

Tax abuse meets the glossary

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I realised that the glossary was missing some key entries yesterday. As a result, I have added three new items:

Tax arbitrage

Tax arbitrage refers to the process of selecting the regulation, law or legal system that will be applied to a transaction, or more likely a series of related transactions, with the usual intention of securing a profit, although this might be by way of reduced cost than by increased revenue.

Situations where such choices might be made relate, for example, to the use of differing accounting standards, or with regard to different regulatory environments e.g., by recording transactions in a tax haven or secrecy jurisdiction rather than the location where the transaction might be more obviously located.

A great deal of tax avoidance involves forms of arbitrage. The identification of opportunities for regulatory arbitrage is at the heart of tax spillover assessments.

Tax evasion

Tax evasion is the illegal non-payment or under-payment of taxes, usually resulting from the making of a false declaration or no declaration to tax authorities; it entails criminal or civil legal penalties.

Tax avoidance

Tax avoidance is the term given to the practice of seeking to minimise a tax bill without deliberate deception (which would be tax evasion or fraud). The practice may be summarised as 'seeking to get around the law'.

Tax avoidance usually entails setting up artificial transactions or entities to re-characterise the nature, recipient or timing of payments with the intention that a resulting saving in tax should arise. Motive is generally considered important in the

identification of tax avoidance activity.

Where the entity is located or the transaction is routed through another country, it is international avoidance. Special, complex schemes are often created purely for this purpose.

Since avoidance often entails concealment of information and it is hard to prove intention or deliberate deception, the dividing line between avoidance and evasion is often unclear, and depends on the standards of responsibility of the professionals and specialist tax advisers.

An avoidance scheme which is found to be invalid entails repayment of the taxes due plus penalties for lateness.

Some claim that this term refers to any activity that reduces the amount of a person's income subject to tax, for example, claiming of allowances and reliefs clearly provided for in national tax law. This is not the case. If the law provides that no tax is due on a transaction then no tax can have been avoided by undertaking it. This practice is now generally described as tax compliant. Tax avoidance instead refers to the practice of seeking to not pay tax contrary to the spirit of the law. Some also call this aggressive tax avoidance.