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Theological and Ethical Perspective on Tax Avoidance

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Abstract:

This paper aims at contributing to the ongoing debate as to whether tax avoidance is ethical or unethical. Our approach is from the theological and ethical point of view, and we concluded that tax avoidance is unethical. Christians must be law abiding and not look for loopholes in the tax laws to reduce their tax liabilities to the State.

Keywords: Tax avoidance, tax evasion, theological-ethical, utilitarian, deontological, Situationism, antinomianism

1. Introduction

In business today, there are a lot of people with religious background engaging in commercial transactions. One of the major challenges in commerce is the issue of taxation which has been serving as a test on the moral, ethical, legal and spiritual perspective of many Christian business persons. Taxation is “a compulsory payment levied by the government on individuals and companies to meet the expenditure which is required by public welfare” (Akrani, 2010, para. 1). The Christian in commerce is faced with the dilemma of tax avoidance or evasion. This study aims at contributing to the ethical implications of tax avoidance and its impact on Christian businessmen or women and other employees. The study considers the theological and ethical perspective of tax avoidance. It approaches the study from an outline which considers argument for and against tax avoidance from a deontological, utilitarian, generalist, situationist and antinomianist perspective. It further analyses tax avoidance from the basis of economical, philanthropic, legal and ethical, and a biblical reflection and implications of the study.

Tax evasion has to do with a company hiding income or not declaring all income for tax purpose (Kuchumova, 2016). Tax evasion as per the definition maybe considered both as unethical and illegal (Gokalp, Lee & Peng, 2017). However, there seems to be a split when it comes to deciding whether tax avoidance is right or wrong. Others find tax avoidance as a social menace which impacts negatively on government revenue collection and also affects social development (Obafemi, 2014). Prebble and Prebble (2010), have argued that tax avoidance is immoral and is similar to tax evasion, however, Lennard (2016), sees tax avoidance as ethical.

As defined by Ralph, Allert and Joss (1999), tax avoidance is the exploitation of the structural loopholes in the law in order to achieve tax outcome that is unintended by the lawmakers. It involves manipulation of the law based upon its forms and legal effects rather than the substance. In simple terms Hall (2015) states that tax avoidance implies using legal means to reduce the company’s tax liability. This means that tax avoidance is done within the law. Nonetheless, a question of interest is, is all legal issues ethical and is all ethical issues legal? This has been the dilemma when it comes to issues of tax avoidance.

The debate concerning tax avoidance dates back to 1873 according to Likhovski (2008), it related to a case which was known as U.S verses. Isham, which was related to payment of stamp duty on a bank check issued on an amount exceeding twenty dollars as considered,

- The Stamp Act of 1862 imposed a duty of two cents upon a bank-check, when drawn for an amount not less than twenty dollars. A careful individual, having the amount of twenty dollars to pay, pays the same by handing to his creditor two checks of ten dollars each. He thus draws checks in payment of his debt to the amount of twenty dollars, and yet pays no stamp duty. This practice and this system he pursues habitually and persistently. While his operations deprive the government of the duties it might reasonably expect to receive, it is not perceived that the practice is open to the charge of fraud. He resorts to devices to avoid the payment of duties, but they are not illegal. He has the legal right to split up his evidences of payment and thus to avoid the tax. The device we are considering is of the same nature (p.52).

It was decided by the U.S Supreme Court that the act was legal and legality of the procedure is as important as the legality of the results of the procedure. The tax avoidance scheme adopted by Isham was deemed legal by the Supreme Court.

The occurrence of tax avoidance comes in many forms. Stigit (1985), has observed that tax avoidance could be done through postponement of taxes, tax arbitrage on a different type of income levels and tax treatments. When tax payment is delayed it reduces the value of the amount due to the time value of money. The difference in tax rate brackets makes individuals apportion their income

in such a way that they fall in a lower tax bracket. The arbitrage takes advantage of the low tax capital to gain interests on long term investments accrued from the tax variance. The current tax avoidance challenge affecting many countries with regards to globalization is how profit is usually transferred from a parent company to a subsidiary company in another country whose tax rate is low. The case of Apple Incorporation and Caterpillar Incorporation in 2013, demonstrates how these firms used cost sharing agreements to transfer more profits to their subsidiaries other than their parent company countries to reduce their tax obligations (Filho, 2014).

2.1. Ethical Argument against Tax Avoidance

Prebble and Prebble (2010) have stated categorically that tax avoidance is the same as tax evasion and consider both as unethical and immoral. They based their arguments on the deontological approach which has its basis on rules as opposed to the consequentialist approach. They state that tax avoidance is a breach of the rule which is obedience to the law, instead of looking for loopholes in the tax regime to exploit. Prebble and Prebble (2010) assert further that tax evasion is also a breach of the law. They conclude that the law is the line between tax avoidance and tax evasion in that tax avoidance falls on the safe side and tax evasion on the wrong side. However, in practice this becomes blur as the outcome deprives the state the right amount to be received from firms and individuals as their tax payments.

In summing up the Prebble approach to tax avoidance and morality, they stated the following points: There is a close factual similarity between tax evasion and tax avoidance and this makes tax avoidance unethical as tax evasion. Tax avoidance is a legal concept as tax evasion, and if tax evasion is immoral so also is tax avoidance.

Tax avoidance and tax evasion have the same basis and motivation. It is the aim of the tax avoider and tax evader to reduce or avoid tax liabilities. The economic motivation of tax avoidance and tax evasion are the same, both aim at minimizing the tax liabilities of the company with the aim of gaining economic advantages.

2.2. Ethical Argument in Favor of Tax Avoidance

Speaking against Pebble's approach of classifying tax evasion and tax avoidance as the same, Lennard (2016) argues that tax avoidance aims at reducing the amount of tax a company pays, on the other, tax evasion has a moral defect of lying which is unethical. He argues that in the act of tax avoidance, people do not lie but take advantage of the gray areas or loopholes in the tax laws to reduce their tax obligations. In short, tax avoidance is not based on deceit as full disclosure principles are applied which makes tax avoidance legal and ethical.

In arguing from a utilitarian (teleological) viewpoint as to whether tax avoidance is ethical or unethical, Baron (2012), states that there should be a way to compute the balance of satisfaction, and the one that gives the greater satisfaction is accepted. The act of tax avoidance will be beneficial to the shareholders who in term spread their wealth for the benefit of others and in the same way, tax paid to the state will be used to benefit the society. Geisler (2010) asserts that utilitarians seek what will benefit the greatest number of people in the society. The question of interest is how do you know who will be greatly benefited when you avoid tax?

Another argument from the worldview of antinomians is generalism, which supports tax avoidance because the act is done through the law. According to Geisler (2010) antinomians believes that there is no moral law, therefore, tax avoidance cannot be considered as unethical or ethical. Generalism claims that there are some laws but no absolute law (Geisler, 2010). This view is expressed in Houghton's (1979) argument that tax is not a moral issue and therefore it is not fair to say that tax is a legal obligation or a public duty. He continues that we can obey the law but not to the extent of complying with the spirit of the law.

Based on the ideology of individual freedom, the libertarians support the view that tax avoidance is ethical. They hold the view that tax avoidance is individual right (Barker, 2009) and that the government should minimize its interventions in such matters. Colle and Bennett (2012) assert that entrepreneurs create employment and boost economic activities so they should not be punished with high tax obligations. Hall (2015) notes that from the right approach, tax avoidance is legal and so it is a rightful action and if the action is not harmful then it cannot be deemed unethical.

2.3. Tax Avoidance Issues: Economical, Philantropical, Legal and Ethical Issues

According to Dowling (2014), tax avoidance imposes cost on society and as a result is considered not to be right. Companies have to pay their fair share of tax on their profit to the state and they should be guided by the moral and ethical principles of the firm as stated in their company governance policy. However, the practice of tax avoidance or tax planning as firms call it has become common in the world today. The common argument for tax avoidance is based upon the fact that the money the State loses through tax avoidance directly goes to shareholders who in turn have to pay dividend tax. (Dowling, 2014) and Hall (2015) also conclude that saving from tax avoidance maneuvers can go into other stakeholders within the community in the form of corporate social responsibility. It is a fact that the rate of tax on the corporate firm is always higher than the rate on dividend payment.

It must be stated that the intention of tax avoidance may not necessary be non-payment of tax but a reduction in the amount of tax to be paid to the government. Is it morally right to reduce the amount of tax paid to the state and instead use it for the benefit of shareholders? This dilemma could only be addressed through the worldview of the decision makers. Hall (2014) has noted that the perception of many is that firms have a responsibility to the law. On the other hand, them an agement also argues that they have a responsibility to return the highest amount of value to their shareholders, a responsibility to which tax planning contributes. This is part of managerial fiduciary duties of profit maximization (Colle and Bennett, 2012)

The issue of tax avoidance occurs before tax liability arises. "The precondition to pay any tax is the occurrence of an event assigned by law; if this situation does not happen, like in the tax avoidance case, the tax obligation does not exist in legal terms" (Filho, 2014, p. 12). It is the duty of tax planners to advice and make sure that through legal means no tax occurrence exists to warrant any tax

liability. Could we say that this duty of a tax planner and management responsibility is unethical? Their ultimate aim is to meet the expectation of their shareholders.

2.4. Theological-Ethical Perspective of Tax Avoidance

It must be noted that theological ethics is a moral teaching base on Christian principles as interpreted on the basis of the bible (Romanus, 2009). On this premise, tax avoidance in this paper will be discussed on the basis of biblical ethics. We will first subject this discussion to the deontological or duty centered ethical worldview. Deontological ethics, as summarized by Geisler (2010, p. 18) posits that “rules determine the result, rule is the basis of the act, rule is good regardless of results and result is always calculated within the rule.” The first point is that payment of tax is backed by law and it is a biblical obligation (2 Kings 23:23, Matt 22:17-21). The rule is that payment of tax obligation must be done by paying the right amount at the right time. On the other hand, the tax collector must collect the right amount as stated; “tax collectors also came to be baptized and said to him, “Teacher, what shall we do?” And he said to them, “Collect no more than you are authorized to do.” Luke 3:12-13 (ESV) by Jesus’ instruction to the tax collector who came for baptism. The point is that tax avoidance which seeks gray areas or loopholes in the tax law to their advantage is unethical.

It has been stated in Roman 13:6-7 (ESV) that governments or people in authorities who establish tax rates and tax laws act as God’s servants.

- For because of this you also pay taxes, for the authorities are ministers of God, attending to this very thing. ⁷ Pay to all what is owed to them: taxes to whom taxes are owed, revenue to whom revenue is owed, respect to whom respect is owed, honour to whom honour is owed.

The point to note here is the statement “pay to all” which implies that we have to pay as the tax law states in the right amount without any avoidance of doubt. Once the tax authorities doubt the amount of tax paid, it imposes a motive of unethical behavior. The motives of tax avoidance from the perspective of scripture will be judged by God as stated in I Corinthians 4:5.

Why seek a lacuna in the tax law when Jesus has stated clearly that we should give what is Caesar’s to him in the payment of tax. Jesus could have looked for all gaps in the law to avoid or minimized his tax obligation, but he paid it according to the law to defeat the immoral and unlawful danger in the question in Matthew 22:17-21 (ESV). It is also stated in the Old Testament that Solomon taxed his citizenry and colonies to pay tax for development which they complied faithfully in 1 Kings 4:6 (ESV). In the case of the temple tax as ordered by God in Exodus 30:11-16 (ESV), Paul could have answered in the negative and Jesus would have refused to pay or minimize the amount to avoid this order, however, through an act of a miracle, a “coin in the mouth of a fish,” he paid his tax in the right amount for himself and others as in Mathew 17:24-27 (ESV).

To argue in support of tax avoidance is the same as supporting the fact that one can avoid or minimize his or her tithe payment, forgetting that it is immoral and an illegal act as shown in Leviticus 27:30-33(ESV). The tithe is the Lord’s as stated in Malachi 3:10 (ESV) so also, the tax is for the government and it is authorized by God (Roman 13:2; Roman 13:1-7 ESV) and meeting our tax obligation requires both ethical and legal consideration.

Addressing the issue of tax planning and the fiduciary duty of management to shareholders bring to mind the issue of knowledge and its application. The book of James 4:17 states clearly that: “So whoever knows the right thing to do and fails to do it, for him it is sin (ESV).” Trying to look for a lacuna to indulge in tax avoidance is immoral. Knowledge application must be legal and ethical.

3. Conclusion

In an attempt to prevent tax avoidances, it is important to know the factors that facilitate the occurrence of tax avoidance. A study by Siehl (2010) with GIZ Sector Programme Public Finance has shown that low tax morale, high tax compliance cost, insufficient tax collection and weak capacity in detecting and prosecuting tax violators are some of the factors contributing to the immoral behavior of tax avoidance.

It has also been observed by Manning (2015, p. 1), that “evidence from other countries suggests that making avoidance harder and high rates of tax are complements to each other.” Furthermore, Potter (2016) has affirmed that increasing tax rates because of tax avoidance would complicate the matter. The implication is that tax avoidance exists because firms and individuals have the willingness to pay lower rates (Jackson, 1996). Haile (n, d) refers to Micah 3:2-3 which states that “...Who strip the skin from my people, and the flesh from their bones; who also eat the flesh of my people, flay their skin from them, break their bones, and chop them in pieces like meat for the pot, like flesh in a caldron (ESV). He used it to analogically portray the effect of excessive taxation upon people which necessitates the immoral practice of tax avoidance. In order to prevent the unethical act of tax avoidance, governments must address the factors that facilitate the occurrence.

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