Tax Avoidance and Tax Evasion – the differences

Tax avoidance is generally the legal exploitation of the tax regime to one’s own advantage, to attempt to reduce the amount of tax that is payable by means that are within the law whilst making a full disclosure of the material information to the tax authorities. Examples of tax avoidance involve using tax deductions, changing one’s business structure through incorporation or establishing an offshore company in a tax haven.

By contrast tax evasion is the general term for efforts by individuals, firms, trusts and other entities to evade the payment of taxes by illegal means. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability, and includes, in particular, dishonest tax reporting (such as underdeclaring income, profits or gains; or overstating deductions).

Tax avoidance may be considered as either the amoral dodging of one’s duties to society, part of a strategy of not supporting violent government activities or just the right of every citizen to find all the legal ways to avoid paying too much tax. Tax evasion, on the other hand, is a crime in almost all countries and subjects the guilty party to fines or even imprisonment. Switzerland is one notable exception: tax fraud (forging documents, for example) is considered a crime, tax evasion (like underdeclaring assets) is not.

Some tax evaders see their efforts to evade taxation as based upon novel legal theories: these individuals and groups are sometimes called tax protesters. U.S. tax protesters are an example of this kind of approach to tax evasion that has generally ended in failure for those making such claims.
Tax resistance is the refusal to pay the tax for conscientious reasons (because they do not want to support the government or some of its activities), sometimes breaking the law to do so. Some donate their unpaid taxes to charity, while others (at least in the US) take creative “deductions” such as not paying a percentage of tax equal to the defense budget. In either case, they typically do not take the position that the tax laws are themselves illegal or do not apply to them (as tax protesters do) and they are more concerned with not paying for what they oppose than they are motivated by the desire to keep more of their money (as tax evaders typically are). Some have suggested the term tax avoision for people who adopt the techniques of tax avoidance in the service of tax resistance, thereby doing tax resistance legally.

In the UK, there is no General Anti-Avoidance Rule (GAAR), but certain provisions of the tax legislation (known as “anti-avoidance” provisions) apply to prevent tax avoidance where the main object (or purpose), or one of the main objects (or purposes), of a transaction is to enable tax advantages to be obtained. Judicial doctrines, relying on a purposive construction of tax legislation, are being evolved to prevent tax avoidance involving circular, self-cancelling transactions (IRC v. Ramsey), or where steps with no commercial purpose other than the avoidance of tax are inserted into a transaction (Furniss v. Dawson). Controversially, in the 2004 Budget, it was announced that ‘promoters’ and users of certain tax avoidance schemes would be required to disclose details of the schemes to the Inland Revenue.

The UK authorities use the term tax mitigation to refer to acceptable tax planning, minimising tax liabilities in ways expressly endorsed by Parliament. As set out above, on this view tax avoidance flouts the spirit of the law while following the letter and is therefore thought by some to be unacceptable, albeit not criminal in the way that evasion is. Upholding a difference between mitigation and avoidance relies
on a purposive reading of legislation, and commentators disagree as to the extent to which this is permissible.

In the United States, thieves are required to report their stolen money as income when they file for taxes, but they usually do not do so, because doing so would serve as a confession of theft. For this reason, suspected thieves are sometimes charged with tax evasion when there is insufficient evidence to try them for theft.