Control of Income Tax Evasion in Islamic (Shariah) and Malaysian Law (Comparative Study)

Tarek S A. Elgaroshi and Dr. Abdul Samat Musa

Dr Abdul Samat Moussa, is currently the Director of the World Fatwa Management and Research Institute, and the Former Dean of the Faculty of (Shariah) and Law at the Islamic Science University of Malaysia.

Abstract: This paper discusses the issue of tax evasion through exploration of the Malaysian legislation in comparison with Islamic Law. In this paper we pointed out the problem of tax evasion as a phenomenon may threaten the economy system in the country and deploying injustice among taxpayers. The main objectives of this paper are to analyse the principles of the Islamic (Shariah), and the relevant legal provisions governing income tax evasion in Malaysia, to identify the most important causes underlying tax evasion, to Show the impact of tax evasion on the community, to indicate the most important methods to control income tax evasion, besides showing the similarities and differences in the Malaysian and Islamic legal systems. We tried to highlight the possible solutions by suggestions and recommendations based on the results of this research. The importance of this research appears as the subject is lack of discussion and may be considered the first of its kind in this field, as a work highlights the need to educate the income tax payers about the seriousness of tax evasion, the consequent damages to the financial system and the public interest in country. In addition to its uniqueness in terms of comparisons to (Shariah), this expected to add richness to the research, and so will open the prospects for further studies on this subject. This research also highlights the need to educate the income tax payers about the seriousness of tax evasion, the consequent damages to the financial system and the public interest in Malaysia. Significant importance of this research can be seen in its contribution to the improvement of the Malaysian tax administration, where it provides some methods that will reduce the phenomenon of income tax evasion. This paper consists of three sections; the first is dealing with the provisions of income tax evasion in Islamic law (Shariah) and Malaysian law, the second highlights the causes and effects of tax evasion and the third section is devoted to show methods of controlling evasion of income tax in (Shariah) and Malaysian law. The paper has arrived at certain result in this field and concluded with certain reconditions, considered important in the point of view of the writer.

Key words: Tax Malaysian Islamic Law Evasion Control

INTRODUCTION

Praise be to Allah, peace and blessings be upon His Messenger Muhammad al-Sadiq al-Amin, his family, companions, and followers.

The evasion of income tax is considered the most serious type of financial crimes, because of its imminent threat to economy; as it leads to a budget deficit, causing the inability of the state to achieve its overall objectives, as well as it leads to a breach of the principle of justice and equality between the taxpayers. Therefore, it has become an urgent necessity to discuss this vital issue, especially as it is evident from recent cases of income tax evasion in Malaysia, seen through the ongoing efforts by the Malaysian authorities to control it. The purpose of this research is to ascertain the problem of income tax evasion, to offer some solutions, and perhaps comparisons with the Islamic law will enrich this research, consistent with current issues and previous Islamic practices.

This research is divided into three sections: Section I, dealing with the provisions of income tax evasion in Islamic law and Malaysian law. Section II, viewing the causes of tax evasion and its effects. Section III - addressing the methods introduced by the legislator to control tax evasion in the Islamic law Malaysian laws. Section III, concludes with some important findings and recommendations.

Research Problem:

The problem of the research revolves around the issue of; how to deal with income tax evasion, for its severe damages, as a problem may threaten the financial system. The research will be conducted comparatively in Islamic and Malaysian laws, by showing how they approached and differed from each other. The problem of the research can be summarised in the following two key questions: First, what are the causes of income tax evasion in Islamic and Malaysian laws? Secondly, how both of them control and dealt with it?
Research Objectives:
1. To analyse the principles of the Islamic (Shariah), and the relevant legal provisions governing income tax evasion in Malaysia.
2. To identify the most important causes underlying tax evasion.
3. To show the impact of tax evasion on the community.
4. To indicate the most important methods to control income tax evasion, besides showing the similarities and differences in the both legal systems.

The Importance of the Research:
1. The importance of research appears in being the first study in this field of income tax evasion, as most studies have focused on evasion in the tax generally, in addition to its uniqueness in terms of comparisons to (Shariah), which expected to add richness to the research, and so will open the prospects for further studies on this subject in Malaysia.
2. This research also highlights the need to educate the income tax payers about the seriousness of tax evasion, the consequent damages to the financial system and the public interest in Malaysia.
3. Another importance for this research can be seen in its contribution to the improvement of Malaysian tax administration, where it provides some methods that will reduce the phenomenon of income tax evasion.

Research Dimensions:
The research topic will focus on tax evasion in Islamic law and the provisions of the Malaysian Income Tax Act No. 53 for the year 1967, in addition to all relevant laws relating to tax evasion.

Section I - The Provisions of Income Tax Evasion in (Shariah) and Malaysian Law:

First - The Concept of Income and Income Tax Evasion:
The Malaysian tax legislation did not state any specific definition for income through the ITA law of tax, therefore we must use the ordinary meaning mentioned in the (Oxford Dictionary), where it was defined as money that comes as periodically production for the work of someone in business or land or investment (Ahmad, Faridah and Loo Ern Chen, 2006 p.4; Jaginder Singh, 1974, p. 72). However, the Malaysian law classified it under paragraph (a) of Article 4 of the Malaysian law.

The intention behind tax evasion is to get rid of the burden of income tax, by escaping legal obligation of tax performance, which is violation of tax legislation. Tax evasion usually occurs using one of the fraudulent illegal actions to avoid tax payment; such as a statement presented by the taxpayer based on forged documents contrary to the fact of his real profits, or hides his business records. Therefore, tax evasion committed by the action of the taxpayer to get rid of the tax payment completely or partially (Choong Kwai Fatt 2007, p. 144). This means, tax evasion is a crime; because any violation of the laws by action or abstaining; involving tax imposed on taxpayers is a crime, this highlights the concept of crime of income tax evasion, as every act or omission contrary to the legislation of income tax, is considered by the legislator as a punishable crime. Such means which the most widely used, and the easiest pursuant to evade, called illegal evasion. However, the evasion of income tax is multiple to several types, including legal evasion, in case of the taxpayer manages to get rid of tax payment by taking advantage of loopholes in tax legislation, without direct violation of the provisions of the legislation. For example, in the field of corporate income tax, if the director of the company distributed profits in the form of gifts or donation for those bound by kinship together with the owner of the company, or the like. Another example of medical doctors performing surgical operations outside the hospitals, and earn large sums of money, without any knowledge of the tax office.

In fact, the Malaysian scholars have devoted their attention to the distinction between tax evasion and tax avoidance, as an important issue in terms of its economic impact, and where it affects the responsibility of the offender or not (Goh Chen Chuan, 1996, p.50). Tax evasion may occur within Malaysia, so that acts of fraud and forgery utilise those methods mentioned. Perhaps evasion may occur internationally, in such case this crime solved with agreements between countries. We may notice that it is easy for taxpayers to escape from paying their due income taxes, as they have ample chances of avoiding tax payment, on the one hand, and the difficulty of estimating the accurate tax amount to be paid by them of the other.

Second - The Principles of Tax Evasion in Islamic Law (Shariah):
The term of (tax) was not mentioned in the works of the Muslim jurists at the early time, but they were calling different names on this issue (al-Samarqandi, Ala'addin, 1984, p. 310). Many of the scholars of the (Hanafi) school has called it (al-Naiba) plural of (Nawaib) (Ibn Abidin, Muhammad Amin Bin Omar 1979), meaning; individuals acting on behalf of the Sultan (Framuz bin Mohammed 1330 AH, p. 164), and sometimes called it (al-Kharaj) .The (Maliki) jurists called it (al-Wazifa) plural of (Wazaif) meaning, jobs of money collection from the people, gathered by the Sultan (al-Shatiby, Abu Ishaq Ibrahim ibn Musa 1970 p.121). They have stated such term explicitly in many places, however, they call it sometimes (al-Kharaj), while some
scholars of (Shafi'i) and (Hanbali) Schools called it with multi names in general as obligations, and financial costs imposed by the Sultan on individuals (al-Mawardi, Abu al-Hasan ibn Muhammad, 1973 p.206; Ibn Taymiyyah, Taqi al-Din, 1989, p.26).

For the (Zahiri) doctrine, Imam Ibn Hazm did not mention the term (taxes) or jobs, although authorized it in his book (al-Muhalla), however, he addressed the issue in the context of the subject in general meaning, such as (al-Ijabar), meaning, the imposition of financial obligation (Ibn Hazm, Abe Muhammad Ali bin Ahmed bin Saeed, 1969 pp. 10, 105). Therefore, it can be said that although terms reflect taxes were many. Nevertheless all similar in the purport content, but the terms (Wazaif) and (Kharaj) remain most common at the time, beside the term (Kharaj al-Ardh), which means land production, which more widely used Through extrapolation of (Shariah) principles related to tax evasion, noted that the scholars addressed the issue of fraud with wise rules to control it, the action taken by (Zakat) payer (al-Muzakki) somewhat similar to the actions of taxpayer. Perhaps the most prominent image of tax evasion is the resourceful conductance, by which fraudulent may reach to the intentional hidden purposes. Muslim scholars have mentioned several types of resourceful behaviours according to the purpose of fraudulent. If someone reaches through the permissible way to revoke, a right or asserting falsehood is prohibited (Haram). If he is, asserting a right or avoiding falsehood is obligatory (Wajib). If uses permissible way to avoid harmful it is desirable (Mustahab) or permissible (Mubah). Finally, if such way used to leave desirable it is harmful (Makruh) (al-Asqallaani, Ahmed bin Ali bin Hajar 1996 p. 101). In short, if fraud was intended to escape from (Haram), and stay away from sin, it is permissible, but if the purpose to injustice to Muslims or to something else, then it is (Haram). Allah the Almighty told about what happened to those lawful fugitives from (Zakat) or charity of punishment, by which they became a lesson for the worlds. He said: {Indeed, We have tried them as We tried the owners of the garden, when they swore to cut its fruit in the [early] morning without making exception. So there came upon the garden an affliction from your Lord while they were asleep. And it became as though reaped. } (Surat al-Qalam. Verses 17, 18; al-Tabari, Abu Ja'far Muhammad ibn Jarir, 1968, pp. 29,30).

Through extrapolation of the second source of Islamic legislation which is (al-Sunnah), there are some legislative principles dealt with financial commitments and addressed tax evasion doctrinal, it was narrated that the Prophet (peace be upon him) said: "it is not allowed to gather between separate or sparse between convergent for fear of charity (Zakat)" (al-Asqallaani, Ahmed bin Hajar 1986 p. 506). al-Bukhari (may Allah be pleased with him) said: "it is not allowed to gather between separate or sparse between Muslims or to something else, then it is (Haram). Allah the Almighty told about what happened to those lawful fugitives from (Zakat) or charity of punishment, by which they became a lesson for the worlds. He said: {Indeed, We have tried them as We tried the owners of the garden, when they swore to cut its fruit in the [early] morning without making exception. So there came upon the garden an affliction from your Lord while they were asleep. And it became as though reaped. } (Surat al-Qalam. Verses 17, 18; al-Tabari, Abu Ja'far Muhammad ibn Jarir, 1968, pp. 29,30).

In this regard, Abu Yousef said, "It is not permissible for a man who believes in Allah and the Last Day, to abstain from paying (Zakat) meaning prevent charity, or take it out of his ownership to the ownership of a group for separation by such action. Alternatively, invalidates his charity so becomes for every one of them a number of camel, cow or sheep, which is less than the minimum amount subject to charity (al-Nisab), or to fraud by causing the abolition of charity for any reason. " (Abu Yousef  p. 80) During the early age of Islam, there has been similar tax deception and evasion, that was what occurred of the people of (Khaybar) and other Jews, when they fabricated a book, content that the Prophet (peace be upon him) exempted them entirely from tax tribute (al-Jiziah). In this regards, Ibnu al-Jawziyah, the writer of the book (Ahkamu Ahli al-Thimmah) said: When Omar bin al-Khattab (may Allah be pleased with him) evacuated the people of (Khaybar) to the Levant (al-Sham) they thought were exempted from tax tribute. In the year 701, a group of Jewish arrived from Damascus, brought old covenants claimed written by Ali bin Abi Taleb (may Allah SWT bless him). They fabricated it following their appropriate purpose, such documents had deceived governors a long time ago, and they were exempted from tax because of such document bearing signatures of the governors. However, when standing on the reality of the document can detect forgeries there in many ways.

There is another incident of tax evasion in the covenant that was between Habib bin Muslimah and the people of (Taflis - land of Hermuz), which reads: Safety for you and your children, families, and property, in...
exchange with your acceptance to tax tribute on the people, of each house one (Dinar). Though you may gather
between sparse houses to minimize your tribute, meanwhile we do not separate between a collective to
maximize the tribute. (Abu Obeid 1975 p.268) This indicates that it is not permissible to commit tax fraud by
combining separated families to reduce the tax, as combining families may reduce the proceeds of the tax, and
this is some kind of tax evasion (Abdullah, Sayed Hassan 2007 p.318).

It must be said that all kinds of fraud and escape from paying (Zakat) is forbidden, and tax is similar to
(Zakat) in this regard, as long as that was imposed by a decree of the Sultan, therefore every act of evasion and
fraud to drop these two financial obligatory duties becomes forbidden.

Third - The Provisions of Income Tax Evasion in Malaysian law:

Historical evidence indicates that since the start of using the income tax in Malaysia in 1947, where it was
known as Malaya, recorded famous case related to income tax evasion, which regarded as the first case of
income tax evasion (CIT v AB Estates Ltd) (Wan Azlan, 1990, p.93).

It is important to note that the Malaysian tax legislator has addressed the question of income tax evasion, in
articles 93, 114, 140 of the Income Tax Act (ITA), and that was good action, as no doubt the reason behind that
action was the feeling of the seriousness of tax evasion.

To commit a crime of tax evasion must have the completion of certain elements, and this is to be discussed
in the following section (Sorour, Ahmed Fathi, 1960, p.35).

A - Basic Elements of the Crime of Income Tax Evasion:

1 - Legal Element:

This element is highlighted through the acts specified by the Malaysian legislature in (Income Tax Act,
1967, Section 114) which considered evasion as a crime, and imposed suitable penalties for it (Choong Kwai
deliberately from income tax or helps someone else to escape, such as presenting false statements about his
income, or gives false misleading answers orally, or in writing concerning his profit, or forges the records of
accounts, or uses any art of bluffing. Therefore, anyone who commits any acts that the legislator had listed, the
legal element is found against him as offense. Also identified the penalties prescribed for such crime, it has
stated at the end of the said article, to punish anyone who commits an offense of such crimes, upon conviction is
liable to a fine of not less than RM1000, and not more than RM 20000 or imprisonment not exceeding three
years, or both, as estimated by the judge.

It is worth mentioning that the Malaysian legislator did not forget the taxable amount of income that
escaped by the taxpayer, the legislator triples the amount to three times as a result of the crime. Also the
legislator did not lose sight of assistance collaboration by even advising, when such punishable crime is proven,
to impose a fine of RM 2000 up to RM 20000 or imprisonment not exceeding three years, or both.

Material Element:

This element occurs by the establishment of one of the acts prescribed by the legislator in the above-
mentioned article, if it is not occurred, the crime of tax evasion is not found, except by the commission of such
material acts (Goh Chen Chuan, p.27). On the other hand, there is no doubt that negligence is less serious than
fraud or wilful default, the taxpayer, who was not aware that he is guilty, may omitted certain items of his
income, at the time of preparation of income tax revenues, as the nature of his work is negligence, not fraud or
wilful default. Based on such argument, we understand that each of these material elements, if committed by the
taxpayer, is enough to be considered fraudulent. In addition, it is clear that the criminal causation may be
established with the tax administration in the case of conducting tax procedures without considering the
documents that concealed by the evader.

In this regards we may quote the case of Singapore (Re AC -1963- FB XXIV) (Ahmad Ibrahim 2004,
p752; Malaysian Master Tax Guide 2004, p. 772). As the Judicial Council, opinion was that: the use of capital
in the presentation of the undeclared income statement includes wilful default. Tax administration has made its
opinion in this case that "wilful default" is not necessarily means "fraud" where there is no positive explanation
whether undeclared profits made as a facility of building capital, therefore did not rise up to the "fraud" in the
case of large sums of money that do not have explanation. The issue of "cheating" may be featured as these
large sums are unjustified cannot be established without a deliberate attempt to make profits look a few.
Because of the different views between all of the tax administration, and the taxpayers; tax dispute arose due to
lack of understanding of the tax provisions. All of these matters may lead to the creation and the emergence of
tax disputes, tax administration often exploit such situation, because it is in the administration's interest to
impose more taxes, accordingly every increase of such, regarded as fraud and evasion. The result here will be
determined through the burden of proving fraud, negligence or wilful neglect, which in this case, is laid on the
tax administration; however, the conduct may reach only to the extent of neglect.
**Mental Element:**
Most of tax evasion crimes considered of intentional intent with specific determination, in the sense that the offender's intention to get rid of the income tax in whole or in part, to deprive the state from obtaining its financial right. This was clearly stated by the Malaysian legislator, in the Income Tax Act (ITA) in Article 114. When this intent proved against the evader will not be able to avoid responsibility and punishment, even to deny the charge on the grounds that the fraud caused to the income information was committed by the accountant. (Arjunan Subramania, 2004, p.755).

The lawmaker also pointed in the last paragraph of the same article that good faith must be presumed on the taxpayer, unless to prove the contrary. Despite this, the intent of evasion is not denied in general, while the question of its consideration is left to judgment authority. It is understood from the foregoing that the negligence and omissions punished by the law, but if the offender to rectify the matter, perhaps may be relieved, the important issue is not to lose confidence between the tax department and the taxpayer.

Therefore, seems the crime of tax evasion is a criminal offense of a special character, despite the fact that most of the provisions of the tax legislation have an administrative nature. The evidence of that appears when viewing the penalties in the tax legislation of income tax in Malaysia, including imprisonment and fines, which classified legally as offenses with special nature.

**Section II - Causes and Effects of Tax Evasion:**
**First - The Causes of Income Tax Evasion:**
**A- Legal Reasons:**

It is noted that the Malaysian tax legislation features instability to some extent; especially when compared to other legislations. Perhaps the reason for this is the continued amendments depending on the sensitivity of the economy, in order to renew the systems and keep up with the times, making it a cause for tax evasion, to lack of knowledge of the taxpayer to legality of the tax. As well as it will not provide a real balance between the taxpayer and the administration, therefore the more heading of the legislator in this path is one of the causes for evasion (Wan Azlan, pp, 53,54).

The increase in the tax increases evasion, no doubt that the axis of evasion spins with thickens of tax and vice versa. In addition, relying on the taxpayer to present a self-assessment under Article 77 of the Income Tax Act (1967) may provide opportunity to commit evasion. In fact, relying on absolute administrative assessment, or blocking tax at the source, will help to prevent evasion.

The penalty (fine) imposed by the legislature on the evader also played an important role; as the taxpayer will compare between the penalty and the amount that may earn as a result of evasion; so if the penalty is severe adheres to the law avoiding evasion, and subjected to the imposition of the tax, and vice versa.

**B- Ethical Reasons:**

The moral level is an important reason in tax evasion, if weak it will affect the awareness level of taxpayers, leading to a lack of attention to the public interest, and lowers their sense of responsibility towards the state treasury, it becomes a performance of the tax comes from fear, not conviction.

**C- Administrative Reasons:**

The tax administration is considered as one of the executive authorities, which has the burden of implementation of tax legislation, ensuring application of the law is correct, as well as being committed to preparing proposals, solutions to problems, and measures the validity of tax legislation. Therefore, the role of tax administration is to combine between theoretical (legislative), and practical (executive) parts. In addition to the inefficiency of tax administration staff in quantity and quality, neglect review procedures of tax assessment and collection, inaccurate of inventory of taxpayers, and finally the lack of attention to the psychological aspect of the taxpayers (Jumaah, Mohammed Abdullah Mahmoud, 2005, p 88).

**Second - The Effects of Income Tax Evasion:**

Tax evasion results in extremely severe damage to the state treasury, and taxpayers alike, as it will reduce the revenue, and then will affect the public expenditure, which in turn will reduce the projects and investment, and may have led to economic recession, as well as disability of targets for financing economic development, and project management of the state. In addition, tax evasion would disrupt the principle of tax equity distributed among income holders, because some taxpayers may escape their profits wholly or partially from tax payment, while others will pay, and that will increase their financial burden, because the state will have to raise the tax rate for not reaching to the expected financial toll.
Section III - Controlling Evasion of Income Tax in (Shariah) and Malaysian Law:

First - Controlling Tax Evasion in the Islamic System:

There is no doubt that the piety and devotion of people during early ages of Islam was far more than people are today, but despite this, there were some incidents of tax evasion during that era. We may summarise some of the most important methods of controlling tax evasion in Islam as follows:

A - Cooperation with tax collectors, not to hide any information relating to the income, it was narrated that Jareer ibn Abdullah, had to say to his sons: If tax collector arrived, do not hide any of your sheep. (Shariah) has built good relationship between taxpayers and tax collectors on bases of clear confidence. The Prophet (peace be upon him) said: "The person working (tax collector) on charity (Zakat) in the right way is equal to the person fighting in the way of Allah." also the Prophet (peace be upon him) said "The person who abused charity as the same as the person who refused to pay it". In addition, narrated Bashir bin al-Khasasih said: "We said, O Messenger of Allah (peace be upon him) some of the charity collectors are aggressive with us, therefore can we hide our money as far as their aggression? He said: “no” (al-Shawkaani, Mohammed bin Ali, p.156).

B - If the taxpayer claimed that this is what he has and that he had paid all due on him, his statement will not be accepted unless he has a proof.

C - Muslim State imposed fair rate of tax, not exaggerate in the tax rate imposed, taking into account the conditions of the taxpayer. Imam Ali (may Allah be pleased with him) said to his governor al-Ashtar al-Nakha'i when appointed as the governor of Egypt: "Let your eyes in the land development (agriculture) more than tax collection, for that is not reachable except by developing the land. Whoever request tax without development building ruins the country and destroyed the people, and his way will not straighten except a little " (al- Radzial-Sharif 1982 p.96). As well as what was written by Omar bin Abdul Aziz (may Allah be pleased with him) to his governor Abdul Majeed bin Abdul Rahman: " Look after the land, and do not mix between developed and desolate land. Consider the situation of the undeveloped land, tax it if possible and then restore it, and do not tax the developed land that is unbearable. Do not take from unbearable developed land and the arid season year to be taxed in humane and compassion way (Abu Obaid, p.47.; Abu Yusuf, p 93).

These two texts stand as definitive evidence for considering the conditions of taxpayers

D - Promote and protect income and production. In such close meaning, says al-Imam al-Shawkani: "It is the kind that they claim money illegally and use it for trade; they impose taxes on vendors in markets, force them to surrender, like it or not. Then authorize the increase in the prices as they like it and abusing the people what they wanted, as far as they have only fulfilled taxes. If any of the people appealed because of the increase in price or unfair dealing of the vendors, they said, this increase is imposed by the State, so they settled the dispute and confound all. “(al-Bukhari, Abu al-Tayeb Mohammad, p.117)

E - Blocking at the source: This method is applied by the government or authorized person, to levy tax deducted immediately from the source, so that the taxpayer takes pure income free of tax liability. According to sources, the first to apply this method was the first Caliph Abu Bakr (may Allah be pleased with him), al- Qasim ibn Muhammad narrated that the Caliph Abu Bakr al-Siddiq, if delivered to people their wages, used to ask the man, do you have money obligatory to (Zakat)? If he said yes, (Zakat) is taken from the money, if he said no, given the money and did not take anything from him. (Ibn Anas, Malik, p.168) - al-Farouk, Omar bin al-Khattab (may Allah be pleased with him), also applied this method, so if output is ready, takes Zakat and taxes from the present money for the absent and the witness. (Abu Obeid, p.590). As well did Omar bin Abdul Aziz; if gave the man his money deducts (Zakat), if compensations paid, deducts (Zakat), and takes (Zakat) from wages if given out to their respective owners (Abu Obeid, p. 590).

The method of blocking at the source is characterized by preventing tax evasion, as it is moderate in the collection and Justice. The Islamic system in the collection of tax at the source corresponds to Malaysian law, although this system is an ancient way applied in the early age of Islam.

F - Enumeration of taxpayers, names, taxable property and amounts. This method was followed for collection of tax tribute and (Kharaj), as Caliph Omar ibn al-Khattab ordered Othman bin Hanif, Hudhayfah ibn al-Yaman and Kisra bin Kabbaz to conduct a survey and inventory of land of Iraq and Sham, which amounted to about thirty-six million Follicle, and imposed tribute tax according to financial ability (Abu Yusuf, p.42).

G - Taking conditions of taxpayers and their situations into consideration. Caliph Omar ibn al-Khattab (may Allah be pleased with him) used to pay attention to taxpayers circumstances, fearing they are exhausted and then escape of tax payment. It was said that Abdul Malik bin Marwan prevented his governor on Iraq al-Hajjaj bin Yusuf Thaqafi of overreacting in taking money of (Dhimmis), wrote to him: " Do not insist on taking (Dirham) more than that forsaken, and keep for them whatever they can survive "(al-Mawardi, Abu al-Hassan Ali, p.191).

H - Impose financial and criminal penalties on those who refused to pay the tax. This method was shown in the action of Abu Bakr (may Allah be pleased with him). When apostates refrained to pay (Zakat) after the demise of the Prophet (peace be upon him), he vowed to force them swore: In the name of Allah, if they refused to give a rope were performed during the time of the Messenger of Allah (Peace be upon him), I will fight them for that (Ibn Qudaamah, Mowaffiq al-Din Abdullah, 1985, p.228)
Scholars believe that whoever remiss or evades of tax with his capability of payment, shall be punished by imprisonment up to pay what is due on him (al-Qaradawi, Yusuf, 1981, p.1059; Ibn Taymiyyah, Taqi al-Din, 2005, p.1389). It is the right of the Sultan may block on the land, selling part of it, as far as due tax, has the right to lease the land, and deducts the tax from the lessee. (al-Mawardi, Abu al-Hassan Ali p 173)

Second - Methods to Control Evasion of Income Tax in the Malaysian Law:
Evasion should be addressed through its legal, administrative and cultural reasons, to effectively limit the spread of this phenomenon, and this should be as follows:

A - The Cultural and Moral Side:
Must raise ethical awareness of tax, by informing the taxpayers of the state's legitimacy right to impose the tax, the real need for this money, and that the tax burden is distributed between the taxpayers in justice, thus showing how payoff spent on them and their community, all that will reduce tax evasion, and vice versa.

B - The Administrative Side:
There is no doubt that the tax administration is contributing to evasion (unintentionally), therefore must bear part of the responsibility, and should do the following:
1- Tax management must coordinate with other administrative bodies in order to learn the various economic activities for incomeowners.
2- Training staff and raise their efficiency.
3- Raising the salaries of the staff of the tax administration, so not to be lenient with evaders and so on.

C - The Legal Side:
1 - The need for appropriate deterrent penalties, this turned the legislator to put a penalty on anyone who commits tax evasion and proved guilty, in order to reduce evasion of income tax. Therefore, the evader may face the fine, which is not less than RM 1000 and not more than RM 20000, or imprisonment not exceeding three years, or a combination of both. That means the punishment is imprisonment, or fine, or both, as determined by the judge. Indeed, if limited at this point, might be considered a defect in the Malaysian legislation when the amount evaded exceeds the amount of the fine, so the punishment will not deter the offender form committing evasion repeatedly. Fortunately the Malaysian legislature did not lose sight of the amount subject to income tax which evaded by the taxpayer, in this regard the legislator tripled the amount to three times as a result of the evasion crime. (ITA, Section, 114) The fact that the imposition of the penalty is not a target in itself but is an effective tool for application of the tax legislation to deter the public and private sectors as well.
2 - Among the methods of treatment of evasion is the absolute and broad discretion mandated by the legislature to the director of tax administration in dealing with tax evasion, under Article 140 (ITA) (Choong Kwai Fatt, 2003, p.60), this was pointed by the judge of federal court Raja Azlan Shah to confirm the clarity of the Article; when raised equivocal with Article 91 (3) (ITA) (Choong Kwai Fatt. 2005, p.1419)

The legislator also mandated the tax director, under acts of fraud, wilful default or neglect, in accordance with Article 91 (3) of the Malaysian Income Tax Act (ITA), which stated the following: the director-general, where it seemed to him:
(a) That the taxpayer has committed any form of fraud or wilful default, or on behalf of any person.
(b) That the taxpayer, or on behalf of him committed negligence.
Therefore, by the authority vested on the tax director, he may conduct additional assessment at any time with respect to the income of that person, for any year of assessment, for the purposes of rectify any loss of taxes due to the actions attributed to fraud, wilful default or negligence. (ITA, Section, 91).
3 - Exert effort to achieve tax equity, in this regards, we may suggest the following:
(a) Comprehensive tax; to impose an income tax to everyone fairly in general.
(b) Drafting the law properly tight, transparent, and free from complexity.
(c) Equality in tax treatment toward the owners of equal income.
(d) Allowances and tax exemptions must be granted to eligible applicants.
(e) Operate on the principle of personal tax, through which, to focus on the circumstances of the taxpayer's family and the like.

Ibn Taymiyyah pointed to this more than 100 years ago, mentioned that tax evasion has harbingers appeared in increasing the tax burden on the rest of taxpayers, which is incompatible with the principles of tax justice. Ibn Taymiyyah said: As long as the imposition of such unjust taxes is inevitable; justice must be taken into consideration when impose it. There is no favouritism, not imposed on some people without others, so as not to double injustice on some people, who carry the share of others. People should not escape from the harsh financial taxes, because the burden falls on the shoulders of everyone, and in the case of evasion, a group of non evaders will bear the burden of the group of evaders, which is called self-exemption by causing injustice to others. (Ibn Taymiyyah, p 24) and this is unacceptable by Islamic law (Shariah).
4 - Malaysian tax legislation contained meaningful guarantees that widening the process of income tax collection from the source, based on the provisions of the said Act (ITA) Articles 107, 110.

Although the pros of the Malaysian tax legislation, including the most important discounts, allowances, and taking the circumstances of the taxpayer into account. However, there is a defect on the legislature's adoption of the principle of the self-assessment tax (ITA, Section, 77 -1), which may lead to evasion. Since the law considered such assessment is true, unless the contrary is proved, the legislator gave certain legal period to the director to check and audit the assessment, and by the lapse of this period, the assessment is deemed true. Although credibility between the tax administration and taxpayers is assumed, but the administrative assessment of income or applying self-assessment performance with oath, must be adopted.

With respect to the tax penalties, the payment of tax is not a voluntarily action as a competition between the taxpayers; however it is a duty bounden by law to ensure the payment through the sovereign power of the state. The imposition of penalties is not target in itself, but the purpose is to urge taxpayers not to evade, and that is what brought by the Malaysian legislator through the reasoning of toughening punishment of evasion, especially after all allowances and privileges granted to the taxpayer. In fact, it is clear that the occurrence of tax evasion is inevitable, no matter how the legislator reaching to the target and the issue will continue unsettled between the state and the income owners. This matter is similar to a financial thorn in the back of the country's economy, however definitely control of tax evasion will limit its threat.

**Results:**

The study has shown a number of results, as follows:

1- There are multiple reasons for tax evasion based on moral, administrative, and most important legal grounds. Perhaps the near future may excretes new reasons and forms, due to tax evolution.

2- Between the most important underlying reasons for evasion is the community's vision for the evader of income tax, that he is not a criminal, thus his deed is not a crime, and is different from the rest of crimes.

3- The problem is not embedded in the law and legislation only, but also in the behaviour of income holders, as they may lack to enough knowledge about tax purposes and evasion penalties.

4- Tax evasion is a crime of a special nature and serious legal problem, harmful to the economy and ethics, because it causes loss of money on the state treasury, would benefit the country if collected through tax procedures.

5- The absence of specific legislation to control tax evasion; as it is not enough to provide a few texts in the income tax legislation. However, the matter requires drafting a coherent legislation that branching into sections, each section addresses a kind of tax.

6- The concept of tax evasion and its treatment methods in the Islamic law is similar to the Malaysian law to far extent.

7- Tax justice as basis of the capacity of the taxpayer is firm in (Shariah) and Malaysian law as well, and this another similarity between the two systems.

8- There is a similarity between (Shariah) and Malaysian law in terms of the nature of the evaded amount, it considered as dept on the taxpayer. This is clear through legislature implicitly reported in the text of Article 114 the previous; because the tax considered as dept, which is carried not required, unlike the general rule in debt. It is a distinctive dept; deferent from other kinds of debt, as it is a duty to be performed despite the dispute in it, not to be cleared with another dept, and binding the executive and preservative blocking in the evader debtor's funds when it proved. It is justice that Islam has enjoined upon fulfilment of debt in due time, as long as the taxpayer is financially capable to discharge the duty, performed the right and committed to the law.

9- Viewing the Malaysian tax legislation, we notice that (Shariah) has its special position and importance in it. Moreover, (Shariah) represented historical source directly and indirectly in many positions in the legal system in general. There is almost no Malaysian legislation is not dependent on the Islamic tax system, such as the reduction of maintenance of family, assessment procedures, income tax assessment, and assurances of tax collection.

10- Difference was shown between the Malaysian law and Islamic (Shariah) with respect to the penalty, in (Shariah) the focus is on the payment of the amount owed on the evader, if the payment is settled, he will not be punished, and this is different from penalty in the Malaysian law, when a person committed evasion, either be imprisoned, fined, or both

11- The Malaysian legislator did not lose sight of the amount subject to income tax, evaded by the taxpayer, therefore the legislator tripled the amount to three times as punishment, as a result of the crime of evasion, as well for fine. This is what has characterized the Malaysian legislation in comparison with the legislation in other Islamic countries, and Islamic (Shariah) principles.

12- The Malaysian law differs from Islamic (Shariah) in regards to the annexation of the wife's income to the husband. It seems that the Malaysian tax legislation has been influenced by the Western legislation, in particular the British legislation, which looks at the income of couples as one unit. Under article 45/2 (ITA) of the Malaysian law mentioned, may include the husband income to the wife. Nevertheless, such action may
facilitate the perpetration of wilful default and tax fraud. The Malaysian legislator has to distinguish between the incomes of couples, a matter that is consistent with the Islamic (Shariah), dealing with wife’s financial separate from her husband, for considering of the rights of others that require separation.

13- A defect is shown in the legislative system, for the adoption of direct self-assessment to estimate income, under Article 77 of the Malaysian Income Tax Act (ITA). Such action may also facilitate evasion; because the tax legislation deemed the assessment is accomplished properly unless the contrary is proved, while the legislator authorized specific period for the tax officer, once passed, the assessment is deemed true. Although such action may be considered as enhancement to the confidence of taxpayers in front of the tax administration, however it is better rely on fair administrative assessment, rather than direct self-assessment of income in many cases.

Discussion:
The issue of income tax evasion deserves great attention, not only because of its severe and harmful effects on the state finance, but also because of the fact that the evader is a subversive person, and his behaviour foretells the corruption of morals. This topic is characterized by certain specificity, therefore it has not been given ample portion of research, perhaps should be the start point of intensive research, comparative with the Islamic law in this issue, for more comprehensive work, we urge researchers to conduct further researches to realize the possibility of controlling tax evasion. Based on the research results, there are some important recommendations that may contribute to control tax evasion, as follows:

1- We call on the legislator to enact specific and tightly legislation for the issue of evasion of all types of taxes, and not merely limited to the texts that provided in the income tax act.
2- We urge the Malaysian legislator to adopt the Islamic law (Shariah) as a direct source of the income tax legislation, to include some of the Islamic principles that are commensurate with the nature of the Malaysian Muslim community, to meet the desire of the generations, in preparation for the adoption of a fully Islamic financial system, reflected in turn into the increase of awareness of taxation
3- To adopt the Islamic principle saying: (affordable does not fall for the unaffordable) in the sense that if the tax evader is unable to repay all debt, meanwhile capable to pay part of it, then he must repay what he is capable of, even in installments.
4- Tax administration must focus on the control system, that its mission to protect the financial rights of the taxpayer as well the financial authority.
5- Mitigation of tax legal rate in manner that allows depending on the rule of justice embedded commons and unity, the rule of certainty embedded transparency and specificity, the rule of appropriation, the rule of economy, and rationalization. Such rules may help to reduce evasion. More attention is needed to include these rules in the legislation, besides to work on perfect implementation; this is what the legal system of income tax needs today.
6- Attention to Article (77) of the Income Tax Act (ITA) related to the acceptance of self-assessment, by restricting freedom of the taxpayer in estimation of income rather than absolute rely on him. In addition, attention to Articles 90 and 91 concerning administrative estimation of income, by developing constant administrative measures, non-inroad in assessing taxpayer's income.
7- The Malaysian legislator should distinguish between income of couples, according to Article 45/2 (ITA), as that would be consistent with the principles of Islamic law (Shariah), which treated wife’s financial separate from her husband, and that helps to limit tax evasion, as the rights of others pending on each of them, required separation.
8- Publication of annual periodic reports on the total revenue and aspects of its expenses, so that income holders may gain knowledge and conviction, which motivates them not to commit tax evasion.
9- Publicize tax awareness through various media programs.
10- Improve public expenditures further, so that income holders feel the importance of paying tax, and not to commit evasion, as they would be among the beneficiaries of the payment of such duty.

Conclusion:
In this brief research paper we have addressed the issue of tax evasion with focus on the Malaysian law in comparisons with Islamic principles in this regard. this Within the three sections of this paper covered the main topic points including: The provisions of income tax evasion in (Shariah) and Malaysian law, the concept of income and income tax evasion, the principles of tax evasion in Islamic law (Shariah), the provisions of income tax evasion in Malaysian law, causes and effects of tax evasion, controlling tax evasion in the Islamic system and methods to control evasion of income tax in the Malaysian law.

Between the important results of this research paper, we found that there are multiple reasons for tax evasion based on moral, administrative and legal grounds. The absence of specific legislation to control tax evasion Besides we found that Tax evasion is a crime of a special nature and serious legal problem, harmful to the economy and ethics, however it is a crime of a special nature with serious legal problem, harmful to the
economy and ethics. Between the reasons for evasion is the community's vision for the evader of income tax. The concept of tax evasion and its treatment methods in the Islamic law is similar to the Malaysian law to far extent, although there are some difference between the Malaysian law and Islamic (Shariah) with respect to the penalty. Tax justice as basis of the capacity of the taxpayer is firm in (Shariah) and Malaysian law as well we tried to suggest some solutions to the problem Through certain recommendations hopefully will be regarded as contribution in this field, such as to adopt certain instruments to curb tax evasion, including; enact of specific and tightly legislation to deal with the issue of evasion, urge authorities to focus on the control system, that its mission to protect the financial rights of the taxpayer as well the financial authority, to include suitable Islamic principles within Malaysian legislation.

In fact, the tax legislation in (Shariah) and Malaysian law as well, is worthy of appreciations for the principles and methods that will bridge the gaps for sneaking taxpayers, and finally thankfulness to Allah (SWT).

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