

TAX AVOIDANCE VS TAX EVASION: IS IT ONLY AN ETHICAL ISSUE?

Lehte Alver, Jaan Alver

Tallinn University of Technology, Ehitajate tee 5, Tallinn 19086, Estonia

Abstract

In order to understand whether this is an ethical issue, it is first necessary to clarify two terms tax evasion and tax avoidance. It would be reasonable to evaluate the differences between tax evasion and tax avoidance. Tax evasion is illegal, it consists of the willful violation or circumvention of relevant tax laws to minimize tax liability. From a legal point of view, such behavior is easily recognizable: the taxpayer has broken the law and it amounts to criminal fraud. By contrast, tax avoidance is not illegal. It is simply taking advantage of the legal opportunities and loopholes in the system to minimize one's tax liability. It requires fictitious transactions and structures that reduce taxes in a way that is contrary to the policy or spirit of the legislation. Tax ethics refers to tax payer's moral obligation to pay taxes. But sometimes it is not only an ethical issue. International tax practice mainly uses these two key terms. It should be noted that in countries where the official language is not English, there might be problems in translating these terms. The content and meaning given to them in different jurisdictions may not overlap, cannot be distinguished or may be confused. The paper deals with tax avoidance and tax evasion on the context of tax terminology, tax legislation and research performed in Estonia.

Keywords: *tax avoidance, tax evasion, ethics, Estonia*

1. INTRODUCTION

The modern framework of professional *tax ethics* is often given in reference to famous quotations of Justice Oliver Wendell Holmes or Judge Learned Hand. However, there are two significant problems when these are applied to form the basis of *tax ethics*. First, Holmes' idea of "crossing the line" is taken as a presumption that tax laws are legally determinate. They are not. Every tax practitioner ought to be aware that tax laws are not legally determinate. Accordingly, the limits of tax planning should not be expected to be clearly marked. Second, Hand's premise of the legitimacy of "arranging affairs" raises the problem of structuring. By structuring, the tax practitioner creates a convoluted and indeterminate transaction out of a previously known set of facts (Bogenschneider 2020).

Tax ethics refers to the taxpayer's moral obligation to pay taxes and is affected by the relationship between the taxpayer, as a citizen, and the government. The terms *tax ethics* and *tax evasion* are often used interchangeably. *Tax evasion*, however, refers to a person actively trying to avoid paying tax while *tax ethics* refers to all non-monetary incentives to comply with tax legislation. Measuring *tax ethics* helps to indirectly measure the size of "shadow economy", since not many individuals are willing to reveal whether they have committed financial irregularities or not. Consequently, a higher degree of *tax ethics* is positively related to regular tax payments and compliance to tax regulations.

The ethics of *tax evasion* can be examined from a number of perspectives. Some of these are of a religious nature while others are more secular and philosophical. Over the centuries, four basic views have emerged on the ethics of *tax evasion*. One view takes the position that *tax evasion* is always, or usually unethical. This view is especially in democracies, where there is a strong belief that individuals should conform to majority rule. In democracy, this view is justified under the *consent theory*. The second view states that *tax evasion* is always ethical. This might be labeled the *anarchist view*. This view holds that there is never any duty to pay taxes because the state is illegitimate, a mere thief that has no moral authority to take anything from anyone. The third view holds that evasion may be ethical under some circumstances and unethical under other circumstances. This view is prevalent view, based on the existing literature. The fourth view is that there can be an affirmative duty not to pay. At least three arguments can be put forth to justify this position – the state is evil or corrupt, and thus is not entitled to receive the fruits of our labor; evading taxes is a positive-sum game, because private sector

is more efficient than the government sector; and *tax evasion* results in a more just society because there fewer property rights violation if taxes are evaded (McGee 2008).

Payment of taxes is a taxpayer's obligation to the state regulated at the constitutional level. Tax compliance is the degree to which a taxpayer complies (or does not comply) with the national tax rules and is related to either corporate tax or personal tax. Tax compliance can be differentiated depending on how it is achieved: voluntary compliance and enforcement compliance. People studying the behavioral side of taxation use the terms *tax ethics*, *tax moral*, *tax avoidance*, *tax evasion* and *tax discipline*. In general, tax-compliant behavior depends primarily on *tax ethics*. An individual's understanding of tax justice, trust in the state, conscious use of tax revenue, individual characteristics and cultural specificities, also affect *tax ethics*. The attitude of citizens towards tax obligations is affected by various factors. For example, several studies show that *tax ethics* is higher among older citizens, citizens who have strong religious beliefs or citizens who trust politicians. Moreover, international research has shown that *tax ethics* is positively related to *tax system fairness* and *government transparency* and negatively related to *tax evasion* and *shadow economy* (Drogalas et al. 2018).

2. TERMINOLOGY AS A PROBLEM?

There are different ways to reduce the tax burden: *tax evasion*; *tax avoidance*; *tax planning* (*acceptable tax planning*, *aggressive tax planning*); *tax fraud*. These terms and methods are recognized in all countries, but the content and legal framework are very different. In practice, the terms *tax avoidance*; *tax evasion* and *tax planning* are more common in tax reduction terminology. In the professional tax literature, permitted and prohibited ways of reducing tax liability are classified as *tax savings*, *tax evasion* and *tax miscalculation*. Regardless of which terms to prefer, we consider the use of the terms *tax avoidance*, *tax planning* and *tax evasion* to be the most unclear. The main problems stem from the fact that these terms do not have uniform meanings, sometimes are used interchangeably or are not distinguished at all. Table 1 includes excerpts from the specialized dictionaries where all three aforementioned terms appear.

Tax avoidance has been defined as *tax reduction* (Crumbley et al. 1994; Friedman 2007; Friedman 2012; Scott 2009), *payment less tax* (Siegel & Shim, 2005; Qfinance: Pocket Dictionary of Business 2010; Downes & Goodman, 2014), *the minimization of tax liability* (Terminology for Accountants 1992; A Dictionary of Accounting 2010). Unlike others, French (1994) notes that *tax avoidance* is another term for *tax planning*. All the authors of the specialist dictionaries listed in Table 1 agree that *tax avoidance* is legal. However, no one assessed the ethical/unethical nature of *tax avoidance* when defining it (more precisely, this has been indirectly done by Nobes (2002), who has used the wording 'the manipulation by a taxpayer' when defining *tax avoidance* in contrast to the wording 'the illegal manipulation by a taxpayer' when defining *tax evasion*).

Tax evasion has been defined as *illegal failure to pay taxes* (French 1994; Siegel & Shim, 2005; Scott 2009; Downes & Goodman, 2014).

Some dictionary authors have also considered it necessary to add comments and / or examples to the definitions. For example, Wanjialin (2004) notes that *tax avoidance* and *avoidance of taxation* are synonymous, as are *tax avoidance transaction* and *avoidance transaction*. According to him also synonymous are *tax evasion*, *evasion of tax* and *defrauding the revenue*. *Tax fraud* is defined as an illegal act of intentionally filing a fraudulent return (Wanjialin 2004). Crumbley et al. (1994) and Friedman (2007) make distinction between *tax avoidance* and *avoidance of tax*. They also emphasize that *tax evasion* or *evasion of tax* is to be distinguished from *tax avoidance*, which denotes the legal interpretation of relevant tax laws to minimize tax liability. Siegel and Shim (2005) illustrate *tax evasion* with examples of failure to report income received and claiming of fictitious deductions. Hindle (1998) emphasizes that *tax avoidance* is the setting up of artificial (but perfectly legal) schemes to reduce the amount of tax when *tax evasion* is the use of illegal means to reduce the amount of tax due. Downes and Goodman (2014) note that taxpayers who evade their true tax liability may underreport income, overstate deductions and exemptions, or participate in fraudulent *tax shelters*. They consider it necessary to emphasize that *tax evasion* is different from *tax avoidance*, which is the legal use of the tax code to

reduce tax liability. *Business: The Ultimate Resource*TM (2002) states that *tax avoidance* includes strategies to ensure the payment of as little in taxes as is legally possible and *tax evasion* is the illegal practice of paying less money in taxes than is due. *Qfinance* (2010) states that *tax avoidance* involves making the maximum use of all legal means of minimizing liability of taxation. The Oxford Dictionary of Accounting (2010) and the Oxford Dictionary of Law (2006) with the following example illustrate the difference between *tax avoidance* and *tax evasion*: If a person marries in order to reduce his tax burden, he is practicing *tax avoidance*. If a person tells the Revenue that he is married when he is not, he is guilty of *tax evasion*.

<i>Tax avoidance</i>	<i>Tax planning</i>	<i>Tax evasion</i>
The minimization of the impact of taxation by taking advantage of all lawful allowances and benefits (<i>Terminology for Accountants</i> 1992).	The arrangement of the affairs of an individual or an organization with a view to minimizing the impact of taxation (<i>Terminology for Accountants</i> 1992).	The willful attempt to reduce or escape the impact of taxation through subterfuge or other infraction of the law (<i>Terminology for Accountants</i> 1992).
Tax reduction through methods permitted by law, such as tax deferral of income into the following year (Crumbley, Friedman & Anders 1994).	Systematic analysis of differing tax options aimed at the minimization of tax liability in current and future tax periods (Crumbley, Friedman & Anders 1994).	Any method of avoiding or reducing taxes not permitted by law (Crumbley, Friedman & Anders 1994).
Another term for <i>tax planning</i> (French 1994).	Arrangement of financial transactions so as to reduce the tax chargeable so far as this can be done without breaking the law (French 1994).	Illegal failure to pay taxes, for example, by not correctly declaring liability (French 1994).
The manipulation by a taxpayer of his or her affairs, within the letter of the law, in order to reduce tax liabilities (Nobes 2002).	The arrangement of one's affairs (intended to be legal) to maximize after-tax returns (Nobes 2002).	The illegal manipulation by a taxpayer of his or her affairs, or of information given to the tax authorities, in order to reduce tax liabilities (Nobes 2002).
Legal means of preventing a tax liability from coming into existence or in a lesser amount (Wanjialin 2004).	Arranging the affairs of a taxpayer in such a way as to incur the smallest possible tax liability (Wanjialin 2004).	Knowingly reporting tax that is less than the tax liability under the tax law (Wanjialin 2004).
Payment of the least tax possible by using legal tax planning opportunities such as estate planning (Siegel & Shim 2005).	Systematic analysis of differing tax options aimed at the minimization of tax liability in current and future tax periods (Siegel & Shim 2005).	Failure to pay taxes legally due a governmental agency (Siegel & Shim 2005).
Tax reduction methods permitted by law, such as the deferral of income into the following year. <i>Avoidance of tax</i> – method by which a taxpayer legally reduces his tax liability, for example, by investing in a tax shelter (Friedman (2007, 2012).	Systematic analysis of differing tax options aimed at the minimization of tax liability in current and future tax periods (Friedman (2007, 2012).	Any method of reducing taxes not permitted by law. Involves deceit, subterfuge, camouflage, concealment, or an attempt to color or obscure events (Friedman (2007, 2012).
The reduction of a tax liability by legal means (Scott 2009).	The process of systematically making decisions with regard to their impact on taxation (Scott 2009).	The illegal avoidance of taxes (Scott 2009).
A way of managing finances to pay less tax the organization of a taxpayer's affairs so that the minimum tax liability is incurred (<i>Qfinance: Pocket Dictionary of Business</i> 2010).	The process of planning how to avoid paying too much tax, for example by investing in tax-exempt bonds (<i>Qfinance: Pocket Dictionary of Business</i> 2010).	Illegally not paying taxes the illegal practice of paying less money in taxes than is due (<i>Qfinance: Pocket Dictionary of Business</i> 2010).

Minimizing tax liabilities legally and by means of full disclosure to the tax authorities (<i>A Dictionary of Accounting</i> 2010).	The arrangement of taxpayer's affairs, in accordance with the requirements of the tax legislation, in order to reduce the overall charge to tax (<i>A Dictionary of Accounting</i> 2010).	Minimizing tax liabilities illegally, usually by not disclosing that one is liable to tax or by giving false information to the authorities (<i>A Dictionary of Accounting</i> 2010).
Strategy to pay the least amount of tax possible through legal means (Downes & Goodman 2014).	Strategy of minimizing tax liability for an individual or company by analyzing the tax implications of various options throughout a tax year (Downes & Goodman 2014).	Illegal practice of intentionally evading taxes (Downes & Goodman 2014).

Table 1. Some definitions of *tax avoidance*, *tax planning* and *tax evasion*

Source: Developed by the authors

It is appropriate to note here that former British politician Lord Denis Winston Healey who served from 1974 to 1979 as Chancellor of the Exchequer, once remarked: "The difference between *tax avoidance* and *tax evasion* is the thickness of a prisons wall". His quote graphically illustrates that tax avoiders, generally, remain on the outside of the prison wall, while some tax evaders are detained inside. Briscoe and Fuller (2007) consider it necessary to emphasize that *tax avoidance* contrasts with *tax evasion* that has a similar objective but uses illegal means and is therefore a criminal offence. *Tax avoidance* means the use of legally legal deductions to reduce the tax burden. *Tax evasion* is a broad concept that can be interpreted differently, but which refers to intent. There is a narrow line between legality and illegality, so it is important to distinguish between these terms. In most cases, evasion is an intentional act in which a person knowingly acts dishonestly and unlawfully reduces a tax liability that has already been incurred. For some reason, people are left with the misconception that *tax evasion* is something legal that aims to reduce the tax burden by using legal techniques such as tax savings, optimization etc. *Tax evasion* is divided into different degrees of seriousness: minor infringements, such as failure to file tax returns, and more serious infringements, such as false declarations or forgery of documents. More serious cases of *tax evasion* can be described as *tax fraud*, which is characterized by deliberate intent and foresight.

Tax planning has been defined as *minimization of tax liability* (Terminology for Accountants 1992; Crumbley *et al.* 1994; Wanjialin 2004; Siegel & Shim, 2005; Friedman 2007; Friedman 2012; Downes & Goodman, 2014), *reduce the tax chargeable without breaking the law* (French 1994); *the arrangement of one's affairs (intended to be legal) so as to maximize after-tax returns* (Nobes 2002). Qfinance (2010) states that *tax planning* and *planning of tax avoidance* are synonyms. However, no one assessed the ethical/unethical nature of *tax planning* when defining it.

The definitions of *tax avoidance* and *tax planning* sometimes seem to overlap. Table 2 summarizes the differences between them.

Indicator	<i>Tax avoidance</i>	<i>Tax planning</i>
Objective	To reduce the tax liability by applying the provisions of law only.	To lessen the tax liability by application of the provisions and the morals of law.
Content	The practice of purposely adjusting one's financial affairs to prevent the payment of tax.	Refers to a person's planning of financial affairs in such a way that that the assessee gets the full benefit of all permissible deductions and the exemptions as per the law.
Nature	Legal but may be unethical.	Legal and ethical.
Brief	The dodging of tax.	Savings of tax.
Legal implication	Uses loopholes in the law and manipulates the accounts.	Uses the advantages of tax law.

Table 2. Comparison of tax ethics and tax planning

Source: Developed by the authors

In Estonia, problems related to terminology have been addressed by Kask (2010). We agree with her that *tax avoidance* and *tax evasion* are fitted in various ways, there is no clear, universally accepted definition of these terms, and that they are either constantly interchanged or not distinguished at all. Similar terminological problems arise at both the national and international levels. From the legal point of view, the result of such is that the terms are interpreted in various ways; their use in international practice is irregular and unclear. The terminology used in different countries regarding permitted and prohibited ways of reducing taxes has also been transferred into the decisions made out by the Court of Justice. Analyzing the difference between *tax avoidance* and *tax evasion*, Kask (2010) found that both terms have both a narrow and a broad meaning and in some respect the terms overlap, so this should be considered when using these terms. It can even be said that there is a so-called “gray area” where the taxpayer operates on the verge of legality. In distinguishing between these two actions the main focus is that the actions that cause *tax evasion* are illegal from the beginning, however actions that lead to *tax avoidance* usually do not have hits of fraud-like behavior.

We would like to emphasize that *tax evasion* is a pervasive and widespread phenomenon with significant economic and social consequences. Moreover, it creates horizontal inequity because equally well-off people end up with different tax burdens; this, in turn, distorts the redistributive effect of taxation and undermines social cohesion. We agree with Barone and Mocetti (2009) that understanding the main determinants of tax compliance is a major economic and political issue.

3. TAX AVOIDANCE AND TAX EVASION IN THE INTERNATIONAL CONTEXT

International tax practice mainly uses two key terms: *tax avoidance* and *tax evasion*. It should be noted that in countries where the official language is not English, there might be problems in translating these terms. The content and meaning given to them in different jurisdictions may not overlap, cannot be distinguished or may be confused. Irrespective of national legal definitions, these terms may even be used differently in the same country, for example in business practice and in the press.

Where *tax evasion* involves engaging in illegal activities to reduce one's tax burden, *tax avoidance* is just finding loopholes in the current tax administration system to avoid paying all the taxes that one is legally required to. *Tax evasion* not only has a direct impact on the country's economy but it also affects the international economy as a whole. According to an OECD report, combating international *tax evasion* is essential since it is a major source of illicit financial flows from several developing countries. The literature review indicated that there is a significant and direct relationship between the ethics and morality of individual taxpayer and their tax compliance. A higher value of ethics will lead to better tax compliance. Furthermore, tax literacy is also a very important factor affecting compliance. Proper tax education and awareness leads to better planning on part of the taxpayers which leads to greater compliance.

However, although the legality of *tax avoidance* is well settled in both common law and civil law jurisdictions around the world, there is an essential debate that has been increasingly important in the last few years, which is the debate about the ethics of *tax avoidance*. In this field, apart from the legal aspects of this tax arrangement, the achievement is to determinate whether *tax avoidance* is morally right or wrong, in other words if someone that perpetrates this scheme is acting in an ethical or in an unethical manner.

While analyzing the anti-avoidance rules Kask (2010) concluded that regulation varies significantly depending on the country. The general and special rules in use are statute-based or court-based. Analysis of specific practical cases however shows that irrespective of different baselines in fighting against *tax evasion* the results are surprisingly similar. Concerning cross-border transactions the Court of Justice has the last say whether the issue addressed is a harmful *tax evasion* or a harmless *tax planning*. In cross-border transactions, the connection between the tax treaties and anti-avoidance rules is of a big importance. Two controversial approaches exist – according to one, the presence of a tax treaty does not affect the application of domestic anti-avoidance rules. The opposite approach states that avoidance actions constitutes the abuse of the tax treaty and the party to the treaty may just ignore such a transaction.

The Organization for Economic Co-operation and Development has published Glossary of Tax Terms (OECD 2021) where is stated that aforementioned pair of words (i.e. *tax avoidance* and *tax evasion*) is difficult to define. Term *avoidance* is described as a term that is difficult to define but which is generally used to describe the arrangement of a taxpayer's affairs that is intended to reduce his tax liability and that although the arrangement could be strictly legal it is usually in contradiction with the intent of the law it purports to follow. Term *evasion* is described as a term that is difficult to define but which is generally used to mean illegal arrangements where liability to tax is hidden or ignored, i.e. the taxpayers pay less tax than they are legally obligated to pay by hiding income or information from the tax authorities.

On 28 January 2016, the European Commission presented its proposal for an Anti-Tax Avoidance Directive (ATAD) as part of the Anti-Tax Avoidance Package (ATAD 2016). On 20 June 2016 the Council adopted the Directive (EU) 2016/1164 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. The Anti-Tax Avoidance Directive contains five legally binding anti-abuse measures, which all Member States were required to implement from 1 January 2019 and apply against common forms of aggressive tax planning. The Directive (2016) creates a minimum level of protection against corporate *tax avoidance* throughout the EU, while ensuring a fairer and more stable environment for businesses. The aim of the Directive (2016) is to hinder typical ways of aggressive tax planning. One of the main topics of the Directive is that the taxes should be paid where profits and value are generated.

In the ATAD is strongly leaning on the Base Erosion and Profit Shifting (BEPS) package of the OECD. BEPS project is the basis for the most of the rules included to ATAD. In October 2015, after two years of negotiations and development, a BEPS package was announced by the OECD and G20 to address BEPS. The package includes 15 Action Plans which provide governments domestic and international instruments to tackle against BEPS. The purpose of the tools is to ensure that profits are taxed where economic activities generating the profits are performed and where the value is created. By BEPS, it is referred to tax planning strategies that uses gaps and mismatches in tax rules in order to artificially shift profits to low or no-tax locations where the actual economic activity of a company does not occur.

The international organizations attempt to tackle not just the *tax evasion*, but also *tax avoidance*, has risen conversation. In some context, the *tax avoidance* has been seen as *actus reus* of *tax evasion*. The Anti-Tax Directive concerns especially the ways of *tax avoidance* which may have adverse effects towards the functioning the internal market. Finally, by tax mitigation it is referred to legal and even morally supportable ways to plan one's taxation. *Tax avoidance* has become so aggressive that it is already rising ethical issues.

4. TAX AVOIDANCE AND TAX EVASION IN THE ESTONIAN TAX LEGISLATION

Estonian legislation is part of the Continental European civil law system and has traditionally been based on German law. The tax authority for the state taxes in Estonia is the Tax and Customs Board, which is a government agency and acts within the area of government of the Ministry of Finance.

Estonian tax legislation uses the terms *tax evasion* and *tax avoidance* as follows:

- In the Taxation Act (2022), the term *tax avoidance* is not used but the term *tax evasion* is used thrice.
- In the Value-Added Tax Act (2022), the terms *tax evasion* and *tax avoidance* are used once.
- In the Income Tax Act (2022), the term *tax avoidance* is not used but the term *tax evasion* is used once (as title of the Chapter 10).
- In the Penal Code (2022), the term *tax evasion* is not used but the terms *tax fraud* (as title of the Subchapter 4 of the Chapter 21 ECONOMIC OFFENCES) and *concealment of tax liability* are used once.

There is a general anti-abuse rule in para 84 titled "Transactions and acts performed for purposes of *tax evasion*" of the Taxation Act. According to para 84 "if it is evident from the content of a transaction or

act that the transaction or act is performed for the purpose of *tax evasion*, conditions that correspond to the actual economic content of the transaction or act apply upon taxation". The evidence for the *tax evasion* is according to the para 84 observed from the content of the transaction or act. Comparing the para 84 of the Estonian Taxation Act to ATAD (2016) Article 6, the meaning of general anti-abuse rule is very similar. The observation of the applicability of the rule is based on the economic reality of the transaction or an act. According to the Directive if "an arrangement or a series thereof shall be regarded as non-genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality. Where arrangements or series thereof are ignored in accordance with para 1, the tax liability shall be calculated in accordance with national law". According to para 84 the actual economic content of transactions or acts will be considered when the tax liability is calculated. Application of anti-avoidance rules depends on each specific situation, application should be considered if: the transaction has no other economic grounds and the arrangement is artificial, complicated and non-transparent; the transaction only brings along advantages concerning taxation; the transaction only brings along costs; the transaction is concluded between related parties. To apply para 84 of the Taxation Act it is necessary to determine the taxpayers will to avoid taxation.

In concern to *tax avoidance*, three aspects have to be considered: incentive, goal and outcome. In general, one can say that in practice there are few such transactions about which it is possible to say that their main goal has no other economic reason than gaining tax savings (*the criteria of the sole goal*).

If we look, for example, at para 12 (15) of the Value-Added Tax Act, where the only reference to the term *tax avoidance* can be found in the tax laws, it is clear that the terms *tax avoidance* and *tax evasion* are not distinguished at the law level and are referred to as preventable activities. It is stated that "this section shall be applied to prevent *tax evasion* or *tax avoidance*. The aforementioned subsection shall also be applied in the case of intra-Community acquisition of goods)".

According to the case law it is sufficient grounds to re-evaluate the transaction if the main goal of the transaction is gaining a tax benefit. Based on the general nature of the wording of para 84 of the Taxation Act and the burden of proof provided for in para 150 of the same Act: "(1) If an amount of tax assessed in a tax notice or notice of assessment is challenged, the burden of proof that the tax was assessed incorrectly lies with the taxable person. (2) If a determined amount of tax is challenged by a taxable person, the burden of proof regarding evidence possessed only by a tax authority lies with the tax authority", it is not possible to say that the obligation or burden of proof is stated very clearly and is understandable.

Compared to the variety of terms used in practice, national legislation is limited to distinguishing between two different types of tax reduction in the Taxation Act and the Penal Code: *tax evasion* and *tax fraud*. In both cases, these are manifestations of an unacceptable reduction in tax liability.

With regard to the term *tax evasion*, it should be borne in mind that in the Estonian context, its content is generally broader, covering both punishable *tax evasion* offenses and cases of abuse of opportunities permitted by law. The special literature states that intentional tax miscalculation is also referred to as *concealment of tax liability*, *tax evasion* or *tax fraud*. This may explain why some authors use the terms *tax fraud* and *tax evasion* synonymously. At the same time, the use of the term *tax fraud* regarding the miscalculation of punishable and non-punishable taxes may cause significant confusion, as in the cases of para 84 of the Taxation Act this is an intentional act, but not an offense for which a person could be punished.

There are also major differences between countries concerning the structure of the general anti-avoidance rules. For example, there has been much criticism in Estonia about the general wording and lack of definitiveness of para 84 of the Taxation Act, which in practice is complemented through case law. Also, differ the understandings regarding the connection and scope of application of general and specific anti-avoidance rules. Whether and to what extent one rule limits the application of another is unclear, as the rules do not have the hierarchy of general and specific provisions.

Based on the Estonian case law, one can find a guideline that if there is a so-called special provision for tax exemptions, it is generally not possible to conduct *tax avoidance* based on the general provision. Kask (2010) has pointed out that exceptions may arise if the goals of the transaction have characteristics

of personal consumption (e.g., the shares are transferred to the company and the transaction is justified by the need to set up a personal pension fund).

5. TAX AVOIDANCE AND TAX EVASION STUDIES IN ESTONIA

During 20 years a lot of studies have been conducted in Estonia on *tax avoidance* and *tax evasion*. The main topics covered included factors characterizing individuals who evade taxes, issues in the tax moral, attitudes to the *tax avoidance* and *tax evasion* schemes, analysis of Estonian youth tax mentality and educational issues. The authors of current paper discuss the results of major studies in chronological order.

In the years 2002–2004, a study was conducted at the Faculty of Economics of the University of Tartu on the avoidance of labor taxes in Estonia (Kriz *et al.* 2007). The paper employed micro-level data to determine the factors characterizing individuals who evade payroll and income taxation in Estonia. The main results were following: relatively young and old people were more likely to evade than were middle-aged persons. The relatively high occurrence of *tax evasion* among elderly is unusual in an international context and may be a result of the Estonian transition process, where especially older persons have experienced problems getting jobs in the formal economy. Evasion was more common among individuals who work part-time, were of non-Estonian ethnicity, had relatively short education, earned a low income and are men.

In 2007–2009, an empirical study was conducted on the factors influencing tax behavior in Estonia, which examined tax liabilities and the amount of tax liabilities (Lillemets 2009). Tax behavior is influenced by economic, political and social factors. In the responses to the interviews, the experts mainly emphasized economic factors. Among the economic factors, it was noted that a more favorable economic environment favors the payment of taxes, because in difficult economic circumstances, more costs are being saved at the expense of paying taxes.

The authors of this paper have participated in several studies on ethical issues (Gurvitš *et al.* 2017; McGee *et al.* 2012; Alver *et al.* 2012; McGee *et al.* 2008; McGee *et al.* 2007). Issues related to tax morality in Estonia have been thoroughly addressed by McGee and professors of Tallinn University of Technology J. and L. Alver (McGee *et al.* 2008). The survey was conducted by the faculty, graduate and undergraduate students at Tallinn University of Technology on the various cases in which *tax evasion* is considered ethical were surveyed. The survey found that there is wide philosophical support for *tax evasion* in certain cases and that some arguments to justify *tax evasion* are stronger than others. The general rule, one might say that *tax evasion* is seen as more justifiable if the government is corrupt, wasteful, if the tax system is considered to be unjust or if government engages in human right abuses. *Tax evasion* might also be justified by some people if the tax rates are too high or if the taxpayer is unable to pay. The same study also looked at gender differences. It turned out that women consider *tax evasion* to be more unethical than men, which can be interpreted as a sign of women's higher tax morale. By age, it turned out that people under 25 consider *tax avoidance* more ethical compared to the 25–40 age group (McGee *et al.* 2008).

Based on Estonian data, Randlane (2012) has conducted a survey based on interviews, which examined people's attitudes towards taxes. The study based on 1,080 interviews. The results showed that most people pay taxes because the law tells them to do so. There was a relationship between *tax evasion* readiness and educational attainment. The highest number of potential tax evaders was among people with basic education and the lowest among people with higher education. Thus, these results showed that the tax morale of persons with a higher level of education is higher. This study also found that tax morale is related to people's age, income and marital status. However, these relationships were weaker than the relationship between tax morale and educational attainment. The relationship between tax morale and gender did not prove to be statistically significant.

In 2012–2013, Buldas (2013) conducted a study of tax optimization schemes. During the survey, 177 people answered the questions. Analysis of the responses showed that fraud tolerance depended most on management experience and slightly less on gender.

In 2012–2013, Kivar (2013) conducted a survey in which respondents were asked to evaluate the ethics of the most common ways of optimizing the tax burden. The aim was to find out, which ways are considered more aggressive and unethical, which are more acceptable. People with business experience tolerated all tax optimization methods more than people without business experience. The age comparison revealed both differences and similarities in the estimates. For example, the youngest respondents (up to 25 years old) were the strictest in their assessments, and the next age group was the most understanding. At the same time, the study showed that men of all ages, regardless of their level of education, found tax optimization methods to be slightly more acceptable than women on all issues did. The study also found that the higher the level of education, the more tax optimization is tolerated.

Viin (2013) studied the attitudes of Estonian young people towards taxes and their tax mentality. The sample included young people aged 18–26. The results showed that the tax morale of Estonian young people is higher than expected and their subjective assessment of their tax awareness is quite high.

Suharukov (2015) conducted interviews with experts from the Tax and Customs Board and the Estonian Chamber of Commerce and Industry. Among the factors influencing tax morale, the Tax and Customs Board pointed out that the payment of taxes is a matter of attitude. According to the Estonian Chamber of Commerce and Industry, the payment of taxes is related to public attitudes and opinions regarding the payment of taxes.

The Ministry of Justice funded a research project “Brief Analysis of Criminal Policy” carried out by researchers of Tallinn University of Technology. In 2020, a survey was conducted in the Estonian higher education institutions on whether and how to teach topics like business ethics, corruption and financial crime in the curriculum of business administration and entrepreneurship (Ojasoo *et al.* 2021). Respondents found that the topics of corruption and economic crime could fit well with the content of business ethics.

6. CONCLUSIONS

Tax avoidance and *tax evasion* rise from moral responsibility of every citizen to pay taxes. It is connected to moral culture. At the same time, it is not only an ethical issue. International tax practice mainly uses two key terms: *tax avoidance* and *tax evasion*. It should be noted that in countries where the official language is not English, there might be problems in translating these terms. The content and meaning given to them in different jurisdictions may not overlap, cannot be distinguished or may be confused. Irrespective of national legal definitions, these terms may even be used differently in the same country, for example in business practice and in the press. Where *tax evasion* involves engaging in illegal activities to reduce one’s tax burden, *tax avoidance* is just finding loopholes in the current tax administration system to avoid paying all the taxes that one is legally required to. *Tax evasion* not only has a direct impact on the country’s economy but it also affects the international economy as a whole.

However, although the legality of *tax avoidance* is well settled in both common law and civil law jurisdictions around the world, there is an essential debate that has been increasingly important in the last few years, which is the debate about the *ethics of tax avoidance*. In this field, apart from the legal aspects of this tax arrangement, the achievement is to determinate whether *tax avoidance* is morally right or wrong, in other words if someone that perpetrates this scheme is acting in an ethical or in an unethical manner. Estonian tax legislation uses the terms *tax evasion* and *tax avoidance* as follows: in the Taxation Act (2022) the term *tax avoidance* is not used but *tax evasion* is used twice; in the Value-Added Tax Act (2022) terms *tax evasion* and *tax avoidance* are used once; in the Income Tax Act (2022) the term *tax avoidance* is not used but *tax evasion* is used once; in the Penal Code (2022) the term *tax evasion* is not used but the terms *tax fraud* (as title of the Subchapter 4 of the Chapter 21) and *concealment of tax liability* are used once. During 20 years a lot of studies have been conducted in Estonia on *tax avoidance* and *tax evasion*. The main topics covered included factors characterizing individuals who evade taxes, issues in the tax moral, attitudes to the *tax avoidance* and *tax evasion* schemes, analysis of Estonian youth tax mentality and educational issues. The authors of current paper discussed the results of major studies in chronological order.

REFERENCES

- A Dictionary of Accounting* 2010, 4th ed, Oxford University Press, Oxford.
- Alver, J, Alver, L & Gurvitsh, N 2012, 'Estonian Opinion on Business and Professional Ethics', *Journal of International Scientific Publication: Economy & Business*, vol. 6, part 4, pp. 178–192.
- ATAD 2016, viewed 10 April 2022, https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package/anti-tax-avoidance-directive_en.
- Barone, G & Mocetti, S 2010, 'Tax Morale and Public Spending Inefficiency', *Bank of Italy Temi di Discussione (Working Paper)* no. 732, viewed 16 April 2022. <https://link.springer.com/article/10.1007/s10797-011-9174-z>.
- Bogenschneder, BN 2020, 'How do the Professional Ethics of Taxation account for Legal Indeterminacy?', viewed 10 June 2022, <https://scholarworks.iu.edu/dspace/bitstream/handle/2022/23349/How%20do%20the%20Professional%20Ethics%20of%20Taxation%20account%20for%20Legal%20Indeterminacy%20%20Bogenschneder.pdf?sequence=1&isAllowed=y>.
- Briscoe, S & Fuller, J 2007, *Harriman's Financial Dictionary*, Harriman House, Hampshire.
- Buldass, V 2013, 'Erinevate maksupettuse skeemide tajumine elanikkonna gruppide poolt', viewed 20 April 2022, <https://maksundus.wordpress.com/2013/04/18/velda-buldass-erinevate-maksupettuse-skeemide-tajumine-elanikkonna-gruppide-poolt/>.
- Business: The Ultimate Resource*™ 2002, Bloomsbury Publishing, London.
- Crumbley DL, Friedman JP & Anders SB 1994, *Dictionary of Tax terms*, Barron's, New York.
- Directive 2016, viewed 10 April 2022, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN>.
- Downes, J & Goodman, JE 2014, *Dictionary of Finance and Investment Terms*, Barron's, New York.
- Drogalas, GG, Anagnostopoulou E, Pazarskis M, & Petkopoulos D 2018, 'Tax Ethics and Tax Evasion, Evidence from Greece', *Theoretical Economics Letters*, 8, pp. 1018–1027.
- French, D 1994, *Dictionary of Accounting Terms*, Croner Publications, Kingston Upon Thames.
- Friedman, JP 2012, *Dictionary of Business and Economics Terms*, 5th ed, Barron's, New York.
- Friedman, JP 2007, *Dictionary of Business Terms*, 4th ed, Barron's, New York.
- Gurvitš, N, Alver, J & Alver, L 2017, 'On the role and place of business ethics in the modern business world – evidence from Estonia', *Zeszyty Teoretyczne Rachunkowości*, t. 93(149), pp. 79–95.
- Hindle, T 1998, *Pocket International Business Terms*, Profile Books, London.
- Income Tax Act 2022, viewed 30 May 2022, <https://www.riigiteataja.ee/en/eli/501042021003/consolide>
- Kask, G 2010, 'Maksudest kõrvalehoidumise piiritlemis- ja hindamiskriteeriumid eesti ja euroopa maksuõiguse näitel' viewed 30 April 2022, https://dspace.ut.ee/bitstream/handle/10062/15058/kask_gerly.pdf?sequence=1&isAllowed=y.
- Kivar, A 2013, 'Eesti elanike hinnangud levinud maksude optimeerimisskeemidele ning võrdlus maksupettuste hinnangutega', viewed 30 April 2022, http://dspace.ut.ee/bitstream/handle/10062/32433/kivar_arvo.pdf?sequence=1&isAllowed=y.
- Kriz, KA, Meriküll, J, Paulus A & Staehr K 2007, 'Why do individuals evade payroll and income taxation in Estonia' *University of Tartu. Working Paper Series*, 49, pp. 27–29.

- Lillemets, K 2009, 'Maksumoraal maksukäitumise kujundajana ja selle peamised isikupõhised mõjutegurid', viewed 20 April 2022. <https://rito.riigikogu.ee/wordpress/wp-content/uploads/2016/04/RiTo-20.pdf>.
- McGee, RW 2008, 'Four Views on the Ethics of Tax Evasion', in RW McGee (ed.), *Taxation and Public Finance in Transition and Developing Countries*, Springer, New York, pp. 3–33.
- McGee, RW, Alver, J & Alver, L 2007, 'The Ethics of Tax Evasion: A Survey of Estonian Opinion', *Working Paper Series, Working Paper No. 5/2007*, Andreas School of Business, Barry University.
- McGee, RW, Alver, J & Alver, L 2008, 'The Ethics of Tax Evasion: A Survey of Estonian Opinion', in RW McGee (ed.), *Taxation and Public Finance in Transition and Developing Countries*, Springer, New York, pp. 461–480.
- McGee, RW, Alver, J & Alver, L 2012, 'Tax Evasion Opinion in Estonia', in RW McGee (ed.), *The Ethics of Tax Evasion: Perspectives in Theory and Practice*, Springer, New York, pp. 285–299.
- Nobes, C 2002, *The Penguin Dictionary of Accounting*, Penguin Books, London.
- OECD 2021, *Glossary of Tax Terms*, viewed 10 April 2022, <https://www.oecd.org/ctp/glossaryoftaxterms.htm>.
- Ojasoo, M, Pevkur, A & Ustav, S 2021, Ärietika, korruptsiooni ja majanduskuritegude käsitlemine ettevõtjalerialade õppekavades: analüüs ja ettepanekud, Tallinna Tehnikaülikool, Tallinn.
- Oxford Dictionary of Accounting 2010, Oxford University Press, Oxford.
- Oxford Dictionary of Law 2006, Oxford University Press, Oxford.
- Penal Code 2022, viewed 30 May 2022, <https://www.riigiteataja.ee/en/eli/ee/509032021001/consolide/current>
- Qfinance: Pocket Dictionary of Business* 2010, Bloomsbury Publishing, London.
- Randlane, K 2012, 'Tax Compliance and Tax Attitudes: The Case of Estonia', *Journal of Management and Change*, 1 (29), pp. 89–103.
- Scott, DL 2009, *The American Heritage Dictionary of Business Terms*, Houghton Mifflin Harcourt, Boston.
- Siegel, JG, Shim, JK 2005, *Dictionary of Accounting Terms*, Barron's, New York.
- Suharukov, V 2015, 'Maksupettuste tõkestamise võimalused', viewed 30 April 2022, https://digiriul.sisekaitse.ee/bitstream/handle/123456789/477/2015_Suharukov.pdf?sequence=1&isAllowed=y.
- Taxation Act 2022, viewed 30 May 2022, <https://www.riigiteataja.ee/en/eli/ee/523012015008/consolide/current>
- Terminology for Accountants*, 1992, 4th ed, Canadian Institute of Chartered Accountants, Toronto.
- Value-Added Tax Act, 2022, viewed 30 May 2022, <https://www.riigiteataja.ee/en/eli/527042020008/consolide>.
- Viin, I 2013, 'Eesti noorte maksumentaliteet riigi maksukultuuri osana', viewed 30 April 2022, https://dspace.ut.ee/bitstream/handle/10062/29121/viin_ingvar.pdf?sequence=1&isAllowed=y.
- Wanjialin, G 2004, *An International Dictionary of Accounting and Taxation*, iUniverce, Lincoln.