CHAPTER 5

AVOIDANCE OF INCOME-TAX

IN INDIA
AVOIDANCE OF INCOME-TAX IN INDIA

5.1 Introduction

"TAX AVOIDANCE HAS COME ACROSS THE ART OF DODGING TAX WITHOUT BREAKING THE LAW"

Tax avoidance is the practice whereby the tax payer manages to curtail his tax burden through the conduct of a device or a transaction or a series of transactions, which ostensibly comply with the provisions of the taxation statute and appear to be within the four corners of law, but in fact are a 'sham' or a 'colourable device' or a 'subterfuge' which does not create any real legal relations and are designed solely to avoid the payment of taxes.

Thus, where long term capital gain has accrued to a tax payer on the transfer of a residential house property and he avoids the payment of tax, thereon, through the instrumentation of a transaction, whereby he ostensibly acquires a new residential house property and avails exemption under Section 54 of the Act, but in reality, it would be a case of tax avoidance.

Rudick, Harry J. states: "Tax avoidance covers every conscious attempt, successful or unsuccessful, to prevent or reduce income tax liability by taking advantage of some provision or lack of provision in the law"

The Royal Commission on Taxation for Canada explained the meaning of avoidance as under:

"For our purposes----- the expression ‘tax avoidance’ will be used to describe every attempt by legal means to prevent or reduce tax liability which would otherwise be incurred, by taking advantage of some provision
or lack of provision in the law. It excludes fraud, concealment and other illegal measures."

The artful tax dodger may use in genuity for adopting a particular device. It may appear to be aimed at violation of the spirit of the law and may seem to be a case of tax planning. In these cases, the tax payer may go a step further and shape the events affirmatively or negatively not so much for a genuine commercial purpose as with an eye to escape tax by exploiting a defect or unintentional failure of the law to impose tax upon a certain type of transaction.

The following are some of the criteria used by English and Indian Courts to define tax avoidance:

- Use of colourable devices;
- Instance where doctrine of substance is defeated;
- Defeating the genuine spirit of law;
- Mis-representation or twisting of facts;
- Taking only strict interpretation of law and suppressing the legislative intent behind it.

As to the nature of tax avoidance there is the difference in opinions. There are those who maintain that tax avoidance is both immoral as well as unlawful, contrary to these there are others who do not smell any foul odor in tax avoidance and regard it as perfectly moral and lawful.

It becomes quite clear that the term “tax avoidance” may be described as every attempt by legal means to prevent or reduce tax liability which would otherwise be incurred, by taking advantage of some provision of the law. It excludes fraud, concealment and other illegal measures. Prof. Wheatcroft has observed:
There are, however, many lawful means open to a tax payer who wishes to reduce his tax liability, the use of such means is known as tax avoidance. The avoidance is the elimination or reduction of taxes through lawful means. It streams through the course of our entire tax structure.

Webster has rightly defined “Avoidance” as the act of keeping away from or keeping clear taxes.

5.2 Is tax Avoidance Immoral?

There was a time when in America, Tax Avoidance was thought to be unethical as is clear from the following observations made by President Roosevelt in his massage to the U.S. Congress in 1937:

“Methods of escaping or intended escape from tax liability is many........Some are instances of avoidance which appear to have the colour of legality; Others are on the borderline of legality; Others are plainly contrary even to the letter of law”.

The aforesaid remarks of the American President had raised a controversy at that time. Mr. J.P. Morgon stated in 1937 said:

“Taxation is a legal question pure and simple. It was not up to the tax payers to repair the mistake of the Congress......I have no sympathy with tax dodging or tax evasion and such practices should certainly not be defended but what I feel strongly is that when a tax payer had complied with all the terms of the law, he was not be held up to obloquy for having not paid more than he owed”. The remarks of an American Judge, Lord Hand are also noteworthy in this connection:

---

1 Vide report p. 147.
2 Quoted by DTAEC p. 512.
"There is nothing sinister in so arranging ones affairs as to keep taxes as low as possible for nobody owes any public duty to pay more than the law demands. Taxes are enforced exactions, not voluntary contributions".3

Commenting on the question that Tax Avoidance is not immoral, the Learned Judges of U.K. observed as follows:

1. “No man in this country is under the smallest obligation, moral or other, so as to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest shovel into his stores. The Inland Revenue is not slow.......and quite rightly.......to take every advantage which is open to it under the taxing statues for the purpose of depleting the tax payer’s pocket and the tax payer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue".4

2. “It is trite law that His Majesty’s subjects are free, if they can to make their own arrangements so that their cases may fall outside the scope of the taxing Acts. They incur no legal penalties and strictly speaking, no moral censure, if, having considered the lines drawn by the Legislature for the imposition of taxes, they make it their business to walk outside them”.5

—Per Viscount Summer

The Supreme Court Observed, “Avoidance of tax liability by so arranging commercial affairs that charge of tax is disturbed is not prohibited. A taxpayer may resort to a device depends not upon consideration of

4 Ayrshire Pullman Motor Services vs. I.R. —14 Tax cases P.754
5 Levene vs. I.R. —13 Tax cases 486 (H.L.)
morality, but on the operation of the Income Tax Act. Legislative injunction in taxing statutes may not, except on peril of penalty, be violating but it may lawfully be circumvented.

Similarly, Justice S.R. Singh of the Punjab High Court observed, “A taxpayer has full liberty to decrease what otherwise would be his tax or altogether to avoid them by the mean which the law allows. The fact, a certain transaction has been entered into with the ulterior object of enabling the tax payer to avoid payment of Income Tax would not rendered the transaction void, for motive alone cannot make unlawful what the law allows”.

The conclusion, therefore, is that tax avoidance does not involve moral turpitude at all. There is nothing malicious, reprehensible or illicit in it. It does not bear the criminal stigma of tax evasion.

Although tax avoidance can take many forms and can differ from what we call passive avoidance, it is clear that in avoidance there is no concealment of income or deception of the revenue authorities, it is usually proper. We can take an example to explain this point. Suppose Excise Duty is levied on tobacco and anybody not smoking tobacco cannot be criticized for avoiding duty on tobacco by not smoking tobacco. Similar is the case with regard to avoidance of tax. If the law levies a charge on a particular income or class of income and in a specified manner, or allows certain exemptions or deductions there from, can any one be criticized for earning such income as is not amenable to levy of tax at all or is either exempt or tax free or claims certain deductions allowable by law. On the other hand, it will be not only proper but perfectly wise to act and keep within the bounds of law. It would be ridiculous to condemn a person for not earning such income as is taxable or for condemning him for not making a large income liable to
pay income tax at the highest rate. Any attempt a person makes to reduce the burden of tax, irrespective of the methods he adopts to achieve this goal, is not an anti-social act deserving condemnation. If the right of a person to property is recognized, his right to manage his affairs within the realm of law must also be recognized. If there are two lawful courses open to a tax payer—one involving payment of more tax and the another less—how can his choice between them to choose the course of paying less tax be regarded as unethical or liable to criticism. What the law permits cannot be reprehensible.

Thus, to say that Tax Avoidance is immoral is sanctimonious nonsense. Tax Avoidance unlike evasion is not a crime but a right. A taxpayer, who, because of neglect or ignorance does not minimize tax liability to the full extent permissible by law, is, in effect, paying more than his fair share of the price of the civilized society.

5.3 Is Tax Avoidance Unlawful?

The next question in the context that naturally arises is whether tax avoidance is lawful or unlawful. For years a battle of maneuver has been waged between the Legislature and those who are minded to throw the burden of taxation, off their own shoulders on to those of their fellow subjects. In that battle the Legislature has often been worsted by the skill, determination and resourcefulness of its opponents. Intelligent tax study means knowing the most favorable alternate position under the law.

In fact, tax avoidance is stated to arise ordinarily from drafting defects in tax legislation. If the drafting of the Legislation is defective or if the state while imposing or seeking to levy and collect tax, does not take proper care to translate the intentions into the statutes, or bring in its statutorily drafting,
all that it intended to net in, it is not fault of the citizen taxpayer and the state cannot claim to collect what it has omitted not to provide statutory or in other words the State cannot hold a citizen liable for its defectively drafting legislation.

Observations of the courts and of the Royal Commission (U.K.) 1955

"It is usual to draw a distinction between tax avoidance and tax evasion. The latter denotes all those activities which are responsible for a person not paying the tax that the existing law charges upon his income. By tax avoidance, some act by which a person so arranges his affairs so that he is liable to pay less tax than he would have paid but for the arrangement. Thus, the situation which he brings about is one in which he is legally in the right, except so far as some special rule may be introduced that puts him the wrong."

Now, the avoidance of tax has acquired legal sanction and the law courts have upheld the right of the tax payer to secure reduction in his tax liability, by taking advantages of the loopholes in the law. The following observations of the Law Lords in the connection are pertinent:

"I know of no law which prevents a man from avoiding a duty which has not attached to the property. A man is perfectly entitled if he can, to avoid the payment of duty by disposing of his property in any way not forbidden by the Act. The argument that his motive is to escape duty appears to one wholly irrelevant, because a man is perfectly justified in avoiding and escaping the duty which will arise in future but which has not yet attached to any property which he possesses."

--- Farwell L. T.

--- Farwell L. T.

6 Vide report Para 10 pp. 304-305.
7 Attorney General vs. Richmond and Gordon (1908) 2K.B. 729, 743.
"Every man is entitled if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than otherwise would be. If he succeeds in ordering them so as to secure this result, then, however unappreciative the Commissioners of Inland Revenue or his fellow tax payers may be of his ingenuity, he cannot be compelled to pay an increased tax".8

— Lord Tomlin

"It has to be recognized that the subject, whether poor and humble or wealthy and noble, has the legal right so to dispose of his capital and income as to attract upon himself the least amount of tax.

--- Lord Atkins

This has been so upheld by the courts in India as well:

1. "Any one is entitled to conduct his affairs within the law so to avoid incidence of taxation".9

2. "Any subject of the state is entitled to escape paying taxes if he can devise a lawful method of doing so".10

Article 265 of Constitution of India provides:

"No tax shall be levied or collected except by authority of law".

In this view of the matter also in India, since no tax can be collected without any legal authority, the tax payer here will be well within his rights to walk outside the letters of law, if he can, and reduce his tax liability.

As long as taxes are imposed, there are bound to be transactions in a Commercial Complex and Industrial Society in which the tax will be greater

---

8 Duke of Westminster vs. Inland Revenue——19 Tax cases 490 (511) H.L.
9 In Central Talkies Circuit- 1941 Income Tax Reports 44 (Bom)
10 Rajniti Pd. Singh vs. Commissioner of Income tax – All India Reporter 1930 Patna 33(35).
by one way than the other and it is up to the tax payer to conduct his business affairs in a way to secure the minimum incidence of tax liability. This effort aims at tax avoidance. High tax rates compile a tax payer to search for methods of tax avoidance and complicated tax structure provides penalty of opportunity for the same. The tax payer does not owe on obligation to pay a paisa more than what is legally due and any methods adopted by him within the four corners of law cannot and should not be questioned and any score whatsoever. Any other hypothesis will put a discount on intelligence because if the law intends to engraft a certain income and if the drafting of the legislations is defective or if the state does not take proper care to translate intentions into the statutes, it is not the fault of the citizen taxpayer.

Therefore, as tax avoidance is usually practised within the letter of the law, it incorporates a systematic searching out of the weakness and loopholes in the tax statutes and thereafter arranging one's affairs in such a way as to take advantage of the loopholes. It results in minimizing tax and is perfectly legal and no grievance can be held against it.

- The Attitude of the Supreme Court

The attitude of courts in our country towards tax avoidance is generally sympathetic. This will be evident from the following quoted passage from the judgment\(^\text{11}\) of ‘Mr. Justice Shah’ of the Supreme Court: “The law does not oblige a trader to mark the maximum profit that he can out of his trading transactions. Income which accrues to a trader is taxable in his hands. Income which he could have, but has not earned, is not made taxable as income accrued to him. By adopting a device, if it is made to

\(^{11}\) Refer C.I.T. vs. A. Raman & Co. I.T.R. 11.
appear that income which belonged to the assessee had been earned by some other person that income may be brought to tax in the hands of the assessee. Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divest the income before it accrues or arises to him. Effectiveness of the device depends upon consideration of morality but on the operation of the Income Tax Act. Legislative injunction in taking statutes may not except on the peril of penalty, be violated, but it may lawfully be circumvented”.

The Supreme Court again followed the above principle in another case and reiterated that an assessee can so arrange his affairs as to minimize his tax burden.

Our tax laws tend to serve a dual purpose of collecting revenue and of achieving certain social objectives. There are inbuilt tax incentives which promote savings, investments in new enterprises and development of backward areas. A lot of exemptions and incentives are provided in all the Direct Taxes Acts. If an assessee takes maximum advantage of these incentives, exemptions etc. and enlarge the scope of his disposable resources through tax planning, these can be no objection because the legislature wants optimum utilization of there incentives to promote economic activity in the country. However, if an assessee resorts to a device which gives him some tax benefit which was not intended to be given by the legislature, a question may arise whether he should adopt this device. In law there is nothing wrong in such a scheme but the Government may put curb on such tax saving device. The spate of amendments in our tax laws shows how every attempt to avoid tax by a taxpayer is being frustrated by our legislature from time to time.
In conclusion, there is nothing immoral and unlawful in resorting to tax planning. "Over and over again, courts have said that there is nothing sinister in so arranging one's affairs as to keep taxes as low as possible. Everybody does so, rich or poor, and all do right for nobody owes any public duty to pay more than the law demands-taxes are enforced exactions- not voluntary contributions- to demand more in the name of moral arc cant".

5.4 How People Avoid Taxes?

Taxes can be avoided in the following three broad ways:

1. Income splitting
2. Income spreading
3. Income transaction

These broad ways can further be further divided into following devices which are used for purposes of tax avoidance:

- The purchase of a defunct company, which has made a heavy loss, so as to use up that loss against future profit.
- Accumulating income by means of trust so as to avoid sur-tax.
- Arranging for the tax avoider's income to come to him as capital. For example,
  i. Letting property on a lease at a large premium with a much reduce rent, and
  ii. Selling securities just before the dividend is paid and repurchasing them after.
- Arrangements between a friendly employer and employees, which suit them both of the disadvantage of revenue.
- Transferring income from a high surtax payer to some one pays little or no surtax. However this device is not prevalent in India.
• Arranging expenditure in such a way as to qualify for deduction for tax purposes from his business, for e.g., by allowances to relations, paying charitable subscriptions and other domestic expenditures.

• Income splitting by means of intra-family arrangements, trusts and controlled corporations.

• Transferring the income to a corporation or trust situated in a jurisdiction which levies tax at a nominal rate, or even no tax.

• Showing income as Agricultural Income to get exemption.

• Spreading income over a number of years, thereby reducing tax liability.

• Capitalizing a tax payer's income, deducting capital expenditure from income or converting income into untaxed capital gains.

• Purchasing securities with a low dividend yield but a high of expected capital gain, owing to rising dividend payment over time.

• Purchasing Government Bonds which provides discount and interest tax fee.

5.5 Causes of Avoidance

The main causes of avoidance of income-tax can be illustrated in the chart as under:

5.5.1 The Tax itself: - We have discussed already the merits and demerits of the tax as also dis-incentiveness, in-expediency and complexity of the tax which cause evasion of the tax. In fact’ the experience proves that it is a tax on honesty and even honest tax payers are always on the look out to devise ways and means of escaping it.
Legislature does not seriously notice it, and allows the same to continue by not amending the statute suitably. To this extent if the Legislature does not intervene, there is tax avoidance.

Besides the above, in our own country, there are other laws viz. the personal laws of Hindu, Muslims, the Indian Trusts Act and the Indian Partnership Act, which come into play is determining the tax liability and aid in avoidance of the tax.

5.5.3 The Government Policy: - The Government policy is one of the major factors responsible for tax avoidance. In all countries, the State is regarded as the authority for development, regulation and control of all business activities. For this purpose the policy of the States has to be geared from time to time to suit the demands of the nation. For example, if the country is passing through an inflationary situation, it is for the state to check it through a dis-inflationary policy or when a developing country is coming out with speed, it is for the state not only to protect the infant and key industries but also to provide the necessary incentives to them; or in an event of emergency it is for the Government to mould its policy so as to achieve the twin objective of defence and development. All these examples point out shifts in Government policy towards allowing concessions, development rebates, favourable treatments and even meeting unjustified demands of some pressure groups in the democracy.

In a deflationary policy, these tax concessions are increased and the tax base is enlarged. To the extent these are allowed, the tax is avoided.
5.5.4 Administrative Factors

A. Delay: - When the Tax Administration notices some defect in the words of a tax statute either suomoto or through the judgments of the courts, it requires considerable time in finalizing and bringing it to the notice of the Government at the centre, for remedial legislation. The time lag between pointing out of a lacuna in a tax statute by Tax Administration and its ultimate removal by the Legislature is utilized by the taxpayers to their advantage.

B. Inaction: - In cases where the tax involved is small, in practice, the Tax Administration is in-active to file reference applications in the high court or to take the matter in Supreme Court. This tendency leads to tax avoidance. All cases involving a point of tax avoidance, irrespective of the revenue involved, are taken to the highest court and an authoritative pronouncement obtained.

C. Expenditure Pattern: - As observed by Professor Alexander Forbes, taxpayers in a country become reluctant to contribute their share of tax for general administration, if they find that their hard earned money is being lavishly spent without any fruitful and productive result.

D. Slackness:- Slack Government machinery, further, in the assessment and recovery of the tax provides ample opportunity to a taxpayer to avoid the tax at both the levels-the assessment and the recovery.
5.5.5 The Taxpayer Himself

The taxpayers in the World are getting conscious of their legal right to avoid payment of tax by lawful means. The high rates of taxes, economic causes, cut throat competition etc. have also led them to resort to the same. In India, the tax payer is comparatively not as much conscious to avoid tax as in most highly developed countries like U.S.A. and U.K. The method adopted to avoid tax is to develop a sense known as "Tax Planning" by the taxpayers. In this arrangement, evasion of tax by illegal means is avoided. Tax Planning is now practised by the taxpayers either by themselves alone or by employing the services of Lawyers and Accountants working as 'Tax Planners' to their clients. It is clear that when tax avoidance will be planned, the amount of avoidance will be greater than it is not planned.

5.5.6 Socio- Economic Factors

Economic factors likewise provide ample opportunities for tax avoidance. By some it is purposeful from the broader interest- social as well as national- while to others, it is purely economic. For example when a Government bent upon balanced industrialization of the country, contracts to import technical know how at some concessions, it is with the motive of national advancement, when a business men, to help the customers in times of soaring prices, tries to avoid the tax to keep down his prices, it may be a social cause.

But tax avoidance, as stated above can be purely economic. In case where the cost of collection of a tax and likely to exceed the tax itself, there appears to be no economic motive to collect the tax, or in the present day cut-throat economy wherein every business man tries
to take advantage of all the external as well as internal economies, he also resorts to tax avoidance as one of the measures of economy. The taxpayer also is equally guided with economy motives. Generally in infatuation ridden economics where the prices are constantly moving up, every taxpayer tries to pay less tax to meet his other requirements motivated by a higher living standard. Again when a taxpayer finds that the loss of tax avoidance is lesser than the tax itself, his plans, the avoidance. Thus the Government the industrialists, and the taxpayer himself, all are actives by economic motives to plan avoidance.

Social factors have their own contribution to tax avoidance. Encouraged by the motives to improve the human to gain spiritual as well as mental contentment, many persons are actuated to go in for charities, opening educational institutions or hospitals-rest houses (Dharmshalas) etc. The Income Tax law recognizes these expenses as exemption. There is ample scope in these to avoid the tax. For the social and cultural advancement again, a country encourages tourism and exchange of the elite of the nation or take part in International Sports and other meets. All these activities have money implied tax concessions.

5.5.7 Political Factors

Political factors also go a long way in providing many occasions for tax avoidance. The provisions for exemption of salaries of foreign embassies, Indian staff abroad, Privy purses of Rulers, allowances of Members of Parliament and of Members of Legislative Assemblies etc., inter-Governmental tax immunities, exemption of incomes of local authorities for the services rendered in their
territorial jurisdiction and like others enumerated in section 10 of the Act of 1961, are the examples which result in tax avoidance.

5.5.8 Psychological Factors

It is human tendency to avoid tax burden of a direct tax either by minimizing it or by trying to shift it on to others as far as possible either by agreement or otherwise. Human mind has always been fertile in investing ingenious methods to reduce the tax liability to the minimum within the framework of law and has attempted to keep the larger benefits of ownership to him and be relieved of the attendant burdens. It is of interest to quote the remarks\(^\text{13}\) of Mr. Richford in this connection “Human beings never display their ingenuity to such good advantage as and when they are trying to find out ways to escape taxes”.

5.6 Impact of Tax Avoidance

Income tax contain seeds of their own avoidance, hence their consequential economic, social impact and impact on Government and the Tax Administration are bound to be there. Some of these impacts are mentioned below:-

5.6.1 Economic Impacts: - These may be both beneficial as well as injurious to the economy as a whole. The consideration of these impacts, therefore, demands a careful balancing of the two types of impacts before a tax policy is chalked out.

- Beneficial Impact
  i. At the very outset, it may be stated that tax avoidance through tax planning, minimizes the tax liability of a tax payer and provides him economic relief.

\(^{13}\) “Practical limitations to the net Income tax general” p. 203.
ii. By providing for tax exemptions and tax concessions to foreigners, foreign technicians, foreign employees\textsuperscript{14} and foreign visitors, a country can have better trade relaxations, get foreign capital employed in the industries of the country, employ and retain the services of technicians and experts not available in that country and earn more foreign exchange from foreign visitors.

iii. Tax avoidance provides incentives to increase production to certain manufactures, especially as export incentives, whose profits are exempt from taxation. It also helps in better marketing\textsuperscript{15} of certain specified goods manufactured and exported out of India (covered by the export tax incentive provisions), which in turn, stimulate and increase import of capital goods including machinery so essential to industries.

iv. Further, tax avoidance helps in the growth of industries by section 10 15 (4) (c) of Act of 1961 a non-resident, who advances moneys or allows credit facilities to an Indian industrial undertaking for acquiring capital plant or machinery or raw materials from abroad, is exempt from tax on the interest that is received by him from the industrial undertaking provided the loan agreement has been approved by the Central Government.

v. Likewise total exemptions of tax on the income of Association established for control, supervision or encouragement etc. in India of the games of cricket, hockey etc. income from certain sources of local authorities and income of certain co-operative societies

\textsuperscript{14} For exemptions refer to section 10 (6) (vi), (viii), 8 and 9 of Act of 1961.

\textsuperscript{15} Vide section 99 (2) of Act of 1961.
tend to give a Philip to their activities and stimulate better and cheaper service. This helps these institutions to meet their financial obligations also in a better way.

vi. Moreover, tax avoidance is beneficial to capital formation in the country, to the extent, the tax is avoided, and there is addition to capital. This is contrary to the economic impacts of evasion which the evaded money does not come into open but flows as an undercurrent.

In addition to the above, avoidance of tax promotes savings and investment in the country. The tax force securities and the exemption of the items noted below have gone a long way in promoting savings and thrift in the country and have provided the Government with much of the required resources for executing the economic Plans in the country:-

(1) Monthly payment on the 15 years Annuity Certificates issued by or under the authority of the Central Government etc. to the extent to which the amounts of the certificates do not exceed in each case the maximum amount which is invested as permissible therein.

(2) Interest on Treasury Savings Deposit Certificates, Post Office National Savings Certificates, 12 years National Plan Certificates etc. and interest on deposits in Post Office Savings Banks to the extent to which the amount of such Certificates or deposits do not exceed in each case the maximum amount which is permitted to be invested or deposited therein.
(3) Interest payable by Government or a level authority on money borrowed by it from sources outside India.

(4) Further, a business man, through Tax Planning, so arranges to keep down his business cost as to withstand successfully the cut throat competition in the market. Tax avoidance, as such, benefits the businessman on the one hand in quick turnovers and the consumer on the other hand, in improving his living standard.

- **Non-Beneficial**

  I. When tax avoidance is allowed to prevail on large scale, the impact is that it invites, introduces and encourages high tax rates especially for top income brackets. In the alternatives, fresh taxes are levied generally on the same industry or business.

  II. Tax avoidance becomes purposeful when by tax avoidance the tax saved far exceeds the amount of income involved in the transaction. A taxpayer reports to tax avoidance in order that he may minimize his liability e.g. if tax is levied on capital gains also and the incidence is low in comparison to income tax, a taxpayer plans to have income in the shape of capital gains only.

  III. Tax concessions or exemptions tend to develop certain industries or regions at the cost of others. Capital is diverted naturally to those industries or localities where these concessions or exemption are available. Thus those businesses wherein such concessions are not available, suffer in respect of production and expansion affecting the price of their production in particular and the price level in general. To that extent there is imbalance in the economic growth also. For example much of the capital in India, in recent years has been diverted to hotel business; coal mining business and manufacturer of goods meant for exports etc.
IV. Avoidance in most cases leads to evasion. The existence of provisions of avoidance in the form of tax exemptions, abatements exemption limit and income of charities etc. serve as a means of evasions of income through the said source of avoidance.

V. Lastly, tax avoidance brings in loss to the State Exchequer.

5.6.2 Social Impacts

Like economic impacts, the social impacts of tax avoidance also can be classified into beneficial as well as non-beneficial.

- **Beneficial:-**
  
  (a) Social and cultural views between the two countries are exchanged, smoothened and improved considerably by providing for tax concessions to foreign visitors on certain considerations.

  (b) In advanced countries, the science of tax planning through the existence of tax avoidance provisions in the tax statutes, has provided employment to a new class known as ‘Tax Planners’.

  (c) Tax avoidance promotes education by providing for exemption of any income of a university or other educational institution, existing solely for educational purposes. Further, when the education, as imparted in foreign countries or of foreign languages or some technical or specialized education in regard to the same is needed, the salary income earned in India by visiting professors and teachers of foreign nationality whose services are utilized in any university or educational institution in India, is exempted from tax for certain period on the prescribed conditions.\[16\]

\[16\] Vide section 10 (6) (ix) of Income tax Act inserted by the Finance Act 1964.
(d) If the tax can be avoided, the standard of living of the people or individuals can be raised.

(e) By exemption of income for certain number of years in respect of income derived from a business of livestock, breeding, poultry or dairy farming, tax avoidance helps in developing the same.\textsuperscript{17}

(f) Tax avoidance also encourages development of international games like those of cricket, hockey, football, tennis etc. when adequate provisions of tax relief in this regard exist in the tax statute.

(g) Tax avoidance provisions in regard to contribution to charities, charitable institutions, health schemes and labour welfare encourage donations and contributions to such institutions and schemes. These are universally recognized to be of much social importance.

(h) Likewise, when by the laws of country, the income from property constructed by a particular exempted class of tax payers or of income derived from property constructed between a particular periods\textsuperscript{18} is exempts from the tax, such provisions of tax avoidance encourage house constructions and aid in solving the housing problem of the society.

\begin{itemize}
  \item Non Beneficial
  \item (a) The rich have succeeded in avoiding taxes in every country and in every age, the principal burdens of taxation have been borne
\end{itemize}

\textsuperscript{17} Vide section 10 (27) of act of 1961.
\textsuperscript{18} Vide section 10 (22) of Act of 1961.
(b) By the poor. Thus avoidance helps the rich to shift their tax burden as a class to the lower income group of people.

(c) Persons engaged in tax exempted business or trades entitled to tax concessions, are as a whole economically well off and placed better in society than those engaged in non exempt businesses.

(d) Tax avoidance provisions also cause occupational changes in society. It enables a section of taxpayers to drift from a cent per cent taxable income business or occupation to one which is either wholly or partly exempt from tax.

Considering the social impacts of avoidance—beneficial and non-beneficial, one may conclude that the latter far outweighs the former. This is correct subject to other effects of tax avoidance e.g. economic and those on Government and the Tax Administration, as here the position may be just the reverse.

5.6.3 Impact on Government and the Tax Administration

(a) In respect of tax avoidance not intended by the Government, but so held to be operative due to a strict interpretation of the fiscal statute by the courts, the necessary consequence is improved drafting of tax statutes as the Government fills in the lacuna so pointed out by subsequent legislation.

(b) Often tax concessions, exemptions and abatements in trades and businesses have been harnessed by many Governments to avoid their criticism by the aforesaid classes against its wasteful expenditure. This is practised more because of political considerations.
The full scale impact of these problems as affecting avoidance of tax has been taken up in the chapters following. To sum up, there is no denying the fact that the problem of avoidance of the tax, not only results in serious losses of revenue to the Exchequer, but also it has serious socio-economic repercussions.

Tax avoidance based on the tax concessions, rebates, exemptions etc. allowed by law and practised through tax planning may result in some good effects in these spheres. Increase in production, capital formation, import of technical and managerial know-how, occupational changes, social and cultural advancements etc. may follow due to tax avoidance.