

## An Analysis of Tax Planning, Tax Evasion, Tax Avoidance & Tax Management

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The game of tax planning, management, avoidance and evasion is quite fondly practiced in the field of all taxes, duties, cesses etc. payable to the government like income-tax, gift tax, wealth-tax, sales tax, central excise, customs duty, property tax, etc. Out of these taxes, the direct tax is disliked by almost all the tax payers because one gets nothing directly in turn as he pays it. The rule of law under direct tax snatches directly from one's pocket, therefore, the practice of tax planning, management, avoidance and evasion has assumed far-reaching importance with the same object of minimizing tax incidence. It is necessary to understand all these approaches as they are different from the angles of legality, objectives, needs, spheres, consequences, etc.

### **Tax evasion**

Tax evasion is dodging tax by dishonest means. Practices in this area are beyond legally permissible limits. Tax is avoided to cheat the revenue by unscrupulous citizens. Tax evasion, if detected, invites heavy penalty and even prosecution. It relates to :

- (i) Concealment of income
- (ii) Inflation of expenditure or claim excessively deductions or allowance
- (iii) Misrepresentation of facts
- (iv) Falsification of accounts
- (v) Making an untrue statement knowingly
- (vi) Circumvention of rules

### **Tax avoidance**

Though, the device technically satisfies legal requirements but it is also considered unethical. It banks upon loopholes in the law and goes beyond the true intention of the statute. Tax reduction is made by arranging affairs in such a way that affairs are within four corners of law that goes on to reduce tax burden, though not intended by law. It is again an art of dodging tax without breaking the law whereby no provision of law is transgressed nor any criminal offence arises. It relates to :

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- (i) Fraudulent and mala-fide intention,
- (ii) Colourable devices
- (iii) Form of transaction as per law but absence of substance of transaction defeating the legislation intent, etc.

### **Tax planning**

Tax planning involves an intelligent application of the various provisions of the Direct Tax Laws to practical situations in such a manner as to reduce the tax impact on the assessee to the minimum. Tax planning is availing of relief, deductions, exemptions, concessions, rebates, allowances and other benefits offered by law under the Act to minimize the incidence of tax burden. It is an intellectual exercise of arranging one's financial affairs in such a way that, without breaching any legal provisions, full advantage is enjoyed of all the beneficial provisions in the tax laws. It is perfectly legal as it is devised within the legal framework by availing of what the legislature intended. The right to plan tax is also not denied by any judiciary worldwide. The only precaution to be taken while planning is to avoid employing colourful devices or subterfuges. It relates to :

- (i) Varying the residential status
- (ii) Choosing the suitable form of assessable entity
- (iii) Opting suitable forms of investment
- (iv) Diversification of the business activities
- (v) Diversion of income by over-riding title

### **Ethics of Tax Planning**

The moral aspect of tax planning has always been a debatable issue. In the *Mc Dowell & Co. Ltd. V CTO* case, the evil consequences of tax planning have been emphasized as under :

- (i) Substantial loss of much needed public revenue
- (ii) Piling up of mountains of black money
- (iii) Sense of injustice and inequality
- (iv) Not ethical – transferring the tax liability to guideless citizens by artful dodgers.

However, the impact of *MCDowell's* Decision was tried to be diluted by J. Rangnath Mishra in a case stating that:

Tax planning may be legitimate provided it is within the framework of law. Colourable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.

Further, Hon'ble Sabyasachi Mukherjee J. in *Arvind Narottam's* case provides guidance :

The question which many ordinary taxpayer very often, in a country of shortages and deprivation for the large masses, ask is, does he with taxes buy the civilization or does he facilitate the waste. Unless waste in Govt. spending is avoided, no amount of moral sermons would change peoples' attitude to tax avoidance.

#### **Characteristic of Tax Planning**

- (i) It should not be illegal.
- (ii) It should be simple.
- (iii) It should be cost effective.
- (iv) The method should be commercially acceptable and should not be artificial.
- (v) The objective should be clear and well defined.
- (vi) The transaction should be genuine and not sham.

#### **Pre-requisite of Tax Planning**

- (i) Proper collection of all the relevant facts and figures.
- (ii) Family history, background and relations.
- (iii) Acquisition of expert knowledge of all the relevant tax laws and other non-tax enactments.
- (iv) Fall back arrangement, wherever possible.

#### **Tax management**

It is more concerned with compliance with the statutory provision of law. It relates to :

- (i) Maintenance of proper accounts
- (ii) Filing of Returns
- (iii) Timely payment of taxes
- (iv) Compliances of notices, etc.

#### **Areas of Tax management**

##### **A. Tax management with respect to return of income**

- (i) Obtaining PAN
- (ii) Collecting all relevant information for preparation of return
- (iii) Offering income to tax in correct hands/status
- (iv) Making correct choice of head of income
- (v) Consideration of carry forward and set off of losses
- (vi) Claiming all available deductions, exemptions, relief, etc.

**B. Tax Management with respect to Assessment Proceedings**

- (i) Compliance of notice u/s 142(1)
- (ii) Facing scrutiny assessment.
- (iii) Making a rectification application u/s 154
- (iv) Filing a revision application u/s 264.

**C. Tax Management with respect to Appeal**

- (i) Filing of the appeal in prescribed form with prescribed fee within the prescribed time against the specified orders.
- (ii) Making the application for condone delay/early hearing of appeal/blocking hearing of appeal/adjournment/stay of demand/ certified copy of any order/etc.
- (iii) Filing of additional ground of appeal along with a fresh statement of facts as soon as the failure is noticed.
- (iv) Making the application explaining the circumstances for production of additional ground.
- (v) Responding to notice of hearing of the case.

**D. Tax Management with respect to Other Proceedings**

- (i) Managing refund proceedings.
- (ii) Managing survey, search and seizure proceedings.
- (iii) Managing TDS obligations & other obligations under the Act.

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