



# COMPARATIVE STUDY OF PENALTY PROVISION IN INDIRECT TAXES IN INDIA IN THE ERA OF EASE OF DOING BUSINESS VIS-A-VIS DEVELOPED COUNTRIES

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# TOP ECONOMIES OF THE WORLD

<b>Rank</b>	<b>Country</b>	<b>GDP (Trillions of US\$)</b>
1	<a href="#"><u>United States</u></a>	18.56
2	<a href="#"><u>China</u></a>	11.39
3	<a href="#"><u>Japan</u></a>	4.73
4	<a href="#"><u>Germany</u></a>	3.49
5	<a href="#"><u>United Kingdom</u></a>	2.64
6	<a href="#"><u>France</u></a>	2.48
7	<a href="#"><u>India</u></a>	2.25

# GDP (NOMINAL) PROJECTION - 2020

Country/ Economy	GDP Nominal (billions of \$)				
	2016	share	Rank	2020	Rank
<b>United States</b>	18,561.934	24.7	1	21,927	1
<b>China</b>	11,391.619	15.1	2	16,458	2
<b>Japan</b>	4,730.300	6.29	3	5,506	3
<b>Germany</b>	3,494.898	4.65	4	4,008	4
<b>United Kingdom</b>	2,649.893	3.52	5	2,928	6
<b>France</b>	2,488.284	3.31	6	2,851	7
<b>India</b>	2,250.987	2.99	7	3,297	5

# GDP (PPP) PROJECTION - 2020

GDP PPP (billions of Int. \$)					
Country/Economy	2016	share	Rank	2020	Rank
United States	18,561.934	15.6	2	21,927	2
China	21,269.017	17.9	1	29,348	1
Japan	4,931.877	4.14	4	5,483	4
Germany	3,979.083	3.34	5	4,583	5
United Kingdom	2,787.741	2.34	9	3,244	9
France	2,736.717	2.30	10	3,185	10
India	8,720.514	7.32	3	12,842	3

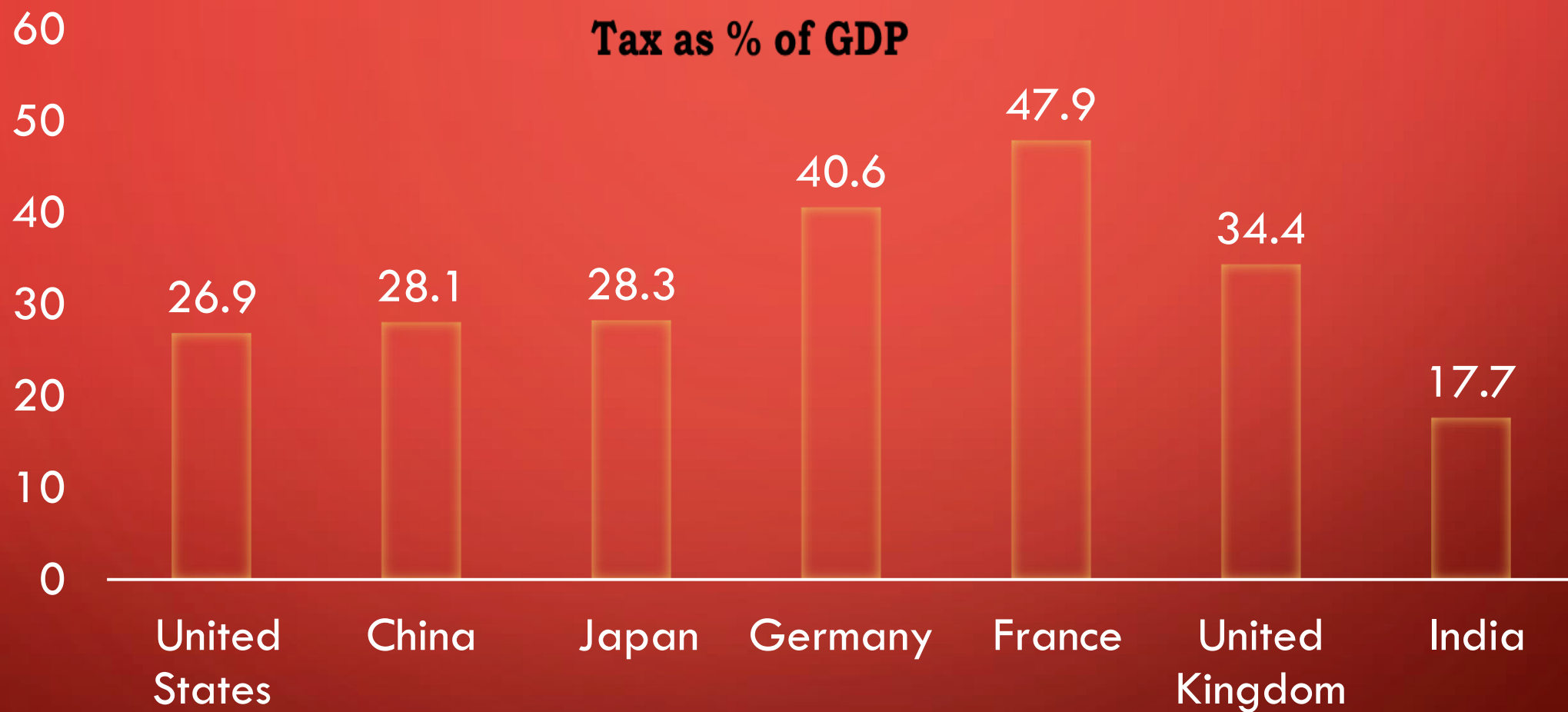
# TAX-GDP RATIO

- The **tax-to-GDP ratio** is the **ratio** of **tax** collected compared to national gross domestic product (**GDP**).
- The tax-GDP ratio (Centre+state) in India is the lowest in its league -- at 17.7 per cent as compared to China at **28.1**
- per cent, Brazil at 35.6 per cent and the overall emerging markets' average at 21.4 per cent.

# TAX-GDP RATIO OF MAJOR COUNTRIES

<b>Country</b>	<b>Tax as % of GDP</b>
<b><u>France</u></b>	<b>47.9</b>
<b><u>Germany</u></b>	<b>40.6</b>
<b><u>United Kingdom</u></b>	<b>34.4</b>
<b><u>Japan</u></b>	<b>28.3</b>
<b><u>China</u></b>	<b>28.1</b>
<b><u>United States</u></b>	<b>26.9</b>
<b><u>India</u></b>	<b>17.7</b>

## Tax as % of GDP



# STEPS TAKEN FOR “EASE OF DOING BUSINESS” IN INDIRECT TAX IN INDIA

- Registration to be allowed within 2 days of the application.
- E-payment of refunds and rebates through RTGS/NEFT.
- Payment of duty has been made mandatory to be paid electronically.
- Revision of return allowed.
- Number of returns to be filed by a large manufacturer reduced from 27 to 13.



- Records can be maintained electronically and digitally signed invoices are accepted.
- Facility of direct dispatch of goods by registered dealer from seller to customer's premises provided. Similar facility allowed in respect of job-workers.
- Time limit for taking CENVAT Credit of duty/tax paid on inputs and input services increased from six months to one year.
- Registration for factories operating through multiple premises falling within a range allowed.
- Requirement of self attestation of the transporter's copy by a manufacturer using digitally signed invoice done away with.
- Interest rate on late payment of duty reduced by about 20 per annum.

- Launch of Customs SWIFT clearances (Single Window Interface for Facilitating Trade):
- Filing of declarations by importers, exporters, Customs brokers and filing of manifests by shipping and airlines allowed through digital signatures with effect from 01-01-2016.
- Deferred duty payment for select categories of importers and exporters
- The number of documents required for export / import have been reduced to three, namely, electronic declaration, Invoice cum packing list & Bill of Lading
- 24X 7 customs clearance facilities extended to 19 sea ports and 17 Air Cargo complexes

- Customs Clearance Facilitation Committee (CCFC) set up at every major Customs formation to address the issue relating to Customs Clearance and infrastructure impacting clearance of goods.
- 100% disbursal of Drawback electronically.
- Provisional payment of drawback to exporters pending fixation of brand rate.
- Full transferability of duty credit scrips to pay dues under all three indirect taxes.
- Exemption to payment of excise duty in the case of locally procured excisable goods against advance authorization, which shall improve cash flow of exporters.

- Self sealing for exports of bulk cargo.
- Electronic monitoring of export proceeds realization, which shall obviate need for submitting documentary evidence by exporters. As a measure of facilitation verification of export obligation discharge certificates limited to 5% cases.
- Installation certificates from private chartered engineers allowed.

## Service Tax

- Online registration of new Service Tax assessee in 2 days
- Permission to maintain electronic records and acceptance of digital signatures.
- Granting provisional payment of 80% of the refund amount with 5 days in respect of service exporters, subject to fulfillment of certain conditions
- Interest applicable on outstanding taxes has been reduced to 15%. Only in cases where service tax has been collected by the assessee and not deposited Shall have a higher rate of 24%.

# TAX COMPLIANCE

- **Tax compliance means** “Degree to which a taxpayer complies (or fails to comply) with the tax rules of his country, for example by declaring income/ Turnover, filing a return, and paying the tax due in a timely manner.”

Voluntary compliance rate in Various countries (estimated source IMF)

- Sweden – 95 %
- South Africa – 90 %
- USA - 81.7 %
- Romania – 60 %
- Chili – 80%
- Pakistan – 59 %



# PENAL PROVISIONS IN INDIRECT TAX - INDIA

## *- Penalty for short-levy or non-levy of duty in certain cases -*

- Where any duty of excise has not been levied or paid or has been short-levied or short paid or erroneously refunded, for any reason **other than** the reason of fraud penalty liable should not exceeding **ten per cent.** of the duty so determined or rupees five thousand, whichever is higher



(C) WHERE ANY DUTY OF EXCISE HAS NOT BEEN LEVIED OR PAID OR HAS BEEN SHORT-LEVIED OR SHORTPAID OR ERRONEOUSLY REFUNDED, BY **REASON OF FRAUD** PENALTY LIABLE SHALL BE EQUAL TO THE DUTY SO DETERMINED:

-  
IN RESPECT OF THE CASES WHERE THE DETAILS RELATING TO SUCH TRANSACTIONS ARE RECORDED IN THE SPECIFIED RECORD FOR THE PERIOD BEGINNING WITH 8TH APRIL, 2011 UP TO THE DATE ON WHICH THE FINANCE BILL, 2015 RECEIVES THE ASSENT OF THE PRESIDENT (BOTH DAYS INCLUSIVE), THE PENALTY SHALL BE **FIFTY PER CENT.** OF THE DUTY SO DETERMINED;

(D) WHERE ANY DUTY DEMANDED IN A SHOW CAUSE NOTICE AND THE INTEREST PAYABLE THEREON UNDER SECTION 11AA, ISSUED IN RESPECT OF TRANSACTIONS REFERRED TO IN CLAUSE (C), IS PAID WITHIN THIRTY DAYS OF THE COMMUNICATION OF SHOW CAUSE NOTICE, THE AMOUNT OF PENALTY LIABLE TO BE PAID BY SUCH PERSON SHALL BE **FIFTEEN PER CENT.** OF THE DUTY DEMANDED,

(E) WHERE ANY DUTY AS DETERMINED IS PAID WITHIN THIRTY DAYS OF THE DATE OF COMMUNICATION OF THE ORDER PENALTY LIABLE TO BE PAID BY SUCH PERSON SHALL BE **TWENTY-FIVE PER CENT.** OF THE DUTY SO DETERMINED



# PRINCIPAL TAX EVASION CRIMES (USA)

- Principal crimes include **willfully evading tax or willfully failing to pay a tax** (income tax as well as other taxes such as estate, gift, and excise taxes), **making false statements on any return that is to be filed with the federal government,** or **aiding in the preparation of fraudulent tax returns.**
- Once a criminal tax investigation has begun, **full payment** of taxes, penalties, and interest **will not prevent prosecution.**
- While the filing of **an amended return** is not considered an admission of guilt with respect to a crime it can be used to determine the amount of the underpayment.

## PENALTIES IN GENERAL

- Conviction of a **felony** tax offense usually results in the assessment of a sentence and penalties. For example, the following sentence and penalties are usually assessed for *each count* of evasion (IRC § 7201):
  - Imprisonment up to five years, fine of up to \$250K, a civil fraud **penalty of 75 percent** on the portion of the underpayment due to fraud, costs of prosecution, and interest on the underpayment
- **Criminal prosecution** normally takes place before **civil proceedings**

# IRC § 7206: COMMITTING FRAUD AND MAKING FALSE STATEMENTS

- **IRC § 7206(1):** An offense to willfully make (i.e., prepare and file) and subscribe (e.g., sign) any return, statement, or other document that contains or is verified by a written declaration that it is made under penalties of perjury and that the person does not believe to be true and correct as to every material matter.
  - For example, IRC § 7206(1) applies if the taxpayer characterized illicit sales of drugs as sales of nutritional supplements on an income tax return.
  - No tax deficiency is required for IRC § 7206(1).
  - Taxpayer can be charged with both IRC § 7201 and IRC § 7206(1) offenses.
  - IRC § 7206(2): Makes aiding and abetting preparation of a false return illegal. The document doesn't have to be made under oath (as is the case under IRC § 7206(1)).

# CIVIL FRAUD PENALTIES AND OTHER PENALTIES

- **The civil fraud penalty of IRC § 6663** provides that if any part of an underpayment of tax is due to fraud, a penalty of 75 percent of the part of the underpayment attributable to fraud will be assessed.
- If the taxpayer **fails to file a return**, the penalty is normally 5 percent of the underpayment per month and is limited to a maximum of 25 percent according to IRC § 6651(a)(1). If, however, the failure to file is *fraudulent*, the penalty is 15 percent for each month the failure exists up to a maximum of 75 percent of the tax due (IRC § 6651(f)).
- The failure-to-pay penalty is applied to the balance of the taxes that remain unpaid after the due date of the return.

# PENALTY PROVISIONS IN EU

- The French General Tax Code provides (article 1741) that tax fraud is punished by a 37,500 Euro fine and of five years of imprisonment.
- When fraud is facilitated by the use of false invoices, the French General Tax Code provides a 75,000 Euro fine and five years of imprisonment.
- The Italian legislative decree on tax offences of 24 September of 2015 provides a sentence from one year and a half to six years of imprisonment for committing a tax fraud using false documents for non-existent transactions.



- The article 370 of the German Tax Code and the German Federal Court of law (*Bundesgerichtshof*) jurisprudence<sup>12</sup> provide fines and imprisonment sentences that varies according to the amount of the fraud. For instance, under 50,000 Euros, the tax offender is only punished by a fine. Above 50,000 Euros, a fine and an imprisonment sentence, generally suspended, is provided except for massive tax fraud (above 1,000,000 Euros) for which imprisonment cannot be avoided.
- In UK for most offences the maximum penalty on conviction in the Crown Court is seven years imprisonment or an **unlimited fine**. In the magistrates' court the maximum term of imprisonment is restricted to six months imprisonment or a financial penalty not exceeding £20,000 or **three times** the amount of tax, whichever is greater.

## OBSERVATION:

- We can see that in terms of Ease of Doing Business we have reached closer to the Best Practices of the Developed Countries.
- However in terms of penal provisions India is lagging behind.
- Developed countries have more tougher penal provisions compared to India which acts as deterrence against tax evasions. Even tax Compliance in Developed countries is much higher compared to India. Hence India also needs to have tougher penal provisions for frauds and tax evasions.

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THANK YOU