COMPARATIVE STUDY AND ANALYSIS OF TAX POLICIES OF UNITED STATES, AUSTRALIA AND INDIA

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ABSTRACT

In this paper, it is stated that how a tax is levied across a country. Here we have laid down comparative analysis of Tax Policies and analysis of three major countries i.e., Australia, United States and India. A tax policy is the background for implementation of a good and fair tax structure. Different Constitutional provisions relating to taxations and the freedom involved through these provisions in Trade and Commerce are stated herewith. Fundamental provisions through which these taxations are implemented for the benefit of state as well as for the individual are discussed herewith. The Analysis of how much tax is levied and imposed by a country are necessary for understanding the living standard of an individual.

CHAPTER I - INTRODUCTION

In the 14th Century the word tax first appeared, before this the English used the word 'task'. The word tax is derived from a Latin word 'taxare' which means 'to assess'. Tax is being carried out from more than 3000 years which was levied mostly for military development.

For the development of a welfare state, the Government has a primary responsibility towards its citizens in the matters of health care, education, infrastructure, social security and other development needs. For such a welfare state, government needs revenue which is collected by way of taxes from the public from one hand and given to the public by other hand. Government may levy taxes on income, business profits or wealth or add it to the cost of some goods, services, and transactions.[1] Government collects taxes by two ways, one is direct tax and other is indirect tax. If the tax of which incidence and impact falls on same person then it's a Direct tax and if the tax of which the incidence and impact falls on two different persons it is an Indirect Tax. Any tax law which is not in conformity of the Constitution of India is ultra-vires and is held as illegal and void.

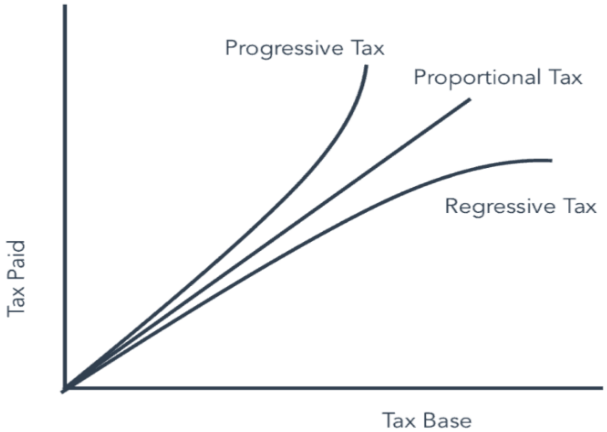
Tax Regime of a country is a key policy instrument that can have a positive or negative impact on a country's investment's influence. A choice of the government on how tax would be levied, in what amount and on whom this would be implemented is the tax policy of a country. There are two aspects related to this, one is macroeconomic aspect and other is the microeconomic aspect. One of the components of fiscal policy is the macroeconomic aspect which concerns on the overall quantity of taxes to be collected whereas microeconomic aspect concerns the issue of fairness and allocative aspect. Tax systems vary across jurisdictions and have changed with time among different countries. Tax systems can be of three types which can be either

- *Progressive*, or
  Individuals with high amount of income pay high proportion of tax as income rises.

[1] Direct Taxation, https://icmai.in/upload/Students/Syllabus2016/Inter/Paper-7-Aug.pdf

- *Regressive*, or
  There is a decrease in tax rate if the amount which is to be levied on tax increases.

- *Proportional*
  It is a flat tax everyone pays the same amount of tax as there as flat tax rate. There is no change in tax rate with increase or decrease in income.[2]



Of these three kinds of taxes most of the famous is the progressive tax system which has an advantage on low-income earners as they are not extensively taxed. As we can see that the world economy keeps on changing so there is a need to change the tax structure as well as the policy with time. All countries from the most developed to the least developed are much concerned on how much amount the tax they can collect. The level of taxation and the growth rate can be altered by making changes in the individual elements that make up the tax structure of a country. Thus, we can say that economic development of a country depends upon a carefully though and carried out organized tax structure.

CHAPTER II – TAX POLICY AND STRUCTURE IN THE UNITED STATES OF AMERICA

The funding of the United States government was very less based on direct taxation instead federal agencies assessed user fees for ports and other government property. At the time of need the government would sell government assets and bonds or would issue an assessment to the states for services rendered. In 1802, Direct taxation in United States was abolished and only excise taxes were levied. But in 1817, this was repealed and direct taxes were back on track. In 1913, taxes on income became a regular revenue item. As of now, taxation in United States applies from income to gasoline activities to cigarettes to inheritances to Nobel prices. The United States tax system is set up on both federal and state level. Each of the federal and state levels have their own authority to charge taxes. There is no right with the federal government to interfere with tax systems of other states. Each state has its own tax system separate from other states. Thus, it is said that United States tax system is quite complex. The power to levy taxes in the United States has emerged from these Constitutional Provisions: -

Article 1, Section 2, Clause 3 -Three Fifths Clause
There is a requirement that direct taxes are to be apportioned according to population. The United States Supreme Court held that federal income is a direct tax[3].
Article 1, Section 7, Clause 1 -Origination Clause
It states that the tax revenue bill would originate in the House of Representatives.

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[2]Direct and Indirect Taxes, https://www.intelligenteconomist.com/types-of-taxes/

[3] Springer v. United States, 102 U.S. 586 (1880)

Article 1, Section 8, Clause 1 -General welfare clause

This gives the main power and authorization to the Congress to impose and collect taxes.

Article 1, Section 8, Clause 3 -Commerce clause

It states the prohibition on state taxation that burdens interstate or foreign commerce.

Article 1, Section 10, Clause 3 - Import/Export Clause

There is a prohibition on state duties on imports and exports without the consent of Congress.

5th Amendment: Due Process Clause

There is a limitation by this amendment on federal and state taxing authorities as there is prohibition on deprivation of property without due process.

14th Amendment: Equal Protection Clause

This amendment limits federal and state taxing authority by guaranteeing equal protection clause.

16th Amendment: Income Tax Amendment (1913)

This amendment gave the power to Congress to collect taxes on income from whatever source it was derived.[4]

<u>Taxability and imposition of taxes in United States</u>

Taxability and imposition of taxes in United States by the federal or state governments is mostly on the net income of the individual or corporation. Citizens and residents are allowed a credit on foreign taxes if they are taxed on worldwide income. Income which is subject to tax is determined under tax accounting rules which includes all source of income received. Individuals are allowed to reduce income by deducting personal allowances and non-business expenses. Federal marginal rates vary from 10 to 37 percent of income which is taxable. State and local tax vary from jurisdiction to jurisdiction mostly 0 percent to 13.30 percent of income. Non-resident citizens are also taxed in United States on worldwide income in same manner as residents and citizens. This type of tax imposition has been termed constitutionally valid.[5] There are Seven ways in which citizens of United States of America pay taxes: -

- Income Taxes – These taxes can be charged federal, state and local level. The rates in Federal level depends on various factors including income and marital status. At state level these structures vary considerably, like in Florida there is no tax on income.

2020 Tax Brackets and Rates

Rate	For Single Individuals, Taxable Income Over	For Married Individuals Filing Joint Returns, Taxable Income Over	For Heads of Households, Taxable Income Over
10%	$0	$0	$0
12%	$9,875	$19,750	$14,100
22%	$40,125	$80,250	$53,700
24%	$85,525	$171,050	$85,500
32%	$163,300	$326,600	$163,300
35%	$207,350	$414,700	$207,350
37%	$518,400	$622,050	$518,400

Source: Internal Revenue Service

[6]

[4] Tax Law Research Federal and Ohio: Us Constitution, https://fclawlib.libguides.com/taxlawresearch/constitution

[5] Cook v. Tait 265 U.S. 47(1924)

[6] The Three Basic Tax Types, https://taxfoundation.org/the-three-basic-tax-types/#:~:text=Learn%20about%2012%20specific%20taxes,property%20taxes%2C%20estate%20and%20inheritance

- Sales Taxes- These taxes are levied on goods and services purchased. It is calculated on the percentage of price paid. In 12 states, sales tax rates are higher than 8%. Sales tax are considered regressive as households spend a great proportion of their earnings.

- Excise Taxes- These taxes are charged on specific goods like gas, cigarettes, beer and liquor. Sales Taxes are mostly combined with excise taxes on a single purchase. These are levied on 'sin-products' which not only help to raise money but also help to deter unhealthy behaviours. Federal government also collect such taxes like 18.4 cents gallon on gasoline.

- Payroll taxes- Both employees and employers have to pay the Social Security tax which is one of the two payroll taxes. Employees pay 6.2 percent whereas employers pay 12.4 percent of total contribution. A similar tax is levied on Medicare.

- Property taxes- These are usually imposed to fund local services and are based on property market value. However, these taxes are deductible for general public welfare.

- Estate taxes- It's a tax which is on your right to transfer property after death. These are often levied on state level.

- Gift Taxes- This is a tax on transferring wealth. It is applicable on transfer of wealth between two living persons, it can be cash or kind. The highest gift tax levied is 40 percent of taxable gift amount. [7]

If there are disputes between the taxpayers and the government there are five federal courts that have jurisdiction over the disputes: -
These three courts hear cases in different locations of country and hear cases at the trial level.

1. United States Tax Courts
2. United States District Courts
3. United States Courts of Federal Claims

4. United States Courts of Appeals- Appeals of Tax Court are heard here and the tax payer residing in a given circuit can appeal here.
5. United States Supreme Court- The court of last resort for all Federal Cases.

CHAPTER III– TAX POLICY AND STRUCTURE IN AUSTRALIA

The first taxes in Australia were levied by Governor Philip in 1788 to raise a pay to help completion of Sydney's first gaol and provide orphans some help. There were duties on import on spirits, wine, beer and luxury goods. In 1824, extra revenue was raised from custom and excise duties. Income taxes were introduced for the first time in late 19th Century in South Australia. Federal Income tax was introduced in 1915 to help Australia in First World War. In 1985, Capital Gains Tax was introduced and later than that in 2000 Goods and Service Tax was introduced. There is a low tax burden in Australia as compared to other developed nations. Income tax is the most significant tax

[7] Seven Ways American Pay Taxes, https://www.usatoday.com/story/money/personalfinance/2014/01/04/taxes-americans-pay/4307825/

in Australia and is collected by the Federal Government. Goods and Service Tax is levied and collected by the Federal Government and then distributed to the states on a common distribution policy.

The Commonwealth is given power under the Australian Constitution to impose taxation under Section 51(ii) and to make laws in relation to taxation. It states: -

"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

(ii) taxation; but so as not to discriminate between States or parts of States "

Section 92 of The Constitution of Australia: - On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. But notwithstanding anything in this Constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation. The Section states that there would be uniform duties across the country and this was also tested by the Court and held that low rate of tax on liquor made from the fruit produced within the state was held invalid. [8]

The powers under the Australian Constitution consist of: -

- Exclusive Powers (Custom and Excise)
- Concurrent Powers (Income Tax); and
- Residual Powers (State Taxes like Stamp duty, Land Tax)

The Policy is framed by the Parliament, Treasury, Board of Taxation and Industry bodies then it is drafted by the Office of Parliamentary Control. After these steps this policy is administered by Australian Taxation Office.

A Tax Policy in Australia is implemented and managed in this way: -

[9]

<u>Taxability and imposition of taxes in Australia</u>

Federal Government of Australia has jurisdiction to tax Australian residents on income from worldwide sources and non-

[8] *Fox v Robbins* 1909 HCA 8, 8 CLR 115 (23 March 1909)

[9] The Institutional Framework of Taxation in Australia, https://tticdn.blob.core.windows.net/tti-files/dmfile/Institutional_Framework_of_Taxation_in_Australia.pdf

residents on only Australian sourced income.[10]The legislation in Australia specifies rules relating to residency for determination whether an individual or company is a resident for taxation purposes. Australia has entered into many agreements with many countries to avoid double taxation and in addition Australia has operated in a system of foreign tax credits under which credits are given to Australian residents who pay foreign tax on foreign income. Different types of taxes in Australia are collected by federal government and their calculation and implementation is as follows–

Tax on Income-Tax in Australia is charged upon the assessee's taxable income which is the formation of assessee's total assessable income less deductions. Deductions are not allowed for personal expenses or for those expenses that are of capital nature.

Tax on Capital Gains-Capital Gains Tax is realised from sale of capital assets be it tangible or intangible. These are included in taxpayer's assessable income and taxed at taxpayer's applicable income tax rate. If the capital asset is held for longer than 12 months, Australian residents are entitled 50% discount for taxation purposes. The CGT rules have recently been amended so that non-residents can no longer access the 50% discount. Any capital loss incurred can be offset only against capital gains.[11]Following are the income tax rates in Australia –

Resident tax rates 2020–21

Taxable income	Tax on this income
0 – $18,200	Nil
$18,201 – $45,000	19 cents for each $1 over $18,200
$45,001 – $120,000	$5,092 plus 32.5 cents for each $1 over $45,000
$120,001 – $180,000	$29,467 plus 37 cents for each $1 over $120,000
$180,001 and over	$51,667 plus 45 cents for each $1 over $180,000

Foreign resident tax rates 2020–21

Foreign resident tax rates 2020–21

Taxable income	Tax on this income
0 – $120,000	32.5 cents for each $1
$120,001 – $180,000	$39,000 plus 37 cents for each $1 over $120,000
$180,001 and over	$61,200 plus 45 cents for each $1 over $180,000

[12]

Unlike Individuals companies are taxed at different rates other than individuals as they are separate legal entity.

Goods and Services Tax-This tax is imposed on all goods and services in Australia at a flat rate of 10 %. Businesses or individuals having an enterprise that have an annual turnover or more than specified amount are required to register for Goods and Service Tax.

[10] A Guide to taxation in Australia, https://hallandwilcox.com.au/thinking/a-guide-to-taxation-in-australia/

[11] A Guide to taxation in Australia, https://hallandwilcox.com.au/thinking/a-guide-to-taxation-in-australia/

[12] Individual Income tax rates, https://www.ato.gov.au/rates/individual-income-tax-rates/

Fringe Benefit Tax – These are imposed on the value of non-tax benefits provided by employers to employee. It is levied on the provider at a flat rate of 46.5 % and is deductible against the employer's taxable income.

Medicare Levy and Medicare Levy Surcharge- Australia's health insurance scheme is Medicare and is operated by receiving contributions through taxes by way of a resident's taxable income. It is imposed at a flat rate of 1.5% of individual's taxable income.

Superannuation Tax- This tax is paid by the employer as to ascertain that the employee after retirement have some adequate amount to live on. If the employer fails to pay the Superannuation tax, he/she has to pay Superannuation Guarantee Surcharge which is the payment to be done plus interest plus administrative charges.

Luxury Car Tax-This tax is imposed on a flat rate of 33 % when a luxury car is sold or imported in Australia.

Disputes between tax payers and government are resolved at first through Administration Tribunal (AAT) then through High Court then the Federal Court.

CHAPTER IV– TAX POLICY AND STRUCTURE IN INDIA

In India, taxation is rooted from the Manu smriti and was introduced by first time in 1860 by Sir James Wilson. For such a welfare state, government needs revenue which is collected by way of taxes from the public from one hand and given to the public by other hand. Government may levy taxes on income, business profits or wealth or add it to the cost of some goods, services, and transactions.[13] In India taxes are levied by the Central Government and State Governments and also somewhere by municipalities. Government collects taxes by two ways, one is direct tax and other is indirect tax. If the tax of which incidence and impact falls on same person then it's a Direct tax and if the tax of which the incidence and impact falls on two different persons it is an Indirect Tax. Any tax law which is not in conformity of the Constitution of India is ultra-vires and is held as illegal and void. The Constitutional provisions regard to taxation are dealt in following Articles: -

Article 265 of The Constitution of India lays down that no tax shall be levied or collected except by the authority of law. This means that tax proposed is to be levied within the legislative competence of the legislature.[14]
Article 246 of The Constitution of India read with *Schedule VII* divides subject matter made by the legislature into three categories: -

- *Union List*
  The Central Government has power of legislation on subject matters covered in this list.
- *State List*
  The State Government has power of legislation on subject matters covered in this list.
- *Concurrent List*
  Both the Central and State Government has power of legislation on subject matters covered in this list.

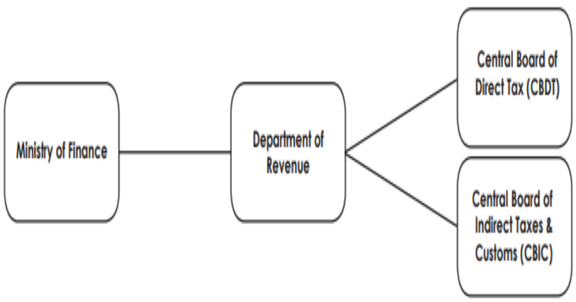
[13] Direct Taxation, https://icmai.in/upload/Students/Syllabus2016/Inter/Paper-7-Aug.pdf

[14] Kunnathatathunni Moopil Nair v The State of Kerala AIR 552 1961(SC)

The taxes to be collected and levied are distributed among these three lists. Parliament by law can added a subject or delete it as according to the procedure established by the Constitution.

Taxability and imposition of taxes in India

Different boards are made by the Government for the collection of taxes. The administrative hierarchy of these taxes collected by respective governments is as follows: -



Now as we have seen the tax structure in India on how it is collected and levied by the Government let's move towards the provisions of how it is regulated in India. Regulation means an official rule or the act of controlling something.[15] Regulation and implementation of various laws and policies is of paramount importance as for long term growth and development of the country.

Article 301 to 307 of The Constitution of India states that the trade, commerce and intercourse in the country would be free throughout the country but it does not mean that the state is barred from regulation of trade. The state has the right to charge tax on goods and this does not act as a restriction on freedom of trade. The Supreme Court stated that even though Article 302 does not speak about reasonable restrictions but still the restrictions can be issued in public interest but this should have a reasonable nexus. [16]

Some of the important Taxes which are implemented in India; -

Income Tax – This tax is imposed on an individual or an entity according to the incomes or profits. For individuals it is at a slab rate. The Government of India in the Finance Act, 2020 introduced a new regime for individuals as giving them option to opt for new regime or continue with old regime. For example, slab rates for individual below the age of 60 years is as follows: -

Old tax regime (With deductions and exemptions)	Total income	New tax regime (without deductions and exemptions)
Nil	Up to Rs 2.5 lakh	NIL
5%	From Rs 2,50,001 to Rs 5 lakh	5%
20%	From Rs 5,00,001 to Rs 7.5 lakh	10%
20%	From Rs 7,50,001 to Rs 10 lakh	15%
30%	From Rs 10,00,001 to Rs 12.5 lakh	20%
30%	From Rs 12,50,001 to Rs 15 lakh	25%
30%	From Rs 15,00,001	30%

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[15] Meaning of Regulation, Cambridge Dictionary, https://dictionary.cambridge.org/dictionary/english/regulation

[16] Prag Ice & Oil Mills v Union of India AIR 1978 SC 1296

[17] Income tax slabs, https://economictimes.indiatimes.com/wealth/tax/latest-income-tax-slabs/articleshow/62751981.cms?from=mdr

Goods and Services Tax- It is an indirect tax collected on supply of good or service. It has been divided into three kinds: -
Central Goods and Service Tax (CGST)- Collected by Central Government on intra state sales.

State Goods and Service Tax (SGST)- Portion allocated to states on intrastate sales
Integrated Goods and Service Tax (IGST)- Collected on Interstate sales.

It is divided into different rates 0%,5%,12%,18% and 28%.
Custom Duty: - It a duty on import and export of goods in India. Rates are divided on certain types of goods. Custom Duty is an indirect tax and collected by Central Board on Indirect Taxes and Customs.

Property Tax: -This tax resembles with United States Wealth Tax and is collected on buildings along with land appurtenant. This tax is usually accompanied with various other taxes like water tax, drainage tax etc.

If a dispute arises between the government and income taxpayer in India, it is first laid down before a tax authority which acts in a quasi-judicial manner. This is a first appellate body and it acts both as investigator and adjudicator. The second appellate form is also quasi-Judicial. It is the Income Tax Appellate Tribunal (ITAT), it hears matters in a manner as of a civil court. The next two are the High Court and Supreme Court which deal only with those matters which involve a substantial question of law. In case of indirect tax, first instance for dispute is the Customs, Excise and Service Tax Appellate Tribunal, if they are not satisfied, they can appeal to the High Court and Supreme Court.

CHAPTER V-CONCLUSION

The collection and implementation of tax in United States and Australia started around in the end of 17th Century. Different Countries have different ways of implementation of tax policies. A tax policy is brought up by the legislature but implemented by the Administrative authorities. Power to levy tax in all these three countries is derived by the Constitutional provisions of these countries. The three different countries stated here have different tax slabs and different deductions. Whether it be United States or Australia or India all have levied tax at Federal as well as State levels. In addition to this, India is a step forward and has also tax levied by the local authorities. The tax structure of Australia is less complex as compared to United States and India. The Goods and Service tax implemented by Australia at a uniform rate across the country is well designed as compared to India where the rates differ by way of different products. The collection of Goods and Service tax in Australia by Federal government and then distributed to the state is less complex as compared to India where Goods and Service Tax is distributed according to these provisions: -

Central Goods and Service Tax (CGST)- Collected by Central Government on intra state sales.

State Goods and Service Tax (SGST)- Portion allocated to states on intrastate sales
Integrated Goods and Service Tax (IGST)- Collected on Interstate sales.

Provisions of Income tax across the three countries are different as there are different slab rates according to assesses taxable. In India, the maximum percentage of taxable income is 30 percent whereas in United

States it is 37 percent. Freedom of Trade and Commerce in United States is guaranteed by the Commerce Clause whereas India it is guaranteed by Articles 301 to 307 of The Constitution of India and in Australia it is guaranteed by Section 92 of the Constitution of Australia. But we can say that Australian Constitution which guarantees this right with uniform duties across the country is an ease to do trade and commerce with other tax structures of different countries. One of the comparisons which needs to be focus is that the waiver of fundamental right way by of taxation is not allowed in India [18]whereas in United States it is allowed, this has been also stated by the United States Court's that there should be this right in Indian Constitution.[19]

From the above three Constitutions, it seems that the tax policy and structure among Australia in way of indirect tax is a well reformed legislation that the other two countries. The way of taxation in India is a way more complex that America. The amount of direct tax collected by India is less than the other two countries. The tax imposed and levied should be a way that there is ease to the individual who pays it. The believe by the individual that the tax collected for him would be fully for his/her welfare would result in more collection of taxes.

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[18] Basheshwar Nath v Commissioner of Income Tax 1959 AIR 149

[19] Daniels v Tearney 102 U.S 415 (1880)