

**TAX AVOIDANCE - A JUSTIFIABLE CONCEPT?****\*AYUSH JAIN**

As a taxpayer, one would always want that the tax liability upon them is minimum. For this, the activities they could indulge in are categorized in one of the following three heads: a) tax planning; b) tax avoidance; and c) tax evasion. What essentially happens is that at the time of computation of tax liability, there are certain deductions and exemptions provided for as per law and to make use of those to minimize one's tax liability is what tax planning is about. However, tax avoidance, as per the Black Law's Dictionary is defined as "*the minimization of one's tax liability by **taking advantage** of legally available tax planning opportunities<sup>1</sup>*". The difference that can be drawn between tax planning and tax avoidance is that while tax planning can be claimed to be as a matter of right, tax avoidance includes *taking advantage of weaknesses or ambiguities in the drafting of the law*. This could be one reason why tax avoidance is considered to be improper or illegitimate by some. The third category is tax evasion which is outright illegal and involves deliberate concealment of information from the concerned authorities. However, the issue mainly arises with tax avoidance which though is not illegal, has resulted in large scale reduction in tax liability, sometimes making the introduction of the law in itself meaningless. With this, I am hopeful that we are clear regarding the distinction between tax planning, tax avoidance and tax evasion and in this paper, we would be focussing on how proper or improper is tax avoidance and is there a need for a change in understanding of the concept.

What happens today is that there is a misuse of the statute by moulding the interpretation of the law in a manner which is most convenient to self with the result of saving taxes. Nobody cares about whether the purpose behind bringing the legislation in the first place survives or gets defeated. What I feel is the correct way is that we never ignore the purposive approach wherein the intent with which the law was passed is overshadowed by the taxpayers. This should never be allowed or ignored by the concerned authorities. However, this should not be confused in a way wherein I am not wanting people to be able to save on tax. I understand that it is but natural for anyone to want to pay the minimum possible amount towards taxation (not necessarily I agree with their mindset, but do understand and admit that this is the reality). For this, I would suggest and highly encourage tax planning instead of tax avoidance. Because with tax planning, we are

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<sup>1</sup> [http://www.un.org/esa/ffd/tax/seventhsession/CRP11\\_Add1\\_Tax%20Evasion.pdf](http://www.un.org/esa/ffd/tax/seventhsession/CRP11_Add1_Tax%20Evasion.pdf)

given opportunities to save tax for a kind of bargain that is taking place. So for example, if I am willing to work in a special economic zone (SEZ), I am given certain tax incentives wherein maybe I do not have to pay tax for initial few years. This is a deal that is provided for with the intention of attracting companies in this area. Hence, making use of this is something I would be willing to promote. Similarly, I am more than willing to consider a proposal wherein the contribution towards Corporate Social Responsibility (CSR) is given tax emptions or benefits as it could be said that the given law is to promote CSR contribution and giving the businesses an incentive for the same. However, making use of loopholes and bringing out ambiguities in the wordings and misusing that is not something that I find acceptable. Presently, tax evasion is only considered illegal and tax avoidance is considered as an acceptable activity. I find tax evasion and tax avoidance to be very different because of its concept itself however, the fact remains that there is a very thin line when it comes down to its application. It is an extremely difficult proposition for anyone to figure out what the companies actually do, falls within tax avoidance or tax evasion. Also, the huge amounts of money that revolves around the market, sometimes across various jurisdictions, just to avoid tax. Thus, tax avoidance is when certain arrangement is taken up only or mainly for the purpose of making use of a possible loophole in the letter of law.

I do understand that some people just do not want to pay tax or find it as a matter of their expertise if they can find ways of not complying with the tax liability without even violating the provisions of the law. There are many people who earn because they know how to figure out loopholes and defend acts which to a rational person would be clearly wrong. There may be arguments as to what is the problem if the statue is not being violated and still people are able to pay lesser tax. For all of this, I only suggest that the concept behind taxes being introduced in the first place is reflected upon. Taxes are necessary for a reason. It is payable for a reason. There are a lot of brains on work behind deciding the rate at which taxes need to be levied and a lot of calculations made accordingly. Tax avoidance and evasion destroys it all. While tax evasion is held to be wrong and punishment accorded for the same, tax avoidance is looked at leniently and benefit given to the tax payers. I am not saying that the tax payers should be made liable for any ambiguity in the law. However, activities that are clearly wrong, activities that are ethically wrong, should not be encouraged also. What can be done is that tax avoidance is considered as wrong and unacceptable and exceptions allowed for cases where there can be legit arguments made about the tax payer making an honest mistake because of any ambiguity in the law.

However, the present scenario is just the reverse and not in the best interest of anyone but the person avoiding the payment of tax.

It is for us to reflect upon as to what do we want to follow in our life. Do we feel that the statute is a book of law where we have to use our expertise in figuring out ways to avoid complying with the same and still not being held liable or do we want to follow the statute the way it is supposed to be? Is not violating the letter of law enough or should one also care about the spirit with which the law was introduced in the first place? I am a person who always believes that rules and regulations (in this case law of taxation) should always be respected and never made a mockery of and any rule which needs to be changed to ensure that the rules and regulations are practical and feasible to comply with, is taken care of in a way that the same is changed as per requirement. I would like the same to be applicable with the letter of law. Any law which we do not agree with is taken note of, discussed and if required, amended or repealed. However, the law that remains should be followed dutifully and honestly. Avoiding following of legit law is not something that should be accepted or encouraged. There stands a difference between what the law is and what the framers thought it ought to be and the entire concept of tax avoidance exists because of such tax gap. It can also be said that if the law is what the people are applying it to be, most rational people would believe that the said law should be changed considering the low or no tax liability that it ends up imposing.<sup>2</sup> To conclude, I would like to state that in my understanding and belief, this tax avoidance concept should be nullified, the law should be taken to be what the framers thought it ought to be, the weakness or loopholes in drafting should not be allowed to be taken advantage of to an extent wherein the purpose behind the law is being defeated. Tax planning is something that should be a right for the people to do, but avoidance or evasion should be considered as illegal and punishable. I also believe that the present distinction is so fine and ambiguous that the purpose does not get solved as it is upon the courts to determine whether an activity is avoidance or evasion because the same can be argued both ways, and rightly so. Thus, tax planning is and should continue to be a legal right but avoidance and evasion should both be improper and unacceptable. The degree of punishment between avoidance and evasion could be different (wherein evasion has higher and stricter punishment when compared to avoidance) but avoidance should not be legally permissible and should be condemned. It is time we start complying with the law not just by the book but also in its spirit.

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<sup>2</sup> <https://www.ft.com/content/b395ad44-9818-11e5-9228-87e603d47bdc?mhq5j=e5>