

Elusión o evasión fiscal

Tax avoidance or evasion

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RESUMEN

Elusión o Evasión Fiscal, figuras que encontramos dentro del Derecho Tributario, derecho que regula las normas y principios para la obtención de la contribuciones, como el ingreso más importante que un Estado requiere para realizar su actividad económica, la cual se enfoca en el bienestar común de una sociedad, vertida primordialmente en Educación, Seguridad, y Salud, por lo tanto, a mayores recursos, mejores Programas.

Palabras Clave: ELUSIÓN, EVASIÓN FISCAL, DERECHO TRIBUTARIO

Abstract

Tax Avoidance or Fiscal Evasion, figures that we find within the tax law, law that regulates the standards and principles to obtain the contributions, as the most important income that a State requires to carry out its economic activity, which focuses on the welfare of a society, primarily poured into Education, Social Security, and Health, therefore, to more resources the better Programs.

Key words: Tax Avoidance, Tax evasion, Tax law.

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Introduction

The Public interest of combating the tax avoidance, so that contribute to the sustainability of public spending all those who have ability to contribute, find sustenance in the duty to contribute to the expenses of the public, and the constitutional requirement of a fair tax system, based on the principles of equality, generality and solidarity.¹ It is important to make an in-depth analysis of the different forms related to the circumvention that exist in tax regulations of Mexico and Spain, for example, approaches that have on this subject other countries, so we will try to define the way possible clearer concepts of avoidance and evasion.

In this paper we will differentiate both terms, stressing that Avoidance is done not taxable; Evasion, Yes is made taxable, and therefore born the tax obligation, but this realization or its true economic dimension is hidden from the Administration. The verb evade supposed to be inside, therefore, only be able to avoid a tax when it is within the tax liability, that is, when they have made the taxable event. Circumvention, strictly speaking, is an indirect action, while avoidance is an open transgression of duty to contribute. If evasion is a direct action on the mandate collected in the standard circumvention acts on the budget of fact, albeit indirectly it affects the mandate.

Following Herrero Madariaga, the broad concept of circumvention encompasses the following assumptions:

- a) the avoidance of tax by the simple failure to complete the budget established by the standard, but this is due to the use of atypical legal forms;
- b) the tax avoidance by making a snap course in the cases known as economies of option or tax economies, which will be discussed below;
- c) and the tax avoidance characterized by the abuse of legal forms involved a manipulation of the budget of fact in order to avoid the birth of the tax liability, resulting in the birth of another involving a minor disbursement or trying to qualify The benefits offered by a standard exemption or rebate.

Elusión

The grammatical meaning according to Dictionary of the Spanish Language defines

circumvention as "cunningly avoid difficulty or obligation", this definition is not far from what legal language in the tax evasion is accepted as a behavior that is performed in order to avoid all or part of taxation of economic activities, carried out by taxpayers.

DIEP DIEP, says that usually understood by circumvention action avoided the influence of a particular tax regime, when there is the possibility of adopting a different one. Gives the example of a person who plans to invest in a company within the political jurisdiction of any particular state of Mexico, that in analyzing the policy regarding the neighboring states find that one of these offers as attractive for investment, some kind of waivers or reductions on state and municipal taxes, in addition to some other offerings: as providing land with minimal cost or not, the existence of an industrial park, and so on. The subject decides to invest in that State rather than on the other, it is something that has nothing combatible, while remaining within the borders of circumvention itself.

TULIO Rosembuj, means tax avoidance:

Avoid the application of the tax rule to obtain a financial advantage by the taxpayer that would not take place if they are not put into practice in turn facts and legal acts or contract procedures with the dominant purpose of avoiding it.

It explains that:

The most important element of circumvention, then would be the adoption of negotiable or not instruments, but in any case, exercised within the prerogatives of autonomy and freedom of lawful contracts and whose effects are worthy of legal protection , as such.

Evasion

With regard to evasion, TULIO Rosembuj states:

The core of the transgressive behavior is none other than the concealment of income, assets and economic rights through the use of materials or ideologically false documents, performing legal acts or business.

DIEP DIEP says "means evasion, being a contributor in some way determined by the law

and not comply with the reporting obligations." Evasion occurs when the subject of a taxpayer being assessed tax, and having carried out transactions involving the accrual and payment of the tax, fails to comply. "This really is a violation of the law, since the obligation exists, has been given, and the subject does not comply with it."

It is essential, first, to differentiate the circumvention is no verification of the operative event and therefore the absence of taxation, tax evasion consisting in verifying the implementation of the event giving rise to the tax liability, as the breach of payment and the time delay becomes due through illegal acts or omissions, that usually postpone the occurrence of the event that is taxed.

Tax evasion, using the methodology applied to the Tax Court Law, in broad terms, is all and any form of exemption from taxation. Strictly speaking, this means derived from voluntary and intentional, negligent or comisiva, of taxpayers is eximieren enforcement, total or partial tax obligations conduct.

The Tax Code of the Federation of Mexican law regulates tipificándola tax evasion as a crime of tax fraud. The distinction between tax evasion and fraud, it is in principle by other subtle, because here we can say that in the background is the same situation, the lack of payment by the tax cause, which is legally obligated to cover. Considering the terminological conception of both concepts, it is possible to make a distinction. According to Mexican criminal, Gonzalez de la Vega: "according to his doctrinaire notion criminal, fraud is a capital offense consisting in general terms, in obtaining by fallacies and deceptions, or through bogus machinations or artifices, theft things or rights of others. Definition is corroborated by the Tax Code of the Federation, which considers tax fraud exists when a taxpayer makes use of deception or takes advantage of errors, to skip all or part payment of any tax or contribution.

This would include an important distinction that makes Arrijo Vizcaino, evasion operates mainly as a case of omission. That is, the taxpayer no longer passively cover taxes, either through ignorance or physical impossibility. On the other hand, tax fraud is characterized by the actions of the taxpayer, which carried out a series of machinations, tricks and fallacies, with the deliberate intention of evading tax benefits. It is a case of bad faith, in which it seeks prejudicing the Treasury, through the tortuous path of deception. A tax fraudster is a

dishonest individual without doubt, but if you operate successfully, becomes an enviable role model in a permanent source of negative temptations.

Internal tax avoidance and international tax avoidance

The domestic tax avoidance involves actions that seek taxpayer circumvent tax law, trying to benefit from the application of other rules of the same system. But in the international circumvention taxpayers escape pursuing particular legal system, trying to provoke the application of a legal system corresponding to another standard, by altering the circumstances of fact and law ("the connection elements") that determine what the appropriate legal order to govern a particular issue. The aim with this change will get a treat or some improper tax advantages, given the true nature of these businesses, the reality of the operations performed or the unfairness of those. In international circumvention it usurps what is not a particular standard system, but the national system as a whole. Moreover, in cases where the international circumvention has occurred or, at least, is encouraged by certain features of the law of the State of which comes standard coverage, such behavior can be a form of competition or unfair tax competition the second State on the first.¹

Tax havens

Drawing on the most characteristic features, we can define tax havens as jurisdictions, state or sub-state character, with levels of low or no taxation, where traders enjoy the anonymity provided the banking, commercial and professional secrecy, the latter guaranteed by rules of constitutional or legal status. The combination of these elements, privileged taxation and opacity, allow us to configure a matching concept of paradise with the literal translation of its name in English (tax haven) which translates as "harbor or tax shelter". The historical evolution of tax havens has its origin in the second half of the twentieth century. His booming responds to the industrial and economic development of the postwar years and the process of decolonization of some European powers. Thus, motivated by a variety of circumstances, some territories designed tax systems can attract foreign capital, using the

¹ YÁÑEZ VILLANUEVA, F., ponencia *La Elusión Fiscal y los medios para combatirla* en la XXIV Jornadas Latinoamericana de Derecho Tributario, Ed. Asociación Venezolana de Derecho Tributario e Instituto Latinoamericano de Derecho Tributario, Memorias Isla Margarita Venezuela 2008, p. 286.

most varied legal and tax structures. The reasons and motivations of this process are varied. Some territories based their tax systems based on the principle of territoriality, as Costa Rica, Hong Kong and Panama. Other territories, such as the Isle of Man, the Netherlands, Luxembourg and Switzerland have not had major reasons that tax competition. Even in some small states, among them former colonies of several world powers, these tax practices were established, since its inception, in a "more active" through which to obtain resources.

One of the main and most important forms of international tax avoidance occurs through these tax havens, now called the Law of Income Tax in Mexico, preferential tax regimes, such as:

- 1) the territories aimed to attract companies and foreign capital through schemes in which there is a tax on capital income and increased equity.
- 2) are those for calculating the income tax, have a territorial system exempting transactions outside the territory and,
- 3) countries with low tax rates, used in so-called off-shore operations.

Abuse of so-called tax available to taxpayers with great economic capacity havens, the tax authorities concerned, while a decrease of income that affects the distribution of public burdens adversely affecting the principle of tax fairness, because it causes economic distortions .

Which, recursively, are repeated in most havens, forming the essential nature of these jurisdictions are mainly the following features:

1. The support, tacit or express, that the governments of these jurisdictions provide for consideration as advantageous tax jurisdictions; that is, its existence and the advantages are the result of an active attitude of the tax authorities. This support may be motivated either because the authorities themselves have participated in the design based on the use of fiscal aspect as comparative or advantage, simply regimes, because the authorities have confirmed the existence of privileged regimes used by international investors and have encouraged this situation through legislation protecting it.
2. The exorbitant tax advantages that characterize them, are often accompanied by other elements or opacity advantages such as access to information, existing rules on banking, trade or professional, non-existent or confusing legislation, so secret.

3. The absence of legislation which limits or controls on capital movements. While it is true that freedom of movement of capital is now a reality in most developed countries, usually there are certain rules in order to monitor the economic reality, impose reporting duties on capital movements from certain quantities. Well, tax havens are characterized by a total absence of such standards, as well as the possibility of maintaining bank accounts in most reference currencies.

4. Existence of a broad economic, legal, accounting infrastructure, commercial and tax. Often these jurisdictions have numerous banking institutions, many of them subsidiaries of internationally recognized banks and numerous law firms that offer all kinds of professional services.

5. Poor existing information on the actual operation of these havens. Despite the information society we live in, access to information and the actual content of their legislation is not always easy, because of the opacity and lack of transparency in their legislation. It also collaborates to this opacity the existence of a restricted market for these benefits, which are not available to everyone and that in most cases is managed by specialists who monopolize the sale of knowledge they have on these advantages to their best customers .

To combat the abuse of these behaviors have been adopted internationally various measures such as:

A. Fiscal Transparency, to combat international use of intermediaries, the object is to prevent the deferral of income to resident as well as generating tax deductible expenses.

B. Change of Residence. A common international practice of avoidance, is that the natural or legal persons transferring their residence to a low tax country. In the case of legal persons, changes of residence raises difficulties in defining the residence of the Company, so this concept is linked to the place where the place of effective management of the company is located.

C. or Thin capitalization Thin capitalization, this figure represents financing between companies in the same group which are situated in different countries for tax reasons, and what is sought is to cover financing with own resources under the guise of borrowings, with the In order to reduce the taxable base of the company located in a country of high taxation through the deduction of interest paid. Mexican law has taken steps to combat these practices,

establishing the amount deductible as interest arising from capitalization, when these interests derived from the annual average balance of debts of the taxpayer in excess of three times its equity, provided that these debts have been incurred with related parties resident abroad.

D. Transfer Pricing Fiscos' interest is to control operations which involve more than two companies, with or without tax residence in the same country, with the aim of supervising the operations performed, adhere to the reality and not be mere speculation to achieve tax benefits. Preventing manipulations with respect to the profits or losses generated in a country and are transferred to another by means of artificial operations, such as interest, dividends, royalties, etc., in order to minimize the tax burden. The primary objective is that in the operations of business groups recording rules apply the principle of free market prices. arm's length principle, to be applied between related the same conditions as in independent operations, also avoiding double taxation parts.

E. Mechanisms to prevent abuse of double taxation conventions. Mexican law has established certain requirements in order to enjoy the benefits granted by international conventions, such as:

- a) is required to prove that the beneficiaries of the agreements are resident in the country concerned,
- b) demonstrate that they comply with the provisions of the treaty itself and to the other provisions of the procedure contained in Law (internally in each country that is party) and,
- c) Prove that meet various formal obligations such as the registration obligations, to present opinions and to appoint a legal representative.

We have the example of the OECD project for the Fight against Harmful Tax Practices. With regard to tax havens must be placed in May 1996, when the ministers of the member countries of the OECD called on this organization to develop measures to counter the distortions introduced by harmful tax competition on investment and financing decisions and consequences for national tax bases, and this was due to submit a report in 1998. This report, published in April 1998, called harmful tax competition: A global problem, included as Annex I a recommendation concerning the fight against harmful tax competition, for governments of member countries. This recommendation, in fact, consisted of 19 recommendations to combat harmful tax competition through

unilateral measures (via domestic legislation), bilateral (via agreements to avoid double taxation) and multilateral (via the OECD, in particular through the creation of a working group to analyze the harmful tax practices: Harmful Tax Competition Forum).

The work of the OECD were mainly carried out on three fronts:

1. Identify and eliminate the harmful elements of the preferential tax regimes of the member states of the OECD.
2. Identify tax havens and seek their commitment to the principles of transparency and effective exchange of information.
3. Encouraging other economies outside the OECD to be associated with this work.

Concept of harmful tax regime

The OECD report considered four key criteria for determining the existence of harmful tax competition:

- A. Existence of an effective tax rate of zero or low, therefore the nominal rates following the procedure for the determination of the tax base (necessary but not sufficient condition).
- B. Sealing or isolating the regime, via exclusion of its benefits to residents (what is known as the principle of subjective sealing) or limiting its applicability to transactions with non-residents (principle of strict sealing) or even the restriction of having necessarily operate with foreign currencies.
- C. Lack of transparency, legal level, regulatory or administrative functions, including the ability to favorably apply certain provisions, tax rulings, and so on.
- D. Lack of effective exchange of information on taxpayers who benefit from that regime.

It was felt that for the identification of such schemes was enough that the first criterion mentioned together with one or more other criteria, in a process of global evaluation of each of them was fulfilled.

Results of work on tax havens and harmful tax competition thrown by the OECD

The first result of the work of the Forum was constituted Harmful Tax Competition Report, published in June 2000 on progress in the identification and elimination of Harmful Tax Practices. This report collected in paragraphs 17 and 11, respectively, a list of tax havens and a list of harmful tax regimes in OECD countries.

The list of tax havens by the OECD finally included 35 of the 47 jurisdictions analyzed. However, 6 jurisdictions (San Marino, Bermuda, Cayman Islands, Malta, Cyprus and Mauritius) still meet the technical criteria for being tax havens were not included in the list, because they assumed before the date of publication of the report, June 2000, the political commitment to modify their tax systems to stop being tax havens before December 31, 2005.

The list of harmful tax regimes of the member states of the OECD included 47 measures considered potentially harmful. The term meant potentially harmful, according to the report, that the measure had characteristics suggesting that the tax regime had the potential to be a harmful tax practice. You could not say that such regimes were actually harmful because it would have to study the practical implementation of the scheme (analysis not performed on Harmful Tax Competition Forum).

From the above it can be concluded that the first result of the exercise of what constituted basically OECD blacklisting. Whether a particular jurisdiction or a tax system in a given country in the OECD appear in such list was undeniable and immediate political consequences, image and even practical.

Within figures including circumvention are the economy option, simulation, law fraud, abuse of law, abuse of forms and indirect business. As figures that cause the reduction or elimination of the tax burden, the economic activity performed.

Economics Option

The economy option is a concept that is attributed to the Spanish jurist LARRAZ J., who conceived it as an exceptional case in which the tax law should be interpreted literally, which is set when individuals are subordinated to the law

and choose the appropriate legal form for your business. Therefore their behavior is lawful. The concept assumes that the taxpayer faces different alternatives that the law itself provides, and this is in possibilities to choose the way best benefits and, of course, will generate a lower tax burden.

Legal alternatives offered by the system are all lawful, because the rules do not impose a specific legal form, but the taxpayer is free to analyze the legal situation or the fact that it is legally formalize their business, so we would be in a real tax planning.

Likewise, when a taxpayer makes exempt acts, we are facing an economy option, that the law establishes. The exemption is subject, because the operative event made the taxable event occurs, at which the obligation but the law itself grants the exemption, which implies that there is a rule of law creates an obligation, but that it dispenses the tax payment. Here we could give an example such as the alienation of immovable property, which are recorded by the income tax and VAT, but the systems in turn state that if you alienate is your household, this act is exempt from both taxes. So the exemption is a right granted by law and the fact that the taxpayer's advantage in exercising its own right, never to be a wrongful act.

Choosing a less burdensome figure, you will always have the sole purpose of the tax savings that does not contradict the spirit of the law, so the taxpayer acting in good faith is entitled to be interpreted with respect to their tax law as literal. Under German law, this figure takes the name of tax avoidance (Steuervermeidung), thus differentiating circumvention (Steuerumgehung) and tax evasion (Seteuerhinterziehung)

When we are dealing with an economy option we can not be facing a fraud law, since the economy of choice is a more advantageous way that enables expresses legislature or implied, or as claimed by some authors, "consciously or unconsciously" without the legal form by the taxpayer resulting forced. Therefore, it makes little sense to talk about reaction to the economy of choice as it is a completely legal operation.

On the other hand, the lack of intentional tax payment can be configured through evasion or avoidance. The taxpayer does not pay the tax, then opt for the misleading statements, or any other malicious concealment trick or deception (evasion) and placed outside the law. But you can also opt for another way to be excluded from the application of the tax rule (avoidance). The taxpayer in this case try to show the performance of a different business to running and is not reached by the rules that describe the taxable event. The purpose of the taxpayer is always the same, so the government does not take cognizance of the fact or part of reality. This involves developing behaviors to show or not to show the facts in full. It is important to stipulate that a taxpayer to avoid the obligation also skillfully used the loopholes in the law, and as the highest law says what is not forbidden is allowed.

Simulation

The active subject is the State and Treasury or the judges, who often confuse simulation with cases of circumvention, are similar in that both seek a result contrary to the rule of law. In the simulation, the rule infringed is prohibiting the unlawful act that is concealed under the guise of legitimate one being simulated. Later this issue touches most widely Simulation as a way to combat circumvention. In the simulation we are dealing with a purely apparent act in circumvention concurs change in an act intended by the parties. However, in theory, there is a fundamental difference between them. However, in practice the distinction between simulation and avoidance is often problematic, because the circumvention supposed, somehow, as PALAO, an appearance, where the parties do not want to get the typical effects of the act, but he used to say a different purpose. Here it is important to make clear that only the relative simulation is that would fit inside the forms of circumvention, because the Absolute Simulation and falls within Evasion.

Fraud Law

In a generic sense, the term Tax Fraud any violation of tax laws that results in less than the result of a correct application of the rules collection. In this broad concept fit occultations data, income, property, and so on. In a narrower sense, and making specific

reference to legal fraud, we can define as a tax rule under unsuitable to a particular case, to defraud another that responds to that course.

At present, fraud can be considered widespread in the whole of the political geography of the world. The phenomenon occurs in both developing countries and industrialized countries, the only thing that changes often are the technical arrangements when to do it. But reality also shows us that the selfish impulse that arises from the obligation to pay taxes, appears to varying degrees depending on the country to which we refer. It is also noteworthy that this geographical generality usually correspond to a concentration of socio-professional fraudsters. It has been noted that the table of tax fraud which offers a country is the caricature of the society in which it appears.

Fraud occurs when law respecting the letter of the law, its meaning is elusive. Us back to Roman times when it stated: "is not understanding the laws on retaining his words, but to understand its purpose and its effects" as a result of these educated words noted, "work against the law makes what the law forbids; it's fraud, while respecting the words of the law, evading its meaning. "

"Tax avoidance" is a specific category, with exclusive effect in the tax field within the generic concept Fraud Act. This is the position of the German doctrine has distinguished between gender (fraud law-Gesetzesumgehung) and the species (Steuerumgehung tax-avoidance). Its equivalent in the common law is the concept of tax avoidance, the latter has more diffuse than coined in the continental European law limits, so there is hardly a link between tax avoidance and evasion of the law concept. There is no rule defining fraud law, so it is necessary to refer to comparative law. It is important to refer back to Article 6.4 of the Spanish Civil Code which regulates the concept of acts performed in fraud of the law which reads: "The acts performed under the text of a standard achieving a result prohibited by law, or contrary to it, be deemed executed in fraud to law and shall not prevent the proper application of the rule which were intended to circumvent. " Allowing us to see that this holds that the purpose of the acts performed in fraud of law, is due evade compliance with a particular standard. According to this rule, elements of fraud to the law are:

1. the act or celebrants invoke a particular rule ("..to under a standard text")

For this, which is called "standard coverage". This standard is not the tax law to which the taxpayer to avail, but civil or commercial standard on which bases its contrived rating, which will have a negative result.

2. ceremony pursues a prohibited or otherwise result to another statute, called "disappointed norm"; Y

3. The body responsible for implementing the law -the judge for antonomasia- makes a "negative assessment" of the ceremony held this says this is not covered by the standard coverage for their defraudatoria purpose, and consequently determines the act held left disappointed regulated by the standard.

The acts in fraud of the law involve two elements, one objective, namely the similarity or practical equivalence of the result pursued by the act performed and the prohibited or contrary to the order result, one subjective, which is intended to exist between the parties defraud or deceive the norm. Fraud can be considered widespread, perhaps because the cause of the resistance to the payment of taxes is in the fact that the taxpayer wish to preserve the integrity of their income or assets, is greater than the reasons which They can induce assign the State.

In a roundabout fraud law that aims, without violating the letter of the law occurs, but violating its spirit, the same results of the defrauded standard.

As we can see, this figure is governed by Spanish law, in Germany and many other countries; in Mexico we are not regulated in this way, however, they have taken some anti-abuse measures, which will be discussed later. It is very interesting analysis of the figure Fraud Act because in the end they are forms of avoidance and as we move forward in the development of this work, it is good to note the different approaches to the doctrine concerning this figure, we already know was eliminated the Spanish system but other countries still holding. So we will study the different positions around a fraud of tax law, which raises ARRAIZ PEREZ:

A. For a sector of the doctrine there is the problem of tax fraud law because of the idea that, since the tax law is structured on the basis of positive terms to pay a tax liability by making a taxable event and the citizen is free to make or not the fact set by the legislator as a taxable event, if not performed,

except in cases of simulation, their behavior does not have to suffer any reproach.

B. Contrary to the previous position are those who defend the freedom of the parties to conduct business with the legal forms you need, it is irrelevant to the taxation of their economic relations. What we really need to consider is the economic relationship which constitutes the factual tribute, and this can be determined through interpretation, without being any precise rules against tax fraud law. So the proponents of this view are based on the idea that the exercise of autonomy can not be used to violate the law.

Abuse of rights

It is called abuse of law or abuse of rights, the situation that occurs when the holder of a subjective right acts so that their behavior is consistent with the statute that grants the right, but its exercise is contrary to good faith, morality, decency or social and economic purposes of the law. Likewise, it is the actions of those who in exercising a right act with negligence or fraud, useless to himself and causing damage to third parties.

Not admit the abuse of rights would prevent the State or the powers or individuals may, under the exercise of a fundamental right, limit or attack another fundamental right or to deviate from the inherent limits on the exercise of that right the case.

In the abuse of rights are given the following constants:

- Using an objective law and strictly legal
- The damage to an interest not protected by a special legal rule
- Immorality damage manifested either subjectively or objectively.²

² GÓMEZ COTERO J. de J., "*La elusión fiscal y los medios para evitarla*" ponencia en la XXIV Jornadas Latinoamericanas de Derecho Tributario, Ed. Asociación Venezolana de Derecho Tributario e Instituto Latinoamericano de Derecho Tributario, Isla Margarita Venezuela, p. 461.

In the abuse of rights, there is a use which exceeds the powers attributed a rule, that is, what began as a legitimate use of powers under the norm to a subject, degenerates and ends up causing undue harm to others. This results in compensation and the adoption of judicial or administrative measures to prevent the persistence of abuse, while fraud to the law is unrelated to compensation and sanctions; and given the existence of a misuse of the exercise of the autonomy of the individual in relation to obtaining results not protected by law. It under this last comment was the reason why the Tax Spanish 2003 figure left out fraud in law, ushering in "Conflict in the application of tax law," Article 15.

The abuse of legal forms

In the abuse of forms, motivation is simply to avoid the tax wholly or partly by legal forms that do not express the true substance of the act performed. This is an illegal act, beyond the reclassification worthy strictly from the point of view tax must be punished. It is always necessary that the parties that made the act have acted maliciously to reduce the tax burden and, to this end, they have given a legal business structure that does not correspond with the true objective pursued by them. The German doctrine states that this is an abuse of forms when there is a mismatch between the economic result sought and the form used for this purpose, using inadequate legal configurations involving rodeos and are often cumbersome and complicated.

Abuse of forms is not in themselves but in the misuse that is made of them, deforming their typical target for a different economic order which by virtue of their nature attributed the law. The goal, which in private affairs may be lawful, it is not the tax, as a result as an unlawful non-payment of a tax because it is produced. But the act or transaction in question, it is only when fraudulent by a deformation in an illegal structure for tax result is obtained. In the private order, the use of these forms may be lawful, while the tax order is unlawful because it produces results as unlawful non-payment of a tax due.

It is important to make clear that the abuse of fraudulent forms be unlawful for tax only when a result is obtained, making it necessary to show a subterfuge or deceptive device

that acts as a medium, resulting in the frustration of the tax rule.

Indirect business

It is that which is done using a legitimate figure to facilitate an outcome, which is essentially another legal concept itself. This is not necessarily an act simulated, but -as Mosset points Iturraspe- parties really and truly materialize any agreement, but also want to that is typical and normal business adopted, also pursue obtaining ulterior motives , who they are strangers to this. On this definition, we can see that the indirect business in principle be lawful, unless it causes injury to another or have an unlawful purpose. To achieve this, we believe it should not necessarily be incurred in the simulation of an act, since in certain cases the law expressly admits the possibility of ulterior motives by using different figures. Therefore, if we follow the teaching characterization Mosset Iturraspe, it could be interpreted that the association form of society-at being specified in the law-typical normal order of business adopted and further achieving business goals strange coexist within a same plane. The parties use for the purpose of obtaining a purpose other than that correspond to the type of business conducted, in the strict sense has place when the parties enter into a typical act, but want to achieve through consciously and consensualmente- ste purposes (economic, financial) many of which in principle they are typical used the legal act.

In the indirect legal transaction, the subject wants it with all its consequences, but the economic purpose does not correspond with what is typical business employee, this leads us to distinguish the business of the reasons for its implementation, which are variable in each case concrete; in the indirect business a legal reality but an economic reality is not hidden, and that while the business is really intended not so with his typical cause, while what is sought is to obtain different financial results for the business running . It is used to achieve economic and legal outcomes that although they are own business, do not identify with the cause or economic reason for carrying it. In contrary to the law, sometimes it was done through indirect legal business but it is not the only way to do it, plus the indirect business does not always have a tax purpose.

Tax planning

Tax planning is an effort to optimize the tax burden strictly linked to the right, which helps us get an optimization of financial resources, it is a management tool capable of producing future economic benefits. Its aim is basically "eliminate, reduce or defer the tax burden of any operation, always within the legal framework applicable tax and with the supporting documentation proving the legality of cases".

All planning is a symbolic foreshadowing of the events and phenomena to be monitored. While foreshadowing involves an imaginative conception of reality, as if it could be manipulated.

Tax planning depends, the tax system, the type of business, and all contingencies that may arise. The design of the strategy will be based on the particular circumstances and background of each company or person, here comes the capacity, technical creativity and specialist knowledge in the field, consistent with the natural principle of economy "maximum performance with minimum sacrifice. "

REPECO small taxpayer regime, combined with intermediate regime, both figures regulated by ITL in Mexico: Then the following example will show tax planning.

- Elena has a stationary, it is registered in the Small Taxpayers Regime, under the Law on Income Tax Título.IV, Chapter II, Sec. III, does not prepare invoices, but sales notes (simplified tax receipt), and pay their taxes through an estimate that the Income Tax Law empowers the authority to determine it, which is always made smaller, to a middle or higher rate.
- Your business has grown and some customers ask breakdown of VAT invoices.
- He did a poll and 65% of sales are to the general public, and 35% with customers necessarily would require an invoice.

The problem is that Elena wants to stay in REPECO not to go to Intermediate System and pay a higher rate so he asks, can I stay in the scheme, and issue separate invoices for those who require it ?, so your advisor tax planning gives Elena the following alternative:

- keep it as REPECO for 65% of sales,
- and enroll her husband under Intermediate Regime for sales invoice, also there he may deduct purchases of goods billed to your name (decreasing its base, and crediting the VAT on their purchases), obtaining a double benefit this .

So we can conclude that fiscal planning is a management tool that helps us to have better control of our finances and that is not a crime as long as you stick to the right. But if we see it from another perspective we could say that is an abuse of form.

Fundamental objective of tax planning

It is intended to abate or mitigate possible-always within the law-usually implicit fiscal costs to all operations, either alone or be continuous. But this priority economic goal only acquires complete and full significance to the extent rooted in the full respect of the legal precepts. It is subordinated to economic matters the legal to the extent that is no longer feasible and loses authenticity and technical at the same time in which affects the illegality.

Defined attitudes

If the distinction between "saving legal" and "illegal evasion", added the case of circumvention, it is simply to refrain from acting to avoid affecting tribute causal and also cover cases of naive taxation, we can reformularnos the full picture about the kinds of attitudes to tax legislation:

- 1) The subject taxed without taking action.
- 2) avoiding the tax by simply abstaining or avoidance.
- 3) The saving through legal channels.
- 4) evading obviously by illegal means.

No social conscience condemns fraud, but sees tolerant fraudulent combinations, Rosier says, far from being a criminal fraud behavior applaud admiringly reaction procedures against the Treasury and is given a sporty character.

CONCLUSIONS

1. Tax avoidance is the setting not the hypothesis established in the tax law how taxable event, or set a load of much smaller, being caused by performing acts that are lawful in isolation. On the other hand tax evasion is the illegal conduct by the concealment of all or part of the tax base, which makes the taxpayer to avoid paying the tax debt, being obliged by law.
2. In the field of taxation very often be to conduct an economic result not foreseen by the legislature even if not physically made the taxable event. That is, the non-realization of the taxable event does not have to move to an economy option that is completely lawful, but in the case of non-realization of this fact, as a result of using cumbersome or artificial formulas to elude him, we then in fraud of the law.
3. The different forms that the taxpayer uses in order to make the least onerous tax burden and analyzed in this work, as is the economy option, simulation, law fraud, abuse of law, abuse of forms, indirect business and the same tax planning are the means or mechanisms through which the primary objective is to obtain a result of lessening the tax burden. It is important to consider that most of these figures, there is a very thin thread to the avoidance or evasion of taxes are set, based on the different shapes or devices used by the taxpayer of the obligation to prevent, reduce or hide your tax burden. Causes these negative effects on revenue collection, necessary for each State to be able to conduct their business and seek common welfare of society.
4. This analysis is striking that the authors do not agree on whether circumvention is legal or illegal, but we can conclude that when circumvention is legitimate economy are facing a choice, and when circumvention is illegal we are to a simulation.
5. Both avoidance and evasion are legal phenomena that have negative consequences for the tax administration, whose special manifestation can be seen in the tax collection area.
6. To combat behaviors that are in violation of the spirit of the rule, both the Administration and the courts need an appropriate instrument, which must be provided by the legislature. Currently there are still complex but effective tax rules to prevent abuse of the figures of the taxpayers, but just serve to not leave it to the tax authorities the application of the Act.
7. All these elusive forms made by taxpayers generally cause a distortion of what is considered the central principle of taxation, such as the economic capacity in its horizontal aspect or equality, because when these phenomena encyst internal systems each state, a structural weakening of this principle is generated.

8. With respect to the criminality of the conduct set forth in the tax laws, you could be violated if these could clearly predict that a particular behavior can be sanctioned. So that only you can apply sanction behaviors that are prescribed by law and fulfill all elements of the type contained in it. When an act other than the taxable event stipulated by the legislature for a particular outcome, regardless of whether it may involve the application of some form of antielusiva clause, may not include the application of a sanction is carried out, since in this embodiment is not hidden or left to declare the act committed and not the type of offense to which the penalty applies is committed.

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