drafted a new direct tax code that has been posted on the NBR website for comments and suggestions. It is hoped that, if the new tax code is passed by the parliament and becomes law, it will remove the complexities and subsequently encourage voluntary compliance.

3.7.6 New Transfer Pricing Law

Until 2012, Bangladesh had no separate transfer pricing regime—transfer pricing cases were dealt with under the anti-avoidance rules.460 In 2012, the NBR presented a separate transfer pricing law to manage the transfer pricing issues of the multinational corporations working in Bangladesh.461 This new law was implemented on 1 July 2015.462 The NBR is undertaking a three-year implementation phase and has established a separate transfer pricing cell. It will implement the new transfer pricing law with assistance from the IMF and International Finance Corporation.463

3.7.7 Alternative Dispute Resolution Provisions

The NBR introduced an alternative dispute resolution (ADR) system to the department through the Finance Act 2011.464 The ADR mechanism is used by other laws of the

460 Income Tax Ordinance 1984, ch XI.
463 Ibid.
According to the ADR law, taxpayers can settle disputes through the ADR process while disputes are pending in the traditional settlement mechanism. The ADR is becoming increasingly popular as a tax dispute settlement mechanism. The ADR has been working in the ITDB with remarkable success since July 2012.

### 3.7.8 New Information Reporting Regime

Third-party tax information reporting is a primary tax enforcement tool, with the information reporting system being one of the most effective tools to increase voluntary compliance. Taxpayers tend to cheat if they have the opportunity; thus, a successful tax system must seek to deny this opportunity. Tax information reporting is a tool that achieves this. Until 2011, there was no standalone law regarding a TIRS in the income tax laws of Bangladesh. Considering the importance of an information reporting system for improving voluntary compliance, the NBR implemented a new section in the 1984 ITO—Section 75B. Chapter 6 of this thesis further discusses the third-party tax information reporting regime.

### 3.8 Conclusion

This chapter has observed that, like other developing countries, the ITDB has many problems of varying magnitude. Although gradually increasing, the share of revenue collected by the ITDB is still low compared to the country’s collected indirect tax. Numerous factors influence the taxation system in Bangladesh, including the lack of a taxpaying culture, corruption, dependency on indirect tax, tax evasion, a strong informal economy, a narrow tax base, the lack of taxpayer awareness, and legal complexities. Against this backdrop, the government of Bangladesh is seeking to determine and implement effective reform initiatives to modernise the income tax department and improve voluntary compliance by taxpayers.

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466 Income Tax Ordinance 1984, s 152F.
468 Brooks, above n 133, 22.
Chapter 4: Tax Compliance Theories

4.1 Introduction

Previous research has presented numerous theories and models to explain the causes of and remedies for the issue of tax noncompliance. Since this study seeks to identify the best possible ways to address the problem of tax noncompliance in Bangladesh, it is necessary to discuss some of these tax compliance theories and models. However, before doing so, it is important to examine the inherent issue of why people obey the law. After attaining a satisfactory answer, it will be possible to comprehend how, why and to what extent tax compliance theories have been developed in an attempt to explain the tax compliance issue.

Why do people obey the law? This is a puzzling question and it is a challenge to determine an appropriate answer. Compliance behaviour remains a mysterious trait of human character, particularly given that defiance and disobedience appear to be innate in humans. The truth of this is revealed by the expulsion of Adam and Eve from the Garden of Eden because they disobeyed the order of god.\textsuperscript{469} Religious scriptures present what god says about obeying the law. A reading of the verses of the Holy Quran or Bible reveal that it is god’s order that people obey the state authority and the laws of sovereigns.\textsuperscript{470} However, do people feel it necessary to obey the law? This question is posed because of the popular belief that individuals have no obligation to obey the law—some say there is not even a \textit{prima facie} obligation to obey the law\textsuperscript{471} at least to obey all the laws of the state.\textsuperscript{472} In contrast, some argue that people obey the law because they have consented to do so.\textsuperscript{473} Others argue that people are obliged to obey the law because they benefit from the legal system.\textsuperscript{474} Raz states that people have

\begin{itemize}
\item \textsuperscript{469} The book of Genesis 3 gives accounts of why and how Adam and Eve disobeyed god’s order and were subsequently expelled from Eden to Earth as punishment.
\item \textsuperscript{470} For example, in the Bible, Luke (20:25) states, ‘He said to them, “Then render to Caesar the things that are Caesar’s, and to God the things that are God’s”’.
\item \textsuperscript{471} ADM Walker, ‘Political Obligation and the Argument from Gratitude’ (1988) 17(3) Philosophy & Public Affairs 191; Smith, above n 41, 950; Richard A Wasserstrom, ‘Obligation to Obey Law’ (1963) 10 University of California Los Angeles Law Review 780.
\item \textsuperscript{472} Raz, above n 24.
\item \textsuperscript{473} Smith, above n 41, 950.
\item \textsuperscript{474} Ibid, 960.
\item \textsuperscript{475} Ibid, 955.
\end{itemize}
moral and prudential reasons for obeying the law. Philosophically, it is argued that the obligation to obey the law is based on the proposition that the government is essential to safeguard society from evils. A plethora of research has developed on this topic, particularly during the last two decades. Tyler offers two explanations for why people obey the law—one from an instrumental perspective (forced compliance) and the other from a normative perspective (procedural justice). According to Tyler, the deterrence theory forms the basis of the instrumental perspective. Deterrence theory states that people mould their conduct to be responsive to incentives and punishments in order to obey the law. The normative perspective considers compliance a response to internal factors, such as norms and the internalised values of people. Thus, Tyler identifies the main reasons for obeying the law as being fear of being caught and punished for wrongdoing, personal morality, and a perceived obligation to obey the law.

Ross argues that people have a political obligation to obey the law, and should obey the law as a form of gratitude to their government, in exchange for the benefits received from the state. Advocates of this theory of gratitude are Ross, Plamentaz and Simmons. However, Klosko argues that gratitude cannot be the basis of political obligations to obey the law for several reasons. According to Klein and Klosko, people believe that they have a political obligation to obey the law. People have a significant moral requirement to comply with the law, even when doing so is costly. Klosko argues that citizens have a moral obligation to obey the law. Klosko further argues that people’s consent lays the foundation of a strong moral obligation to obey

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477 Smith, above n 41, 964–965.
479 Tyler, above n 44, 3.
480 Ibid.
481 Ibid, 4.
482 Ibid, 56.
483 Walker, above n 471, 193.
485 The reasons given by Klosko are vagueness, stringency, attitudinal or interior aspect problem, and lack of people’s true loyalty towards political obligations to obey law. George Klosko, ‘Four Arguments against Political Obligations from Gratitude’ (1991) 5(1) Public Affairs Quarterly 33.
487 Klosko, above n 46.
the law.488 In contrast, regarding consent, Knowles refers to express and tacit consent.489 Consent remains one of the bases of obedience to the law. Hobbes’s social contract theory is also based on consent between contractors.490 However, it appears that each of these theories offers only a partial explanation of why people obey the law.

As with research on compliance behaviour regarding general law tax, compliance has also been studied elaborately.491 The schools of thought researching tax compliance are divided into two groups. The first emphasises the theory of crime and punishment, which posits that taxpayers decide to comply or not comply based on the probability of being caught and the benefit achieved through noncompliance. This is popularly known as the ‘economic deterrence theory’ of tax compliance. The second school is based on theories of psychology and sociology that explain the varying levels of taxpayer compliance. This section of the thesis critically discusses the different theories of compliance. Considering the peculiar nature of the tax compliance environment in Bangladesh, this section identifies that there is no single solution to the compliance problem. Rather, this study suggests that the income tax administration should incorporate a pragmatic approach to apply an appropriate theory to each particular case, or use a combination of theories, depending on the context and nature of the involved party’s behaviour and psychology.

4.2 Economic Deterrence Theory

The economic deterrence theory is one of the most important and pioneering theories in the field of tax compliance research. This model presents the taxpayer as an economically rational being who will evade taxation as long as the reward from evading is greater than the expected cost of being caught.492 Tax evasion is considered a gamble in which taxpayers either pay lower tax by cheating, or subject themselves to punishment through detection by the tax authority.493 The model suggests that the

488 Klosko, above n 485, 151.
491 Klosko, above n 485, 184.
492 Hasseldine and Bebbington, above n 57, 299, 302.
apprehension of being detected and punished by the tax authority through legal enforcement will reduce illegal or noncompliant behaviour for the betterment of society.\textsuperscript{494} This theory was first propounded by Nobel laureate economist and sociologist, Gary S Becker, in his seminal work on the economics of crime.\textsuperscript{495} The main element of this neoclassical theory of crime and punishment is a person’s expected utility if he or she complies, compared to the expected utility in the case of noncompliance, weighed against the probability of detection. During the last 50 years, the theory has been expanded and developed by Allingham and Sandmo,\textsuperscript{496} as well as many other scholars, such as Srinivasan,\textsuperscript{497} Kolm,\textsuperscript{498} Yitzhaki,\textsuperscript{499} Spicer and Becker,\textsuperscript{500} Clotfelter,\textsuperscript{501} Beck and Jung,\textsuperscript{502} Klepper and Nagin\textsuperscript{503} and Beck and Davis.\textsuperscript{504}

According to Murphy, the economic theory regards taxpayers’ behaviour to be moulded by profit-seeking decisions.\textsuperscript{505} Hasseldine and Bebbington highlight that the deterrence model involves two factors.\textsuperscript{506} First, taxpayers’ tax evasion behaviour depends on the level of risk aversion of the taxpayer. If the taxpayer is more risk averse, there is less chance of tax evasion. Second, taxpayers’ knowledge of the tax administration—in terms of the chance of detection, and penalties imposed for tax evasion—motivates compliance behaviour. This last aspect throws the taxpayer in state of uncertainty.\textsuperscript{507} Beck and Jung\textsuperscript{508} demonstrate that uncertainty created by a knowledge gap makes taxpayers more conservative and averse to tax evasion. According to Devos, the economic deterrence model asserts that taxpayers make compliance decisions in a social vacuum.\textsuperscript{509} The model examines the effect of both the economic and structural factors involved in moulding compliance behaviour.

\textsuperscript{495} Becker, above n 25.
\textsuperscript{496} Allingham and Sandmo, above n 25, 323.
\textsuperscript{497} Srinivasan, above n 49.
\textsuperscript{498} Kolm, above n 50.
\textsuperscript{499} Yitzhaki, above n 51.
\textsuperscript{500} Spicer and Becker, above n 52.
\textsuperscript{501} Clotfelter, above n 53.
\textsuperscript{502} Beck and Jung, above n 54.
\textsuperscript{503} Klepper and Nagin, above n 55.
\textsuperscript{504} Beck, Davis and Jung, above n 56.
\textsuperscript{506} Hasseldine and Bebbington, above n 57.
\textsuperscript{507} Ibid, 302.
\textsuperscript{508} Beck, Davis and Jung, above n 56.
\textsuperscript{509} Devos, above n 140, 182.
4.2.1 Does Deterrence Really Deter Taxpayers from Noncompliance?

There is theoretical and empirical evidence that deterrence works;\(^{510}\) however, there is also evidence indicating that it does not always work.\(^{511}\) Posner argues that, if taxpayers only considered the probability of being detected, there would not be as many taxpayers voluntarily complying every year.\(^{512}\) Webley et al. find that fear of punishment serves as one of the determinants of tax compliance behaviour.\(^{513}\) Berenson reaches the same conclusion, based on survey evidence.\(^{514}\) In addition, Klepper and Nagin\(^{515}\) and Park and Hyun\(^{516}\) find the same. However, their research finds penalty rates to be a more effective deterrent.\(^{517}\)

Despite its positive effects,\(^{518}\) the economic deterrent theory has limitations. Sheffrin and Triest argue that it fails to provide strong predictions of the socioeconomic determinants of tax evasion.\(^{519}\) Weigel et al. identify the absence of a motivational concept as one of the weaknesses of the model.\(^{520}\) The theory is beset with difficulties that need to be solved.\(^{521}\) Lederman states that the economic model cannot encompass all tax compliance issues.\(^{522}\) This is because only a fraction of all taxpayers can be audited, and penalties are not imposed on all detected tax evaders. Klosko argues that deterrence has been proven to be a primary determinant of compliance behaviour, but not the sole determinant.\(^{523}\) Despite its limitations, this theory is important in the field of legal enforcement as a whole, and particularly for expounding taxpayers’ compliance behaviour.

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\(^{510}\) Klosko, above n 485, 184.
\(^{514}\) Berenson, above n 494, 8.
\(^{515}\) Klepper and Nagin, above n 55.
\(^{517}\) Ibid, 680.
\(^{519}\) Sheffrin and Triest, above n 59.
\(^{522}\) Lederman, above n 61, 1457.
\(^{523}\) Klosko, above n 485, 184.
4.3 Social Norm Theory

Although the social norm theory has not attracted the attention of law and economics scholars, it has contributed immensely to explaining compliance behaviour. According to this theory, taxpayers respond to a compliance norm outside the ambit of legal enforcement or the command-and-control regime of tax authorities. Posner, Lederman and Wenzel emphasise social norms to explain tax compliance behaviour. Norms are social regularities that individuals feel obliged to follow because of an inner sense of duty, a fear of legal sanctions, or both. According to Becker, ‘Norms are those common values of a group which influence an individual’s behaviour through being internalized as preferences’.

Norms can control individual behaviour to the exclusion of law, or sometimes law and norms together. For example, when an individual’s friends and colleagues pay tax, he or she feels obliged to pay as well. In contrast, if fellow taxpayers cheat, the individual also tends to not comply. Thus, taxpayers’ compliance is influenced by their estimates of other taxpayers’ noncompliance. This obligation is internalised and normative outside the ambit of law. Thus, a compliance norm is important to ensure a robust culture of taxpayer compliance. Research by the Australian Centre for Tax System Integrity finds that a norm-based appeal has a positive effect on tax compliance. The same result is found in research by the Minnesota Department of Revenue. In this research, psychologists identified three tiers of decision making related to complying or not complying with taxes. The report finds that the social norm approach had the most significant effect on taxpayers’ compliance decisions.

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525 Posner, above n 512.
526 Lederman, above n 61.
527 Wenzel, above n 63.
531 Wenzel, above n 63.
533 National Social Norms Institute at the University of Virginia <http://www.socialnorm.org/Case Studies/tax compliance.php>.
4.4 Psychological Contract Theory

The psychological contract theory of tax compliance views the relationship between taxpayers and the government as a contract. Taxpayers contribute to the government treasury, and the government provides benefits and services to the people—this is the tax contractarian theory of tax compliance. Citizens’ payment of tax is thought to be contingent on the government’s performance of its obligations towards them. Feld and Frey extend the contractual obligation to what they call the ‘psychological contract’.535 Like an ordinary contract, the psychological contract incorporates the existence of rights and duties with which taxpayers and the state must comply. Failure to perform the expected duties or noncompliance with the taxpaying obligation will trigger noncompliance with the contractual provisions from one of the parties, particularly from taxpayers.536

Feld and Frey develop the notion of a psychological tax contract that goes beyond the traditional economic model to explain tax morale as a complicated element that exists between taxpayers and the government to establish fair and reciprocal obligations between the parties. This leads to giving one thing to a contractual partner, and taking something from the same partner—it is a *quid pro quo* scenario that incorporates duties and rights from both contractual parties (the government on one side, and citizens or taxpayers on the other). Thus, a government is expected to provide public services to all citizens in exchange for the taxes collected from them.537

4.5 Shame and Guilt Theory

The shame and guilt theory is an offshoot of the psychological theory of tax compliance that posits that taxpayers’ psychological attitudes can be manipulated to create more negative consequences for noncompliance. The use of shaming as a deterrent to tax noncompliance has attracted significant attention from researchers.539

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534 Scholz, above n 64,139.
535 Feld and Frey, above n 25,113.
536 Ibid, 104.
537 Ibid, 119.
538 Afield, above n 150, 53.
539 Ibid, 79.
Shaming is a deterrent because it deters the propensity to commit an offence. Effective communication of shame about crime lowers the crime rate in a society. Likewise, researchers have found that shame and guilt have a significant effect on tax compliance behaviour. Soled and Ventry recommend using the shaming approach by the IRS, and US states such as California, Delaware and Wisconsin have successfully employed this approach to improve compliance. Other advocates of this theory are Grasmick and Bursick, Williams and Hawkins, Erard and Feinstein and Aitken and Bonneville. However, Andreoni, Erard and Feinstein express some reservations about the explanatory scope of shame and guilt theories on the basis that the inclusion of shame and guilt into the utility function of economics is arbitrary and not of economic or psychological value. In addition, because it is difficult to identify shame and guilt, their existence is based on mere presumption.

4.6 Procedural Fairness Model

Another influential model explaining compliance behaviour is the procedural fairness model. Tyler finds that people respond to perceptions of fairness and unfairness, rather than considering the outcome of an action as favourable or unfavourable. Procedural justice and trust are vital for the voluntary acceptance of decisions by authorities, and can be substituted for deterrence-based compliance, which can be kept for recalcitrant law breakers. Andreoni, Erard and Feinstein contend that taxpayers’ perceptions of the fairness of the tax burden imposed on them are very important in explicating tax

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545 Ibid, 854.
548 Andreoni, Erard and Jonathan Feinstein, above n 521, 818, 851.
549 Tyler, above n 44.
compliance behaviour.\textsuperscript{551} Hartner et al.\textsuperscript{552} and Dijke and Verboon\textsuperscript{553} also find evidence to support this theory. However, according to Murphy, deterrence measures employed directly by the tax administration to ensure tax compliance may jeopardise the legitimacy of the administration if it is seen as procedurally unfair by taxpayers.\textsuperscript{554} Tyler states that procedural fairness indicates the perceived fairness of the procedures used to make allocation decisions.\textsuperscript{555} Laventhal states that there are six rules that must be maintained for a procedure to be perceived as fair: consistency, lack of bias, lack of suppression, accuracy, lack of corruptibility, representativeness and ethicality.\textsuperscript{556} Murphy finds support for the theory,\textsuperscript{557} and suggests it to solve the problem of the aggressive tax planning faced by the ATO.\textsuperscript{558}

4.7 Motivational Posture Model

The motivational posture model suggests that taxpayers maintain a social distance between themselves and the tax authority, signalling the nature of that distance through different postures that protect themselves from negative appraisal by the authority.\textsuperscript{559} According to Hartner et al., in the context of taxation, motivational postures are said to account for the self-positioning of taxpayers in relation to the tax authority. The five motivational postures are commitment, capitulation, resistance, disengagement and game playing.

Commitment and capitulation describe favourable attitudes towards tax authorities, while resistance, disengagement and game playing reflect a negative orientation towards tax authorities. Capitulation describes the acceptance of the tax office as a legitimate power whose decisions must be followed in order to get along with them. In contrast to the two deference-oriented motivational postures, resistance reflects a sense of distrust of the intentions of the tax authority, and an oppositional stance.

\textsuperscript{551} Andreoni, Erard and Feinstein, above n 521, 851.
\textsuperscript{552} Hartner et al, above n 141, 137.
\textsuperscript{554} Murphy, above n 505, 562, 565.
\textsuperscript{557} Murphy, above n 505, 563.
\textsuperscript{558} Ibid, 587.
However, taxpayers with the motivational posture of resistance still remain in the system, and stay available to persuasive messages from the tax office. The greatest social distance to the tax authority is reflected in the motivational posture of disengagement, where taxpayers consider themselves outside the system. The final posture, game playing, can be described as an attitude towards legal rules—that is, the perception of laws as something to be interpreted in ways suitable for one’s own purpose.560

4.8 Organisational Culture Model

The organisational culture model of tax compliance emphasises the organisational structure and behaviour of tax administrators, rather than focusing on the behaviour of taxpayers. According to Brown, organisational culture may be generally described as a set of norms, beliefs, principles and behaviours that together give each organisation a distinctive character.561 Organisational culture is thought to be important in crafting an effective and responsive taxation system.562 Job, Stout and Smith use organisational culture to examine changes in the administration of the tax laws and policies of Australia, New Zealand and East Timor.563 In East Timor, tax administration was also perceived as corrupt and disoriented, with the people ‘demanding accountability, transparency, and culturally appropriate treatment’.564 However, the organisational culture model has some challenges, including resistance to change, meeting the legal principles of consistency and equity, and so forth.565 In addition, the model explains tax compliance only from the perspective of the tax authority.566

4.9 Religious Theory

Religion remains an important determinant of tax compliance behaviour.567 According to Afield,568 religious values are a vital component of norm changing behaviour. Thus,

560 Hartner et al, above n 141, 4.
561 AD Brown, Organizational Culture (Pitman Publishing, 1995).
562 Job, Stout and Smith, above n 147, 84.
563 Ibid, 88.
564 Ibid, 89.
565 Ibid, 92.
566 Odinkonigbo, above n 80.
568 Afield, above n 150.
Afield emphasises the importance of religiosity in shaping tax compliance behaviour. He suggests that partnerships between religious organisations and the government may be crucial to ensuring compliance with tax laws.569

Torgler finds that religious faith has a strong effect on shaping the tax morale of taxpayers, which subsequently influences tax compliance behaviour.570 Mutascu finds that, among the major religions of the world, the Protestant and Muslim religions have a positive effect on tax revenue collection, while other religions do not.571 Thus, tax authorities can use these religious dogmas to enhance tax compliance.572 Studies about the influence of religion on deviant behaviour are profuse; however, only a few have been able to determine some form of influence of religion on criminal acts.573 In Bangladesh, the major religion is Islam; thus, the government could take the opportunity to use religious dogma to influence taxpayers’ compliance.

4.10 Needs Preference Theory

The needs preference theory posits that, when governments fail to respond to the needs of citizens—such as health, education and quality of life—the citizens themselves have to provide for those needs. Under such circumstances, people prefer not to pay tax. Thus, it is imperative that governments retain people’s confidence in their credibility and capacity to deliver promised returns for taxes. In addition, they ‘must convince taxpayers that taxpayer contributions make a difference in producing the desired goods’.574 The government of Bangladesh is distanced from the people, and the people do not trust it.575 The government seems to fail to provide the required services to the people; thus, the people may prioritise meeting their own needs, rather than paying taxes. As a result, this paper argues that a culture of noncompliance prevails in the

569 Ibid.
571 Mutascu, above n 567.
574 Levi, above n 301, 53.
country. People prioritise their needs according to a needs hierarchy, and tax payment is in a less prioritised position in that hierarchy.

The concept of the needs preference theory has been borrowed from the famous psychologist, Abraham Maslow. Maslow suggests that human needs can be classified into five categories, and that these categories can be arranged in a hierarchy according to their importance. These include physiological, security, belonging, esteem and self-actualisation needs. The hierarchy of needs is presented in the pyramid in Figure 4.1.

![Maslow's Need Hierarchy Pyramid](http://www.citehr.com/24353-maslow-s-hierarchy-theory.htmln at 28 May 2012)

According to Maslow, a person is primarily motivated to satisfy physiological needs, such as food, air, water, heat and the basic necessities to survive. As long as these needs remain unsatisfied, people will continuously seek only to fulfil them. When these physiological needs are satisfied, the individual will move ‘up’ the hierarchy to seek to satisfy security needs. This process continues until self-actualisation needs are satisfied.

This study applies the first and second tiers of the hierarchy pyramid in an attempt to use the needs preference hierarchy to explain tax compliance behaviour. According to

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577 Ibid.
578 Ibid, 372.
579 Ibid, 382.
the first tier, people will first try to fulfil their basic physiological needs, such as food and water. No tax payment occurs at this level because it is not a basic element of survival. The second tier of the pyramid considers safety—Maslow argues that, once physiological needs are fulfilled, attention turns to safety and security.\(^5\) Such needs might be fulfilled by living in a safe area, having medical insurance, ensuring job security, having financial savings, having physical safety, being free from attacks, and so forth. It is the duty of the state to maintain social order, ensure justice and proper application of the rule of law, and ultimately create a safe environment for its citizens. However, if the government fails to provide safety and security to the people, the people will rely on themselves for these provisions. In such a situation, people will be reluctant to pay tax to the government—they will prioritise fulfilling their more basic needs. Accordingly it can be hypothesised that people’s tax complying behaviour is characterised by needs preference, according to the needs hierarchy presented by Maslow.

### 4.11 Responsive Regulation Model

The responsive regulation model of tax compliance presents a framework of tax compliance in the tax administration. This model is also known as the ‘ATO model’ because the ATO adopted this framework in 1998 to ensure voluntary compliance in Australia. This model is also used by tax jurisdictions in the UK, New Zealand, East Timor, Indonesia and Pennsylvania.\(^6\) Before switching to the responsive regulation model of tax compliance, the ATO followed a long-established, traditional style of command and control administration and tax enforcement.\(^7\) As a result, the ATO was considered unfair, lacking in integrity and out of touch with commercial reality.\(^8\) A lack of community tolerance had developed for the blanket approach to enforcement that was harsh, inflexible and bullying. Thus, change was inevitable under this critical juncture.\(^9\) Against this backdrop, the ATO began to explore responsive regulation as a possible alternative to the old approach to tax compliance.

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\(^5\) Ibid, 376.
\(^9\) Job, Stout and Smith, above n 147.
The concept of responsive regulation was first presented by Ayers and Braithwaite in 1992. Responsive regulation is an interdisciplinary approach that originated from the discipline of psychology. Compliance is generally a problem for tax administration around the world. According to Braithwaite, responsive regulation is effective when compliance is not easy, automatic or straightforward. The responsive regulation model was based on the idea that the government should choose when to intervene and when not to intervene by adopting a philosophy of responsiveness to ‘industry structure’, ‘the differing motivations of regulated actors’ and ‘industry conduct’.

Before escalating punishment, dialogue is employed by regulators. Typically, responsive regulation seeks to maintain a balance between persuasion, friendliness and providing assistance to taxpayers, with an interventionist approach that emphasises punishment or a command-and-control approach. The responsive regulation model seeks to build a moral commitment to comply with the law.

This model posits that if taxpayers make mistakes through ignorance or poor financial planning and are prepared to come forward and acknowledge their mistakes, they should be helped. If they are prepared to be cooperative when anomalies are identified, they should be assisted to correct the issues and move on. Persistent and consistent attention should focus on the difficult cases and the ‘big fish’, not the ‘low hanging fruit’. The initial goals of the compliance model were to:

1. understand taxpayer behaviour
2. build a cooperative relationship with the community
3. encourage and support compliance
4. introduce a range of sanctions that escalate in severity and are known to taxpayers so that difficulties can be settled before the costs became too great for both parties
5. reduce the time-consuming handling of complaints about procedural injustice

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586 Taxation is not the only field where responsive regulation theory is applied—before it was imported to the taxation arena, the theory was applied in the health and environment sectors. Charlotte Wood et al, ‘Application of Responsive Regulation in Australia and Overseas’ (Occasional Paper No 15, The Australian National University 2010) <http://ctsi.anu.edu.au/publications/index.html>.
588 Ayres and Braithwaite, above n 18.
589 Heimer, above n 71, 633, 663.
590 Parker, above n 72, 591, 592.
6. implement the Taxpayers’ Charter.591

This model is graphically represented in the form of a regulatory triangle and accompanying circle of influencing factors. The pictorial representation of this model is shown in Figure 4.2.

![Responsive Regulation Model](http://www.ato.gov.au/corporate/content.aspx?doc=/content/5704.htm)

**Figure 4.2: Responsive Regulation Model**


At the very base of the enforcement pyramid are the willing and compliant taxpayers who need support from the authority to comply. These taxpayers form the majority. The second group up needs more help or persuasion to comply. The third group up are the resistant people, who tend to avoid complying and need to be detected. The taxpayers at the top of the pyramid are those engaged in tax evasion, who show disrespect to the tax authority. They cannot be persuaded or coaxed to comply, and the ATO compliance model suggests that the full force of the law should be used against them to make them compliant.

The model considers the basic economic model, while also recognising other factors, such as the way that society, morality and ethics affect taxpayer behaviour, and particularly the manner in which the taxpayer–tax administration relationship affects compliance. The most important contribution of the responsive regulation theory is that it enhances understandings of regulatory enforcement and its effect on compliance, recognising that different people have different motivations for

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complying or not complying with the law, and that the same person or firm can have multiple, potentially conflicting motivations for compliance. By following this model, the ATO attempts to establish a cooperative and friendly relationship with taxpayers, while also using deterrence when necessary.

4.11.1 Comments on the ATO Model of Compliance

The ATO model is being replicated by other tax jurisdictions, such as the UK, Canada, New Zealand, East Timor and others. However, it faces several criticisms. Haines contends that enhancing sanctions in response to serial noncompliance might help regulatory authorities shape enforcement policy, but also shapes the behaviour of regulated firms. The escalation of enforcement measures and serious action against a firm might aggravate the relationship between the regulator and regulated, and create distrust of regulators. Gunningham, Grabosky and Sinclair argue that responsive regulation is too focused on the state. According to Freigang, responsive regulation is not compatible with the rule of law, and has inherent constitutional problems that create judicial and doctrinal challenges. It is difficult to apply to corporate taxpayers, encourages tax corruption and creates disequilibrium in treatments. Due to the constitutional and political sensitivity of tax collection and the complexity and relative indeterminacy of tax legislation, it is difficult to apply the responsive regulation model to tax. Baldwin and Black present criticisms that mounting up through the enforcement pyramid might not always appear appropriate because of serious fractions of regulations and the adversarial relationship between the regulator and the regulated make it difficult to glide through the pyramid.

The success of responsive regulation depends on a number of factors, including the agency’s resources, size of the regulated population and types of standard imposed.
In a developing country such as Bangladesh, the bureaucracy is not free from political interference.\textsuperscript{604} Actions may not be taken or less action may be taken against one person, while stern action may be taken against others due to media and political pressure.\textsuperscript{605} In addition, the model is thought to cause regulatory capture,\textsuperscript{606} which leads to situations of exploitation by the authority for private gains.\textsuperscript{607} Evidence of such capture has already been found by the progenitors of the model.\textsuperscript{608}

The model is also criticised because it was crafted for a developed country\textsuperscript{609} to address the regulatory debate in such countries, rather than in developing countries.\textsuperscript{610} To solve this problem, third-party participation and \textit{qui tam} provision are suggested.\textsuperscript{611} Another major weakness of the model is that it encourages corruption\textsuperscript{612} due to the frequent interaction between the regulators and regulated,\textsuperscript{613} where tax officials might develop a desire to please those who they are supposed to be regulating, as Grbich notes.\textsuperscript{614} This can be dangerous for developing countries such as Bangladesh. Heimer argues that corrupted regulatory systems can sometimes masquerade as being responsive systems.\textsuperscript{615}

\begin{footnotes}
\item[605] Baldwin and Black, above n 602, 9.
\item[606] Ian Ayres and John Braithwaite, ‘Tripartism: Regulatory Capture and Empowerment’ (1991) 16(3) \textit{Law & Social Inquiry} 435, 437.
\item[608] Ayres and Braithwaite, above n 607, 438.
\item[611] Braithwaite, above n 609.
\item[612] Ayres and Braithwaite, above n 607, 435.
\item[613] Ibid, 437.
\item[615] Heimer, above n 71, 683.
\end{footnotes}
Ayres and Braithwaite suggest republican tripartism to solve the problem of corruption; however, Scholz, Khademian, Mendeloff and Burton criticise republican tripartism on various grounds. Besides, the confidential nature of tax matters always indicates bipartite negotiation. Since the responsive regulatory model considers law as determinate, the indeterminacy of taxation law remains the ‘Achilles’ heel’ of the model. Picciotto and Freedman agree that income tax law is indeterminate. Thus, the model suffers from a constitutional shortcoming because it ignores the constitutional values of proportionality and consistency, which are ingrained in the right to equal and fair treatment. Yeung states that the model prefers administrative settlements to judicial settlements, and this might stop the regulatory pyramid halfway because it is less coercive and persuasive. It is argued that the responsive regulation theory has a narrow strait of operation decreasing compliance.

4.11.2 Replicating the ATO Model by the ITDB

Since the model has a developed country approach, it is pertinent to consider whether it would work in a developing country, such as Bangladesh. The major obstacles to implementing the model in Bangladesh include organisational barriers and resistance, lack of political commitment, and corruption in the tax administration. However, despite its shortcomings, this model offers the best solution to the problem of tax noncompliance—the successful use of this model in different countries

616 Ayres and Braithwaite, above n 607, 441.
619 Mendeloff, above n 78, 71.
620 Burton, above n 601.
622 Burton, above n 601.
624 Freedman, above n 76.
626 Ibid, 165.
627 Ibid, 167.
628 Kornhauser, above n 79, 599, 624.
629 Odinkonigbo, above n 80.
highlights its effectiveness. Thus, Bangladesh should implement this model in its income tax administration.

4.12 The Slippery Slope Framework of Tax Compliance

The slippery slope model is a blend of the economic and psychological aspects of tax compliance. This theory proposes that the success of the economic and psychological factors of tax compliance is very much dependent on the relationship between the taxpayer and tax authority. It is argued that compliance increases when this relationship is friendly and not antagonistic. Thus, a relationship of trust must be built to create a congenial atmosphere to increase compliance. Increased power and trust can increase compliance. The following is a pictorial presentation of the slippery slope framework.

Figure 4.4: The Slippery Slope Framework of Tax Compliance

Source: Erich Kirchler et al. (2008).

632 Ibid, 211.
633 Ibid, 212.
The left side of the framework shows that, when trust is low, an increase in power through auditing and detection of tax evasion increases compliance. An increase in compliance is highly anticipated with an increase in the power of the authorities. The right side shows the trust dimension, where power is low, yet trust is high. An increase in trust is likely to increase compliance. Thus, both high power and high trust are likely to yield high compliance. Previous studies have found empirical support for the slippery slope compliance framework, including research by Muehlbacher, Kirchler and Schwarzenberger, Koglar, Muehlbacher and Kirchler, Wahl, Kastlunger and Kirchler, Lisi, and Prinz, Muehlbacher and Kirchler.

4.13 OECD Compliance Risk Management Model

The OECD compliance risk management model seeks to provide its member states with guidelines on how to identify and manage tax compliance, and harvest maximum tax compliance by using minimal and scant resources. To answer its members’ questions regarding tax compliance issues and their need to determine the most rational allocation of limited resources, the OECD identified three focusing questions to guide decisions on how to allocate resources:

- What are the major compliance risks to be addressed?
- To which taxpayers do these risks relate?
- How should these risks be treated to achieve the best possible outcome?

To address the above issues successfully, the OECD developed its compliance model. According to the OECD, this model is ‘a structured process for the systematic identification, assessment, ranking, and treatment of tax compliance risks (e.g., failure to register, failure to properly report tax liabilities etc.).’ The model aims to help

revenue departments respond quickly to changing circumstances, ensure that treatment strategies are applied to activities of the highest priority, have a high probability of success with interventions, and meet their business intents—to optimise collections under the law, while maintaining community confidence in the system.\textsuperscript{640} The compliance risk management model is presented in Figure 4.5.

\begin{figure}[h]
\centering
\includegraphics[width=\textwidth]{figure4.5.png}
\caption{The Compliance Risk Management Process}
\end{figure}

As the model reveals, it offers its members specific and strategic guidelines to deal with compliance risks via a micro approach and in a diversified manner. It concentrates on the drivers of noncompliance, and is flexible in nature. While managing the identified risk through a specific treatment strategy, the model recommends considering issues such as the nature of the risk to be addressed, what the treatment strategy seeks to achieve, and which measurement methodologies should be used (including timeframes and external factors that could affect the measures and how they may be interpreted). It also suggests the identification and measurement of compliance-related risks to address the issue of noncompliance by employing a narrow approach.\textsuperscript{641}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{640} Ibid, 12.
\item \textsuperscript{641} Ibid, 10.
\end{itemize}
\end{footnotesize}
4.14 Future Compliance Strategy for Bangladesh

No single theory has been able to explicate tax compliance behaviour in its totality. Yet, it is necessary to determine an optimal model to effectively manage the tax compliance problem in Bangladesh. Thus, it is suggested that Bangladesh employ a model that embraces a comprehensive approach to the problem. This comprehensive approach should consider the contribution and importance of different theories and models of tax compliance.\(^{642}\) A holistic understanding of taxpaying behaviour is necessary to improve compliance.\(^{643}\) This comprehensive approach should recognise that the tax compliance problem is endogenous with the evolution of the taxation system in a human society.

The comprehensive approach suggests that the ATO compliance model based on the responsive regulatory theory should be accepted in Bangladesh, upon fulfilment of certain conditions. This is because, despite its drawbacks, this model remains the optimal option in the regulatory arena.\(^{644}\) The ATO compliance pyramid offers a comprehensive strategy because it does not discard the traditional deterrence type of enforcement. At the same time, it also takes into account the psychological factors that affect compliance.\(^{645}\) However, to successfully use this model in Bangladesh, corruption in the income tax department must be reduced. Achieving this will require policy and political goodwill on behalf of the government to curb tax corruption. There is evidence that appropriate strategies can control corruption. For example, in the Nigerian revenue department, the government has been able to reduce corruption through introducing anticorruption instruments.\(^{646}\) Any successful reform in the income tax department necessitates institutional integrity in its performance,\(^{647}\) and the institutional mechanism remains the main avenue through which the government can

\(^{642}\) Leviner, above n 19, 418.
\(^{644}\) Leviner, above n 19, 369.
increase the integrity of the income tax department. In addition to a separate institutional establishment, strong departmental control is necessary to improve institutional integrity.\textsuperscript{648}

Apart from corruption, to successfully replicate the ATO compliance model for Bangladesh, information asymmetry must be addressed. Once taxpayers’ information is gathered, it will be easier to facilitate dialogue using the ATO model.\textsuperscript{649} Imbalance of information between the tax official and taxpayer creates an avenue for tax evasion.\textsuperscript{650} To address this, Bangladesh requires a strong information reporting regime with the tax department to help gather the necessary information about taxpayers’ true incomes.

\textbf{4.15 Conclusion}

This chapter has critically discussed all the existing tax compliance theories. It has observed that no one theory or model is sufficient to provide a comprehensive solution to the problem of tax noncompliance in its totality. However, it is argued that the responsive regulatory theory adopted by the ATO is currently the best option to manage this problem. Therefore, the ATO compliance model is suggested for Bangladesh as a pragmatic and future tax compliance model.

\textsuperscript{648} Ibid.
\textsuperscript{650} Ibid, 67.
Chapter 5: Tax Amnesties and Tax Compliance in Bangladesh

5.1 Introduction

Tax amnesty constitutes a major aspect of political agendas around the world.\(^{651}\) It is allowed as a part of the government’s tax reform process. Tax administrations in a variety of countries are facing the formidable challenge of curbing tax evasion. The problem of tax evasion is a transnational issue—every country, whether developed or developing, faces this problem to a greater or lesser extent.\(^{653}\) To tackle this problem, tax administrations employ different enforcement measures, such as auditing, prosecution and so forth. Tax amnesty is one such measure relating to policy issues,\(^{654}\) which complements other tools\(^{655}\) to ensure compliance. This strategy can also be adopted by governments to improve their budget by raising quick revenue. Although tax amnesty has only been frequently practised in recent times, the history of tax amnesty is as old as the history of taxation. The Rosetta Stone of King Pharaoh from Ancient Egypt evidences the first occurrence of tax amnesty granted to taxpayers.\(^{656}\) Under that amnesty scheme, the king granted amnesty to tax rebels, and arrear taxes were written off. Traces of tax amnesty are also found in the Ancient Roman Empire.\(^{657}\)

Tax amnesty allows individuals or firms to pay evaded taxes without being subject to all or some of the financial and criminal penalties that are usually imposed on tax evaders.\(^{658}\) For revenue raising, tax amnesty is a controversial tool.\(^{659}\) However, champions of tax amnesty emphasise the short-term success of revenue augmentation, since individual taxpayers take the opportunity to eliminate tax delinquency without

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\(^{651}\) Torgler, Shaltegger and Schaffner, above n 95, 375.
\(^{652}\) Hasseldine, above n 109, 303.
\(^{654}\) Hasseldine, above n 109.
\(^{655}\) Lopez-Laborda and Rodrigo, above n 653.
\(^{657}\) Luitel, above n 87, 2.
\(^{658}\) Alm, Martinez-Vazquez and Wallace, above n 82, 1.
\(^{659}\) Ibid; Luitel, above n 87, 44.
penalty. They argue that, if tax amnesty is offered, taxpayers who are not in the tax net might feel encouraged to do so.\textsuperscript{660} Boise argues that amnesty helps generate revenue, paves the way for future tax compliance by the individuals taking part in the program, and leads to more harsh future enforcement regimes.\textsuperscript{661}

In Bangladesh, tax amnesties are conducted frequently to attempt to curb the problem of the underground economy in the country. However, the purpose of this chapter is to argue that tax amnesty in Bangladesh is used as a means of ‘whitening black money’ by politicians, businesspeople and other corrupt sectors of society. As a result, the overall effect of the tax amnesty scheme is not as great as expected. The scheme is perceived to be exploited by corrupt politicians and businesspeople over the years to the prejudice of the interest of the national revenue. It is also contended that tax amnesty does not have a positive effect on improving voluntary compliance. This chapter argues that, in Bangladesh, tax amnesty is conducted with political motives, rather than as an effective revenue raising tool or part of the tax reform process. Tax amnesty is offered on direct tax, such as income tax, and indirect tax, such as customs duty and value-added tax. Since this thesis focuses on income tax compliance in Bangladesh, this section will detail tax amnesty in the field of income tax in Bangladesh.

There has been considerable research on the effect of tax amnesty programs on revenue collection and improving tax compliance. Alm, Martinez-Vazquez and Wallace’s study on Russian tax amnesty finds that tax amnesties produce little short- or long-term effect on revenue, and are not helpful as a policy instrument in Russia.\textsuperscript{662} Torgler, Schaltegger and Schaffner’s cross-cultural comparative study with data from European and Latin American countries reveals that tax compliance increases significantly when people have the opportunity to vote for or against a tax amnesty, independently of whether a tax amnesty is rejected or not.\textsuperscript{663} In addition, the expectation of further tax amnesties has a negative effect on tax compliance.

\textsuperscript{660} Alm, Martinez-Vazquez and Wallace, above n 82, 1.
\textsuperscript{661} Boise, above n 90, 667.
\textsuperscript{662} James Alm, Jorge Martinez-Vazquez and Sally Wallace, ‘Do Tax Amnesties Work? The Revenue Effects of Tax Amnesties during the Transition in the Russian Federation’ (Working Paper No 0718, International Center for Public Policy, Andrew Young School of Policy Studies, Georgia State University, 2007).
\textsuperscript{663} Torgler, Schaltegger and Schaffner, above n 95.
Alm and Beck find tax amnesty has a positive effect on revenue collection when combined with increased enforcement measures. Through a study of Michigan tax amnesty programs, Fisher, Goddeeris and Young find that amnesty programs could not substantially increase the number of taxpayers; rather, only existing taxpayers took advantage of the programs by paying their tax debts. Joufiaian notices the same trend in Massachusetts tax amnesty programs. Christian, Gupta and Young’s study uses data from Michigan state to ascertain the effect of tax amnesty on subsequent return filing. They find that two-thirds of new and nine-tenths of previous taxpayers who filed amended tax returns under the amnesty program filed a state income tax return after the amnesty period was over. Uchitelle finds tax amnesties to have mixed success. Some programs failed to broaden the tax base, while some succeeded, and some could raise revenue, while others could not. He argues that it is not beneficial for developing countries to conduct tax amnesty programs if they do not also improve their overall tax collection mechanism—a tax amnesty program should be accompanied by structural and tax reforms.

Martinez notes that states without tax amnesty programs also experience rises in revenue and compliance rate like the states having same with amnesty programs by implementing enforcement measures. In an experiment with US data, Alm, McKee and Beck find that compliance decreased after the tax amnesty period because of the expectation of further amnesty, and that post-amnesty revenue increased if strong enforcement measures were implemented. Alm argues that tax amnesty produces limited revenue, and there is exaggeration when presenting the revenue data collected through amnesty programs. Repeated amnesties are even less effective; thus, tax amnesty should not be regarded an efficient revenue raising tool.

Through an experiment in India, Gupta and Mookherjee find an insignificant effect of amnesty on revenue collection, except for one sudden boost in revenue collection. Luitel and Sobel find that repeated amnesty programs reduced the state revenue
collection.\textsuperscript{673} Using a Bayesian modelling approach, Fox and Murray’s empirical research finds that the tax amnesty programs conducted by US states over a long period depended largely on economic, fiscal and political factors.\textsuperscript{674} They also find that initial tax amnesty increases revenue collection and subsequent amnesties, although later amnesties produce less revenue. They find the same result in the case of tax return filing. This implies that, when tax amnesties are offered repeatedly, revenue performance diminishes gradually. Mikesell finds tax amnesty programs to be the norm among US state tax collection systems.\textsuperscript{675}

Tax amnesty programs have been found to be an effective revenue raising mechanism based on the positive experience of tax administrations undertaking repeated tax amnesties. Parle and Hirlinger observe that amnesty programs are revenue yielding, though in low volume, and appear to be low-cost and low-risk political undertakings that increase compliance and are helpful in minimising budget shortfall.\textsuperscript{676} In an empirical study, Rakhmindyarto identifies the factors of a successful tax amnesty program in Indonesia.\textsuperscript{677} Rechberger et al. study the influence of the perceived justice of tax amnesty on future tax compliance.\textsuperscript{678} They find that post-amnesty tax compliance was positively influenced by the perceived justice of tax amnesty. The fairer the tax amnesty was perceived, the more honestly people reported their income in post-tax amnesty periods.

From the above elaboration it is observed that scholars have come to different conclusions regarding the effectiveness of the tax amnesty programme as a revenue raising tool. Debate is ongoing about the issue. The following section addresses the tax amnesty debate.

\textbf{5.2 Tax Amnesty Debate}

As a fiscal policy, the tax amnesty scheme attracts debate among scholars in the field of research. There are champions of tax amnesty, who support the scheme as a policy instrument to mobilise internal revenue and improve compliance. In contrast, there are
those who argue that tax amnesty has little effect on revenue collection and compliance behaviour. This section first gives an overview of the arguments in favour and against tax amnesty, and then critically details each argument in the following subsections.

5.2.1 Arguments for and against Tax Amnesty

As a revenue raising tool, tax amnesty attracts both positive and negative debate. The arguments in favour of tax amnesty are identified and categorised by Luitel in his PhD thesis. The arguments in favour of tax amnesty state that it:

- augments government revenues and ensures income distribution in society
- offers an opportunity to mend the mistakes of delinquent taxpayers to allow them to undertake honest tax compliance
- helps remove the slur of guilt from citizens
- is an effective and appropriate tool that can be employed before increasing penalties and enforcement activities
- paves the way for a transition to a new tax regime
- indicates the government’s strong will and capability to curb tax evasion in the country
- broadens the tax base by including more citizens in the tax net
- mobilises internal revenue in both the short and long term
- helps revenue departments minimise administrative costs
- increases tax compliance through continuously monitoring tax evaders and bringing them into the tax net.

The arguments against tax amnesty state that it:

- erodes tax morale among honest and complying taxpayers by decreasing the moral costs for dishonest behaviour
- is regarded as too lenient action against tax evaders
- encourages honest taxpayers to evade taxes because it removes the guilt of tax evasion by allowing amnesty for previous evasion
- highlights the strong presence of an underground economy and widespread noncompliance in the tax system of the country
- reveals the weakness of the tax administration in enforcing the tax law and ensuring compliance
• decreases present compliance when employed repeatedly because taxpayers wait for future schemes in order to avoid penalties, thereby negatively affecting present revenue collection.\textsuperscript{679}

Overall, the tax amnesty is still regarded as a reasonably efficient tool to generate internal revenue in both the short and long term. It is true that, in the short term, the tax amnesty frequently fails to generate the anticipated level of revenue. Yet it is considered useful, particularly in times of financial crisis and economic recession, when government spending increases unexpectedly.\textsuperscript{680} The positive effect of tax amnesty is usually measured by policymakers in terms of gross short-term revenue collection. Evidence suggests that tax amnesty generally gathers a small amount of revenue, while recurring amnesties generate even less.\textsuperscript{681} The advantages of tax amnesty are that it increases government revenue, expands the tax base, encourages dishonest taxpayers to be honest, does not penalise unintended mistakes by sincere taxpayers, helps improve the tax structure, highlights sincere efforts by governments that are committed to curbing tax evasion in the country, and lowers the cost of tax collection. Conversely, tax amnesty lowers tax morale in the community, highlights the weak enforcement capacity of the state machinery, reduces compliance by making taxpayers believe that it will recur, generates a belief among tax evaders that tax evasion is a minor or negligible offence, generates less revenue than expected, signals the presence of noncompliance, and encourages taxpayers to be dishonest by not complying regularly.\textsuperscript{682} Different researchers have found different results of tax amnesty; however, there is lack of studies in the field of tax amnesty, and the available evidence fails to offer a clear picture of the effect of tax amnesty on tax compliance practice.\textsuperscript{683}

In the US, there are two factors compelling taxpayers to comply voluntarily. First, taxpayers believe it is their duty as citizens to pay tax according to the law. Second, strict enforcement of the tax law causes taxpayer honesty.\textsuperscript{684} These complying taxpayers are honest, law abiding and patriotic. If these voluntarily complying taxpayers thought that the system of tax concession (in the name of tax amnesty) was

\begin{itemize}
    \item \textsuperscript{679} Luitel, above n 87, 45.
    \item \textsuperscript{680} Baer and Le Borgne, above n 88, 2.
    \item \textsuperscript{681} Alm, Martinez-Vazquez and Wallace, above n 663.
    \item \textsuperscript{682} Torgler, Schaltegger and Schaffner, above n 95.
    \item \textsuperscript{683} Ibid.
    \item \textsuperscript{684} Martinez, above n 100.
\end{itemize}
absolving tax criminals of their crimes, these patriotic feelings might disappear, and they might be discouraged from paying tax at the specified rate. Malherbe et al. contend that, as a result of tax amnesty, honest taxpayers may be encouraged to reduce their compliance due to perceiving tax amnesty as an unfair tax relent for delinquent taxpayers. Consequently, they might find tax evasion to be a profitable business.\textsuperscript{685} The resultant revenue loss from tax amnesty programs has the potential to undermine its benefits. Malherbe et al. cite an example from the US in which, in 1985, a one per cent point loss caused around US$5 billion.\textsuperscript{686} The amnesty in Michigan in 2002 decreased the revenue of the 2003 financial year by $18.4 million.\textsuperscript{687} Martinez argues that, in this situation, tax amnesty might decrease tax compliance, rather than increasing it.\textsuperscript{688} It might also create anger and dissatisfaction among honest taxpayers who see their fellow citizens evade tax by thwarting the tax laws.\textsuperscript{689}

5.2.2 Tax Amnesty and Black Money Whitening

Tax amnesty programs can work as a legalised means of money laundering by black money holders. Pasha argues that allowing tax amnesty is like inviting tax evaders to whiten their black money.\textsuperscript{690} It teaches people how to whiten black money illegally earned and legally earned but tax not paid.\textsuperscript{691} A black money whitening scheme offered through a tax amnesty program ultimately encourages tax evasion.\textsuperscript{692} Tax amnesty legitimises money laundering, thereby rewarding those who do not pay their taxes and penalising honest taxpayers who pay tax at higher rates.\textsuperscript{693} When amnesty programs are conducted regularly, tax evaders take full advantage of such anticipated amnesties.\textsuperscript{694} The way that tax amnesty leads to money laundering through paying tax at a lower rate is indicated by the example of amnesty provisions contained in the 1984
ITO. Section 19A of the ITO gives the opportunity to whiten black money by investing this money in newly established industrial undertakings. The income tax authority cannot ask any questions about the source of money invested under this section if, prior to the investment, the taxpayer has paid tax at the rate of 10 per cent. This is a clear example of amnesty offered to tax evaders to legalise dirty money. The researcher also has anecdotal evidence of the ways people take advantage of the amnesty to whiten their black money in Bangladesh.

5.2.3 Tax Amnesty and Tax Base

It is believed that tax amnesty expands the tax base, and there is some evidence to support this. However, specific country experience shows that, in the long term, tax amnesty does not expand the tax net. For example, in the US, the state tax amnesty programs have failed to broaden the tax net as expected. In Pakistan, during the last two decades, repeated tax amnesty programs have failed to increase the tax net. In Bangladesh, the NBR has been conducting regular amnesty programs since independence, yet they have not contributed much to the tax roll. For example, there are currently 2.6 million taxpayers in Bangladesh and, of these taxpayers, only half submit income tax returns. Interestingly, of the taxpayers submitting returns, salaried people and contractors are the main constituents. The lack of people paying tax is a significant problem for the ITDB. The number of taxpayers in Bangladesh remains much the same, except for a slight increase in volume. Thus, it appears that tax amnesty programs have failed to increase the tax net. In this respect, Martinez argues that ‘adding to the tax rolls through a … tax amnesty is an unrealistic objective because much of the income that goes unreported is derived from illegal activities’—as is the income from bribery and other forms of corruption.

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695 This was introduced by the Finance Act 1997 and subsequently omitted by the Finance Act 2010.
696 Stella, above n 111, 38.
697 Leonard and Zeckhauser, above n 689, 55.
698 Martinez, above n 100, 559.
701 Martinez, above n 100, 560.
Another problem for Bangladesh is that the tax statute can offer immunity from penalty and punishment under the tax statute only—it cannot guarantee protection from prosecution under any other law in the country. For example, if a person declares income from bribery, the income tax law might ignore this, but the law regarding anticorruption should not exonerate the person due to the tax amnesty. Thus, considering the legality question of income earning, the chance of tax amnesty to contribute to the tax net appears bleak.\textsuperscript{702}

5.2.4 Rule of Law, Social Justice and Tax Amnesty

The rule of law postulates that there will be proper and just application of the law for all citizens, and that everybody will be treated equally, without preference or prejudice. The rule of law remains a precondition for successful governance;\textsuperscript{703} however, tax amnesty seems to tarnish the essence of the rule of law by treating taxpayers unequally. Thus, tax amnesty schemes are intrinsically reprehensible. The fairness of the tax system becomes questionable because of preferential treatment in the payment of tax. Tax amnesty might cause honest taxpayers to believe that the tax system is unfair because of treating tax evaders in a privileged manner by granting amnesty.\textsuperscript{704} In tax systems operated with a voluntary compliance system, taxpayers’ positive perceptions about the system are vital to ensure voluntary compliance. If taxpayers perceive that the system is unfair, they might be discouraged to comply voluntarily. According to Vihanto, the decision of taxpayers whether to evade tax depends on their perception of the fairness of the system, and tax amnesty makes the system seem unfair to honest taxpayers.\textsuperscript{705}

Tax amnesty may negatively affect the horizontal equity of taxation. A horizontally equitable tax system renders equal treatment to all taxpayers in similar economic situations.\textsuperscript{706} A horizontal system postulates that there is ‘equal treatment of equals’. That is, individuals who have the same wealth, or are in the same income bracket, should receive the same tax rate. Horizontal equity is considered vital because it affects

\textsuperscript{702} Ibid, 561.
\textsuperscript{704} Boise, above n 90, 702.
Taxpayers’ perceptions of the fairness of the system. Tax amnesty undermines horizontal equity because it creates discrimination among tax rates by giving tax evaders opportunities to pay tax at lower rates. Thus, uniform application of the tax statute is impeded because tax amnesty has the effect of sabotaging the principle of equality. If tax amnesty is unaccompanied by provisions of punishment for tax crime, the purpose of the traditional view of punishment under the criminal law is thwarted. The retributive justice theory does not support tax amnesty because retributive justice emphasises the apportionment of appropriate punishment for violation of laws. Tax amnesty compromises that by not punishing individuals who violate the tax laws, and gain immunity under the tax amnesty program.

5.2.5 Tax Amnesty and Tax Compliance

The voluntary compliance rate may decrease following the amnesty period. Hasseldine argues that tax amnesty reduces tax evasion guilt among delinquent taxpayers. However, Saracoglu and Kasakurlu contend that, in the short term, tax amnesty increases tax compliance by enabling detection of taxpayers in the informal economy. A successful tax amnesty program highlights the rampant noncompliance in the country. Consequently, tax evaders become aware of the fact that they are not the only ones who cheat. This is particularly true in developing countries, such as Bangladesh. When there are repeated tax amnesties, tax evaders might be encouraged not to comply in anticipation of future tax amnesty. Thus, amnesty can reduce taxpayer compliance. However, there is evidence that amnesties supported by strict enforcement and taxpayer education generally increase compliance, or at least do not decrease it.

Torgler, Schaltegger and Schaffner find that an initial tax amnesty increases tax compliance, while recurring amnesties have a negative effect on the compliance

707 Ibid, 3.
709 Martinez, above n 100, 566.
710 Malherbe et al, above n 107, 240.
711 Hasseldine, above n 109.
712 Saracoglu and Kasakurlu, above n 89, 95.
713 Malherbe et al, above n 107, 240.
714 Rechberger et al, above n 86, 215.
rate.\textsuperscript{715} Alm and Martinez-Vazquez observe that, if post-amnesty enforcement activities are increased and organisational capacities are improved, tax amnesty might be an effective tool for improving voluntary compliance.\textsuperscript{716} To improve compliance through tax amnesty, the revenue authority must create an impression that amnesty will be followed by tougher enforcement. Baer and Le Borgne argue that tax amnesty alone plays a very limited role in increasing compliance.\textsuperscript{717} Thus, if tax amnesty is employed alone, it may not succeed, but if it is accompanied by other penal provisions, it may work well. Leonard and Jackhuser refer to the Massachusetts state revenue department’s estimate regarding the effect of tax amnesty, and argue that when a tax amnesty program is coupled with wide publicity and stricter future enforcement, it can substantially increase future compliance with tax statutes.\textsuperscript{718}

Moran suggests that tax amnesty can be an effective mechanism for the government to combat the burgeoning tax noncompliance problem in the IRS. However, he stresses the need for a thorough examination of the present and future implications of the amnesty program, including its moral aspects.\textsuperscript{719} Martinez argues that, although apparently effective, the short-term success of the state amnesty program is dangerously misleading, and the amnesty cannot be regarded the most important factor to increase compliance.\textsuperscript{720} He suggested publicity and enforcement as an alternative to tax amnesty.\textsuperscript{721} Mikesel contends that limited tax amnesty programs targeted as a one-off tool to raise revenue might not affect future tax compliance.\textsuperscript{722} As a logically tailored tax amnesty that seeks to balance complying and noncomplying tax payers, the amnesty might increase both revenue and equity.\textsuperscript{723} However, Mikesel concentrates on the effect of tax amnesty in US states—he does not consider the background and culture of developing countries, such as Bangladesh. In addition, he argues that tax amnesty will strike a balance between honest and dishonest taxpayers if accompanied by high penalties and strict enforcements, yet this does not occur in

\textsuperscript{715} Torgler, Schaltegger and Schaffner, above n 95.
\textsuperscript{716} James Alm and J Martinez-Vazquez, ‘Institutions, Paradigms, and Tax Evasion in Developing and Transition Countries’ in J Martinez-Vazquez and Edgar Elgar James Alm (eds), Public Finance in Developing and Transition Countries 146.
\textsuperscript{717} Baer and Le Borgne, above n 88.
\textsuperscript{718} Leonard and Zeckhauser, above n 689, 55.
\textsuperscript{720} Martinez, above n 100, 539.
\textsuperscript{721} Ibid.
\textsuperscript{723} Ibid.
developing countries. Usually, tax amnesties are not coupled with punishment or strict enforcement measures. In most cases, people who take advantage of the amnesty go unpunished or pay a minimum penalty, to the utter chagrin of the honest taxpayer.

The case of Bangladesh can be used as an example to support this argument. There is a tax amnesty provision in the 1984 ITO in Section 19BBB that states that:

no question shall be raised as to the source of any sum invested by an assessee, being an individual, firm, association of persons or a private limited company between the first day of July 2009 and the thirtieth day of June, 2010 in the purchase of stocks and shares of a company listed with any stock exchange in Bangladesh if the assessee pays, before the filing of return of income, tax at the rate of ten per cent on such sum invested.

The implication of this is that, while honest taxpayers go for corporate investment giving proper tax, tax evaders whiten their black money by paying only 10 per cent tax, which is far below the maximum rate for the individual. Unlike in developed countries, developing countries such as Bangladesh have significant resource constraints. Referring to the success of US states’ tax amnesty programs, Stella argues that the enforcement capacities of the different US states have made these programs successful, while developing countries lack unique enforcement capabilities. In addition to a lack of resources, developing countries’ tax administrations do not have the appropriate will to implement post-amnesty strict enforcement measures.

5.2.6 Tax Amnesty and Revenue Authorities’ Audit Power

Tax amnesty impedes revenue authorities’ audit power. The tax audit is a very important tool because it detects noncompliance at the individual taxpayer level; gathers information on the health of the tax system, including patterns of taxpayers’ compliance behaviour; gathers intelligence; educates taxpayers; and identifies areas of the law that require clarification. However, tax amnesty affects the tax audit in several ways. Certain tax amnesty schemes provide that a return will not be audited for a certain period if a taxpayer commits to increasing his or her present or future (or both) tax payment. Another type of amnesty provides exemption from audit for returns submitted in the future. Yet another type provides that, if the return submitted in the present is correct and accurate, earlier returns with problems or evasions will be

724 Stella, above n 111, 40.
725 Uchitelle, above n 81, 48.
ignored and no audit will be conducted. In developing countries, where there is low tax morale and a weak tax culture, accompanied by corruption and other phenomena,\textsuperscript{727} audits are an effective tool for enforcing tax compliance; however, due to tax amnesty, the audit activities of revenue authorities are compromised.

5.2.7 Tax Amnesty and Enforcement

Tax enforcement is costly and time consuming; thus, the tax authority is frequently in a weak and sensitive position. Tax evaders take time to respond because they are aware that the government has time and resource constraints to go for quick enforcement. Baer and Le Borgne observe that high penalties for tax evasion are not frequently applied because they might not be commensurate with the offence, they might be impractical and there might be corruption among the tax officials.\textsuperscript{728} Tax amnesty worsens this issue by revealing the tax authority’s constraints and incapability to enforce tax laws in order to prosecute and punish tax evaders.\textsuperscript{729} If the tax authority allows tax amnesty regularly, habitual tax evaders find it easy and profitable to flout the law and evade tax.

5.2.8 Tax Amnesty Programs and Future Enforcement

Boise states that tax amnesty can ease the transition to a new tax enforcement regime that features more stringent enforcement activities.\textsuperscript{730} Under tax amnesty, delinquent taxpayers are given the opportunity to erase their illegal behaviour by paying tax at lower rates. In addition, usually, no civil or criminal actions are initiated against people under the amnesty program. Certain percent monetary penalty is imposed in addition to the rate of tax. At the same time, governments publicise that, after the amnesty period, strict measures will be taken against individuals identified as cheating. Thus, amnesty programs can ease the transition to a more strict enforcement regime.\textsuperscript{731} Commenting on this transition, Lederman contends that increased enforcement necessitates change in norms, and that amnesty works as a transition relief. These

\textsuperscript{727} Ibid, 10.
\textsuperscript{728} Baer and Le Borgne, above n 88.
\textsuperscript{729} Malherbe et al, above n 107, 240.
\textsuperscript{730} Cited in Lederman, above n 91, 22.
\textsuperscript{731} Boise, above n 90, 700.
norms include attitudinal change, and Lederman argues that an immediate change of attitude is not possible.732

5.2.9 Effect of Repeated Tax Amnesty

For a tax amnesty program to be effective, it should be conducted once only. Repeated amnesty has the effect of diminishing revenue collection and the rate of compliance. US state tax amnesty and other international amnesty experiences indicate that repeated amnesties yield gradually smaller amounts of revenue.733 Boise argues, ‘a proliferation of amnesties generally is associated with an overall reduction in tax compliance’.734 When compliance falls, revenue collection is bound to fall. When tax amnesty is conducted for the first time in a country, it is widely held to generate substantial short-term revenue. The one-off amnesty conducted in Indonesia—under the title of the ‘Sunset Policy’—generated significant revenue. However, when amnesty programs are repeated, revenue collection decreases.735 Luitel and Sobel draw this conclusion after a thorough study on the effect of repeated tax amnesty on US states’ revenue collection. They consequently recommend that the states do not make repeated use of tax amnesty programs.736

5.2.10 Tax Amnesty and State–Taxpayer Fiduciary Relationship

It is suggested that tax amnesty affects the psychological tax contract between the state and taxpayers.737 According to psychological contract theory, governments and taxpayers are considered two actors with an implicit or relational psychological contract with each other. Feld and Frey propound the psychological contract theory.738 They argue that strong political participation makes the contract more explicit and generates high tax morale. Revenue authorities must admit the existence of such a tax contract and support this by treating taxpayers equally and respectfully. Since tax

732 Lederman, above n 91, 22.
733 Boise, above n 90,707.
734 Ibid, 705.
735 Luitel and Sobel, above n 104, 19, 37. Indonesia’s ‘Sunset Policy’ is discussed below at 5.3.4
736 Ibid.
737 Rechberger et al, above n 86.
amnesty absolves tax evaders by granting amnesty from tax crime, amnesty disrupts the psychological tax contract relationship between the government and taxpayers.\(^{739}\)

In addition, this study argues that tax amnesty affects the fiduciary relationship between the state and taxpayer. The state–taxpayer fiduciary relationship postulates that taxpayers trust the government and subsequently pay tax as per the law. In return, it is the duty of the state to provide the needed public services that cannot be obtained by individual taxpayers. When applying the law, the government must not discriminate among taxpayers. If the government does not follow these principles, it is in violation of the fiduciary duties it owes to taxpayers in general. By allowing tax amnesty, the government moves out of the ambit of the state–taxpayer fiduciary relationship. As a result, honest taxpayers might feel frustrated and perceive the tax system as unfair, and subsequently become reluctant to comply voluntarily.

### 5.2.11 Why Countries Choose Tax Amnesty Schemes

Despite the debate about the negative effect of tax amnesty on revenue, countries still undertake tax amnesty. For example, US states repeatedly conduct amnesty programs. However, the US Treasury Department has expressed disapproval for these programs. According to the Treasury Department, tax amnesty:

> would further undermine taxpayer morale by sending a clear signal to the American public concerning noncompliance and tax fraud … Amnesties can only reinforce the growing impression that the tax system is unfair and encourage taxpayer noncompliance.\(^ {740}\)

However, if ignoring the question of whether amnesty is moral, amnesty has proven an important and popular program in tax administrations.\(^ {741}\) Baer and Le Borgne state that, ‘[t]he ease in quantifying the short-term benefits of tax amnesty programs combined with the difficulty in quantifying their costs, especially in terms of compliance, could partly explain amnesties’ popularity’\(^ {742}\).

\(^{739}\) Ibid, 89.


\(^{741}\) Mikesell, above n 722, 507.

\(^{742}\) Baer and Le Borgne, above n 88, 3.
Developing countries employ tax amnesty schemes because of the weakness of their legal framework, and management and operation of the tax administration. Tax amnesty indicates the presence of tax evasion. When a tax administration is aware of tax evasion, it employs enforcement actions, such as audits and imposition of penalties. However, audits are a complex and costly task, particularly for the tax administrations of developing countries, which face resource constraints and complexities when undertaking audits. Thus, before employing expensive enforcement measures, an increased penalty rate can be a solution. However, there is danger in enhancing and applying penalties under tax statutes, as Stella states:

> The choice of penalty structures may be constrained by equity considerations … Harsh penalties that are viewed as incommensurate with the offense would not be applied in practice and thereby would call into question the tax authority’s credibility.

In this situation, it is likely that tax administrations will prefer tax amnesty, which is cheaper and rapidly brings easy money to the treasury. However, although the inability to pursue a long-term enforcement policy might justify the short-term success of amnesty programs, it is expected that tax administrations would commit to a given enforcement policy eschewing amnesties. However, the popularity of amnesty around the world has made it an integral part of the tax policy of most tax administrations.

### 5.2.12 Remoteness of Damage and Tax Amnesty

Tax amnesty creates resentment among honest taxpayers, with civil society very critical of this. However, governments employ amnesty, and the people ultimately accept it. Parle and Hirlinger observe that the US states’ tax amnesty programs do not face much resistance from citizens. They find that some citizens favour the programs, while others are neutral. They find no example of uprising or organised protest from the people against the amnesty. Rather, states increasingly resort to tax amnesty on a regular basis. As aforementioned, this might be a sign of the weakness of the tax administration in enforcing tax laws, yet it is unclear why people accept it. One

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744 Stella, above n 111, 39.
746 Ibid.
747 The World Bank, above n 743.
748 Parle and Hirlinger, above n 84, 246, 254.
plausible explanation might be the ‘remoteness of damage’ theory. The idea of ‘remoteness of damage’ is found in the law of contract. According to the remoteness of damage theory, a person claiming damages for any damage caused to him or her by breach of the terms of a contract must be foreseeable by the party, and must be directly related to the breach of the contract. If the damage is indirect or remote, the court will not consider the case fit for damages due to the remoteness of the damage. Tax amnesty does not cause any direct harm to fellow taxpayers or the state. Thus, this study argues that this might explain people’s acceptance of amnesty, given that the damage caused by the loss of revenue due to amnesty is not clearly visible, and cannot be identified as having a direct negative effect on revenue collection.

Interestingly, anecdotal evidence reveals that some business leaders in Bangladesh speak against the tax amnesty policy of the government. However, these leaders are sometimes identified as tax evaders, who use the tax amnesty scheme to whiten black money. It is alleged that one former finance minister of Bangladesh whitened black money by taking advantage of the tax amnesty that he himself had declared while working as the finance minister. Even some of the organisations that campaign against tax amnesty and tax evasion in Bangladesh do not have a satisfactory record regarding payment of tax.

5.3 Selected Country Snapshots on Tax Amnesty

This section of the chapter presents snapshots of the overall scenarios of tax amnesty programs conducted in selected countries, namely Australia; USA; Italy; Indonesia. These countries were selected because of evidence being available on implementation and comparative success. Between them they exemplify a range of developed countries with differing cultural, political and legal characteristics, as well as Indonesia, a rapidly developing country with a very large population.

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749 A related and frequently cited case regarding the remoteness of damage under contract law is Hadley v Baxendale (1854) 9 Exch 341.
5.3.1 Tax Amnesty in Australia

It has been observed that tax amnesty programs are popular as a revenue raising tool. The popularity of domestic and international tax amnesty programs in different countries highlights the problem of tax evasion around the world. Schneider, Buehn and Montenegro find that the average size of the informal economy around the world reached a noticeable size until 2007.751 Australia is not free from an informal economy or tax evasion. The size of the Australian informal economy was found to be 14 per cent of the GDP, on average, from 1999 to 2007.752 In Australia, tax evasion is not regarded a serious offence, compared to other offences.753 However, tax evasion targeting is a high priority of the ATO.754 Tax evasion in Australia occurs due to the failure of taxpayers to report all income, failure to report cash wages, failure to forward tax withheld from employees’ wages to the ATO, withholding tax from workers’ wages (for example, paying in cash), not paying employee superannuation entitlements, lodging tax returns in an attempt to avoid payment, and lodging tax returns in order to avoid childcare or other obligations.755 Tax evasion also occurs due to claims of non-deducted taxes.756 To minimise tax evasion, the Australian government launched ‘Project Wickenby’ in 2006. This project has proven successful in detecting cases of tax evasion and bringing tax evaders into the tax net.757

Despite the wave of tax amnesty programs around the world, Australia has conducted very few amnesty programs. There are very limited studies on amnesties conducted in Australasia. According to Sawyer, this the dearth of studies indicates that there has been very minimal use of tax amnesty in Australia.758 In 1988, the ATO conducted a domestic tax amnesty program that it considered successful.759 However, no details

752 Ibid.
are available about that amnesty. Hasseldine briefly reviews the 1988 Australian and New Zealand tax amnesty. Besides this short study, no major documents are available about Australian domestic tax amnesty programs.

The 1988 Australian tax amnesty was a limited amnesty that gave the opportunity to submit un lodged tax returns. The ATO decided to conduct the amnesty when it found that nearly 360,000 Australian taxpayers had failed to submit their tax returns. The ATO encountered this problem of non-lodgement because of the shift from the traditional assessment system to the self-assessment system in the 1980s. Thus, the ATO offered lodgement amnesty, where taxpayers with outstanding returns were able to lodge their returns. This was a time-locked amnesty from 30 May to 31 October 1988, and there was no penalty provision accompanying the program. It should be noted that, while the ATO was happy with the results of the program, the returns lodged under the program showed that only 28 per cent of the taxpayers submitting returns owed tax to the ATO, while 57 per cent claimed refunds.

After the first domestic amnesty program in 1988, in 2007, the ATO offered tax amnesty for taxpayers who made mistakes between the financial years of 2001 to 2002 and 2006 to 2007 regarding payments and loans from their private companies, and allowed taxpayers to avoid penalties under Division 7A of the *Income Tax Assessment Act 1936*. This amnesty was offered through the issuance of practice statement, *PSLA 2007/20*. This stated that if taxpayers took corrective action by 30 June 2008, they would not have to pay interest or penalties. However, taxpayers would have to pay the correct amount of tax, provided the time limits under the law allowed it. Changes in the tax statute gave the commissioner the discretion to disregard penalties when an honest mistake or inadvertent omission had been made. It should be noted that the

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760 Ibid.
761 Sawyer, above n 758, 110.
762 Hasseldine, above n 759, 510.
763 Ibid.
765 Ibid.
766 Hasseldine, above n 759, 518.
767 Australian Government, above n 764, 15.
above tax amnesty was only granted to honest taxpayers who had made inadvertent mistakes, and not to deliberate tax evaders.

Australian taxpayers have a positive attitude about the performance, integrity and other aspects of the taxpayers’ service rendered by the ATO. In a community perception survey, 85 per cent of the taxpayers surveyed expressed confidence in the ATO’s administration of the Australian tax system.\(^{770}\) Eighty-four per cent were happy that the ATO was doing a good job,\(^{771}\) while 87 per cent believed that the ATO acted with integrity.\(^{772}\) Seventy-nine per cent stated that the ATO was fair and professional in administering the tax system,\(^{773}\) while 95 per cent believed that the ATO was effective in dealing with tax evasion.\(^{774}\) Since repeated tax amnesty programs are regarded as proof of the weakness of a tax administration, the ATO may be deterred from conducting domestic amnesty programs. In addition, given the current tax compliance rate, the ATO would not feel the need to conduct amnesty programs.

5.3.1.1 The ATO and Overseas Voluntary Disclosure Programs

Although Australia has a reputation for not offering major tax amnesty, it has joined a group of countries to implement offshore tax amnesty programs. These offshore tax amnesty programs are conducted by different countries as overseas voluntary compliance programs. The main purpose of these programs is to curb tax evasion by eliminating international tax havens and bringing undisclosed overseas money into the tax network. The growing budget deficits and financial crisis around the world have necessitated such programs. These voluntary compliance programs are conducted by enabling tax information exchange agreements and tax treaties among countries. In 2011, 600 such tax information exchange agreements and treaties had been signed by different countries, following the OECD standard on information exchange for tax purposes.\(^{775}\)


\(^{771}\) Ibid, 19.

\(^{772}\) Ibid.

\(^{773}\) Ibid, 20.

\(^{774}\) Ibid, 35.

Like other OECD countries, Australia felt it is time to identify overseas money, and bring this back into the country. To make this possible, the ATO started an offshore tax amnesty program under Project Wickenby, launched in 2006. According to the ATO, voluntary disclosure by individuals under Project Wickenby generated an additional A$301.7 million in revenue by June 2010.\footnote{Ernst and Young, ‘Wealth Under the Spotlight: Tax Amnesty and Disclosure Opportunities’ (2010) 20 <http://www.ey.com/GL/en/Services/Tax/>.} However on 30 November 2009, the ATO declared an Offshore Voluntary Disclosure Initiative (OVDI), under which Australian taxpayers who had offshore income that they had not declared or paid tax on would be able to show that income voluntarily until 30 June 2010. The program was open to those who were holding or had held an offshore account or investment (either directly or indirectly), or had participated in an offshore tax arrangement. However, under the law, voluntary disclosure concessions were reduced once the ATO began audit.

The ATO’s OVDI expired on Wednesday 30 June 2010. In 2012 to 2013, the ATO started its follow-up actions on people who did not come forward after receiving an OVDI letter—notwithstanding that over 8,000 people did respond. However, the ATO voluntary disclosure initiative program is regarded a success in achieving its targets.\footnote{According to the Australian Auditor General Audit Report No 25 2011–12, the compliance rate in response to Project Wickenby is low.} Numerous people who were identified by the project submitted their tax returns\footnote{ATO, Project Wickenby \<http://group1.www.ato.gov.au/corporate/content.aspx?menuid=41119&doc=/content/00220075.htm &page=17&H17>}. and, as of 30 June 2012, Project Wickenby had collected more than A$660 million of outstanding revenue. This exceeded the targeted collection of A$503 million set for this date, and included more than A$351 million in cash collections and nearly A$308 million made from increased voluntary compliance following interventions by the Project Wickenby taskforce.\footnote{Ibid.}

The latest and perhaps the last tax amnesty offered by the ATO is ‘Project DO IT’ (Disclose Offshore Income Today). This was declared on 27 March 2014 to allow eligible taxpayers with previously unreported offshore financial activities to voluntarily disclose any income and assets.\footnote{ATO, Project DO IT: Disclose offshore income today <https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Project-DO-IT/Project-DO-IT/>}. The deadline for coming forward under

777 According to the Australian Auditor General Audit Report No 25 2011–12, the compliance rate in response to Project Wickenby is low.
779 Ibid.
780 ATO, Project DO IT: Disclose offshore income today <https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Project-DO-IT/Project-DO-IT/>}. Under the project total disclosed income was expected to exceed $600m and assets disclosed was expected to exceed $4bn.
Project DO IT was 19 December 2014. The ATO received information of approximately A$550 million worth of assets stored in offshore havens in Europe, Israel and Asia. Serious penal measures are planned for the people who did not come forward to take advantage of the amnesty.

5.3.2 Tax Amnesty in the US

Tax amnesty is a common feature of the state tax system in the US. Mikesell and Ross argue that tax amnesties have evolved as a standard component of the US tax system. During the last 30 years, the states have conducted tax amnesty programs 117 times. The state tax amnesty began in 1983 and continues to be conducted at regular intervals. Tax amnesties are generally conducted by the states, with more than half of the states conducting tax amnesty regularly. At the federal level, tax amnesty had never been conducted until 2009, when the IRS for the first time declared tax amnesty for US citizens and green-card holders who had failed to report foreign income on their US income tax returns and/or failed to report foreign bank and investment accounts on a Foreign Bank Account Report (FBAR). As a result, in 2009 and 2011, the IRS implemented two amnesty programs that encouraged people to declare their undisclosed foreign income and assets. More than 30,000 people have voluntarily complied since 2009, with at least 30 people criminally indicted, and the IRS netting a total of US$4.4 billion in unpaid taxes, interest and penalties. Although tax amnesty programs at federal level began in 2009 and in case of offshore income of US citizens and permanent residents, there were demands for federal tax amnesty programs in the 1990s.


Ibid.

Mikesell and Ross, above n 106, 529.


Martinez, above n 100.
The IRS began a voluntary disclosure program that aimed to capture the untaxed billions of dollars held by US citizens in foreign accounts. This voluntary disclosure tax amnesty program was conducted at federal level in 2009, followed by a second one in 2011. During that time, more than 30,000 people have voluntarily complied, at least 30 people have been criminally indicted, and the IRS has netted a total of US$4.4 billion in unpaid taxes, interest and penalties. It is thought, that despite these two amnesties, a large amount of money remains untapped. The state department estimates that more than six million citizens live overseas, excluding those in the military, yet the IRS receives only 1.6 million tax returns each year with foreign addresses. In addition, just over 500,000 FBARs were filed in 2009. Thus, to bring that money into the US, on 9 January 2012, the IRS announced a third amnesty—formally known as the Offshore Voluntary Disclosure Program. This was substantially the same as the 2011 amnesty, with some exceptions.\(^{786}\)

Amnesty programs at the state level are very popular and repeatedly conducted. States favour amnesty programs because they generate much-needed cash for the tax administration. However, regular amnesty can have negative effects because it raises questions about the justness of the system.\(^{787}\) The US state tax amnesty programs operate like sales in departmental stores—similar to the way consumers wait for a sale to buy goods, US taxpayers wait for tax sales in the form of tax amnesties.\(^{788}\)

5.3.2.1 Success of US Offshore Tax Amnesty Program

The tax amnesty programs conducted at federal level are regarded a boon for the IRS.\(^{789}\) The first disclosure program, which ended in October 2009, proved so successful that the IRS initiated a 2011 follow-up program. The 2009 program led to approximately 15,000 voluntary disclosures and another 3,000 applicants who came in after the deadline, but were allowed to participate in the initiative. The agency has closed around 80 per cent of these cases, and collected US$2.2 billion in taxes, interest and penalties. These cases represented bank accounts in 140 countries. Overall, it can

\(^{788}\) Ibid.
\(^{789}\) Lederman, above n 121, 31.
be said that the US offshore tax amnesty is a success, considering the volume of revenue it has gathered. Until 2012, the IRS offshore programs produced US$4.4 billion for the nation’s taxpayers. Lawmakers and tax enforcement agencies see the success of the tax amnesty programs as confirmation that many taxpayers are using offshore jurisdictions to avoid compliance with tax laws. Whether this is justified or not, lawmakers seem to agree that greater transparency is needed to combat offshore abuses.\(^{790}\) As a result, the US Congress enacted the *Foreign Account Tax Compliance Act* (FATCA) in 2010. FATCA seeks to increase transparency by imposing an additional disclosure requirement on individuals and certain domestic entities.

Although the US offshore disclosure programs have been successful and the IRS is happy with their success, it is argued that repeated use of voluntary disclosure initiatives might cause diminishing results in terms of collection of revenue.\(^{791}\) The 2012 disclosure program launched by the IRS has no deadline, which might encourage taxpayers to avoid compliance in the early years of the program.\(^{792}\) According to Lederman, the reason for not setting any deadline for the current disclosure programs might be the maximum use of penalties by the IRS.\(^{793}\) However, this might cause a lack of enforcement actions by the IRS relating to the offshore voluntary programs. As a solution to this, Lederman suggests that the IRS should collect the names of evaders and seek criminal prosecution.\(^{794}\)

### 5.3.3 Tax Amnesty in Italy

Italy has a successful record of offshore tax amnesty programs. The Italian tax amnesty—the ‘*Scudo Fiscale*’ (‘tax shield’)—was adopted in 2001 and offered to taxpayers who voluntarily disclosed or repatriated undeclared foreign assets. The amnesty program was a strategy adopted by the Italian government to improve voluntary compliance among those who placed money in foreign bank accounts without paying tax. The amnesty program captured 56 billion euros of exiled money. The returning money attained a 2.5 per cent tax so that the Italian government produced 1.4 billion euros of additional tax revenue (about 0.4 per cent of the total tax

\(^{791}\) Lederman, above n 121, 32.  
\(^{792}\) Ibid.  
\(^{793}\) Ibid.  
\(^{794}\) Ibid, 33.
revenues). Additional tax revenue of 1,480 million euros in 2002 and 617 million euros in 2003 was raised through the *Scudo Fiscale* program.

For example, in 2009, Italy’s amnesty for tax evaders got the benefit of more than 80 billion euros.\(^{795}\) The key to this success is thought to be the generous terms and anonymity of people stashing money in Swiss banks.\(^{796}\) However, although initially successful, a 2012 report states that the amnesty strategy is no longer an effective method in Italy to improve voluntary compliance.\(^{797}\) Thus, Italy is now preparing to sign a deal modelled on the agreement that Switzerland has already signed with Germany and the UK. It is believed that signing this agreement will mean that anything between 10 billion and 25 billion euros could be brought back from Switzerland to the Italian treasury.\(^{798}\)

### 5.3.4 Tax Amnesty in Indonesia

In July 2008, Indonesia declared a tax amnesty program known as the ‘Sunset Policy’. Under this program, people who had never registered as taxpayers had the opportunity to register in the tax ledger without penalty, up to 28 February 2008. Existing taxpayers would also have the opportunity to amend their past mistakes and omissions without receiving any administrative penalties. The Sunset Policy was backed by Kadin\(^{799}\) (the Indonesian Chamber of Commerce) and proved a huge success for the Indonesian government’s fiscal policy.\(^{800}\) The program collected revenue of 7.46 trillion rupiahs in total. Tjen and Abbas argue that the revenue generated from the Sunset Program is significantly lower than the revenue target set by the tax service office. However, 5,635,128 people entered the tax net as a result of the program,\(^{801}\) and a study found that the increased number of registered taxpayers might bring enhanced revenue in the

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798 Ibid.
800 Rakhmindyarto, above n 85, 198.
801 Ibid.
future.\textsuperscript{802} The Sunset Policy was part of the Indonesian government’s comprehensive reform program, which made the program successful.\textsuperscript{803} In addition, publicity played a significant role in the program’s success.\textsuperscript{804}

5.4 Tax Amnesty in Bangladesh
5.4.1 Informal Economy and Tax Evasion in Bangladesh

Developing countries such as Bangladesh face critical constraints to their development due to low overall revenue because of tax evasion and avoidance.\textsuperscript{805} As a result of tax evasion and avoidance, developing countries face a loss of revenue of approximately $385 billion a year.\textsuperscript{806} By losing this revenue, tax evasion seriously hinders the state’s capacity to spend on basic public goods.\textsuperscript{807} In addition, rampant tax evasion produces a feeling of exploitation among honest taxpayers, and encourages them to join the tax evaders.\textsuperscript{808} In Bangladesh, it is estimated by the NBR that approximately Tk 40,000 crore is lost each year because of tax evasion and avoidance, and as a result, the size of the informal economy has increased to an alarming 38.1 per cent.\textsuperscript{809} From 21.4 per cent in 1989, the informal economy reached to the present state in 2011.\textsuperscript{810}

The government of Bangladesh has undertaken a variety of measures to eradicate the underground economy. Tax amnesty is one such measure to curb the rampant tax evasion in the country. In Bangladesh, tax amnesty is generally known as a ‘black money whitening’ scheme and is highly controversial.\textsuperscript{811} It is argued that the amnesty projects of the NBR have failed to access the underground economy—rather than improving compliance, they have deteriorated it, and encouraged honest taxpayers to

\begin{flushright}
\textsuperscript{803} Rakhmindyarto, above n 85, 211.
\textsuperscript{804} Ibid, 212.
\textsuperscript{806} Cobham, above n 386.
\textsuperscript{807} Hug and Spörri, above n 392, 120.
\textsuperscript{808} Vihanto, above n 108, 111, 120.
\textsuperscript{811} Gani, above n 394, 25.
\end{flushright}
indulge in evading practices. Although the repeated tax amnesty conducted by the government at different times during different regimes has failed to curb the underground economy to the expected level, the government of Bangladesh is always eager to conduct tax amnesty programs again. The statistics of tax collected through tax amnesty are not very encouraging—during the last 40 years, Tk 12,996 crore was whitened, and the government received tax of Tk 1,368 crore.

5.4.2 Repeated Tax Amnesty Programs

As observed throughout this chapter, tax amnesty is allowed as a part of tax reform to raise government revenue and broaden the tax net. However, it does not seem to work properly in Bangladesh. In Bangladesh from 1971 to 2013, tax amnesty has been allowed 18 times. However, the experience of tax amnesty programs does not support the aims of the program. Although the amount of black money is appalling, less money has entered the government treasury through the amnesty program. During the last 40 years, Tk 1,805.01 crore has been whitened, while tax of Tk 230.41 crore has been collected under several tax amnesty programs. This is only a fragment of the estimated amount of black money in the country.

The taxpayers of Bangladesh do not like the idea of repeated tax amnesty programs by the government, with tax amnesty considered an awful system, and economists and members of civil society continuously opposing the amnesty. The trend of allowing tax amnesty programs is more frequent just before a national election. It is argued that only a handful of people have benefited from the tax amnesty program, and that it violates the law and is disrespectful to the people, which is unacceptable. The program has failed to serve any national interest—rather, tax amnesty in Bangladesh

highlights the inability of the government to tackle the black economy, and presents an opportunity to whiten black money.818

The first tax amnesty program was announced in 1975. The *Martial Law Order No. 6* allowed people to declare any undeclared income until 30 June 1976. However, this period was extended into the 1977 to 1978 financial year. The amnesty was again offered during the 1981 to 1982 fiscal year; however, no positive responses were received by the government. During the 1988 to 1989 fiscal year, Tk 250 crore was whitened and tax was collected at Tk 25 crore. In the following fiscal year, Tk 400 crore was whitened and the government received tax of Tk 40 crore. After the fall of General Ershad’s regime, the Bangladesh Nationalist Party (BNP) gained power through popular vote. The then finance minister, Saifur Rahman, said that he would not allow any tax amnesty. Thus, no amnesty occurred during the five-year period of the BNP government. In 1996, the Awami League government came to power and began allowing tax amnesty at different times. During the fiscal year of 1996 to 1997, the government passed a law that if money is invested in new industries. The amnesty continued until the 2000 to 2001 fiscal years, but few people took advantage of it. During the 2000 to 2001 fiscal year, provision was made to whiten money by paying 10 per cent tax on undeclared income. Tk 1,000 crore was whitened at that time, and revenue of Tk 100 crore was collected under the scheme.

After political turmoil at the end of the BNP government, the military-backed caretaker government came to power in 2007, declared a war against corruption and vowed to punish all corrupt people and tax evaders. A state of emergency was declared. This caretaker government adopted a new way to offer tax amnesty. It stated that undeclared income could be shown on income tax returns, and this would be accepted without question if a tax of seven per cent was paid. At that time, 32,558 people declared income in their returns who had not previously declared. As a result, Tk 3,775 crore was declared, and the government received revenue of Tk 678.43 crore.

After the caretaker government, the Awami League party again came to power and, despite widespread criticism, allowed tax amnesty in its first year, during which 1,923 people whitened black money for a total of Tk 922.98 crore. This government remains

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818 Gani, above n 394, 26.
in power and continues allowing tax amnesty. In the fiscal year of 2012 to 2013, the
government again made provisions for tax amnesty. This created resentment among
civil society and honest taxpayers. However, the finance minister defended provisions
for legalising undisclosed money in the proposed budget by stating that it generates
investment and prevents cash leaving the country.819 Muhith stated that the amount of
undisclosed money in the economy is huge—between 42 and 82 per cent of the
country’s GDP. He stated about the proposed tax amnesty:

We have given scope to bring the undisclosed money to the market because
we want the undisclosed money invested in the economy. We want to utilise
the money. We kept provision for penalty for this scope.820

According to the amnesty scheme, individuals can legalise their undisclosed money
with a 10 per cent fine, and then must pay regular tax. Transparency International
Bangladesh (TIB) has termed the proposed tax amnesty scheme to ‘whiten black
money’ as unconstitutional, immoral and a violation of Article 20(2) of the
constitution. As such, it has demanded its immediate withdrawal.821 Article 20(2) of
the constitution states that:

the State shall endeavour to create conditions in which, as a general principle,
persons shall not be able to enjoy unearned incomes, and in which human
labour in every form, intellectual and physical, shall become a fuller
expression of creative endeavour and of the human personality.

Tax amnesty creates a condition where tax evaders can enjoy the benefit of reduced
tax, thereby making this saved tax equivalent to unearned income. Clearly, this issue
raises questions regarding the constitutional validity of the tax amnesty schemes.822
The following table presents an overview of black money whitening under the tax
amnesty schemes conducted at different times by the Bangladesh NBR.823

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819 ‘Black Money for Investment’, *The Daily Star* (online), 9 June 2012
820 Ibid.
821 ‘TIB Urges Govt to Drop Black Money Whitening Option’, *The Financial Express* (online), 9 June
822 ‘Money Whitening Scope to Legitimise Corruption’, *The Daily Star* (online), 11 September 2011
Table 5.1: Black Money Whitening under Tax Amnesty Schemes over the Years

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Disclosed Amount (in Bangladesh Tk Crore)</th>
<th>Amount of Revenue Collected (in Bangladesh Tk Crore)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976–1977</td>
<td>70</td>
<td>10</td>
</tr>
<tr>
<td>1987–1988</td>
<td>200</td>
<td>40</td>
</tr>
<tr>
<td>1988–1989</td>
<td>250</td>
<td>25</td>
</tr>
<tr>
<td>1989–1990</td>
<td>400</td>
<td>40</td>
</tr>
<tr>
<td>2000–2001</td>
<td>1,000</td>
<td>100</td>
</tr>
<tr>
<td>2002–2005</td>
<td>1,757</td>
<td>No tax</td>
</tr>
<tr>
<td>2005–2006</td>
<td>4,603</td>
<td>345</td>
</tr>
<tr>
<td>2006–2007</td>
<td>3,775</td>
<td>687.43</td>
</tr>
<tr>
<td>2007–2008</td>
<td>800.03</td>
<td>80.03</td>
</tr>
<tr>
<td>2008–2009</td>
<td>70.87</td>
<td>10.08</td>
</tr>
<tr>
<td>2009–2010</td>
<td>923</td>
<td>121</td>
</tr>
</tbody>
</table>

Source: NBR Bangladesh

The above table reveals that revenue generation through amnesty programs is not particularly high, which gives enough reason to go for amnesty programs in Bangladesh. The percentage of income tax collected as a result of tax amnesty compared to the overall collection in the concerned financial years is not satisfactory—to some extent, it can be said to have had no effect. The following table demonstrates the low effect of tax amnesty on overall revenue collection.

Table 5.2: Collection through Tax Amnesty Program versus Total Collection

<table>
<thead>
<tr>
<th>Financial Year</th>
<th>Total Income Tax Collection (in Tk Crore)</th>
<th>Collection of Tax through Tax Amnesty Program (in Tk Crore)</th>
<th>Percentage of Amnesty Tax of Total Income Tax Collection</th>
</tr>
</thead>
<tbody>
<tr>
<td>1976–1977</td>
<td>114.64</td>
<td>10</td>
<td>8.72</td>
</tr>
<tr>
<td>1987–1988</td>
<td>664.29</td>
<td>40</td>
<td>6.02</td>
</tr>
<tr>
<td>1988–1989</td>
<td>705.93</td>
<td>25</td>
<td>3.54</td>
</tr>
<tr>
<td>1989–1990</td>
<td>782.24</td>
<td>40</td>
<td>5.11</td>
</tr>
<tr>
<td>2000–2001</td>
<td>3,500.82</td>
<td>100</td>
<td>2.85</td>
</tr>
<tr>
<td>2002–2005</td>
<td>14,520.00</td>
<td>No tax</td>
<td>0.00</td>
</tr>
<tr>
<td>2005–2006</td>
<td>7,162.01</td>
<td>345</td>
<td>4.81</td>
</tr>
<tr>
<td>2006–2007</td>
<td>8,721.24</td>
<td>687.43</td>
<td>7.88</td>
</tr>
<tr>
<td>2007–2008</td>
<td>11,744.66</td>
<td>800.03</td>
<td>6.81</td>
</tr>
<tr>
<td>2008–2009</td>
<td>13,857.74</td>
<td>100.08</td>
<td>0.72</td>
</tr>
<tr>
<td>2009–2010</td>
<td>17,042.28</td>
<td>121</td>
<td>0.70</td>
</tr>
</tbody>
</table>

Source: NBR Bangladesh

It is observed that the tax on undeclared income declared under the tax amnesty programs of the NBR is negligible when compared to the overall collection of income tax. It is to be noted that data regarding black money whitening in Bangladesh are not readily available, and there are no significant studies in this respect. However, considering the volume of collected income tax in different years and the percentage of amnesty tax, it can be deduced that the revenue effect of tax amnesty in Bangladesh
is very limited—amnesty seems to have failed to generate revenue to the expected level. In addition, compared to the size of the black economy in Bangladesh, the total amount of amnesty tax of Tk 1,368 crore is negligible. According to Alim, conducting tax amnesty and asking people to declare black money appears to be a futile exercise that offers little revenue. Rampant corruption, worsening law and order, the use of money and muscle in elections, and the rise of criminality in society are all related to black money. Alim argues:

The governments in Bangladesh have so far generally failed to put the ‘black money whitening’ effort to any good use. The government should not any more run after this chimera. It should instead show zero tolerance to undisclosed money and apply the law more strictly on sources of black money.

It is also argued that amnesty fosters the black economy and criminalises politics. Although data regarding the participants in amnesty programs are not available, it can be seen that the tax net expansion effect is not very positive or significant. This study was able to collect partial data on the effect of an amnesty program in a particular tax zone in Dhaka—Zone 4. In that tax zone in the 2005 to 2006 financial year, 818 taxpayers participated in the amnesty program. In 2006 to 2007, 2,461 participated, and in 2008 to 2009, only 138 participated. Nationally, in 2007 to 2008, 16,664 taxpayers participated, while in 2008 to 2009, 14,254 taxpayers participated. These statistics, while incomplete, present a picture of the limited effect of tax amnesty on expanding the tax net.

5.4.3 Political Dimension of Tax Amnesty in Bangladesh

It is acknowledged that tax amnesty is unethical, yet it yields to political motives to whiten the black money of politicians. Tax amnesty is conducted in Bangladesh on political grounds to enable corrupt politicians and businesspeople with black money.

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826 Alim, above n 824.
827 Ibid.
The government admits that tax amnesty in Bangladesh is a compromise or surrender to politics. Dewan states, ‘Successive governments dared not to enforce the existing laws and regulations because it would hurt their own “black people”’.831 These people may try to undermine the government, while crippling the economy. Thus, every government has flirted with whitening black money at a nominal tax rate that is well below the statutory rate applicable to honest taxpaying citizens, thereby perpetuating the breeding of black money and a parallel economy driven by corrupt people.832 If black money holders were to whiten the money on their own, they could be charged with money laundering.833 The TIB states that this is an example of political bankruptcy, and the helpless surrender of the government to the immoral pressure of black money holders. The government justified the tax amnesty scheme allowed in the 2012 to 2013 budget on the grounds that the country held around 42 to 82 per cent of black money (US$110 billion), and that this huge amount must be brought into the investment and tax network. With that goal, the government decided to allow tax amnesty to taxpayers to whiten black money with 10 per cent tax on the money declared.834

Different interest groups—especially political leaders and businesspeople—pressure the government for amnesty to whiten black money.835 They may do so for a number of reasons. For example, they may have a significant amount of black money that they attained via corruption, and now wish to declare the money to invest it in business. The present Awami League government approved six commercial banks that were owned by either politicians or close allies of the ruling parties. This decision was not unanimously welcomed by economists and commentators across the country. While politicians owning large shares of banks are not a new phenomenon in this country, this time, the political involvement was so conspicuous that it created repercussions. The media and general public who are critical of the decision state that the authorities gave in to political pressure and compromised their principles.836

832 Ibid.
835 Zahid, above n 816.
approving these six private commercial banks, the government is planning to issue licenses for around 10 new non-bank financial institutions to operate in the country. This decision is also criticised by financial experts and economists, who state that these licenses were given for political reasons, and that there is no need for new banks, given the size of the country’s economy. Amnesty seems to be an art of compromise by the democratic government of Bangladesh, which is acknowledged by the finance minister himself. The government compromises with black money and allows amnesty based on political motivations.

Given that tax amnesty remains a popular revenue gathering tool by countries around the world, there is nothing inherently wrong with Bangladesh offering amnesty; however, there are some preconditions of a successful amnesty program. Primarily, tax amnesty should not be frequent. In addition, a survey of OECD countries divulged that most compliance strategies involve tax amnesty programs with varied conditions and tax rates. Their cause of success was identified to be broad advertising via the media and revenue department’s website, and the involvement of financial institutions in the process. This is discussed in greater detail in the following section.

5.4.4 Preconditions of Successful Tax Amnesty Programs

For a successful tax amnesty program in Bangladesh, the following conditions should be considered by the revenue administration:

1. Tax amnesty, whether domestic or offshore, should not be a repeated event.
2. When an amnesty program is conducted, it must be widely advertised in the media and on the website of the revenue department. Financial institutions should be involved in the process because these institutions, such as private banks, are an important actor in the process of money laundering.
3. The government must show its political commitment to the notion that, once the amnesty period is over, harsh enforcement measures will be taken against detected tax evaders who failed to take advantage of the tax amnesty.

840 Ibid.
4. The government should undertake structural change to remove fundamental economic problems that contribute to tax evasion.

5. The tax rate should be reduced to encourage taxpayers to voluntarily comply.

6. Special investment bonds can be issued, and investment in these bonds should be accepted without question by the revenue department.

7. The corruption problem in the tax department must be addressed. Taxpayers evade tax in collusion with tax officials by giving bribes in cash or in kind. If they can remain untapped and undetected without paying tax at all, they will not participate in the amnesty program.


5.4.5 Tax Amnesty on Offshore Assets

The current world economy has observed a surge of tax amnesty on undisclosed offshore income offered by governments of different developed countries, such as the US, the UK, Australia and Italy. The money held by citizens in foreign banks is black and untaxed money. As aforementioned, the remarkable success of offshore tax amnesty in the US has encouraged the IRS to conduct amnesty for the third time in 2012. In addition, such amnesty has also been a huge success in Western European countries, such as Italy and the UK.841

Encouraged by this, Spain has also announced an offshore amnesty program. The UK and Liechtenstein launched the Liechtenstein Disclosure Facility in 2009, and, due to its huge success, extended it until 5 April 2016. HM Revenue and Customs initially expected to recover one billion pounds, but has since revised its estimate to over three times this figure. Meanwhile, an Italian tax amnesty launched in 2009 has yielded over 80 billion euros.842 Portugal has also launched a similar amnesty program to recoup tax from citizens who keep money in foreign accounts. This is Portugal’s third amnesty, announced in 2012.843

841 ‘A Spanish Offshore Tax Amnesty Will Have to be Very Lenient to Encourage Uptake’, Datamonitor (online), 4 April 2012 <www.datamonitor.com/.../a_spanish_offshore_tax_amnesty_will_have_t>.

842 Ibid.

Now is the right time for Bangladesh to declare amnesty on the money and assets held by Bangladeshi citizens in foreign jurisdictions. While exact statistics are not available on the volume of such assets held by Bangladeshi nationals, it is assumed that a huge quantity of money is syphoned away from Bangladesh every year. According to the NBR’s estimate, every year, Tk 2,000 crore exits Bangladesh. Another estimate states that Tk 1,400 crore are syphoned away from Bangladesh each year. The political circle is involved in the process of sending money out of the country. The money goes out in the first and last days of the government and a vicious political nexus could be behind this capital flight. The 2012 Global Financial Integrity report reveals that a total of US$14.059 billion had been taken away from Bangladesh in the 10 years since 2001, through trade mis-invoicing, corruption, bribery and tax evasion. The NBR states that this occurs through back-to-back letters of credit definition; people buying second homes in foreign countries, such as Malaysia; and hundis. One recent example of money laundering is the case unearthed by the Bangladesh Bank in which one leading business institution in Bangladesh (Destiny Multipurpose Cooperative Society Ltd) laundered money and took an amount of Tk 70 crore out of the country via one of its foreign directors. It has been alleged that a number of corrupt suspects transferred around Tk 20,000 crore via illegal channels to 12 countries, including Malaysia, Thailand, Switzerland, Singapore, the Philippines and Hong Kong.

The government finds it difficult to retrieve this syphoned money from foreign countries due to the lengthy legal process involved. Bangladesh does not have the necessary bilateral pacts and legal framework to obtain cooperation from the countries to which money has been syphoned. Bangladesh has an Anti-Money Laundering Act 2012; however, this does not appear to be functioning successfully. Under pressure

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from the UN, Bangladesh first enacted an anti-money laundering Act in 2002. This Act made provision for a maximum of 12 years jail term for this crime in order to strengthen efforts to retrieve syphoned money from abroad. The law also provides for a minimum of four years’ imprisonment and a fine of Tk 1 million or twice the amount.851 In addition to the anti-money laundering law, the government committed to mutual legal assistance with the US, Singapore, the UK, the United Arab Emirates and Malaysia to curb money laundering. In this regard, the government has also signed a memorandum of understanding with 12 countries, including the US, Singapore, the UK, Malaysia, the Philippines, Cambodia, Sri Lanka, Afghanistan and Nepal.852 This gives a picture of the government’s efforts to control money laundering in Bangladesh. However, the legal process is usually lengthy and depends on mutual and rapid assistance from the involved countries. This is sometimes difficult, time consuming and costly. Thus, alongside the different anti-money laundering laws, the government should consider conducting tax amnesty programs in the name of a voluntary disclosure regime, such as in Australia, the US, India and other countries. Such amnesty for a limited time might help the government retrieve money from abroad and gain a significant amount of tax. The experiences from foreign jurisdictions support the idea of conducting an offshore amnesty program in Bangladesh.

To achieve this, Bangladesh can follow the legal mechanisms used in other countries, particularly OECD countries. For example, Germany, the UK and Austria are about to ratify ‘Rubik’ agreements with Switzerland to impose a one-off tax on all deposits of citizens with accounts in Swiss banks. This deal provides that Swiss authorities will deduct 40 per cent from all Swiss accounts of the citizens of these countries, which will be reimbursed to the governments of the respective countries. Further, Switzerland will tax dividends every year with 22 per cent, which will be reimbursed to the countries concerned.853 Currently, Belgium is also considering signing this agreement with Switzerland.854 In 2012, the Indian tax department declared amnesty for more than 100 wealthy citizens who evaded taxes by hiding funds in Switzerland’s HSBC branch. No criminal proceedings will be started against them, and no penalty will be

852 Acharjee, above n 849.
imposed, if the money is brought back into the country and has tax paid on it.855 Bangladesh should strongly consider implementing similar agreements with the countries where money has been syphoned off by Bangladeshi citizens. The sooner these programs are conducted, the more quickly the tax situation will improve in favour of government revenue.

5.5 Conclusion

Tax amnesty is a tool used by tax administrations around the world to generate quick revenue and improve voluntary compliance, with the aim of curbing the problem of tax evasion. As stated in this paper, amnesty highlights the rampant tax evasion in an economy. Although tax amnesty is a popular program with a positive effect on national revenue collection, it also has a negative effect in the long term. It distorts tax legislation, affects tax equity, evidences the lack of capacity or resources of the tax administration to enforce tax legislation, causes honest taxpayers to perceive the tax system as unfair and subsequently resort to tax evasion, and encourages corruption in the tax department. At present, places such as Australia, the US and other OECD countries are conducting offshore amnesty programs, rather than domestic programs.

In addition, tax amnesty programs have done little to improve voluntary compliance. In Bangladesh, amnesty programs have been conducted repeatedly over the years, but have produced limited success in terms of revenue generation, improving compliance and curbing the problem of the black economy. Tax amnesty programs in Bangladesh seem to be conducted for political motives, rather than in consideration of revenue. To improve the compliance culture in Bangladesh, while also occasionally conducting an amnesty program, the government should create other tools to enhance the national revenue and increase the tax roll. Tax amnesty in Bangladesh has now become an anticipated event because it is repeated at regular intervals. This repetition encourages corrupt people to indulge in further corruption by hoarding black money, and ultimately whitening it through amnesty programs.

Chapter 6: Improving Income Tax Compliance with a TIRS—Lessons from Foreign Jurisdictions

6.1 Introduction

Taxes are endogenous with state governance. State building is viewed as a process to improve capacity, institutions and government legitimacy in terms of state–society relationships. Taxation remains vital to improving state capacity, which subsequently contributes to improving the state–citizen relationship. Thus, the government’s rule is accompanied by the system of raising tax, which is then accompanied by complaints from citizens, thereby giving rise to the perennial problem of compliance for tax administrations around the world. Tax is as old as civilisation, and so is tax evasion. This compliance problem remains more acute in developing countries. While developed countries have been successful in improving their tax administrations, developing countries face a formidable challenge to reform theirs. As a developing country, Bangladesh is trying to overcome this problem.

The purpose of the chapter is to discuss the effectiveness of the information reporting system to ensure voluntary compliance in the field of income tax in developing countries—particularly Bangladesh. It discusses how developed countries such as Australia, the US, Denmark, Sweden and New Zealand are using the information reporting system to tackle tax evasion. It also discusses why and how Bangladesh can use this to improve tax compliance, as well as other relevant issues. The TIRS is suggested as one of the tools to curb the problem of noncompliance in Bangladesh.

856 OECD, above n 179.
To improve the poor state of income tax compliance, the ITDB is undertaking various reform programs and innovative steps, as discussed earlier in this thesis. However, while the ITDB is using a variety of tools to improve income tax compliance, a particular legal enforcement tool needs special attention—the TIRS. This particular tool needs special attention because it is an effective legal tool to improve compliance and ITDB does not a strong TIRS. The TIRS is an effective tool that has been proven to substantially improve tax compliance in different countries. The US, Australia, Denmark, Sweden and New Zealand all use this system effectively. There are taxpayers who tend to cheat if they have the opportunity to do so; thus, third-party reporting substantially reduces the scope of non-reporting or underreporting. Kleven et al. find that the compliance rate is high when income is subject to third-party reporting, rather than self-reporting. 860 In the US, underreporting is very low among income that is subject to third-party reporting. Thus, this section of this thesis suggests that, by using the experience of foreign jurisdictions, Bangladesh can substantially improve its income tax compliance rate with a strong TIRS.

6.2 Meaning of TIRS

Third-party information reporting is a primary tax enforcement tool. 861 It is a legislated requirement for organisations to report wage and non-wage payments made during their trade or business to the income tax authority. This can be standalone reporting, or coupled with tax withholding provisions. 862 Brooks states that the TIRS is one of the most effective tools to increase voluntary compliance. 863 Tax information reporting reduces the opportunity to cheat, while compulsory tax withholding and information reporting both improve tax compliance and reduce the tax gap. 864 They reduce tax evasion and help taxpayers comply voluntarily. 865 Tax enforcement through an information reporting system is less costly and much more effective than tax audits for detecting unreported income. Taxpayers’ actual income is made evident, which makes any attempt to conceal income futile, and taxpayers will subsequently avoid tax

860 Kleven et al, above n 117, 670.
861 Heiberg, above n 115, 1689.
862 Highfield, above n 116, 10.
863 Brooks, above n 133, 22.
evasion.  

Kreiner observes that ‘[a]ttempts at declaring less income than 3rd party reported income is extremely rare’.  

6.3 Effectiveness of the TIRS

Third-party information reporting can be used as a way to unearth taxpayers’ true income. In most cases, the tax authority either cannot obtain taxpayers’ information, or receives it at a later stage, which delays any timely action by the tax administration. Lederman identifies this as a problem of asymmetric information, which creates an easy avenue for tax evasion. An information reporting system can be a solution to this type of information problem. An information reporting system works in two ways. First, it gives taxation officers an opportunity to verify returns, thereby making noncompliance easy to detect. Second, once taxpayers know that the government has information about their income, it is less likely that taxpayers will be able to cheat.

A third-party reporting system can also help tax authorities minimise the high enforcement costs involved in traditional enforcement tools. It can be beyond the ambit of withholding provisions in a way that people other than bound by tax law can furnish any information regarding any kind of payment received by any taxpayer that is not reported in the tax returns. Again, this information return system is effective in two ways. First, in some countries, the information gathered from third parties is sent to taxpayers before they file their returns, which means they cannot be forgetful when reporting income. Second, since the tax department has information about taxpayers’ income, taxpayers are aware that if they do not report their income in their tax return, they might be selected for audit. In that case, the taxpayer will have to face legal complexities, including penalties. Taxpayers alone cannot perform intricate financial transactions—there are various people and institutions involved. As a result, the

866 Morse, above n 126, 483, 485.
867 Kreiner, above n 120.
869 Lederman, above n 121, 1735.
870 Bowels, above n 649, 67.
transactions reported by the taxpayers and recorded by the involved institutions must be analysed and examined to determine the correct amount of income.873

6.4 Information Return System: International Experience

There is research evidence that information reporting systems help achieve a very high level of voluntary compliance.874 The same cannot be said for categories of income that are not subject to withholding and/or information reporting obligations.875 Thus, it is pertinent to discuss the positive experiences of selected countries that have successfully used the information return regime to combat tax evasion.

6.4.1 Income Tax Provisions for Filing an Annual Information Return in India

The Indian income tax law contains provisions for information reporting. However, the law regarding information reporting was not extensive before 2004. In 2003, Section 285BA was inserted in the *Income Tax Act 1961*, which provided for the submission of an annual information return (AIR). In 2004, Section 285BA was substituted and extensive provision for filing an AIR was made, with the substituted Section 285BA covering high-value financial transactions. An AIR for high-value financial transactions is required to be furnished by specified people for specified transactions that are registered or recorded during the financial year. In effect, it identifies the entities that function in the economy, such as banks, financial institutions, companies, motor vehicle registering authorities, land and other property registering authorities, and other such authorities with whom taxpayers may have transactions with financial implications. The specific nature of information to be collated by them to report to the tax administration is identified in the Act. The following table lists the specific transactions about which information must be supplied to the tax administration.

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874 Murphy, above n 868. From the income tax perspective the countries selected for mention below are especially relevant, particularly India as a country neighbouring Bangladesh, that shares a common legal system and a common tax statute from 1922. Lack of space precludes discussion of other countries.

875 OECD, above n 125, 12.
Since its introduction in 2003 to 2004, the AIR system has yielded spectacular results. Income tax collection has increased by 370 per cent and the number of taxpayers has increased by 15.50 per cent.876 The AIR system in India has reduced the time needed for audit and assessment, and taxpayers’ grievances have been addressed. The system is cost effective, easy and user-friendly. The Indian AIR system is considered a successful legal regime that has created substantial improvement in voluntary income tax compliance.877

6.4.2 The IRS and Information Reporting System

Since its inception in the wake of the civil war in the US,878 the IRS has persistently sought to collect revenue for the government treasury. The vast majority of revenue comes from taxpayers who voluntarily report and pay the taxes that they owe. The IRS estimates an overall voluntary compliance rate of 84 per cent.879 However, despite the

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876 Sharma, above n 869.
encouraging picture of compliance, the tax gap is alarming\textsuperscript{880} and one of the biggest contributors to this tax gap is underreporting.\textsuperscript{881} Thus, the IRS has taken comprehensive measures to reduce opportunities for tax evasion. These measures include strengthening reporting requirements for third parties and expanding IRS access to reliable data from third parties.\textsuperscript{882} In the IRS, reliable third-party information is considered pivotal to reducing tax evasion.\textsuperscript{883} In the US, one-third of the tax gap arises from unreported transactions.\textsuperscript{884} To address this problem, experts suggest expanding the list of transactions that must be reported to the IRS.\textsuperscript{885} It is thought tax revenues will jump if every taxable transaction becomes subject to reporting requirements.\textsuperscript{886}

Thus, the IRS is successfully using a tax withholding and reporting system to reduce the tax gap.\textsuperscript{887} Statistics published by the IRS in 2006 reveal that, every year, the IRS receives approximately 1.5 billion information returns from third parties.\textsuperscript{888} However, it still fails to obtain information regarding self-employment business income, which is a major source of the tax gap.\textsuperscript{889} There are currently more than 30 types of tax information returns required by the IRS, which provide the primary cross-checking measure the IRS uses to verify the accuracy of the tax returns filed by individual taxpayers. When tax returns are subject to both third-party information reporting and withholding, the compliance rate is very high. For example, salary and wages are subject to third-party reporting and withholding, and misreporting in this sector is only at one per cent.\textsuperscript{890}

\footnotesize
\textsuperscript{881} Afield, above n 150, 60.
\textsuperscript{885} Ibid.
\textsuperscript{886} Ibid.
\textsuperscript{887} Bickley, above n 864.
\textsuperscript{888} US Department of the Treasury, above n 876, 13.
\textsuperscript{889} Striz, above n 883, 1069–1070.
\textsuperscript{890} Afield, above n 150, 66.
The information reporting regime started in the US with the *Current Tax Payment Act 1943*, which established withholding and quarterly estimated tax payments.\(^{891}\) This Act established the broad-based income tax withholding system that has continued to the current day.\(^{892}\) The information return regime is used by the IRS for two main administrative purposes. First, it is used to encourage voluntary correct reporting of income. Second, it is used to assist in the detection of unreported income (including by non-filers) via matching reports received with tax records. Most information returns submitted to the IRS are matched to tax returns. According to the IRS, about 90 per cent of all received information returns are eligible to be used for matching purposes.\(^{893}\) Discrepancies are assigned to the Automated Under Reporter system. Technicians review and match the filed tax returns to the information submitted by payers. For those selected for audit, unresolved discrepancies are made known to the taxpayer through the issuance of a notice detailing the income type, and explaining why the agency feels the income is subject to reporting. In instances where there is no income tax return to match to the information returns, the agency files a return on behalf of the taxpayer and issues a notice detailing the income type. In addition, the Combined Annual Wage Reporting program matches reported withholding between information returns and employment tax returns to detect business non-filing or underreporting. Thus, a successful information network operates in the IRS, which plays a major role in improving compliance both in the field of income tax and in other areas of taxes.

### 6.4.2.1 The IRS and a Successful TIRS

Third-party information reporting remains a powerful tool to increase and maintain voluntary tax compliance in the US.\(^{894}\) The following chart shows the effect of information reporting on the compliance rate in the US.\(^{895}\)

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The graph shows individual income tax underreporting gap and net misreporting percentage, by ‘visibility category’. In Figure 6.1, the dark bars represent the underreporting gap in billions of dollars, while the light bars show the net misreporting percentage, defined as the net misreported amount of income as a percentage of the true amount).

The IRS’s 2011 data book shows that, in the previous year, the IRS received over 1.8 billion information returns that reported income from employers, financial institutions, third-party payers, and state and federal governments. 896 In the 2011 financial year, under its Automated Substitute for Return Program, the IRS closed almost 1.4 million cases in which a tax return delinquency was identified for non-filers, resulting in almost US$14.4 billion in additional assessments. 897 However, the IRS still lacks reliable information on certain types of income—most importantly, income of small businesses and the self-employed. 898

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897 Ibid, 20.
898 Striz, above n 883, 1069.
Prescribed Payment Categories for Withholding and/or Reporting Regimes

Income or transactions that are subject to the information return regime include wages and investment incomes, agricultural payments, allocated tips, barter exchange incomes, brokers’ transactions, capital gains distributions, non-employee compensation and fees, fishing boat crew member proceeds, fish purchases for cash, prescribed gambling winnings, real estate transactions, rents, and sales of securities.

**6.4.2.2 FATCA: The New Information Reporting Regime of the IRS**

In an attempt to widen the net of the reporting system, the IRS introduced FATCA. This new law requires foreign financial institutions (FFIs) that are investing in the US to report information regarding the accounts of any US citizens held in their institutions. It requires reporting of worldwide information for US taxpayers. This law aims to curb offshore tax evasion by US citizens. It is part of Chapter 4 of the *IRS Code*. According to this Act, FFIs will have to enter into agreements to comply with FATCA. The FFIs entering into agreements under the new law consent *inter alia* to withhold 30 per cent FATCA withholding tax on any pass-through payment (referred to as a pass-through payment in FATCA) to a recalcitrant account holder or another FFI that has elected not to participate in FATCA (a noncompliant FFI). FATCA requires FFIs to look through the shell entities to detect whether a US citizen is the beneficial owner.\(^{899}\) FATCA became law in March 2010, and forms an important strategy to combat offshore tax evasion,\(^{900}\) with effect from 1 January 2013.\(^{901}\)

Other newly introduced important reporting regimes include the new cost-basis reporting introduced in 2011, following recommendations of scholars,\(^{902}\) and the IRS merchant card transaction reporting 6050w. The new cost-basis reporting regime makes tax preparation easier, can help give clients more information about their total

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tax picture, and minimises year-end surprises. The law regarding merchant card transaction reporting was enacted with a view to further reducing the estimated US$345 billion tax gap from the business sector by providing additional information to the IRS on aggregate credit card transactions.

6.4.3 The ATO and the Information Reporting Regime

Australia’s tax system is heavily dependent on personal income tax, which contributes around 47 per cent of all government tax revenue. Consequently, Australia needs to achieve and maintain a high degree of taxpayer compliance to facilitate efficient fiscal management. Thus, the compliance position in Australia is still considered unsatisfactory, and tax collection is low compared to other OECD countries. Australia faces the formidable challenge of taxing its cash economy. However, this problem is not particular to Australia, with cash economies comprising the largest part of the world’s total economy. In Australia, it is recognised that the cash economy is not only living, but growing, with a rate of 14.1 per cent of the GDP. According to the Australian Cash Economy Taskforce, the existence and nature of the cash economy in Australia leads to tax evasion. The cash economy challenges governance by reducing the legitimacy of the taxation system. However, one of the major problems of taxing the cash economy is the invisibility of financial transactions performed under the cash economy system, whereas this invisibility of financial transactions is vital for ensuring voluntary compliance.

905 David Knox, ‘Statement of Reform Priorities’ (2011) Tax Forum 4
906 Saul Eslake, Australia’s Tax Reform Challenge (2011) 3
In recognising the importance of curbing the cash economy, Australia has adopted several measures. Based on the Cash Economy Taskforce Report of 1997 and in response to the grievances of the Australian larger community towards the taxation office,\(^{910}\) the ATO commenced a new tax system on 1 July 2000. Before introducing this new system, the ATO employed strategies such as a record keeping program, serious evasion program, prosecution investigation program and special investigations program. They also required cash dealer reporting requirements under the *Financial Transaction Reports Act 1988*, a Prescribed Payments System and a Reportable Payments System, among others. However, these initiatives were not considered sufficient to curb the problem of tax noncompliance in Australia.\(^{911}\) Based on this, one of the major recommendations of the Cash Economy Taskforce was to strengthen the information reporting regime.

**6.4.3.1 Current Australian Tax Information Reporting Regime**

In Australia, compliance with personal income tax is greatly facilitated by operation of tax withholding and information reporting obligations. Although not measured scientifically by the ATO, the difference in rates of compliance between incomes subject to withholding and information reporting requirements and incomes that are not is likely to be significant, based on the results of ATO compliance programs and observations from compliance-related research by other revenue bodies (such as in Denmark, Sweden, the UK and the US). However, as Highfield observes, compared to other developed and OECD countries, the use of an information reporting system in Australia is not extensive.\(^{912}\) The present income tax law regarding third-party information reporting does not cover a minimum of 30 to 35 per cent of the total income of individual taxpayers.\(^{913}\) As a result, in 2009, there was a tax gap of around A$32 billion.\(^{914}\) The below table presents information on the withholding and information reporting obligations for Australia’s personal income taxation, and indicates the gaps in coverage.

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\(^{912}\) Highfield, above n 872, 2.

\(^{913}\) Ibid.

\(^{914}\) Ibid, 17.
Table 6.2: Personal Income Tax—Use of Withholding and Information Reporting Obligations

<table>
<thead>
<tr>
<th>Income Category</th>
<th>Withholding Requirement</th>
<th>Reporting Requirement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Employment</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Government benefits</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Pensions</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Interest</td>
<td>Generally not—only for TFN non-quotation</td>
<td>Yes</td>
</tr>
<tr>
<td>Dividends</td>
<td>Generally not—only for TFN non-quotation</td>
<td>Yes</td>
</tr>
<tr>
<td>Capital gains</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Rental properties</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Self-employed/business</td>
<td>Generally not—only for ABN non-quotation, which is rare</td>
<td>Generally not—only for ABN non-quotation, which is rare</td>
</tr>
</tbody>
</table>

Note: TFN = Tax File Number and ABN = Australian Business Number.

(Source: Australian Government Tax Forum)

This table indicates that there are gaps in the legislative framework. The legislation does not cover all items in the withholding or reporting system, and around 40 per cent of assessable personal income is not subject to systematic reporting to the ATO. The data the ATO receives through the reporting system are used to provide pre-filling information to taxpayers and their agents to help them correctly complete their income tax return, identify discrepancies between the information reported by taxpayers in their tax returns against details reported by third parties, identify particular noncompliant behaviour in selected target groups, conduct risk assessments, and so forth. More than 600 million transactions are reported to the ATO annually. In the 2010 to 2011 fiscal years, through using the data received from information reporting, matching activity was facilitated and revenue rose substantially.
6.4.3.2 Information Reporting Requirements for Payment to Contractors of Building and Construction Industry

One of the major fields of tax noncompliance is that of contract work.\textsuperscript{918} Although about one million independent contractors currently operate throughout Australia,\textsuperscript{919} there is a high level of noncompliance by contractors in the building and construction industries, particularly in relation to lodging correct reporting and payment.\textsuperscript{920} Of those who lodge a tax return, 40 per cent do not lodge their activity statements on time, while 10 per cent do not lodge at all.\textsuperscript{921} To address this problem, the government has introduced a new reporting regime for building contractors to report annually all sub-contract payments to contractors providing building and construction services. The new reporting regime is currently in operation; however, it is believed that this regime will raise compliance costs for both the reporting entities\textsuperscript{922} and the government.\textsuperscript{923} Therefore, the government might face resource constraints while implementing the regime;\textsuperscript{924} however, the ATO expects to collect A$400 million per annum in the 2013 to 2014 financial years due to this reform.\textsuperscript{925}

6.4.3.3 Withholding and Reporting Requirements for Closely Held Trusts

The ATO introduced legislation requiring trustees of closely held trusts to divulge certain details about the trust’s ultimate beneficiaries and tax-preferred distributions to beneficiaries.\textsuperscript{926} From 1 July 2010, all targeted trusts must comply with the new reporting regime. If a beneficiary does not quote their Tax File Number (TFN) to the trustee before a payment is made to them, the trustee must withhold from that payment (and any future payments unless a TFN is quoted), lodge an annual TFN withholding

\textsuperscript{920} Australian Government Treasury, above n 918, 2.
\textsuperscript{923} Australian Government Treasury, above n 918, 20.
\textsuperscript{924} Ibid, 22.
\textsuperscript{925} Ibid, 27.
\textsuperscript{926} Frank Gilders et al, \textit{Understanding Taxation Law 2013} (Lexis Nexis Butterworths, 2013) 1071.
report that contains details of all payments that were subject to withholding and any withheld amounts, provide a payment summary to the beneficiary, register for ‘pay as you go’ withholding for closely held trusts, and pay any withheld amounts to the ATO.

6.4.3.4 Reporting Requirements for Investment Bodies

In Australia, investment bodies, such as companies and financial institutions, are required by law to provide the ATO with an Annual Investment Income Report (AIIR) that contains details of investment income paid to the concerned party, including quoting TFN numbers.927 A TFN is designed to trace non-disclosure of income and enable the ATO to match the details of income divulged in taxpayers’ income tax returns with details obtained from other sources. If an incorrect TFN or Australian Business Number (ABN) is supplied in the AIIR, the tax office will contact the investor, using the address supplied by the investment body, and advise them to correct their TFN or ABN with their investment body.928 Other important items covered by the reporting regime include payments by governments (all levels) for services provided, and assessable grants and payments made by governments to small businesses or self-employed taxpayers.

It is believed that there is considerable noncompliance among small businesses and self-employed taxpayers when reporting business-related income in the absence of systematic withholding and reporting mechanisms.929 Thus, it is suggested that the government should implement a comprehensive information reporting regime and expand the withholding and reporting regime in specific areas, such as payments by national and sub-national governments to businesses for goods and services.930 It is argued that this reform might cause an imbalance of costs and benefits of tax reforms and also lobbying for tax concessions by the vested corners.931

6.4.4 Information Reporting Regime in New Zealand

Income tax accounts for 70 per cent of the total tax revenue collected by the IRD in New Zealand.\(^932\) The information reporting regime is coupled with the tax withholding system. Subpart BE of the *Income Tax Act 2007* deals with tax withholding liabilities. New Zealand’s tax withholding rates vary from 15 to 33 per cent, along with monthly electronic reporting obligations.\(^933\) Withholding tax deductions are generally required from scheduler payments. Scheduler payments\(^934\) include directors’ fees; honoraria (payments to members of councils, boards, committees, societies, clubs and so forth);\(^935\) salespeople’s commissions;\(^936\) the income of primary production contractors;\(^937\) the income of contractors in the television, video and film industries; and the income of non-resident contractors.\(^938\) The payee must provide his or her TIN to the payer; otherwise, an additional 15 per cent tax is deducted from the payment.\(^939\)

The system followed by New Zealand for withholding tax provisions is called the ‘Scheduler Payment System’ and was introduced in 1979.\(^940\) A range of activities are liable for tax on scheduler payments, as follows:

- agricultural contracts for maintenance, development or other work on farming or agricultural land
- agricultural, horticultural or viticultural contracts by companies and other contractors
- apprentice jockeys or drivers
- cleaning offices, businesses, institutions or other premises (except residential)
- cleaning or laundering plants, vehicles, furniture and so forth
- commissions to insurance agents and sub-agents
- fees of salespeople, company directors and others.\(^941\)

\(^933\) OECD, above n 125, 12.
\(^935\) *Income Tax Act 2007*, sch 4, pt B.
\(^936\) Ibid, sch 4, pt G.
\(^937\) Ibid, sch 4, pt C.
\(^938\) Ibid, sch 4, pt A.
\(^939\) OECD, above n 125.
\(^940\) Inland Revenue, above n 934.
\(^941\) The *Income Tax Act 2007*, sch 4, pt A describes in detail the items covered by the withholding and reporting system.
6.4.4.1 How the Information Reporting Regime Helps the IRD

The IRD uses the reported information to unearth the income not declared by taxpayers. After receiving the information, the IRD matches it with the return submitted by the taxpayers. This matching process is considered highly effective, with over 95 per cent of reports instantly matched to select high-risk cases.942 Thus, the information regime is effective to a great extent943—it helps the tax department locate taxpayers who are not in the tax net.944 Withholding payments are separately recorded and matched to information supplied by payers through inserting separate key points in the returns.945 The risk and intelligence unit employ a data mining technique to select high-risk cases found through computer matching activity.946 Although data are not available to support the notion, it can be claimed that the tax information reporting regime in New Zealand is comprehensive and effective.947

6.4.5 Revenue Canada and the Information Reporting Regime

The CRA is the central body in Canada responsible for administering Canada’s tax system. Like any other tax administration, Canada has a strong informal economy.948 To maintain public confidence in the fairness and integrity of Canada’s tax system, the CRA is persistently seeking to combat the underground economy.949 Among many legal tools to ensure tax compliance, the CRA uses a broad-based information reporting system. There are specific legal provisions regarding the information return regime in the Income Tax Act 1985 and Income Tax Regulations. The information reporting regime in Canada has dual features. In some cases, it is coupled with the tax withholding system, yet generally it is an independent, standalone regime.

942 OECD, above n 125, 48.
944 Ibid, 48.
945 Ibid.
946 OECD, above n 125, 48.
947 Ibid.
6.4.5.1 Provisions of the Third-party Information Reporting System

The Canadian *Income Tax Act 1985* contains detailed provisions regarding the third-party information reporting system. Section 233 of the *Income Tax Act 1985* deals with submitting the information return, while other provisions deal with different types of taxpayers and payments required to be reported to the CRA. According to Section 233(1) of the *Income Tax Act 1985*, every person who is legally obliged to submit an information return and has not done so as per the income tax regulation, upon written demand from the concerned minister, must file the information return to the minister within the prescribed time.

6.4.5.2 Information Return under Section 153 of the Income Tax Act 1985

Section 153 of the *Income Tax Act 1985* deals with the payer’s liability to deduct or withhold tax at the time of paying salary, superannuation and others, and to furnish information on these payments.\footnote{Income Tax Act 1985, s 153(1).} Under Section 200(2) of the *Income Tax Regulation*, the payer must make an information return in the prescribed form in respect of such payment or benefit. Payment under this includes scholarships, fellowships or bursaries; prizes for achievement; research grants; payments by the government to obtain and keep employment; and payments made by the Canada Employment Insurance Commission or any government agency. In addition, information must be submitted regarding payment of certain investment incomes given to any Canadian resident.\footnote{Income Tax Regulation, s 201(1).}

Other areas subject to information reporting are:

- information return on behalf of a negotiator of a bearer coupon\footnote{Ibid, s 201(3).}
- a person or partnership in respect of debt or obligation\footnote{Ibid, s 201(4).}
- a person or partnership in respect of an indexed debt or obligation\footnote{Ibid, s 201(4.1).}
- a person or partnership acting as a nominee or agent of a taxpayer in respect of a debt obligation or indexed debt obligation\footnote{Ibid, s 201(4.2).}
• a return by an insurer\textsuperscript{956}
• payment in respect of a disposition or redemption of a debt obligation in bearer form\textsuperscript{957}
• information return in the case of payment to a non-resident\textsuperscript{958}
• payment to a non-resident actor\textsuperscript{959}
• return in respect of payment to a non-resident under Section 202(2) of the ITR
• information return for a contract payment reporting system (reporting only).\textsuperscript{960}

According to the CRA, if more than 50 per cent of a business’s income-earning activities involve construction, its primary source of business income is deemed to be construction.\textsuperscript{961}

Another important reporting regime is the reporting of tax avoidance transactions, which was introduced in 2013. This regime requires the submission of information return about reportable or tax avoidance transactions to the CRA. This law is already in force in the UK, the US and Québec.\textsuperscript{962} To tackle the problem of tax evasion through tax avoidance transactions, the government made the current law of information reporting regarding reportable transaction.\textsuperscript{963} A ‘reportable transaction’ under Section 237.3 of the \textit{Income Tax Act (Canada)} is an avoidance transaction, as defined in Section 145(3) of the \textit{Income Tax Act 1985}.\textsuperscript{964}

Subsection 237.1(7) of the Act makes it obligatory for the promoters of tax shelters to file an information report regarding the tax shelter, where:\textsuperscript{965}

A tax shelter is defined as any property of which it is expected, based on statements or representations made or proposed to be made in connection with the property, that the aggregate of the losses or other amounts, calculated in any of the relevant years, which a purchaser will be entitled to deduct in taxation years ending within four years of the date of acquisition

\textsuperscript{956} Ibid, s 201(5).
\textsuperscript{957} Ibid, s 201(6).
\textsuperscript{958} Ibid, s 202(1).
\textsuperscript{959} Ibid, s 202(1.1).
\textsuperscript{961} Ibid.
\textsuperscript{964} Ibid.
of the property will exceed the cost of the interest in the property (less prescribed benefits) to the purchaser.\textsuperscript{966}

6.4.5.3 Summary

Canada’s broad-based TIRS indicates two things. First, it is indicative of considerable tax evasion. Second, it shows the ability of the CRA to ensure compliance—it clearly demonstrates that the CRA has the requisite political backing to implement such a reform. Developing countries have much to learn from the CRA regarding the reform and effective implementation of a strong and comprehensive broad-based third-party TIRS.

6.4.6 Information Reporting Regime in Bangladesh

Until 2011, there was no standalone tax information reporting regime in the income tax law of Bangladesh. However, after realising the effectiveness of third-party information reporting, NBR inserted a new Section 75B in the 1984 ITO that deals with the obligation to submit an AIR by certain entities. According to the new law, the government may require any specified entity to submit an information return regarding any specific financial transaction.

Before making the separate law, there were a few provisions regarding an information reporting system combined with the law regarding withholding of taxes. The 1984 ITO contains elaborate provisions regarding withholding taxes in scheduler form. Schedule VIII and Chapter 7 of the ordinance deal with the provisions of withholding taxes. Section 75A of the 1984 ITO makes provisions to file a return of withholding tax. The section states that every company must file a quarterly return of withholding tax collected or deducted as per law to the income tax authority.

It should be noted that, before the promulgation of the 1984 ITO, the \textit{Income Tax Act 1922} was in force in Bangladesh.\textsuperscript{967} This Act also contained no provisions regarding an information return system, although it contained some provisions regarding

\footnotesize{\textsuperscript{966} Income Tax Act 1985, s 237.1(1).} \hfill \footnotesize{\textsuperscript{967} The Income Tax Act 1922 was applicable to Bangladesh until 1971. After independence, the \textit{Income Tax Act 1922} was adapted by enactment of \textit{The Bangladesh Taxation Laws (Adaptation) Order 1972} (Presidential Order).}
deduction of tax at source from income from salary and income from interest on securities.\textsuperscript{968} Section 21 of the 1922 Act provided that the authorities who paid salaries to employees must submit an annual return to the income tax officer furnishing the particulars of salary paid. No other arrangements were made in the 1922 Act regarding an information return system. In contrast, the 1984 ITO contains much broader provisions regarding withholding taxes. As of 2012, 55 items are subject to withholding tax, while very few items are subject to information reporting provision. The items subject to information reporting provision and withholding provision are salary income, interest and dividend income.

Sections 108, 109 and 110 contained in Chapter 12 of the Act deal with the provisions of law regarding the information reporting of items. According to Section 108, employees must deduct tax from their salary and submit it to the treasury, as well as providing information to the tax office. According to Section 109, every person responsible for making any payment of interest under the head ‘Interest on securities’ must furnish information to the tax officer. Section 110 requires an information return to be submitted in the prescribed form regarding payment of dividends. Sections 108, 109 and 110 are complemented by Rules 11, 20 and 21 of the \textit{Income Tax Manual Part II}, which contains further details regarding particulars to be furnished in the form containing information. The provisions of information returns appear scant. Against this backdrop, the new law was introduced.

Perusing Section 75B indicates that the law is deficient in some respects. First, the law provides that the income tax department may ask for information regarding any financial transaction when it considers necessary. Thus, it is not mandatory to ask for the information, but discretionary. This is a major weakness of the law. In comparison, the Indian law of AIR is compulsory.\textsuperscript{969} Since the Bangladesh income tax authority can use its discretion to ask for information, this power might be used inappropriately or might not be used in cases that require it. Second, the law does not specify the nature and volume of transactions, which makes its application uncertain. Section 285BA of the Indian \textit{Income Tax Act} contains specific financial transactions.\textsuperscript{970} Under Section 75B, a large transaction might not be reported by the department because of bias.

\textsuperscript{968} \textit{Income Tax Act 1922}, s 18. \textsuperscript{969} \textit{Income Tax Act 1961}, s 285BA(1). \textsuperscript{970} Ibid, s 285BA(3).
corruption and influence. In addition, the law does not define or identify the people or group of people who will be subject to furnishing information. In contrast, the Indian law specifies the entities who must submit information returns. The 1984 ITO defines the people in Section 2(46) who are bound by the law, yet Section 75B does not make clear whether this definition is applicable when furnishing an information return. Thus, the law appears faulty and might not yield the expected results in terms of attaining information about taxpayers’ true income. The law should be amended in a way that removes the unnecessary discretionary powers of tax officers. In addition, new areas must be discovered and brought within the law of the information reporting system.

6.4.6.1 Areas that Can be Brought in the Ambit of the Information Reporting System
6.4.6.1.1 Banks Paying or Receiving Interest on Deposits, Bonds and Loans

Section 53F of the 1984 ITO makes provisions of deduction of tax at source at prescribed rate from interest on the saving deposits and fixed deposits paid to taxpayers by banks and other financial institutions. It does not specify about filing an information return regarding the payment of interests and profits of share given by a bank operated on Islamic principles. This can be brought under the mandatory annual information filing provision to ascertain the true income of the assessee.

6.4.6.1.2 Building Societies and Other Holders of Mortgages

There are currently 450 registered and 350 unregistered real estate companies in Bangladesh, which sell land and apartments. These companies generate Tk 20 billion in turnover each year. The real estate sector is a booming industry in Bangladesh; however, currently, there are no information reporting obligations for real estate companies. As a result, the income tax office is in an information asymmetry situation regarding the amount of actual investments in the real estate sector. If mandatory information reporting provisions are made for real estate companies regarding

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971 Ibid, s285BA(1).
purchase of apartments and lands by taxpayers, the tax office will be able to match this information with that supplied by taxpayers in their returns.

6.4.6.1.3 Stockbrokers, Banks and Others Dealing in Shares and Unit Trusts

There are a number of commercial banks, stockbrokers’ houses and other financial institutions dealing with stock trading business on behalf of their customers. The current law provides for the deduction of tax at source at a certain percentage from the value of shares, debentures, mutual funds or securities transacted by a member of a stock exchange at the time of payment for such transaction. However, there are no specific requirements for reporting the details of payments to the clients of the stockbroker house. Thus, there should be an information reporting system in the income tax law regarding the payments made by any stockbroker houses, banks and related institutions.

6.4.6.1.4 Companies Providing Deferred Payments to Their Customers

As a business practice, it is common for companies to settle their account balances with customers at a later period, and vice versa. As a result, transactions can remain outside the tax parameters during the relevant income years. Currently, there is no law in Bangladesh regarding any information report filing of deferred payments made by or to the companies. Thus, there should be provisions of submitting information returns about these transactions so that the income tax authority can attain a complete picture of the income of the related taxpayers.

6.4.6.1.5 Education Expenses

Private education in Bangladesh is very expensive for both primary and secondary education. Only those with high incomes can afford to send their children to costly private schools and colleges. However, the high fees paid for private education are not divulged in the wealth statements of taxpayers, submitted with their income tax return. Verifying these fees is time consuming and costly. Thus, if the fee recipient academic

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974 Income Tax Ordinance 1984, s 53BBB.
institutions like schools, colleges and universities, are brought under the mandatory information reporting law, a full picture of the income and expenditure of many taxpayers could be presented. Under the proposed system, all institutions would submit an AIR that would contain the taxpayer’s name, identification number and amount of fees paid. If the expenditure incurred for education is higher than the shown income, or is asymmetrical, the tax office could take action. This might have a substantial effect on improving tax compliance.

6.4.6.1.6 AIR for High-value Financial Transactions

High-value transactions by taxpayers have tax implications; however, the present income tax law of Bangladesh has no provision to deal with such transactions. In India, when an individual conducts a high-value transaction (such as investment in property or mutual funds), this transaction is automatically reported to the income tax department by banks and other authorities, through the annual information report.\(^\text{976}\) Bangladesh could learn from this neighbouring country to make appropriate provisions of law to ensure high-value transactions are visible. The task is not an easy one. The Indian system has been modelled on advanced countries such as the US, Britain, France and Germany.\(^\text{977}\) Bangladesh can follow suit and make necessary provisions of law to make submission of AIR mandatory.

6.4.6.1.7 Additional Transactions

In addition to the specific items mentioned above, the following types of transactions can also be brought under the mandatory reporting requirements:

- companies, banks and other financial institutions providing loans to their employees
- service payments to corporations and other unincorporated people or businesses
- service payments made by landlords
- stock income (Denmark has this law)

\(^{976}\) *Income Tax Act 1961*, s 285BA.  
• fringe benefits (Denmark has this law)
• purchases and sales of assets.

6.4.6.2 How an Information Reporting System Would Benefit ITDB

A strong and comprehensive information reporting regime should help the ITDB in many ways, some of which are discussed below:

6.4.6.2.1 Effective Tax Audit

Auditing tax returns is a common enforcement measure adopted by almost all tax administrations of the world. Although modest, effective and quality audits successfully deter taxpayers from future underreporting of income. Less qualitative audits unearth less situations of underreported income, which affects taxpayers’ perceptions of the effectiveness of the audit. One of the impediments to a quality audit is a lack of information about the true state of taxpayers’ financial transactions. Thus, an efficient information reporting system can improve the success of the audit program, making audits specific and targeted. Income that cannot be detected through the audit can be identified from the information return furnished by the third parties.

In Australia, tax audits are an important feature of the tax administration. In 2012 to 2013, the ATO received 600 million pieces of information from banks and health companies that were designed to be used for data matching programs and auditing. In addition, targeted auditing based on risk assessment and data matching has become the CRA’s preferred approach. Accordingly, if Bangladesh can have a broad-ranging TIRS, audit work would be simple and effective. Through this system, the tax office would have the requisite information from third parties to assess the correct income of taxpayers through auditing.

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978 Kleven et al, above n 117, 651, 687.
6.4.6.2.2 Effective Data Matching

Matching information is considered a vital component of compliance by tax administrations. It is a tactical weapon that is very effective to improve compliance and raise revenue. For example, the ATO successfully matches millions of pieces of information every year, which it derives through third-party reporting. This data matching system helps the ATO better understand the risk, and effectively uses the business performance benchmark system introduced by the ATO. The CRA also uses a data matching system effectively to verify income declared by taxpayers in their tax returns.

6.4.6.2.3 Positive Effect on Tax Culture

The tax culture refers to the tax mentality of taxpayers to comply—it is the pervasive culture of compliance among taxpayers. Creating a tax culture in a country necessitates a fusion of correctly designed incentives and sanctions. Bangladesh has a poor tax culture dominated by a mentality and habit of tax avoidance and evasion. The apathy of taxpayers towards paying tax appears to be entrenched in the culture. However, if the scope of evasion can be reduced through introducing a successful tax information reporting regime, people will be bound to report their true income. This will subsequently create a forced tax culture initially, which will become a spontaneous tax culture if sustained over a period.

6.4.6.2.4 Reduced Shadow Economy

As observed earlier, the informal economy in Bangladesh is strong, and widespread tax evasion has caused it to thrive. Extensive and efficient third-party information reporting regimes can substantially curb the problem of tax evasion that leads to the informal economy. A European Commission report suggests extending the use of

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third-party information to reduce the size of the informal economy. Phua argues that lack of data by the tax administration is the main obstacle to successfully waging war against tax evasion. Thus, if an effective third-party information reporting regime can be established, the ITDB will be able to attain the necessary data that can be used to fight the growing informal economy.

6.4.6.2.5 Reduced Enforcement Costs

Tax enforcement is costly. These costs include the direct costs of the tax administration and the cost of private agents, such as compliance costs. For example, in the US, 10 per cent of the total tax collected is spent on tax enforcement. Developing country tax administrations cannot properly enforce tax statutes because of resource constraints that cause administrative incapacities. Information regarding tax enforcement costs is not available in Bangladesh because there has been no research on this issue; however, the poor state of compliance can be attributed to the high cost of enforcement. Thus, it is suggested that a strong information reporting regime might reduce the additional costs of tax enforcement.

6.4.6.2.6 Reduced Tax Corruption

Corruption reigns in almost all revenue departments of developing countries, and corruption causes tax evasion. Likewise, in Bangladesh, corruption in the ITDB is a cause of tax evasion. Survey evidence supports this, with more than 50 per cent of surveyed taxpayers stating that they had been asked by tax officers to pay bribes. In addition, 58.5 per cent of the survey respondents believed that corruption in the tax


991 International Tax Compact, above n 341, 27.


993 Tanzi and Davoodi, above n 362.
department is a cause of tax evasion.\textsuperscript{994} A third-party information system can be used to reduce corruption. Through third-party reporting, the ITDB will receive data that will be permanently stored in the data bank. These data cannot be destroyed or hidden, and can be accessed at any time, even if it is possible for the time being to suppress it by giving bribe to the officials. As a result, taxpayers will not be interested in corruption, which will reduce the opportunity for tax officers to indulge in corrupt practices.

6.4.6.2.7 Tax Law Simplification

The taxpayers and tax administrations of developing countries have limited capability to manage tax law complexity.\textsuperscript{995} Tax law complexity is not peculiar to developing countries—developed countries face the same problem. Even the IRS tax commissioner admits that the US tax law is complex,\textsuperscript{996} and Australian tax legislation is also complex.\textsuperscript{997} However, a TIRS can help developing countries such as Bangladesh simplify the tax system for both taxpayers and tax administrations. An information reporting system provides easy flow of information to tax administrations regarding the true income of taxpayers. In addition, taxpayers can benefit because the system facilitates the use of prefilled tax returns, which reduce the time and resources needed to file tax returns. Places such as Australia, Denmark and other OECD countries are successfully using the system of prefilled returns, greatly facilitated by the tax information return system.\textsuperscript{998} With rapid modernisation of the e-filing system,\textsuperscript{999} Bangladesh could implement a prefilled tax return system based on an efficient information reporting system. This would substantially reduce the complexity of the tax system by reducing compliance costs and simplifying tax return submissions for taxpayers.

\textsuperscript{994} RIRA, above n 359, 5.
\textsuperscript{998} François Vaillancourt, ‘Prefilled Personal Income Tax Returns: An Examination of Five Cases’ in François Vaillancourt (ed), \textit{Prefilled Personal Income Tax Returns: A Comparative Analysis of Australia, Belgium, California, Québec, and Spain} (Fraser Institute, 2011).
\textsuperscript{999} Karim and Alauddin, above n 12.
6.4.6.2.8 Improved Capacity of the Tax Administration

One of the prerequisites of improved tax compliance is the efficiency and capacity of tax administrations. The tax system should be designed to reflect the ability of tax administrations to administer it. A strong third-party information reporting system can enhance the capacity of the tax administration to achieve low-cost tax enforcement and identify tax evaders with an enhanced capacity augmented by information.

6.4.6.2.9 Additional Benefits

Other benefits related to information reporting systems include revenue being increased, which benefits society; improved community perceptions about the fairness of the tax system; more straightforward compliance and a lesser administrative burden on the taxpayer as a result of introducing a prefilled return system, like many other countries, or potentially by eliminating the requirement to submit a tax return.

6.4.6.3 Conditions of a Successful TIRS

Recognising the fact that information reporting influences taxpayers’ behaviour and that compliance is substantially augmented by successfully information reporting, it is argued that, before Bangladesh can use a third-party information system successfully, certain conditions must be met. These conditions are discussed below.

6.4.6.3.1 Data Security and Taxpayers’ Privacy

One problem associated with the information reporting regime is taxpayers’ data security and privacy. Under the information reporting system, a huge amount of data and taxpayer information is transmitted to the tax authority. These data need to be safe.

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1000 Barrie Russell, *Revenue Administration: Developing a Taxpayer Compliance Program* (2010) 1  

1001 OECD et al, above n 375, 11.

1002 GAO, *Tax Administration Costs and Uses of Third-party Information Returns* (Report to the Committee on Finance, US Senate, November 2007) 21  

1003 GAO, *Tax Administration Preliminary Information on Selected Foreign Practices that May Provide Useful Insights* (2011)  

1004 Kamdar, above n 128, 278, 291.
from unwanted and unauthorised leakage that might infringe taxpayers’ confidentiality. Thus, any such system must have data security as a precondition.\textsuperscript{1005}

6.4.6.3.2 Data Follow-up System

Data received from third parties must be stored, processed and monitored regularly; otherwise, the system will not meet its essential goal. To achieve this, there must be a central data receiving, processing and monitoring cell in the NBR. India has established such a cell to manage the information received from third parties. It has an online monitoring system to ensure follow-up action and track return filing and tax payments. However, experience, expertise, resources and \textit{modus operandi} can be shared with other regions, such as Australia, India and other OECD countries.

6.4.6.3.3 Efficient and Well-trained Staff

For the successful implementation and operation of a reporting regime, efficient and well-trained staff are necessary. These staff require specific training that focuses on developing human resources to deal with information technology and analysis, and implementing and monitoring the data received through third-party reporting. In this respect, the ITDB can receive help from countries where strong information reporting regimes are operating.

6.4.6.3.4 Successful Tax Advisers’ Role

Tax advisers play a very important role in tax compliance.\textsuperscript{1006} Tax administrations around the world agree that the tax intermediaries’ role is critical to improving tax compliance.\textsuperscript{1007} These advisers have dual roles to play.\textsuperscript{1008} In most cases, taxpayers depend on tax advisers to resolve their tax issues. For example, in Australia during 2011 to 2012, 72.8 per cent of individual taxpayers lodged their return through a tax agent.\textsuperscript{1009} Taxpayers face diminishing expertise in preparing and filing tax returns

\begin{thebibliography}{9}
\bibitem{1005} OECD et al, above n 375, 23.
\bibitem{1007} Ibid, 14.
\end{thebibliography}
because of the infrequent nature of return filing. Tax advisers can make taxpayers aware of the enforcement priorities of tax administrations. If they represent taxpayers before the tax department, they actively participate in the tax system.

However, Book argues that return preparers also have an affirmative obligation to enhance the tax system integrity, particularly in respect to unacceptable error rates and high preparer usage. This issue is particularly important for Bangladesh for several reasons. First, tax advisers in Bangladesh prepare returns for taxpayers, and represent them before the income tax department. This is true for both individual and corporate taxpayers. They exert considerable influence on the compliance behaviour of taxpayers. Thus, for any successful reform implementation, their role is very important, and it is of utmost importance that the income tax advisers of Bangladesh play a positive role in improving tax compliance.

6.4.6.3.5 Research on Compliance Costs for Reporting Entities

Placing reporting obligations on third parties, such as employers, imposes compliance costs on them. Under the information reporting system, third-party reporters incur a variety of compliance costs, known as administrative costs. In addition, information reporting requires the reporting bodies to file multiple returns to the tax authorities. This multiple return filing is viewed as one of the causes of tax regime complexity. This complexity also increases compliance costs for the reporting authorities. Thus, before implementing a third-party reporting system, research on the administrative and compliance costs of the third parties is recommended.

1011 Klepper and Nagin, above n 858.
1014 Kamdar, above n 128, 291.
1015 OECD, above n 1006.
1016 Jacqueline Coolidge, ‘Findings of Tax Compliance Cost Surveys in Developing Countries’ (2012) 10(2) eJournal of Tax Research 250, 254
1017 Kamdar, above n 128, 291.
6.4.6.3.6 Assistance with Administrative Costs to Manage the TIRS

Administrative costs *inter alia* refer to the operating costs that must be spent to implement tax policy and collect revenue.\(^{1018}\) Operating costs are necessary for internal resource mobilisation;\(^{1019}\) however, these costs can deter the implementation of a TIRS.\(^{1020}\) Given that Bangladesh lacks resources, the government should seek the advice of donors such as the IMF and World Bank regarding how the TIRS can be implemented and operated.

6.4.6.3.7 Effective Taxpayer Identification Mechanism

To ensure information reporting regimes are effective, a high-integrity taxpayer identifying mechanism must be used so that information reports can be readily and accurately matched with taxpayers’ records. In a survey conducted by the OECD Tax Forum in selected countries—including Australia, Canada, New Zealand and the US—it was found that, for the above reason, most countries incorporate features to ensure the accurate quotation of TINs by payees.\(^ {1021}\)

6.4.6.3.8 Paper Reporting

Paper-based information reports receive low priority by the tax authority, and thus escape the matching system. As a result, the system fails to identify any non-reported income by these taxpayers.\(^ {1022}\) This is a significant problem for the ITDB, given that almost all information reports sent to the department are paper based. The reports receive low priority and are rarely analysed and matched, whether the taxpayer has reported correct income or not. This is because the staff find this work tedious, time consuming and lacking in incentive. The reports are kept in piles in one corner of the office, year after year, and are then destroyed without any action being taken.

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\(^{1019}\) Ibid.
\(^{1020}\) OECD, above n 1006, 12.
\(^{1021}\) Ibid, 17.
\(^{1022}\) Ibid, 22.
6.4.6.3.9 Appropriate Information and Communication Technology

If a successful information reporting regime is to operate on a large scale, electronic reporting and information processing systems must be available. This is because of the need to quickly capture and match a huge amount of data with taxpayers’ records, then action this information systematically—all at minimal cost. Currently, except in the US IRS, most tax jurisdictions of the world gather information manually.\(^{1023}\)

6.4.6.3.10 Additional Conditions

Some other conditions to ensure a successful TIRS include creating awareness and disseminating appropriate knowledge to reporting authorities regarding the laws and regulations of information reporting;\(^{1024}\) a strong political will to introduce the TIRS in the face of resistance from various bodies;\(^{1025}\) given that political will remains essential for tax reform;\(^{1026}\) and identifying the appropriate reporting authorities.

6.5 Conclusion

This chapter has observed that a tax information reporting regime is an important compliance tool in revenue departments around the world, and that most information reporting regimes are coupled with a tax withholding system.\(^{1027}\) The country-specific information reporting regimes as discussed in this part of the thesis bear the characteristics as observed by the OECD. As revealed in this chapter, Canada has some standalone information return submission provisions that are not coupled with withholding laws. This chapter also observed that, while some countries’ information reporting regimes are more comprehensive than others, every tax administration is aware of the importance of the system in ensuring tax compliance.

\(^{1023}\) Ibid, 20.
\(^{1024}\) Ibid, 22.
\(^{1026}\) OECD et al, above n 375, 16.
Bangladesh has demonstrated a sincere attempt to use this system to improve compliance. However, to improve its effectiveness, Bangladesh must follow the regimes employed in Australia, New Zealand, Canada and India. In addition, some preconditions must be fulfilled to implement a comprehensive TIRS. The NBR should immediately establish a committee to examine the probability of improving the regime by receiving assistance from developed and developing countries that are currently using a TIRS effectively. Bangladesh currently has a fairly strong tax withholding regime; however, some of these deducting authorities report information, while most do not. The law should be amended so that the tax deducting authorities mandatorily report tax deduction information, along with the total amount paid or disbursed to recipients. It should be remembered that a TIRS is not the ultimate solution to the tax compliance problem; however, it is one of the most effective means to address this issue. As such, Bangladesh would strongly benefit from using a broad-based TIRS.
Chapter 7: Conclusion and Policy Recommendations

7.1 Introduction

This chapter contains concluding remarks based on the discussions presented in the previous chapters. This thesis observes that the tax compliance problem is endogenous to the taxation system itself. Every country is beset by this problem, although its pervasiveness is more marked in developing countries, such as Bangladesh. In Bangladesh, the compliance rate in the income tax department presents a dire picture, with the total number of taxpayers negligible compared to the overall population. A point to ponder here is that while the total number of taxpayers is compared against the total number of population, it is true that among the total population not all are eligible to pay income tax. As observed in chapter three of the thesis tax expenditure is one of the reasons of low number of taxpayers. Besides, all the companies set up in the exclusive economic zones enjoy repeated tax exemptions. However relevant data are not readily available from the National Board of Revenue and there is no authentic research to support the number of people who can be potential taxpayers in Bangladesh. The informal economy is continuously expanding, with the ratio alarmingly high compared to other countries. The NBR is apparently failing to enforce the tax statute to improve voluntary compliance, and prosecutions for tax evasion are compromised by inappropriate motivations and legal and technical flaws. In some cases, the legal framework is not sufficiently effective or comprehensive to encompass the complete problem of noncompliance.

Against this backdrop, this thesis suggests that it is time for the ITDB to implement a comprehensive approach to secure compliance. It is argued that no sole solution can singlehandedly overcome the problem of tax noncompliance. Rather, compliance strategies should be pragmatic and modelled on a combination of successful existing approaches, according to the needs and nature of the problem specific to Bangladesh. Based on this comprehensive approach, this thesis suggests that the ATO compliance model would be the most effective model to be adopted by the NBR. The ATO compliance model presents an approach that ranges from the persuasion to the prosecution of tax evaders.
This thesis first sought to redefine the state–taxpayer relationship as a fiduciary one. This is a major shift from the traditional, adversarial relationship between the state and taxpayer. This thesis argued that the state–taxpayer relationship is based on trust and good faith. The state remains the trustee for the taxpayer, and it is the duty of the state to collect and spend tax money appropriately for the betterment of taxpayers. The state must perform for taxpayers in domains in which any individual taxpayer cannot perform, without the help of state power. Taxpayers entrust the state with their money in the belief that the state will complete the necessary tasks as per the requirement of its fiduciary obligations. If the state becomes oblivious to the importance of this relationship, this can negatively affect the taxpaying culture. It is also argued that the relationship is subliminal.

Once the state–taxpayer relationship was identified, this thesis proceeded to examine the current income tax system of Bangladesh. Although Bangladesh has a very old history of taxation, dating from the early Hindu period, the income tax system was established for the first time in 1861 by the English rulers. The pre- and post-colonial periods of the income tax system were marked by events and developments that culminated in post-liberation Bangladesh adopting the 1984 ITO. The causes of tax evasion were also discussed, as were the attempts of the government to address this issue.

Chapter 5 discussed the issue of the tax amnesty program in Bangladesh. Tax amnesty remains a popular tool to improve voluntary compliance in the field of income tax around the world. Some countries allow the scheme on a repeated basis, while others offer time-limited amnesty. There is mixed evidence about the effectiveness of such amnesty programs. It has been found that repeated amnesty is not good for revenue, does not improve voluntary compliance, and can even encourage noncompliance and tax evasion. Likewise, it was observed that the tax amnesty in Bangladesh has not resulted in the intended level of revenue collection. In Bangladesh, there is evidence of political motives and corruption behind the implementation of tax amnesty schemes. Thus, it is suggested that the tax amnesty scheme be implemented only occasionally and for short periods. Repeated amnesty erodes the tax base and affects voluntary compliance. In addition, every year, a huge amount of untaxed money is syphoned away from Bangladesh into overseas banks. Considering the extent of illicit capital flight and money laundering, the Bangladesh government should consider an overseas
tax amnesty, rather than allowing repeated domestic tax amnesty. Regions such as Australia, the US and various European countries are currently successfully conducting overseas tax amnesty schemes to repatriate money taken away from the country.

Chapter 6 observed that a third-party TIRS plays a vital role in improving voluntary compliance. An effective third-party TIRS has the effect of deterring taxpayers from not reporting or underreporting their income to the tax authority because the tax authority receives information from the third party about the nature of taxpayers’ financial transactions throughout the year. Evidence suggests that the rate of compliance is much higher when income is subject to tax withholding and reporting requirements. Self-employment and small businesses remain an area where reporting requirements are less effective. However, regions such as the US, New Zealand, Australia, Denmark, Sweden and other OECD countries are successfully using third-party reporting systems to curb such tax evasion. Even Bangladesh’s neighbour, India, has a strong reporting regime that is operating effectively. Some countries have reporting regimes alongside tax withholding provisions, while others have standalone reporting provisions for certain income groups. Researchers strongly suggest this tool to be implemented by tax administrations around the world.

Like other countries, Bangladesh has a fairly strong tax withholding system and a third-party reporting regime; thus, the regime is not a standalone system. However, the regime contained in the 1984 ITO is not comprehensive, and does not specifically state which incomes are covered by the reporting regime. Rather, the tax authority may use discretion to ask for information about particular transactions, if it deems this to be fit and necessary. Therein lies the weakness of this regime. Given the poor picture of voluntary compliance, it is imperative that Bangladesh has a strong and comprehensive third-party tax TIRS. To achieve this, Bangladesh must change its law by following the example of India and other countries that are successfully and effective using this system to determine the true incomes of taxpayers.

This chapter of the thesis also suggested some additional tools for the income tax administration of Bangladesh that are imperative to improve compliance. The following section identifies some of the factors that are considered essential to improving taxpayer compliance in the income tax administration of Bangladesh.
7.2 Creating an Overall Tax Compliance Culture in the Country

The tax culture is essential to ensuring the sustainable development of a country. This culture reflects the tax mentality of a region’s taxpayers in general terms. It is understood in terms of taxpayers’ consciousness regarding payment of tax—that is, taxpayers pay tax because of the tax culture. However, the tax culture encompasses more than the tax mentality, and varies from country to country. As Nerré states:

A country-specific tax culture is the entirety of all relevant formal and informal institutions connected with the national tax system and its practical execution, which are historically embedded within the country’s culture, including the dependencies and ties caused by their ongoing interaction.

Thus, the tax culture is more than what is generally meant and demonstrates the embeddedness of different actors in the national culture, of which the tax culture is only a subsidiary part. Actors include taxpayers, politicians, tax officials, experts (such as tax intermediaries) and academics. The tax culture denotes not only the tax system and existing tax practice, but also the relationship between the tax administration and taxpayers. This relationship is based on trust and belief, and can be termed a fiduciary one.

Poor tax compliance reflects a poor tax culture. Thus, Bangladesh’s poor income tax compliance indicates the country’s insufficient tax culture. It is urgent that this culture be improved to achieve sustainable economic and social development in the face of the current global financial crisis. Against this backdrop, tax administrations around the world are persistently creating new techniques to improve tax culture. To have a sustainable tax culture, awareness must be created among citizens of their obligations to pay tax and the rights they have as taxpayers. There must be a congenial atmosphere, in which taxpayers are encouraged and feel obliged to pay their share of tax. To create

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1031 Ibid, 156.
this awareness among taxpayers, appropriate education and tax-related information must be disseminated. Torgler argues that, ‘[f]iscal ignorance might be an important contributor to the development of negative feelings towards taxation’. Different tax administrations are using different techniques in an effort to educate taxpayers and create awareness.

The NBR in Bangladesh is the central body in charge of direct tax administration. This organisation understands the importance of taxpayer education in enhancing compliance. Thus, to improve this, the NBR has undertaken some important and innovative taxpayer education programs. These programs are gradually being implemented by the NBR to create awareness about tax legislations and procedures, improve voluntary compliance, educate tax officers to perform their duties efficiently, help taxpayers prepare returns and pay taxes, educate taxpayers why they should pay taxes, and increase taxpayers’ literacy.

One important innovative step the NBR takes as part of a taxpayer education program is observing a national income tax day. Every year on 15 September, the NBR observes this day, and has done so since 2008 to motivate the people of the country. On that day, the income tax department holds rallies, seminars and workshops; displays banners and posters; distributes leaflets; holds discussions and conferences; and presents awards to the highest taxpayers. Special programs are broadcast on radio and television to help build tax awareness among the people. In 2013, the slogan of the income tax day was ‘Boost income tax, bring prosperity to the nation and the people’. Under the Taxpayer Recognition Policy (introduced in 2008), the three highest- and two longest-paying income taxpayers from each of the 64 districts and six city corporations are given social recognition (certificates and crests) at a state function. In addition, under the National Tax Card Policy (introduced in 2010), the 10 highest personal and 10 highest corporate income taxpayers are accorded CIP status every year. Due to the innovative measures of the NBR in recent years, it is claimed that two to five million taxpayers every year are brought into the tax net. These

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1034 Torgler, above n 571, 12.
1035 OECD et al, above n 1033.
measures have also improved the image of the income tax department in the eyes of
the media and taxpayers, which has had a positive effect on taxpayers’ compliance.\footnote{1038}

Despite the apparent success of these initiatives, the overall tax compliance rate
remains very low in Bangladesh. In 2013, less than one per cent of people paid tax in
Bangladesh, the informal economy was growing and tax evasion was rampant.\footnote{1039}
Thus, the steps taken by the NBR to educate people about their taxpaying obligations
are insufficient to create awareness. This is evidenced by the NBR admitting that
taxpayers in Bangladesh are unaware of their obligations to pay tax and the outcomes
of doing so. Taxpayers are habitual defaulters and are inclined to disobey tax laws.\footnote{1040}
Thus, it is imperative that the NBR takes more effective steps to educate people to
improve their tax compliance. Taxpayer education programs help boost the tax morale
of the people. In this respect, Odinkonigbo states:

\begin{quote}
the enlightenment or educational program must involve all segments of the
society. Taxpayers, future taxpayers, government officials, and third parties
who are involved in tax administration must be involved in this
enlightenment program. However, the main questions here are: what are the
modalities or avenues through which these enlightenment campaigns will be
carried out? And what should be the contents of the campaign programs for
each of the targeted groups?\footnote{1041}
\end{quote}

In framing the taxpayer education programs with appropriate contents and aimed at
the right target groups, Odinkonigbo highlights the relevance of both economic
deterrence models and psychological models in providing guidelines.\footnote{1042} In
acknowledging the utility of combining deterrence and psychological theories of tax
compliance in taxpayer education programs, this thesis agrees with Odinkonigbo that,
in Bangladesh, the taxpayer education program must be framed in a way that creates
awareness among taxpayers of all the adverse and positive effects of compliance and
noncompliance.

\footnote{1038 OECD et al, above n 1033, 26.}
\footnote{1039 Karim, above n 419.}
\footnote{1040 Ibid.}
\footnote{1041 Odinkonigbo, above n 80, 232.}
\footnote{1042 Ibid, 238.}
7.3 Proposed Programs and Initiatives

In addition to the programs currently being implemented by the income tax department, Bangladesh would also benefit from considering undertaking the following activities.

7.3.1 Holding Income Tax Fairs at Upazila Level

To raise awareness among taxpayers, the ITDB took the unique step of organising an income tax fair. On its first occasion, this income tax fair was held for five days in September 2010 in Dhaka and Chittagong—two divisional headquarters of Bangladesh. At this fair, both old and new taxpayers could submit income tax returns with the assistance of income tax staff. At the first fair, there was a huge response from taxpayers who took the opportunity to submit their income tax returns without delay or difficulty. The taxpayers’ reactions were very positive about the fair, and it was widely discussed in the national and international media. The fair of 2013 also generated a huge amount of revenue and was considered a success. Since its inception, the income tax fair has been organised regularly in the large cities and divisional headquarters of the country. However, this study also suggests that the fair should be organised biannually at the upazila level. Each year, the income tax fair should be hold in every upazila income tax office, and the duration of the fair should be extended based on responses received from the taxpayer in the concerned areas.

7.3.2 Introducing Tax Education to the Academic Curriculum

Tax education plays a vital role in ensuring younger generations will be tax compliant. Thus, Kasipillai, Aripin and Amran suggest introducing tax education to all social science and business courses at university level. Most countries’ universities offer tax-related education in business and law graduate and undergraduate courses. However, in other social science courses, tax is not taught. Bangladesh is no exception.

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1043 Bin Mustafa, above n 398.
to this and, to improve the tax culture in Bangladesh, tax knowledge must be disseminated from the primary level of education. The tax syllabus must be included in all disciplines of education. If regular tax education is provided, the younger generation will be morally encouraged to be future compliant taxpayers, and learn to dislike tax evaders. Bangladesh should take immediate steps in this respect.

7.3.3 Establishing a Tax Museum

A tax museum can be an effective mechanism to educate taxpayers. Israel, Ireland and Rotterdam have such museums. Tax museums create awareness among people of why they should pay taxes, and where and how their tax money is spent. These museums also detail the consequences of noncompliance. Establishing a tax museum has been suggested for developing countries, such as Nigeria. If a tax museum was established in Bangladesh, this could play an important role in improving tax education and creating awareness among the people of Bangladesh.

7.3.4 Using Religious Clergies in Mosques, Churches and Temples

Taxpayer compliance has rarely been considered from a religious perspective; however, religion is a non-economic factor that can work as an intrinsic motivator for compliance because religious beliefs shape tax morale. Religion can supply the moral constitution of a society—it can provide a system of moral rules that form the basis of individuals’ moral constraints. While morality can exist independent of religion, in most cases, the system of moral rules is provided by religious institutions. Thus, religion is viewed as providing a ‘supernatural police force’ that can create additional enforcement of moral behaviour. In the field of tax compliance, taxpayers’ religion can play a vital role, and can be ensured by religious institutions, such as churches and mosques. Religious institutions, such as churches, have been successfully used to enforce law and reduce crime in society. Thus, the government can build partnerships with religious institutions to ensure tax compliance.

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1046 Odinkonigbo, above n 80, 246.
1047 Torgler, above n 571, 3.
1048 Ibid, 5.
1050 Ibid.
1051 Afield, above n 150, 100.
Afield notes: ‘These partnerships [state–church] can tap into the increasing trend of scholarship to consider tax policy issues in religious terms and thus can be instrumental in helping to create the desired norm shift’.1052

In Bangladesh, if the government builds a partnership with the major religious institutions, there might be a norm shift in the tax compliance culture. Religious clergies working in mosques, churches and others can influence taxpayers to pay tax as per the law by preaching that tax evasion is wrong and religion does not endorse it. Clergies have the moral authority to influence citizens’ behaviours and, by using that authority, can create a new norm, thereby leading to increased compliance. This could cause a paradigm shift in the field of tax compliance.

7.3.5 Strictly Enforcing Tax Laws

Chapter 3 briefly discussed that the ITDB has a lack of enforcement of tax laws. The NBR admits that taxpayers are habitual defaulters and disobey tax laws.1053 As a means of securing tax compliance, deterrence has been largely discredited, and other psychological and behavioural determinants have taken place in recent years.1054 However, deterrence is still an effective measure of securing tax compliance, particularly in developing countries. For example, based on the deterrence theory, in 2005, the Philippines tax administration launched the ‘Run After Tax Evaders’ (RATE) program to tackle rampant tax evasion in the country. The RATE program was introduced to enable criminal prosecution of tax evaders. Immediately after commencement of the program, the Bureau of Internal Revenue achieved a 43.6 per cent increase in the overall revenue collection compared to the previous year.1055

Empirical evidence also suggests that strong enforcement measures improve voluntary compliance.1056 One of the weaknesses of the income tax administration of Bangladesh remains its poor enforcement efforts. The current researcher has anecdotal evidence

1052 Ibid.
1053 Karim, above n 419.
from 20 years of service in the department that enforcement mechanisms—such as audits, imposing penalties for tax evasion, imprisoning those involved in significant tax fraud, and third-party information reporting systems—are ineffective and rarely applied.

The current enforcement measures of the department include administrative penalties, interruptions (such as freezing bank accounts and ceasing transactions), criminal prosecution, raising risk points and the probability of being selected for audit. Tax auditing is the most widely used deterrent tool employed by tax administrations to verify the accuracy of the income declared by taxpayers in their returns. Evidence suggests that tax audit has a direct effect on revenue collection and penalties, and indirectly makes taxpayers aware of detection and deters them from engaging in noncompliance acts. Auditing is the most traditional regulatory approach to addressing the risk of taxpayers’ noncompliance. According to the OECD, tax audits play a vital role in tax administration. They promote voluntary compliance, detect noncompliance at the individual taxpayer level, gather information on the ‘health’ of the tax system, gather intelligence, educate taxpayers, and identify areas of the law that require clarification. However, for tax audits to be successful, certain conditions must be met. In this respect, the OECD notes:

there are a number of common pre-requisite features and requirements that need to be in place to ensure a good level of effectiveness and efficiency from audit activities and to support continuous improvement. They are:

- A comprehensive legal framework, including an appropriate regime of sanctions.
- Well-defined organizational and management processes, including a comprehensive performance measurement framework.
- Well-defined audit techniques and adequate support arrangements; and.
- Adequate human resource management and development programs.

Like all tax administrations, Bangladesh’s tax law also makes provisions for audits to improve compliance by deterring taxpayers from noncompliance. Chapter 3 observed how audit functions for individual taxpayers are conducted. Taxpayers who file returns

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1057 Karim, above n 419.
1059 OECD, above n 726, 6.
1060 Ibid, 8.
1061 OECD, above n 726,11.
under universal self-assessment systems are audited following the guidelines given by
the NBR. Around the world, the audit rate for corporate taxpayers is high compared to
individual taxpayers, which is also true for Bangladesh. Large corporate taxpayers’
files are dealt with by the LTU. Audit functions are conducted on the basis of the pre-
fixed audit rules approved by the NBR, and audits are mainly two types: desk audits
and comprehensive audits. Although the tax audits conducted by the LTU appear to be
somewhat successful and regular, audits do not work well in the majority of income
tax departments. This is evident from the poor revenue collection in tax zones other
than the LTU. Thus, it is apparent that audits in the ITDB fail to work properly to
improve compliance. Probable causes of this audit ineffectiveness include the
unavailability of information and evidence to detect true incomes by auditing, inefficiency of audit officers due to lack of proper training, corruption of the officers
involved in audit functions, inadequate guidelines from the NBR and lack of
monitoring.

To use the audit tool effectively, the income tax administration of Bangladesh must
take appropriate steps, such as strengthening the third-party information reporting
system, training audit officers inside and outside of Bangladesh, creating an
appropriate legal frame, reducing corruption in the department, ensuring taxpayers’
rights, educating taxpayers about their obligations and rights, providing clear
guidelines from the NBR, establishing a functional system of tax assessment, making
appropriate provisions for sanctions for noncompliance, and strengthening monitoring
of audit performance. A broad range of tools is imperative to make audit effective.

According to the OECD:

The efficiency and effectiveness of a revenue body’s audit activities depends
critically on the nature and scope of powers in the underlying legal
framework in place, including the provision of adequate powers for obtaining
information and an appropriate regime of sanctions to deter and penalize non-
compliance. Revenue bodies should aim to achieve a balanced program of
audits—one that balances ‘coverage’, ‘audit quality’, and ‘overall deterrent’
considerations. Audit policies and procedures should be based on principles
of accuracy, efficiency, fairness, objectivity, transparency, completeness,
consistency, and defensibility.

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1062 Akhand, above n 383, 134.
1063 For example, in the 2009 to 2010 fiscal year, the total revenue created was Tk 2787.12 crores, of
which the LTU created 1120.00 crores. The poor revenue creation by the other offices highlights the
inadequate audit functions performed by these offices. NBR, NBR Annual Report 2009–2010
1064 OECD, above n 726, 59.
Auditing is a strong deterrent tool that, if used efficiently, can deter taxpayers from noncompliance. A clear message must be sent to taxpayers that they will be subject to a comprehensive audit if there are any anomalies in their tax returns.

Another deterrent tool is the imposition of administrative penalties on taxpayers for different types of noncompliance acts. Though controversial in terms of the fairness of tax statutes, penalties work to reduce noncompliance, and, under the self-assessment system, where the determination of tax liability lies with the taxpayers, penalties set a boundary for taxpayers to restrict their conduct—that is, whether to face or avoid legal sanctions.\(^\text{1065}\) Despite the presence of empirical evidence indicating that unfair penalties create a negative attitude towards tax administrations and place the taxpayer and tax administration in a competing and adversarial position, it is not always possible to prescribe universal rules of fairness because taxpayers always think about the causes of tax evasion when taking decisions on punishment.\(^\text{1066}\)

The 1984 ITO provides for imposition of monetary penalties for different types of noncompliance behaviour, as discussed in Chapter 3 of this thesis. However, the rate of monetary penalty prescribed by the Act for various acts of noncompliance appears to be low and insignificant, and low penalty regimes do not provide an effective deterrence to noncompliance.\(^\text{1067}\) Monir argues that, ‘the rates of penalties in the Ordinance are not significant for making tax evaders aware of the payment they would need to make for non-compliance’.\(^\text{1068}\) Moreover, income tax officers have discretion regarding whether to apply a penalty. While discretion can be positive when imposing penalties on taxpayers who make honest mistakes, it can be misused to exonerate dishonest taxpayers from penalties. Thus, the government must determine the standard monetary penalty of an amount that has the effect of strongly discouraging taxpayers’ noncompliance. In addition, the discretionary power of tax officers must be reduced.

The government must tailor the penalty structure according to the nature and gravity of specific acts in order to target taxpayers who defy the norms.\(^\text{1069}\) Anecdotal evidence

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\(^\text{1066}\) Hofmann, Hoelzl and Kerchief, above n 25, 209.
\(^\text{1067}\) Doran, above n 1065, 133.
<arrow.monash.edu.au/vital/access/services/Download/monash.../THESIS01>.
\(^\text{1069}\) Doran, above n 1065, 133.
shows that tax officers sometimes impose penalties on taxpayers, but ultimately they remain uncollected as arrear tax. The department fails to collect them either because the taxpayer does not care about them or because the penalty amount of penalty is so low that the officer does not bother to collect it. Of course, if a taxpayer does not pay his or her fair share of tax, he or she may also avoid paying the penalty. In this respect, Doran argues:

After all, if a taxpayer does not comply with an obligation to pay a tax, it is not immediately obvious that the imposition of a tax penalty—in effect, a second tax—will cause her to pay both the tax and the penalty.\textsuperscript{1070}

Another deterrent tool in the tax statute is prosecuting taxpayers for serious noncompliance acts. Tax administrations around the world prosecute taxpayers for serious tax evading crimes. For example, in Australia, the ATO takes harsh measures against taxpayers who flout tax legislation and evade taxes. The Australian judiciary also takes tax evasion cases seriously, and frequently delivers custodial sentences for such fiscal crimes.\textsuperscript{1071} Chapter XXI of the 1984 ITO provides punishment for tax evasion cases. For tax evasion offences, there are provisions of imprisonment from one to five years, depending on the nature and gravity of the offence. There is also provision for the trial of income tax evasion cases by a special judge in the first instance.\textsuperscript{1072} However, income tax evaders are rarely prosecuted in the courts. Despite rampant tax evasion, there is not a single instance of exemplary punishment for this. The reasons for this lack of prosecution range from corruption, the inefficiency of the administration, and political interference in tax evasion cases.

During the last caretaker government in 2007, the army-backed government filed many tax evasion cases against a handful of political leaders and businesspeople. However, unfortunately, these cases were in most cases stayed by the higher judiciary, and some were dismissed because of the lack of evidence. The income tax department loses the case because the state attorneys representing the case either have insufficient knowledge of the tax law or are biased towards the tax evaders for reasons such as corruption and nepotism. There are provisions to hire experts for the state prosecution; however, that requires a large amount of money. Due to resource constraints, it is not possible for the department to represent tax evasion cases through expert lawyers.

\textsuperscript{1070} Ibid, 111.
\textsuperscript{1072} Income Tax Ordinance 1984, s 171.
The judicial perspective on this issue also deserves consideration. In Bangladesh, the judiciary holds three views of interpreting and applying taxing statutes. One view favours the strict construction of the fiscal statutes and, in case of any ambiguity, the benefit of doubt is given to the taxpayers. According to this view, if two equally reasonable constructions are possible, the construction favourable to citizens should be given priority.\textsuperscript{1073} The second view favours the purpose of the statute, as opposed to the interest of the taxpayers. In the case of any ambiguity, the court should construe the legislations, being guided by the principles of justice and fairness and considering equality and impartiality in the incidence of taxation, rather than favouring individual taxpayers.\textsuperscript{1074} The third view also favours the taxpayers in the case of any ambiguity. If the language is clear enough to imply the imposition and realisation of revenue beyond doubt, it should not be construed contrary to the intention of the legislature, which has the effect of stopping the realisation of revenue.\textsuperscript{1075} In Bangladesh, because of the problems of framing tax evasion cases, the judiciary exhibits a pro-taxpayer attitude. As a result, the department loses cases, which promotes future tax evasion by encouraging noncompliance. Most importantly, if tax evaders are not properly punished, the rule of law is questionable and the community loses trust in the taxation system, which is not congenial to healthy compliance.

The government must have an honest political willingness to punish tax evaders. Sufficient budget should be allocated so that income tax cases can be represented by reputed lawyers in the higher courts. The law should be changed to allow departmental officers to represent in the courts during income tax cases. In addition, political interference must be faced with courage to prevent immunity being provided to tax evaders. Overall, necessary reforms are imperative to solve the enforcement problem.

7.3.6 Tax Advisers and Tax Compliance

Although tax advisers play a crucial role in shaping the attitudes of taxpayers towards compliance, there is a gap in the field of tax research on the influence of tax professionals on taxpayers’ compliance behaviour.\textsuperscript{1076} Taxpayers rely on tax advisers

\textsuperscript{1073} Mrs Momtaz Mallik vs The Taxing Officer (1968) 20 DLR 599, cited in Waresi, above n 360, 85.
\textsuperscript{1075} Bengal Steel Works vs N Board of Rev (1975) 27 DLR 27 & 28.
for several reasons. They may need assistance interpreting the complexities and uncertainties of tax laws, they may wish to take advantage of loopholes in the law to evade or avoid tax, or they may need assistance in order to save time completing their tax. Thus, the competence and ethics of tax advisers is very important, considering their effect on tax compliance. Every year, tens of millions of taxpayers go to tax advisers either for advice or to prepare returns. From that perspective, tax advisers’ primary responsibility is to their clients. In Australia, for example, around 75 percent of taxpayers receive help from tax advisers while resolving their income tax issues.

If tax advisers are incompetent or unethical, they may, for example, overstate claims in tax returns, so they are rejected by the tax authority under scrutiny; they may understate to the prejudice of the taxpayer; or they may encourage taxpayers to employ aggressive tax planning with the aim of evading tax. Through an empirical study with Australian taxpayers, Devos finds that there is a statistically significant relationship between hiring a tax adviser and compliance behaviour. Although there are no statistics available from the income tax department, it can be presumed from the number of tax professionals in Bangladesh that millions of people visit tax advisers each year to receive advice regarding tax affairs. The government also recognises the role of the tax advisers in mobilising internal resources, and emphasises their efficiency, knowledge and experience. Since tax advisers have special, technical knowledge of the intricate income tax law and accounting, they are in a position to either facilitate compliance or help taxpayers undermine the tax statutes. Thus, tax advisers could help improve compliance and educate taxpayers about their taxpaying obligations and rights. Regarding the role of tax advisers, Brooks states that these advisers can perform the following acts in a tax administration:

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1079 OECD, above n 726, 14.
1080 Devos, above n 1076, 1.
1081 Ibid, 23.
1082 Ibid.
1083 In Bangladesh, there are 93 chartered accountant firms, where 1,263 chartered accountants work mostly as accounts preparers and tax advisers. <http://www.icab.org.bd/index.php?option=com_content&view=article&id=118&Itemid=154>.
1. By assisting taxpayers to comply with their legal obligations accurately and in a timely manner, they can significantly reduce the tax department’s burden of taxpayer education and assistance.

2. By acting as taxpayer representatives in proceedings before the tax authorities, they can increase the efficiency with which tax disputes are resolved. When taxpayers who do not understand the system well represent themselves before the tax department, the proceedings are inevitably more drawn out and misunderstandings frequently arise.

3. The presence and availability of private-sector tax advisers and preparers increase the general level of comfort that taxpayers have with the tax system, and thereby increase their level of voluntary compliance.

4. In the discharge of their professional responsibility to protect the integrity of the tax system, private-sector tax advisers can play an important role in assisting the tax department to ensure that the tax system is operating as intended, and in encouraging taxpayers to fully comply with the rules.1085

The income tax department should have a mechanism to control the behaviour of income tax advisers, and use them as an effective channel to improve tax compliance. It is necessary to analyse the mechanism used by the NBR to regulate the conduct of income tax advisers. In Bangladesh, tax advisers can be categorised into four distinct groups: registered chartered accountants, registered cost and management accountants, income tax advisers with a Bachelor of Commerce degree, retired income tax officers registered as ITPS with the NBR, and advocates registered with the Bangladesh Bar Council. Among these four groups, only income tax advisers with Bachelor of Law degrees are enrolled by the NBR. Occasionally, the NBR issues circulars for income tax practitioner (ITP) registration, and requests applications from commerce graduate. Upon receiving applications, the NBR conducts a written examination. Following this, the successful candidates have to appear for an oral examination. The NBR then issues the successful candidates an ITP licence to practice. After attaining this licence, the ITPs enrol with a taxes bar association as members before starting tax practice.

These requirements are presented in Section 174 of the 1984 ITO. Section 174 deals with all provisions regarding income tax advisers’ qualifications and entitlement to work as an ITP. According to Section 174, taxpayers who are required to appear before the income tax authority can do so through their authorised representative. Authorised representatives inter alia include legal practitioners who are entitled to practice in civil courts in Bangladesh and are advocates, chartered accountants or cost and management accountants, members of an association of accountants recognised by the board, and ITPs registered by the board in accordance with the rules made by the board (subject to those rules, the practitioner must be registered with a taxes bar association).

Income tax advisers remain an integral part of tax compliance in tax administrations around the world. While their primary allegiance is with their clients, and they have a duty to represent the clients and give them the best advice, it is equally important that they should be pro-revenue from an ethical and legal perspective. Hence, regulating the conduct of tax advisers is essential. Thus, like any other tax administration, the NBR should have a mechanism to control the conduct of ITPs and ensure their positive role in taxpayer compliance issues. The following discusses how the NBR could regulate the behaviour of tax advisers, and what relationship should exist between them and the income tax department.

Like in any other country, the tax advisers in Bangladesh owe their loyalty to their clients, and have a duty to represent them and offer the best tax advice. However, a problem in Bangladesh is that tax advisers do not have any direct responsibility to the income tax department—legally, ethically or professionally—except for the overarching necessity to comply with the tax statute. The NBR does not have any overseeing body to monitor advisers’ conduct. They are self-regulated within the frameworks provided by their own professional bodies—for example, chartered accountants are regulated by the Institute of Chartered Accountants of Bangladesh, advocates are regulated by the Bangladesh Bar Council, and other advisers are regulated by their respective taxes bar associations. The only tool that the NBR can use is Section 174 of the 1984 ITO.

1086 OECD, above n 726, 14.
All four groups of tax advisers can represent taxpayers before the tax authority. In addition, Section 174(2) provides for the disqualification of advisers. According to Section 174(2), no person is qualified to represent the taxpayer if he or she is:

- dismissed from government service … a legal practitioner, or a chartered accountant, a cost and management accountant, or other accountant … who, having been found guilty of misconduct in his professional capacity
  i. by any authority empowered to take disciplinary action against him, or
  ii. by the Board, in connection with any income tax proceeding, and, on account of that finding, he stands disqualified from practising his profession for so long as such disqualification continues.

A person disqualified and barred from the profession is given an opportunity to be heard and appeal in a higher forum. However, no tax adviser in Bangladesh has been found guilty of misconduct and barred for practice, despite the fact that the advisers in this country mainly focus on their own monetary interest, to the disadvantage of revenue and sometimes clients.

Anecdotal evidence shows that the relationship between tax advisers and the income tax department is not based on mutual trust and respect. The department does not believe in the advisers’ integrity, while the advisers do not believe they have any responsibility to the department—only to their clients. They also complain that the NBR does not offer them the respect they deserve. Thus, there exists an unstable relationship between tax advisers and the department. As a result, tax advisers only think of their clients and personal gains, and most are involved in aggressive tax evasion planning. The NBR should consider this issue and be vigilant in regulating tax advisers’ behaviour and ensuring their role in promoting voluntary compliance. The following presents some suggestions for the NBR to consider.

It is necessary to motivate and monitor the tax advisers’ regulatory bodies. As aforementioned, income tax advisers are categorised into four groups, each of which have a separate regulatory institution. For chartered accountants, the regulatory body is the Institute of Chartered Accountants of Bangladesh, established under the Bangladesh Chartered Accountants Order 1973 (PO Number 2 of 1973). The profession of chartered accounts and their conduct are regulated by this order. Every chartered accountant must be registered with the institute by law before started practising as an independent accountant or member of any chartered accountant firm. The institute has a separate code of ethics that enables punishment for professional
misconduct. This includes reprimands, fines, payment of costs, withdrawal of practising rights, suspension and expulsion from membership.  

Likewise, cost and management accountants in Bangladesh are regulated under the Cost and Management Accountants Ordinance 1977 and Cost and Management Accountants Regulations 1980. Under this regulation, the Institute of Cost and Management Accountants of Bangladesh was established as the professional body. There is a separate code of conduct and ethics to define and regulate the professional conduct and responsibility of cost and management accountants. If any member is accused of misconduct, as defined in Schedule IV attached to the regulation, membership can be suspended and an inquiry committee may be commissioned to examine the matter relating to misconduct. If the council finds the member guilty of misconduct after a proper inquiry, and after giving the member an opportunity to be heard, the council can reprimand the member or suspend the member from membership for a period not exceeding five years, as the council may think fit, or may exclude the member from membership.

The professional misconduct of the advocates is managed by the Bangladesh Bar Council, constituted under the Bangladesh Legal Practitioners and Bar Council Order 1972. According to Section 32(1) of the order, an advocate registered with the bar council will be reprimanded, suspended or removed from practice if he or she is found guilty of professional or other misconduct. The professional misconduct of other tax advisers to those mentioned above is regulated by the constitution of the respective taxes bar associations. For example, Article 10 of the constitution of the Dhaka Taxes Bar Association states that, if any member is guilty of violation of the constitution; if the conduct of any member is considered undignified, dishonourable or unprofessional by the executive committee; or if any member organises any other association activities that are likely to jeopardise the interest of the association, the member may be expelled from the association or subject to any penalty that may be deemed proper and imposed by the executive committee. If found guilty of any misconduct by the committee, the member may be expelled from the bar. Similar provisions are found in the constitutions of other local taxes bar associations’ constitutions.

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The NBR can monitor the conduct of tax advisers through these professional regulatory bodies by informing them of any misconduct and maintaining regular liaison. In addition, the government can establish a separate overseeing body to provide guidelines and closely monitor the conduct of tax advisers. In the US, an official body called the Office of Professional Responsibility sits within the IRS under the Deputy Commissioner, Services and Enforcement, and is responsible for establishing, communicating and enforcing standards of competence, integrity and conduct among tax practitioners. In Australia, tax advisers are regulated by the Tax Practitioner’s Board constituted under the *Tax Agent Services Act 2009*. This board is an independent statutory body in charge of implementing and administering the Act. Following the Australian example, the government of Bangladesh could establish a separate regulatory body with the NBR to comprehensively manage issues ranging from registering ITPs, to setting a code of conduct and professional ethics, to penalising ITPs for professional misconduct. This could be one of the institutional measures through which the NBR could ensure the role of tax advisers in improving compliance.

An enhanced relationship between the income tax department and tax advisers is imperative, given the vital role played by tax advisers in tax administrations. The relationship between the income tax department and tax advisers is focused on two issues: tax issues and non-tax strategic issues. First, tax issues are always important due to the position of tax advisers as agents of taxpayers. If there is a good relationship, tax advisers can be positively influenced to make taxpayers comply. Thus, this study argues that tax advisers can be included in the ATO regulatory pyramid as one of the actors taking part in negotiations with taxpayers. Thus, the department could regulate tax advisers, along with taxpayers, through the regulatory pyramid. Anecdotal evidence shows that tax advisers can help income tax offices fulfil the budget target by influencing taxpayers to pay tax. Second, the NBR can establish an enhanced non-tax strategic relationship with tax advisers based on trust and mutual respect. Such a relationship would have significant benefits for the department, as the OECD notes:

1088 OECD, above n 726, 59.
1090 OECD, above n 726, 44.
There is the potential for a form of enhanced relationship to develop in appropriate circumstances between tax advisers and revenue bodies. This would be based on the premise that greater openness can lead to better relationships. For revenue bodies, the principal benefit is greater understanding of how tax advisers go about their business, what drives their business practices, how they can be equitably influenced and, most importantly, what impact they have on the decisions made by their clients in relation to tax.\footnote{Ibid.}

In addition, tax advisers could also benefit from this relationship by developing and maintaining policy awareness. The OECD states:

Policy awareness is the ability to predict which transactions and issues the revenue body will want to be disclosed. By gaining greater understanding of revenue bodies, their decision-making processes and general areas of concern in relation to tax planning, tax advisers should be better placed to give best advice to their clients. This may include advice on the tax control frameworks needed and the levels of disclosure and transparency that revenue bodies expect in order to maintain the enhanced relationship. The enhanced relationship between tax advisers and revenue bodies should also result in opportunities for tax advisers and revenue bodies to collaborate on projects such as the production of early explanations of new tax laws, or greater consultation in respect of law-reform proposals.\footnote{Ibid.}

Thus, the ITDB can use tax advisers to improve compliance issues. To achieve this, the NBR should make provisions to regulate and monitor tax advisers’ conduct. In addition, a relationship of mutual trust and respect must be established, recognising advisers’ vital role in mobilising internal revenue. The NBR should work to build this relationship for the interest of national revenue.

### 7.3.7 Reducing Compliance Costs

Compliance costs are the burden that taxpayers bear in terms of the time and expenses involved in meeting their tax obligations. The widely cited definition of tax compliance cost is given by Sandford as:

Costs incurred by taxpayers in meeting the requirements laid on them by the tax law and the revenue authorities … over and above the actual payment of tax; costs which would disappear if the tax was abolished.\footnote{Cited in Coolidge, above n 1016, 250, 251.}

According to Shome, Aggarwal and Singh:
A good tax administration should … concern itself with compliance costs of the taxpayer—lost time, stress, visits to the tax office, standing in queues, charges by accountants and lawyers-associated with a given tax payment.\textsuperscript{1094}

There are three major components included in compliance cost: money, time and psychological costs to taxpayers.\textsuperscript{1095} These costs can be pre- and post-compliance (including the costs involved in filing appeals against assessment orders). Monetary costs may vary according to the classes of taxpayer. The monetary compliance cost can be much higher for corporate taxpayers than individual taxpayers. Monetary costs involve the professional fees of tax advisers, accountants, lawyers and investment advisers, as well as the amount spent to collect taxation guides and books, travelling costs, communications and stationery. The time costs involve the time individuals spend to complete their tax return themselves, or preparing information for tax advisers.\textsuperscript{1096} The psychological costs include the stress and anxiety experienced by taxpayers while coping with the complexities of tax returns and other information.\textsuperscript{1097}

High compliance costs have a negative effect on taxpayer compliance. The greater the costs, the less taxpayers are willing to comply. It is argued that high compliance costs encourage taxpayers to evade tax.\textsuperscript{1098} Odinkonigbo argues that high compliance costs affect the motivational posture of a taxpayer, thereby creating a threat of compliance by the tax authority and keeping the taxpayer away from the authority.\textsuperscript{1099} This distance increases the administrative costs of the tax department in its attempt to make the taxpayer compliant.

Tax compliance costs are very high in developing countries compared to developed countries.\textsuperscript{1100} As a developing country, Bangladesh is no exception. Taxpayers in


\textsuperscript{1097} Pope, above n 1095.

\textsuperscript{1098} Shome, Aggarwal and Singh, above n 1094.

\textsuperscript{1099} Odinkonigbo, above n 80, 356–357.

\textsuperscript{1100} Coolidge, above n 1016, 250.
Bangladesh incur monetary costs at various stages every year. They must pay the fees of tax advisers, consultation fees to the staff of income tax officers (if they do not use a tax adviser), the costs of travelling to and from the income tax office, the cost of collecting income tax returns and other forms, and sometimes bribes to the tax office. In terms of time costs, taxpayers spend time preparing the return themselves, or providing information to tax advisers to prepare the return; travelling to the tax office or tax adviser’s office; and waiting in the income tax office for hearings and to collect related documents. In terms of psychological costs, taxpayers in Bangladesh may undergo considerable anxiety and stress when dealing with income tax matters. The complexities of the tax statute and uncertainty arising from such complexities are one of the psychological costs of tax compliance.1101 Other psychological costs derive from the unfriendly behaviour of the tax authority, travelling to the sparsely and inconveniently located income tax offices, feelings of uncertainty and insecurity in terms of properly finalising the tax assessment process without difficulty, and an overall negative perception that nothing can be achieved easily in the income tax department without money or harassment.

Based on this, it is imperative that the government takes immediate steps to reduce the compliance costs of taxpayers. Some effective measures to lower compliance costs include removing the complexities of the tax law, establishing a centrally located income tax office, establishing good public relations with taxpayers, ensuring that tax returns and other tax-related books and information are easily accessible to taxpayers, eradicating corruption from the department, establishing a centrally located taxpayer service centre, and improving the overall image of the income tax department.

7.3.8 Using Patriotism to Improve Compliance

Patriotism has a deep and historical relationship with taxation. For example, income tax in the US, the UK and India was introduced during wartime or immediately afterwards. In addition, in Australia, income tax was introduced in 1915 to finance Australia’s involvement in World War I.1102 Innovative politicians exploited citizens’

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patriotism and introduced an income tax to fill the treasury. Even now, politicians tend to invoke patriotism to impose taxes.\textsuperscript{1103} Konrad and Quari state, ‘Especially in times of war, politicians appeal strongly to patriotism and to citizens’ national pride trying to increase their tax compliance or to implement tax reform’.\textsuperscript{1104} They argue that patriotism increases tax compliance—it increases during wartime and, during peacetime, can be an influencing factor to improve compliance.\textsuperscript{1105} Quari, Konrad and Geys argue that patriotic sentiments can also play a significant role during peacetime because they relate to a warm glow of paying taxes that manifests a close link between patriotism and personal income tax.\textsuperscript{1106} The influence of patriotism in personal income tax was recognised by Hill long ago:

An income tax has the considerable advantage of being responsive to the influences of patriotism, which are certain to be strong whenever a serious war is undertaken by a democratic country. Indirect taxes have not this quality … But the productiveness of an income tax depends, in large measures, upon the readiness of men to reveal their incomes and meet the tax. To this extent it assumes the nature of a voluntary contribution, to which men will respond more freely when they realize that the hour is one of the sore need and perhaps, of peril to the country.\textsuperscript{1107}

Thus, Hill observes that personal income tax is a voluntary contribution made spontaneously and more freely during wartime. He wonders why this ethos of contribution should not continue during other times: ‘It would have been strange, indeed, if the patriotism which led men to volunteer for the field in such numbers had been inoperative when contributions of money were called for’.\textsuperscript{1108}

Patriotism is a loyalty and benevolent feeling among individual citizens related to their country or fellow citizens. The individual creates such feelings, and they are direct and spontaneous. Zamir and Horowitz argue:

Patriotism is a kind of loyalty a person has for his country that is not the result of cost–benefit considerations. Like altruism, patriotism requires the


\textsuperscript{1105} Ibid.


\textsuperscript{1108} Ibid.
individual to sacrifice personal interests for the sake of others. Patriots’ concern for their country is unconditional and exists for its own sake.\footnote{1109}

However, as aforementioned, the patriotism of citizens becomes most prominent during wartime. During times of national crisis, people focus on the safety and security of the country, which relates to the personal safety and security of the citizen. If the state is not secure, personal liberty and safety are at stake. Thus, citizens of the US and UK pay income tax generously to ensure their personal safety and liberty, and above all their belief. Thus, it appears that patriotism does not consider cost–benefit analysis, but in the final analysis patriotism is no devoid of any profit loss accounting. This might explain one of the reasons that patriotic feelings remain dormant during peacetime and manifest strongly during wartime. If patriotism could be made more active during peacetime, there is no doubt that it would positively affect tax compliance.

Quari, Konrad and Geys suggest that people might be willing to pay higher income tax to their country not because it is their patriotic duty, but because they live in this country.\footnote{1110} The question is how to make patriotism active when there is no war or issue of national interest. One suggested way is to educate young generations to activate and nurture patriotism.\footnote{1111} Another way could be upholding good governance. Good governance ensures the rule of law is upheld, better functioning of the state, fair competition, quality delivery of public goods, the accountability and transparency of government institutions, and the correct spending of taxes. In summary, good governance ensures a liveable country. According to the World Bank, good governance is defined as, ‘the manner in which power is exercised in the management of a country’s economic and social resources for development’. According to the United Nations Development Programme (UNDP), good governance can be defined as the exercise of economic, political and administrative authority to manage a country’s affairs at all levels.\footnote{1112} Sound fiscal policy and efficient internal resource mobilisation form an integral part of good governance in a country.

\footnote{1110} Quari, Konrad and Geys, above n 1106.
\footnote{1111} Ibid, 29.
\footnote{1112} UNDP, ‘Reconceptualising Governance’ (Discussion Paper No 2, Management Development and Governance Division, Bureau for Policy and Programme Support, UNDP, 1997) 9.
Shah and Huther develop indices of good governance that could be important for tax compliance issues in Bangladesh.\footnote{Anwar Shah and Jeff Huther, ‘Applying a Simple Measure of Good Governance to the Debate on Fiscal Decentralization’ (World Bank Policy Research Working Paper, November 1999), 2 <http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-1894>\.} These indices relate to a government’s capability to:

1. ensure political transparency and a voice for all citizens
2. provide efficient and effective public services
3. promote the health and wellbeing of citizens
4. create a favourable climate for stable economic growth.\footnote{Ibid.}

If taxpayer compliance is to be improved in Bangladesh, there must be evidence of good governance, which would awake the dormant patriotism of the people to pay tax as an obligation to their motherland. However, good governance is a major challenge for the government of Bangladesh.\footnote{Md Abu Nayem Miazi and Md Nahidul Islam, ‘Prospect of Good Governance in Bangladesh: A Review’ (2012) 6(2) Prime University Journal 75.} Multi-party democracy is still in a fragile state, parliamentary and institutional accountability and transparency have not been ensured, corruption reigns in almost all government sectors, law enforcement is weak and politically biased, the judiciary’s role is not beyond question, and state institutions’ performance is unsatisfactory. The absence of watchdog offices, such as an ombudsman, all demonstrate that good governance is yet to be achieved in Bangladesh.

As a result of Bangladesh’s lack of good governance, many people are migrating to other countries. There is also alarming capital flight, and illicit financial flows have been observed in recent years. Kaufmann, Kraay and Mastruzzi find that the governance indicator scores of Bangladesh are very low.\footnote{Daniel Kaufmann, Aart Kraay and Massimo Mastruzzi, ‘The Worldwide Governance Indicators: Methodology and Analytical Issues’ (World Bank Policy Research Working Paper No 5430, September 2010).} They select the following criteria to score the governance practice of a country: voice and accountability, political stability and the absence of violence/terrorism, government effectiveness, regulatory quality, the rule of law, and control of corruption.\footnote{Ibid, 4.} The following table gives an overview of current governance quality in Bangladesh.\footnote{Ashikur Rahman, ‘Governance Indicators: Issues and Suggestions’ (Policy Research Institute of Bangladesh, August 2013) 4 <http://www.academia.edu/4227729/Governance_Indicators_Issues_and_Suggestions>\.}
Table 7.1: Current Governance Quality in Bangladesh

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<th>Worldwide Governance Indicators 2011*</th>
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<tr>
<td><strong>Corruption Perception Index</strong></td>
<td><strong>Voice and Accountability</strong></td>
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<td>Bangladesh</td>
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<td>India</td>
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<td>Pakistan</td>
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<td>Nepal</td>
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<td>Sri Lanka</td>
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* Estimate of governance (ranges from approximately -2.5 [weak] to 2.5 [strong] governance performance).
** Transparency International’s Corruption Perception Index Score (ranges from zero [most corrupt] to 100 [least corrupt]).
Note: TI = Transparency International.

Source: World Bank and Transparency International

Miazi and Islam’s social survey on the governance quality of Bangladesh\[1119\] finds that most participants expressed an opinion that there is no alternative to good governance, and the present governance quality is not satisfactory. Based on the survey results, the authors conclude:

On the basis of the … findings, it might be remarked that the current state of governance of Bangladesh is poor as almost all the aspects of good governance are severely absent in the country. At present, Bangladesh has been facing a number of challenges in the path of democratic or good governance like uninstitutionalised political parties, lack of accountability and transparency, lack of rule of law, inefficient leadership, ineffective political institutions, rampant corruption, and widespread poverty and so on.\[1120\]

It is imperative that there exists good governance in Bangladesh. Good governance can play an important role in nurturing patriotism among citizens, which is positively related to tax compliance. High tax compliance is related to the delivery of quality public goods and services, which improves the liveability of a country.\[1121\] Thus, the delivery of quality public goods and services is hindered due to lack of good governance. However, patriotism can be an effective tool to improve tax compliance. Based on this, the government of Bangladesh should take appropriate steps to nurture patriotism among its people.

\[1119\] Miazi and Islam, above n 1115, 69.
\[1120\] Ibid, 92.
\[1121\] Quari, Konrad and Geys, above n 1106, 23.

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7.3.9 Curbing Corruption in the Income Tax Department

Corruption remains a severe problem in the tax administration of developing countries.\textsuperscript{1122} In particular, it is argued that corruption has a higher negative effect on direct taxes, such as income tax.\textsuperscript{1123} As a developing country, Bangladesh is no exception, with its income tax administration beleaguered by corruption among income tax officers.\textsuperscript{1124} The UNDP defines corruption as ‘the misuse of public power, office or authority for private benefit-through bribery, extortion, influence peddling, nepotism, fraud, speed money, or embezzlement’.\textsuperscript{1125} According to Li, tax corruption can be defined as the behaviour of tax officials aimed at unjustly enriching themselves or other close people by the misuse of the public power entrusted to them.\textsuperscript{1126}

Li categorises tax corruption into two groups. The first includes embezzlement, graft, bribery, fraud, stealing state property, living a luxurious life, receiving gifts and enjoying entertainment opportunities offered by taxpayers.\textsuperscript{1127} The second involves activities or behaviours that are very often considered corrupt.\textsuperscript{1128} Both categories are present in the ITDB. Taxpayers or their agents pay bribes, forward gifts and provide entertainment opportunities to tax officials to reduce their tax liabilities. Some tax officials influence the higher authority to gain a better posting in a ‘wet’ workplace.\textsuperscript{1129}

One vital issue of tax corruption is how it can be measured, given that it is very difficult to measure corruption.\textsuperscript{1130} The main problem in quantifying corruption is the lack of


\textsuperscript{1123} Tanzi and Davoodi, above n 362.


\textsuperscript{1125} UNDP, Fighting Corruption to Improve Governance (New York, 1999) 7.


\textsuperscript{1127} Ibid.

\textsuperscript{1128} Ibid.

\textsuperscript{1129} The concept of ‘dry’ and ‘wet’ agencies in civil service was used by Warwick in the case of Indonesian civil servants. In this context, a ‘wet’ agency means a department where generous honours, allowances, work on committees and foreign training opportunities are available. In contrast, a ‘dry’ agency is a traditional department that has no extra incentives. Donald P Warwick, ‘The Effectiveness of the Indonesian Civil Service’ (1987) 15(2) Southeast Asian Journal of Social Science 43, cited in John ST Qua, Curbing Corruption in Asian Countries: An Impossible Dream (Emerald Group Publishing, 2011) 16.

\textsuperscript{1130} Asad Zaman and Faizur Rahim, ‘Corruption: Measuring the Unmeasurable’ (2009) 25(2) Humanics 117, 118.
Moreover, the quantity of corruption or corrupt transactions is not finite or amenable to measurement by research. However, there are some methods available, such as the perception survey method. Transparency International’s Annual Corruption Perception Index and the World Bank’s Control of Corruption Index are based on the perception survey method. Other methods of measuring corruption include the expert survey method, estimating bribery and the direct observation method.

TIB employs the household survey method to measure the extent of corruption in the public sector of Bangladesh, including the tax administration. The first survey was conducted by TIB in 1997. Then, in 1998, it investigated corruption in different sectors of Bangladesh, including the income tax department. There are other ways to measure corruption in the income tax department, including external audits by the Office of the Comptroller and Auditor General of Bangladesh, internal audits by the Office of the Director General of Taxes Inspection, and regular internal audits by the Inspecting Additional/Joint Commissioner of Taxes. Although audits are a potential source of attaining data about corruption, they have limitations. However, performance appraisal through improved auditing processes can play a useful role in unearthing cases of corruption.

Numerous causes of tax corruption have been identified, including tax officials’ low salaries, lack of professional ethics and ambitions to become wealthy quickly;

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1131 Li, above n 1126, 476.
1139 Ibid.
legal loopholes; conflicts of interest; and bureaucratic red tape.\textsuperscript{1141} Tax corruption manifests in various ways\textsuperscript{1142} and, in transitional economies, the transition process paves the way for corruption.\textsuperscript{1143} As Nobel laureate Gary Becker says, ‘There is no sure fire way to eliminate corrupt behaviour, but certain steps would certainly reduce the temptations’.\textsuperscript{1144} The municipal and international community agree about the damaging effect of corruption, and have begun fighting corruption concertedly.\textsuperscript{1145} Tax corruption is an institutional problem;\textsuperscript{1146} thus, curbing corruption in the ITDB requires a holistic approach that includes methods that are universal, state centric and society centric.\textsuperscript{1147} Some of the measures to combat corruption include providing adequate remuneration for income tax officers, establishing a separate semi-autonomous revenue authority, reducing opportunities for corruption by simplifying tax legislation, reducing discretionary power, eliminating the need for personal contact with taxpayers, introducing a 100 per cent self-assessment system, punishing corrupt officers, increasing integrity among income tax officers, and limiting the scope of post-retirement employment.

Thus far, the government of Bangladesh has undertaken several measures to combat corruption in the administration, including in the income tax department. The \textit{Anti-Corruption Commission Act 2004} established a separate anticorruption institution—the Anti-Corruption Commission (ACC) of Bangladesh—in November 2004. However, with the exception of the army-backed government regime, the role of the ACC to curb tax corruption appears ineffective.\textsuperscript{1148} Although, by law, the commission is required to be independent and impartial, the reality is that it has always been under political influence.\textsuperscript{1149} The institution is largely used as a tool by the ruling government

\textsuperscript{1141} K Pashev, ‘Corruption and Tax Compliance: Challenges to Tax Policy and Administration’ (CSD Report No 16/2005, Centre for the Study of Democracy); Quah, above n 1129, 14.
\textsuperscript{1143} Li, above n 1126, 477.
\textsuperscript{1147} Mobasser Monem and Hasan Mohammad Baniamin, ‘Public Service Ethics and Corruption in Bangladesh’ in Meghna Sabharwal and Evan M Berman (eds), \textit{Public Administration in South Asia: India, Bangladesh and Pakistan} (Taylor and Francis, 2013) 252.
\textsuperscript{1149} Ibid.
to harass or subdue opposition party leaders. In addition, the corruption cases filed by the commission against different politicians and government officials have been dropped by the commission due to political pressure, the inefficiency of commission officials to make cases, a lack of cooperation from other government agencies, and the corruption of the investigating officers of the ACC.

The dropping of graft cases by the commission is viewed as being a result of the moral vulnerability of the commission. The commission is not independent in its work, and is under-staffed to deal with the huge volume of corruption cases. In addition, there is corruption in the commission itself because it hired most of the personnel from the earlier anticorruption commission, which was branded a corrupt institution. Above all, lack of political will remains a strong barrier to the successful functioning of the ACC. The ACC was not established because the government wished to curb corruption—the government had no political will to establish the ACC. Rather, it was established at the behest of donors and due to the pressure of civil societies. However, despite this, the ACC seems to be active in recent days. A separate cell in the commission has been established to deal with the political corruption of members of parliament and ministers. In addition, recently, the commission started investigating the wealth of some top bureaucrats of the government after the highest court in the country ruled that an attempted amendment of the ACC law that sought to protect government officials was illegal. Thus, it is hoped that the commission will play a vital role in reducing corruption in the income tax department.

Another way to curb corruption in the income tax department is to introduce the responsive regulatory pyramid as an internal mechanism in the department. The pyramid suggests using persuasion as a value-based approach to regulation, as opposed

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1150 Monem and Baniamin, above n 1147, 251.
1154 Ibid, 51.
1155 Ibid.
1157 ‘So Much for Independent ACC’, above n 1152.
to a rule-based approach. In Bangladesh, deterrent legislation is rarely applied and, even when it is applied, does not produce the intended result. The ATO and other government regulatory organisations in Australia use the regulatory pyramid. Mills proposes the regulatory pyramid for anticorruption agencies with some modifications, and it can be a useful device to reduce corruption. The proposed pyramid is presented in the figure below.

Figure 7.1: The Responsive Regulatory Pyramid

According to the regulatory pyramid, to control corruption, the department must start at the base of the pyramid by raising awareness through educating, socialising, researching and increasing knowledge of the organisation’s integrity and code of conduct. The next step up provides for managing implementation of organisational design, policy frameworks and procedural standards. The next step up involves

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1159 United Nations, 1124, 17.
1160 Wood, above n 586.
1161 Mills, above n 1158, 23.
1162 Ibid.
monitoring and supervising corruption by the authority. If any case of corruption is reported or brought to the notice of the authority, it must be investigated and a report prepared. The next step up provides for punishments, such as suspension, demotion or counselling, depending on the circumstances. As a final measure, a corrupt noncompliant tax officer can be dismissed by the authority. Another attempt by the government to tackle tax corruption involved establishing the office of the tax ombudsman in 2005; however, this office was abolished in 2010.

7.3.10 Introducing Adequate Information and Communication Technology

Technology such as the internet and information and communication technology (ICT) systems and devices has transformed the ways that governments operate, and the revenue department is no exception. As in developed countries, technology has affected the design and implementation of the tax systems in developing countries. To establish an efficient and transparent tax system, appropriate ICT must be implemented. ICT can help tax administrations in a variety of ways. It can:

- help establish an efficient and transparent tax administration
- help the income tax department establish an e-tax system
- help reduce tax compliance costs for taxpayers
- help reduce administrative costs for the income tax department
- help gather third-party information about taxpayers’ income, making taxpayer tracking an easy job
- make tax withholding more sophisticated and efficient
- help remove complexities in tax legislations
- make taxpayers’ record keeping easy
- make internal management and control over resources easy
- enable taxpayer audit to be smoothly performed
- enable returns and payments to be easily processed.

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Overall, improved tax compliance and better management of the administration could be achieved through proper use of ICT in the Bangladesh income tax department. There is evidence from developing countries in this respect.\textsuperscript{1167}

Given the poor capability of the income tax administration of Bangladesh in managing and collecting income tax, it is imperative that the efficiency and transparency of the department be increased. One of the tools to increase the efficiency of the income tax department to improve the assessments and collection system is the effective use of ICT. However, the income tax department has been unable to introduce ICT in a pragmatic manner. It still uses the traditional manual system to make assessments and collect income taxes.\textsuperscript{1168} Only two tax zones use an e-filing system—the LTU and Tax Zone 8 (Dhaka)—which are administrative zones working with professional taxpayers, such as doctors and lawyers. In other tax zones, computers are used, but remain instruments for typing only.\textsuperscript{1169}

In recognising this deficiency of ICT and considering its importance in internal resource mobilisation, the NBR has undertaken a modernisation project to equip the income tax department with proper ICT. Automating the tax processes and establishing an integrated revenue management system remain the core purposes of this modernisation.\textsuperscript{1170} From 2011 to 2016, the modernisation plan is being implemented with the help of donors such as the World Bank and IMF. Under this modernisation and automation project, in 2013, the NBR was able to implement the automated issuance of TINs, linked with the national identification database. This was a benchmark project implemented in June 2013 under the guidance and financial assistance of the IMF.\textsuperscript{1171} Thus far, the automated TIN issuance program remains a substantial achievement in the process of automating the income tax department. Under this system, by the end of September 2013, more than 530,000 taxpayers had been issued with TIN registration, including over 90,000 new taxpayers. This automated system of issuing TINs is considered a success because the collection of income tax has increased.\textsuperscript{1172} It is anticipated that the automation process of the

\textsuperscript{1167} Ibid.

\textsuperscript{1168} NBR, above n 17.

\textsuperscript{1169} Ibid.

\textsuperscript{1170} Ibid, 7.


\textsuperscript{1172} Ibid.
department will continue with full strength to improve income tax collection and ensure sustainable tax compliance.\textsuperscript{1173}

Another important achievement in the process of automation and providing taxpayers’ service is the NBR’s introduction of an online tax calculator. The objective of hosting a tax calculator on the NBR website is to provide an online service to taxpayers to calculate their taxable income and payable tax. This calculator is hosted by the NBR in consideration of the technicality of calculating income tax among nonprofessional taxpayers. The online calculator contains income tax returns, wealth statements and head-wise income and tax calculation guides. This is a simple and helpful guide for taxpayers who do not possess much technical expertise to deal with complicated income tax issues. It is expected that the tax calculator will be an excellent tool in helping taxpayers derive their total income and tax liability, without needing much knowledge about income tax law and rules.

Another important advancement in the field of automation is the online portal for paying income tax. The NBR has launched this e-payment portal to make tax payments easy and hassle free for taxpayers. Through this portal, taxpayers can pay their income tax without going to the bank or income tax office to collect \textit{challans} (a traditional invoice used to pay tax by physically visiting the collecting banks). However, current online facilities do not allow taxpayers to submit their returns online. This is a drawback of the automation system. While taxpayers can register, calculate their tax liability using the tax calculator, and pay tax using the online portal, to submit their income tax return, they must physically visit the income tax office or appoint an income tax adviser to prepare and submit their return. However, the NBR could introduce an e-tax system to enable taxpayers to lodge electronic returns. For example, Australia currently uses an electronic return filing system.\textsuperscript{1174} This e-tax system could facilitate a free and secure return lodgement option for individual taxpayers via the internet. This system could include in-built checks and calculators to help ensure the tax return has been completed correctly, as well as a tool that provides an estimate of the taxpayer’s tax assessment. This system could also facilitate pre-filling of tax return by obtaining data from previous returns and current information from organisations, including employers, banks and government agencies. The NBR should actively

\textsuperscript{1173} Ibid.

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consider introducing a comprehensive e-filing system. Income tax officials can gain experience from the ATO about the operations and technology needed to create an e-filing system in Bangladesh.

7.3.11 Introducing Qui Tam Legislation

Every year, Bangladesh loses a huge amount of revenue due to fraudulent claims of tax deductions, underreporting and non-reporting. As mentioned earlier in the thesis, the exact amount of revenue lost because of the tax gap cannot be determined due to the lack of data; however, the severity of the problem can be perceived by the size of the informal economy in the country. The income tax authority is constantly seeking to curb this problem via various legal measures, including prosecution of tax evaders. However, this public law enforcement process often proves insufficient. This is not only an issue in Bangladesh, but also in developed countries, such as the US. As an alternative to public enforcement, ‘qui tam’ actions are becoming a popular and powerful enforcement tool, particularly in the public sector, such as healthcare and procurement fraud.1175

The term ‘qui tam’ is derived from the Latin phrase ‘qui tam pro domino rege quam pro se ipso in hac parte sequitur’, meaning ‘who pursues this action on our Lord the King’s behalf as well as his own’.1176 Qui tam cases are a class of civil law case that whistle-blowers file in the courts on behalf of the government. In the US, such actions are a popular and effective enforcement tool that are brought by whistle-blowers under the False Claim Act, which rewards whistle-blowers if their actions recuperate lost funds for the government. Although qui tam actions do not have a place in federal tax legislation, several US states have introduced laws authorising qui tam suits for violations of the state tax law.1177 In 2010, New York became the first state to explicitly authorise the application of its FCA to tax claims.

Qui tam proffers private enforcement as an alternative to traditional public law-enforcement actions. The prominent aspects of private enforcement are as follows.

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1177 Hertel, above n 1175.
First, it provides incentives to private citizens to bring action regarding monetary fraud committed against the government. Second, enforcement agencies can reduce the huge costs involved in enforcement activities, and divert resources to pursue other priorities. Third, since private enforcement provisions allow standing to a large number of potential enforcers, it might mitigate the problem of regulatory capture. Hertel argues that, ‘[b]y introducing a virtually unlimited number of new “regulators”, private enforcement actions greatly reduce the possibility that all enforcers may be improperly influenced by the industry they seek to regulate’. Regulatory capture is a common phenomenon in the tax departments of developing countries. It is a breeding ground of corruption, where tax officers are captured by taxpayers through the process of giving and taking bribes to evade tax. Ventry suggests that public law enforcement by private individuals can be an effective monitoring and prosecutorial mechanism in the field of law when the institutional mechanism fails due to information asymmetry, active concealment by regulated parties and weak enforcement. The ITDB has all three of these negative attributes.

In Bangladesh, a Whistleblowers Protection Act 2011 was enacted. This Act provides for the protection of whistle-blowers who provide information about any government fund irregularities. However, there is no legislation authorising qui tam actions, and the Act does not contain specific provision for qui tam action. The ITDB administers its own whistle-blower program under the 1984 ITO. Section 184D of the ordinance makes provisions for rewarding officers or employees of the board and its subordinate tax offices for outstanding performance collecting taxes and detecting tax evasion, and for any other person who provides information leading to detection of tax evasion. Under this program, the finance minister is authorised to approve rewards to the informants of tax detection cases.

However, a new law should be made to deal with false claims and wrongdoing involving government funds. This new law will provide for qui tam actions by private individuals in sectors such as procurement and healthcare, including income tax fraud. This would substantially contribute to improving voluntary compliance. As Ventry argues, ‘If sunlight is the best antiseptic, the looming possibility of qui tam actions

\[1178\] Ibid, 1903.

\[1179\] Ibid, 1903–1904.

could alter risk assessments of reporting positions by taxpayers and their advisors and thereby improve tax compliance¹.¹¹⁸¹

### 7.4 Conclusion

Taxation is the principal source of revenue that is the lifeblood of governments. It is imperative that governments are able to collect sufficient revenue to reduce poverty and provide social infrastructure, healthcare, education, security, transport, pensions and public goods that are necessary for citizens and to ensure good governance. However, this much-needed revenue source is affected by increasing tax evasion and avoidance. This is a global problem, to which Bangladesh is no exception. Tax evasion and noncompliance pose a major challenge for the ITDB. As such, the government should seek to reform the personal income tax system to ensure just distribution of wealth against the backdrop of the current market economy, considering the horizontal and vertical equity of taxation, as well as social outcomes, rather than only the traditional fairness of the taxation system.¹¹⁸²

This thesis has sought to determine the causes of income tax noncompliance and to suggest potential tools to manage this problem. It is proposed that the relationship between taxpayers and the state is a fiduciary one, based on the trust and good faith of the taxpayer in the state. If the state fails to comply with its fiduciary obligations, this is likely to affect tax compliance behaviour. The current state of the income tax administration and tax compliance has been examined in detail in this thesis. It has been observed that, despite a variety of efforts, the ITDB has not notably improved the poor state of tax compliance. Its inappropriate compliance strategy and inadequate legal tools remain the principal causes of this.

Thus, this thesis suggests a new approach to tackle the problem of noncompliance. The suggested strategy is to adopt the ATO compliance model, together with necessary legal reforms. This thesis has presented a set of policy suggestions. It is expected that, if these are applied by the ITDB and tax policy is crafted accordingly, the overall compliance rate will be improved, and Bangladesh will be able to generate suitable

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¹¹⁸¹ Ibid, 732.
revenue from income tax. However, it should be noted that the tools suggested are not intended as ultimate solutions to the noncompliance problem. The tax noncompliance problem is intertwined with the taxation system itself, which means it cannot be eradicated permanently. However, the current enormity of the problem can be reduced substantially by employing appropriate legal tools and creating a comprehensive and pragmatic compliance strategy.

This thesis examines selected issues regarding taxpayers’ compliance in the field of income tax. A key issue identified is the fiduciary relationship between the state and taxpayers. The analysis presented above of this important concept calls for empirical investigation and thus for future research. Similarly the thesis examines various tax compliance models and theories in a critical manner, in order to evaluate their relative merits both as to explanation and as to effectiveness. The emphasis throughout is on the future improvement in effectiveness of taxation policy in the context of developing countries. Empirical evaluation of implemented policy will be vital to this project. The policy suggestions made in the thesis should provide some valuable guidelines for the tax administrations of developing countries particularly for Bangladesh.
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