

Criminal Penalties for the Crime of Tax Evasion in Iraqi and Algerian Law

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Abstracts

Penal sanctions for tax evasion are the appropriate guarantee to reduce the phenomenon of tax evasion, as the penalty resulting from the taxpayer's failure to meet his obligations to pay the tax is a guarantee to collect the tax debt and a deterrent to anyone who tries to evade paying it. Most tax legislations have imposed criminal penalties on the taxpayer who evades paying the tax, including the Iraqi and Algerian legislators, as their laws, including the general rules represented by the Penal Code and the special tax legislations, have imposed penalties that deprive freedom, such as imprisonment, and financial penalties represented by a fine, as well as complementary and consequential penalties. In this study, the legal texts related to imposing penalties on tax defaulters were examined and analyzed by stating the deficiency in some legal articles related to the crime of tax evasion. In addition, the Iraqi tax legislator addressed the penalty of imprisonment in its tax laws and considered it a misdemeanor crime, but did not punish the case of recidivism in committing the crime of tax evasion after the execution of the penalty, as the Algerian tax legislator did. The latter also addressed the penalty of imprisonment in its tax laws and made it a misdemeanor crime, as the Iraqi tax legislator did. The latter also did not address the penalty of the legal person, but rather went to the general rules stipulated in the Penal Code No. 111 of 1969, as amended, as the legal person was not punished with the penalty of imprisonment, but with the penalty of a fine, while the Algerian tax legislator determined the responsibility of the legal person exclusively in Article 36, paragraph one of the Stamp Law, with the penalty of a fine. We also concluded that the Iraqi tax legislator must include the crime of recidivism in committing the crime of tax evasion in its legal texts in order to achieve justice in applying the penalty, so that there is discrimination. Between those who commit the crime for the first time and those who are accustomed to committing it repeatedly, and as a result, this achieves financial deterrence that achieves the punishment, as well as the necessity of tightening the criminal penalties for the crime of tax evasion in its tax texts, whether they are deprivation of freedom or financial or a combination of both.

Keywords: Criminal penalties, tax crime, economic crime, Iraqi law, Algerian law.

1. Introduction

Punishment in general is the penalty imposed by law as a social measure on anyone proven guilty before the competent courts of committing a crime. The penalty aims to control the behavior of individuals to achieve moral and social reform, and is a means of expressing legal

condemnation directed at the offender due to his violation of the law and his harm to the public interest (1).

The criminal penalties for the crime of tax evasion are an effective legal means to combat tax evasion, and they aim to achieve general and specific deterrence and protect the tax system.

The aim of the research is to study the criminal penalties in the general rules and tax legislation resulting from the taxpayer's failure to fulfill his obligation towards taxes and to show the positive and negative aspects thereof, and to highlight the weaknesses in these penalties in order to reach a fair punitive system that ensures the taxpayer's obligation to pay the tax.

The importance of the research lies in the fact that the tax penalty represents one of the most important legal guarantees for the state in collecting the due tax, in view of the negative effects resulting from tax evasion, which pose a danger to society. Evasion deprives the public treasury of resources that support its service projects, and the penalty is a legal means of pressuring the taxpayer to ensure payment of the tax amount.

In our study, we adopted the descriptive analytical approach to the legal texts in the general rules and special tax laws in Iraqi law compared to Algerian law to combat the crime of tax evasion.

The subject of our study was divided into two sections. In the first section, we addressed the original penalties in Iraqi and Algerian law, and in the third section, we addressed the secondary penalties in Iraqi and Algerian law.

Section One

Original Penalties in Iraqi and Algerian Law

The basic objective of tax legislation in imposing tax obligations on individuals is to guarantee the state's right to collect the tax.

Therefore, the tax legislator stipulated the imposition of a set of penalties for those who fail to meet their tax obligations. These penalties included either freedom-depriving penalties imposed on tax evaders, represented by the penalty of (imprisonment), or financial penalties, represented by the penalty of (fine). We will address these penalties in two sections. In the first section, we will discuss the penalty of imprisonment, and in the second section, we will discuss the penalty of fine.

The first requirement is imprisonment

The imprisonment penalty is one of the penalties that deprive freedom and one of the most important penalties in tax penal legislation, as it obliges the convict to serve the period specified in the ruling in one of the penal facilities designated for that purpose, in accordance with the provisions of the law. This penalty is defined as "placing the convict in one of the social reform departments designated for this purpose for the period specified in the ruling" (2).

It is worth noting that the imprisonment penalty is either severe imprisonment or simple imprisonment, as the Iraqi Penal Code No. 111 of 1969, as amended, defined severe imprisonment as "placing the convict in one of the penal facilities designated by law for this

purpose for the period specified in the ruling. Its period shall not be less than three months and not more than five years unless the law provides otherwise. The court shall rule severe imprisonment whenever the period of imprisonment imposed is more than one year. The convict sentenced to severe imprisonment shall be charged with performing the legally prescribed tasks in the penal facilities" (3).

Simple imprisonment is "placing the convict in one of the penal facilities designated by law for this purpose for the period stipulated in the ruling. Its period shall not be less than twenty-four hours and not more than one year unless the law stipulates otherwise" (4).

The researcher believes that the penalty of imprisonment means "placing the convict in one of the correctional prisons for a period of not less than twenty-four hours and not more than five years"

In line with what was mentioned, the Iraqi tax legislator approved in Income Tax Law No. 113 of 1982 in Article (57) some penalties that deprive the freedom of the tax evader, imposing a penalty of imprisonment for a period not exceeding one year on anyone proven before the competent courts to have committed one of the following acts: "1 - Whoever knowingly submits false data or information or includes it in a report, account or statement regarding the tax or conceals information 000000" (5).

Article (58) of the same law also referred to the punishment of the taxpayer who is proven before the competent courts to have used fraud or deception to evade paying the tax imposed or to be imposed under this law, in whole or in part, with imprisonment for a period of not less than three months and not more than two years.

It is clear from reading the previous texts that the law has considered these crimes as misdemeanor crimes, and they are punishable by simple imprisonment, such that the period of imprisonment is not less than 24 hours and not more than one year, unless the law provides otherwise, and by severe imprisonment for a period of not less than three months and not more than two years.

As for the Real Estate Tax Law No. (162) of 1959, Article (30) stipulated the penalty of imprisonment "..... imprisonment for a period not exceeding six months..... in the event that the taxpayer is proven to have committed one of the following acts" (6). Within the framework of the penalty of imprisonment, a dispute arose over how to apply it to the legal person, as the Income Tax Law did not indicate the procedures to be followed in this regard. Accordingly, reference must be made to the general rules stipulated in the Iraqi Penal Code No. 111 of 1969 as amended, which Article (80) stipulated that "legal persons, with the exception of government interests and official and semi-official departments, are criminally responsible for crimes committed by their representatives, managers or agents on their behalf or in their name, and they may not be sentenced to anything other than a fine, confiscation and precautionary measures prescribed for the crime by law. If the law stipulates an original penalty for the crime other than a fine, it shall be replaced by a fine, and this does not prevent the perpetrator of the crime from being personally punished with the penalties prescribed for the crime by law."

The text of this article reflects an important principle in criminal law relating to the liability of legal persons, which are legal entities such as companies and institutions, for crimes committed by their representatives, managers or agents on their behalf or in their name. The article indicates that a legal person can only be punished by a fine, confiscation or precautionary measures, and therefore cannot be sentenced to physical penalties such as imprisonment, which is one of the controls for the occurrence of criminal liability (7).

This is what the Iraqi judiciary went for by replacing the penalty of imprisonment with a fine in Articles (57 and 58) of the Iraqi Income Tax Law No. 113 of 1982. Among the judicial rulings that went in this direction is the decision issued by the Karkh Misdemeanor Court No. 881/C/97, issued on 4/12/1998. The court's decision stated the following: The Karkh Misdemeanor Court was formed on 4/12/1998 and issued the following decision: 1- The court ruled in the presence of the convict (S) in addition to his limited company (S) with a fine of (1000) dinars based on the text of Article (57) of the Income Tax Law No. 111 of 1982 and the Revolutionary Command Council Decision No. (206) of 1994 and Article (80) of the Iraqi Penal Code No. 111 of 1969, as amended.

This court decision shows that a legal person, such as a company, can bear criminal liability alongside a natural person (director or legal representative), as a fine has been imposed on both the convicted person and the company. The law imposes appropriate penalties for legal persons, such as fines, due to the inability to impose corporal punishment on them. This is in line with the general rules indicating that a legal person is punished by fines, confiscation or precautionary measures.

However, the Iraqi legislator imposed various financial penalties, including:

1- The penalty resulting from violating the provisions of the Commercial Bookkeeping System. The Iraqi legislator granted the Appeal Committees (8) the authority to consider violations committed in violation of the Commercial Bookkeeping System No. 5 of 1957 and its amendments, which are referred to them by the financial authority. These committees are also authorized to impose the fines specified in the system, and in the event of non-payment of the fine, the case is referred to the competent court to replace the fine with imprisonment (9).

2- Financial penalties related to the amicable settlement include the tax legislator imposing an additional financial penalty, and granting the financial authority the authority to collect it. The Minister of Finance was authorized to conduct an amicable settlement in the actions mentioned in Articles (57 and 58) of the Income Tax Law, whether before filing the lawsuit before the competent courts or during its consideration, by replacing the penalties stipulated in these two articles with a financial amount not less than twice the tax due on the income subject to the lawsuit.

3- Doubling the tax: - Since the penalty combines a deterrent and financial nature, the tax legislator is keen to ensure that these two features are available in the imposed penalties. This is evident from his obligation to the financial authority to double the income tax if the subject of the lawsuit is mentioned in one of Articles (57 and 58) after the ruling becomes final (10).

This means that if a ruling is issued to imprison the taxpayer in accordance with the penalty specified in Articles (57 and 58), the financial authority must double the tax on the offending taxpayer. For example, if the value of the tax is 100,000 dinars, it will become 200,000 dinars. It is worth noting that the financial penalties stipulated in Article (56) are less harmful and severe than the penalties that deprive the taxpayer of his freedom stipulated in Articles (57-58-59) of Income Tax Law No. 111 of 1982 (11).

The Algerian legislator addressed the penalty of imprisonment in Article (5), paragraph one of the Algerian Penal Code No. 66-156 of 2006, which he considered a misdemeanor crime, which states "imprisonment for a period exceeding two months to five years, except in cases where the law stipulates other limits...". This text refers to the penalty of deprivation of liberty, which is the penalty of severe imprisonment from two months to five years, and this period aims to achieve a balance between deterring violators and giving the criminal a chance for rehabilitation and reform after the end of the sentence. As for the original penalties, which are considered misdemeanor crimes, what is stated in paragraph one of the same article is "imprisonment for at least one day to two months at most", and this is what is called simple imprisonment. Based on this, the Algerian tax legislator has addressed the penalty of imprisonment in its tax laws, including the Direct Taxes and Similar Fees Law No. 51-21 of 2001, which stipulated in Article 303 that "anyone who evades or attempts to evade by using fraudulent methods in declaring the tax base, right or fee or liquidating it in whole or in part shall be punished by imprisonment and a fine or by one of these two penalties as follows (12):

1- Imprisonment from six months to two years and a fine of 500,000 DZD to 2,000,000 DZD or one of these two penalties when the amount of the evaded rights exceeds 1,000,000 DZD and does not exceed 5,000,000 DZD.

2- Imprisonment from two months to six months and a fine of 100,000 DZD to: 500,000 DZD or one of these two penalties when the amount of the evaded rights exceeds 100,000 DZD and does not exceed 1,000,000 DZD.

3- Imprisonment from two to five years and a fine of 2,000,000 DZD to 5,000,000 DZD or one of these two penalties when the amount of the evaded rights exceeds. 5,000,000 DZD and not exceeding 10,000,000 DZD.

4- Imprisonment from five to ten years and a fine from 5,000,000 DZD to 10,000,000 DZD or one of these two penalties when the amount of the evaded rights exceeds 10,000,000 DZD".

The same penalties shall be applied to the accomplice, and shall be doubled in the event of recidivism, whether it is a tax or criminal penalty (13).

Article 304 of the same law stipulates a penalty of imprisonment from six days to six months in the event of recidivism (the criminal's recidivism) in doing what is stated in Article 303 (14).

Indirect Tax Law No. 46-104 of 1976 stipulated in some of its articles, including Articles 530 and 531, a prison sentence of six days to six months (15). Article 532 stipulated a prison sentence of one to five years for "anyone who uses fraudulent methods to evade or attempt to evade all or part of the tax base or payment of taxes or fees to which he is subject..." (16).

Also, Algerian Registration Law No. 76-105 of 1976 and its amendments stipulated a prison sentence of one to five years in Article 119, stating that “anyone who evades or attempts to evade, in whole or in part, the tax base or its liquidation or payment of taxes or fees to which he is subject by using fraudulent methods.”

Article 34 of Stamp Law No. 76-103 of 1976 also stipulated a prison sentence of one to five years for “anyone who Reduced or attempted to reduce, in whole or in part, the tax base, or paid the taxes and fees due on it by using fraudulent means.

It is worth noting that the Algerian tax legislator has exclusively defined the liability of legal persons, so that it is limited to entities subject to private law such as companies, associations, institutions, and organizations. This is what Article 36 / Paragraph One of the Stamp Law addressed, which states that “persons or companies convicted of the same violation shall be jointly liable to pay the financial fine issued against them” (17). As for public legal persons such as the state, the state, the municipality, and public utilities, they cannot be held criminally accountable because they are subject to the provisions of public law (18).

In conclusion, the Iraqi tax legislator has defined in its tax laws the penalty of imprisonment and considered it a misdemeanor crime, but it did not punish the case of recidivism in committing the crime of tax evasion after the execution of the penalty as the Algerian tax legislator did, and the latter defined in its tax laws the penalty of imprisonment and made it a misdemeanor crime as the Iraqi tax legislator did.

The second requirement

(Fine)

It is one of the financial penalties imposed by tax laws to reduce the crime of tax evasion. From a tax perspective, it is “a financial penalty in the form of a cash amount imposed by criminal courts or administrative authorities for some violations that include encroachment on the financial interests of the state” (19).

It is also known as “a type of fine stipulated by financial legislation, and is usually determined by a certain percentage of the unpaid tax, which is imposed in addition to the criminal fine, or the original penalty in general” (20).

The Iraqi legislator defined it in the Iraqi Penal Code No. 111 of 1969, as amended in Article (91) thereof, as “obligating the convicted person to pay to the public treasury the amount specified in the ruling. The court takes into account, in estimating the fine, the financial and social status of the convicted person, what he benefited from the crime or was expected to benefit from it, the circumstances of the crime, and the status of the victim. The amount of the fine shall not be less than half a dinar and shall not exceed five hundred dinars unless the law provides otherwise” and is achieved when the ruling becomes final. From the text of the article, it is understood that it has set the amount of the fine as a minimum of half a dinar, while the maximum is five hundred dinars. When imposing it, the convict's social and economic circumstances are taken into account. This penalty, which the Iraqi legislator has set, is a criminal penalty. Article (93), paragraph two of the same law stipulates that “if the crime is punishable by a fine, the period of imprisonment in the event that the fine is not paid shall be

one day for every half a dinar, provided that the period of imprisonment does not exceed two years." Among the cases stipulated by the law, contrary to what was mentioned in the previous text, is the crime of tax evasion. The Iraqi tax legislator has addressed the penalty of the fine in its tax laws, including Income Tax Law No. 113 of 1982, which stipulates in Article 56 that a fine ranging from (100 to 500) (21). (19) dinars shall be imposed before the competent courts for anyone proven to have committed one of the following violations (22). It is worth noting that the law obliges the financial authority to double the tax on the income that was the subject of the lawsuit stated in one of Articles 57 and 58 of the same law after the judgment issued therein has acquired the degree of finality (23). This is done by imposing an additional financial penalty of (10%) of the tax due, not to exceed (500,000) one thousand dinars on the taxpayer who did not submit, or who refrained from submitting the income tax report until (5/31) of each year, or who caused a delay in completing the assessment of his income, unless the taxpayer proves that the delay was due to a legitimate excuse (24). As for the Land Tax Law No. 26 of 1962, it specified a financial penalty in Article (8) thereof not exceeding two hundred and fifty dinars in the event that the taxpayer does not submit the information required to be submitted in accordance with Article Five (25) of this law (26).

The Iraqi legislator left the appeal committees with broad discretionary authority to impose penalties on the offending taxpayer according to the degree of criminal danger, the type of crimes committed, and the damages resulting from them. If the fine is not effective, it is replaced by imprisonment (27). The competent authority that replaces the fine with imprisonment is the courts, not the appeal committees, as the latter is competent to impose the penalty of a fine without imprisonment (28). As for the Algerian legislator, he did not provide a specific definition of the penalty of a fine in the Algerian Penal Code No. 66-156 of 1966, but rather referred to determining the amount of the fine in Article (29) thereof (30).

The Algerian tax legislator also addressed the penalty of fine in its tax laws, including the Direct Taxes and Similar Fees Law No. 51-21 of 2001 in the text of Article (303), paragraph one, "Anyone who evades or attempts to evade using fraudulent methods in submitting a declaration related to the base of any tax, right or fee due from him or in liquidating it, in whole or in part, shall be punished with the penalties stipulated in the text of the previous article, including the penalty of a fine that is imposed according to the amount evaded" (31).

Article 194, paragraph two, of the same law also stipulated the imposition of a tax fine of (30,000) DZD "on every taxable person who did not submit a declaration of existence for the activity he practices." Article (304) of the same law imposed a fine ranging from 10,000 to 300,000 DZD in the event that "any person acts in any way that prevents qualified agents to inspect tax legislation violations from carrying out their duties." Article (306) of the same law also imposed a fine in the event of participation in the preparation or use of documents or information proven to be false, by an agent or expert...."(32) with a fine of 1,000 DZD for the first violation, 2,000 DZD for the second, and 3,000 DZD for the third. Indirect Tax Law No. 46-103 of 1976 distinguished between two types of fines: a "fixed fine" ranging from 5,000 DZD to 25,000 DZD for all violations related to the provisions, and a "proportional fine" equal to the amount of the evaded rights, at least 25,000 DZD (33). The same law also stipulated a

financial fine ranging from 50,000 DZD to 200,000 DZD in the event that the evader uses fraudulent methods to evade or attempt to evade all or part of the tax base (34).

Article 537 of the same law imposed a fine of 10,000 DZD to 100,000 DZD on anyone who obstructs, by any means, qualified agents to prove violations of tax legislation. Article 544 also imposed a fine of 1,000 DZD for the first violation, 2,000 DZD for the second violation, and 3,000 DZD for the third violation in the event of contributing to the preparation of documents or information known to be incorrect by a businessman, expert, or in general any person or company whose profession is to keep the final accounting records for several clients or to assist in keeping them. Algerian Stamp Law No. 76-103 of 1976 also imposed a fine of between 5,000 DZD and 20,000 DZD on anyone who reduced or attempted to reduce the tax base, in whole or in part, or paid the taxes and fees due by using fraudulent means (35).

As for Registration Law No. 76-105 of 1976, it imposed a tax fine equal to four times these fees, not less than 5,000 DZD, in the event that the taxpayer evades registration fees, while it imposed a fine ranging between 5,000 DZD and 50,000 DZD in the event that the taxpayer obstructs tax control (36). Article (99) of the same law stipulates that "A fine of twice the additional amount of the fees due, not less than 5,000 DZD, shall be imposed on anyone who makes an incorrect statement that has an impact on the amount of fees in a gift contract between living people or in the declaration of the estate..." (37).

The Business Tax Law of 2017 punishes all violations of the legal provisions or implementing regulatory texts related to the value added tax with a tax fine ranging between 500 and 2,500 DZD. In the event of using fraudulent methods, the fine is set at 1,000 DZD to 5,000 DZD (38).

We note that the fine was unable to achieve any of the objectives of the penalty for a long time, due to its weak value compared to the seriousness of the act committed and its negative impact on the financial interest of the state. On the contrary, it may become an incentive to return to committing the crime again (39). In line with the above, we note that the Iraqi tax legislator in the Iraqi Income Tax Law No. 113 of 1982 did not address compound financial penalties (fine) or deprivation of liberty (imprisonment), while the Algerian tax legislator in the Direct Taxes and Similar Fees Law and the Algerian Indirect Taxes Law stipulated compound penalties (fine and imprisonment). The researcher believes that the fine is "a penalty approved by the court or imposed by the competent authority on the convicted person and obliges him to pay a sum of money to the state treasury."

Section Two

Subordinate Penalties in Iraqi and Algerian Law

The tax legislator in some comparative laws took into account the completion of the exceptional powers granted to the tax administration to combat tax evasion by taxpayers, by stipulating a set of penalties of an economic and social nature such as complementary and subsidiary penalties that are imposed alongside the original penalty. Their content aims to achieve various purposes, including ensuring that taxpayers comply with the duties imposed on them in accordance with tax legislation, as well as deterring and punishing tax evaders (40).

We will address this topic in two sections. In the first section, we will address complementary penalties, and in the second section, subsidiary penalties, as follows:

The first requirement

Supplementary penalties

are the penalties that accompany the original penalty with the aim of enhancing deterrence and achieving reform, as well as preventing the commission of crimes in the future. This preventive measure has led some legal scholars to consider supplementary penalties as merely preventive measures and to examine their subject as such and nothing else (41).

We see that supplementary penalties "are secondary penalties that agree with accessory penalties in that they do not come alone, but rather are concomitant with the original penalty, but they differ from it in another sense that accessory penalties do not necessarily and by force of law affect the convict, but rather the judge must explicitly stipulate them in his ruling that includes the original penalty."

From this standpoint, we find that the Iraqi legislator in the Iraqi Penal Code No. 111 of 1969, as amended, included supplementary penalties in some of its legal texts, which are: -

1- Deprivation of some rights and benefits

Article (100) of the same law stipulates that "the court, when ruling on life imprisonment or temporary imprisonment for a period exceeding one year, may decide to deprive the convict of one or more of the rights listed below for a period not exceeding two years starting from the date of completion of the execution of the penalty or from the date of its expiry for any reason whatsoever" (42).

A- Holding some public jobs and services, provided that what is prohibited to him from them is determined by a ruling and that the decision is sufficiently justified.

B- Wearing national or foreign medals.

C- The rights and benefits mentioned in paragraph (second) of this decision, in whole or in part, meaning those rights and benefits mentioned in Article (96) (43) of the same law.

2- Confiscation

Confiscation means seizing the property of the convicted person and transferring its ownership to the state without compensation (44) It is clear from this definition that confiscation is a legal procedure whereby the ownership of the money or property of the convicted person is transferred to the state permanently and without providing compensation to him. Therefore, it is a financial penalty imposed by the judicial authority. Confiscation was also defined as "a ruling to transfer certain things from a person to the treasury, or it is the sultan taking the property of others by force without compensation." (45).

Confiscation is of two types: the first is general confiscation, through which the convicted person is stripped of all his property or a certain percentage of his property, such as half, a third, or a quarter, and it is the maximum financial penalty and is equivalent to the death penalty in

corporal punishments. The second is special confiscation, which is directed at a specific property, which is the means by which the crime was committed, or a result of it, or is the subject of the crime itself.

In this regard, the Iraqi Penal Code No. 111 of 1969, as amended, clarified that, except in cases where the law requires a confiscation ruling, the court may, when ruling a conviction for a felony or misdemeanor, rule to confiscate the seized items that were obtained from the crime or that were used in committing it or that were prepared to be used in it. All of this is without prejudice to the rights of bona fide third parties. The court must, in all cases, order the confiscation of the seized items that were used as a wage for committing the crime (46).

It is noted from the text of the article that the following conditions are required for ruling on the confiscation penalty: -

- 1- That the accused be sentenced to an original penalty for a felony or misdemeanor.
- 2- That the items were seized during the crime or that are being used.
- 3- Not to prejudice the rights of third parties in the event that the items are seized during the commission of the crime.
- 3- Publication of the ruling.

The Iraqi Penal Code No. 111 of 1969, as amended, stipulated in Article (102) on publishing the ruling, stating that “the court, on its own initiative or upon the request of the public prosecution, may order the publication of the final ruling issued in the conviction of the felony. It may, upon the request of the victim, order the publication of the final ruling issued in the conviction of the crime of slander, defamation or insult committed by one of the means of publication mentioned in paragraphs (c) and (d) of item (3) of Article 19. The publication shall be ordered in one or more newspapers at the expense of the convicted person. If the crime of slander, defamation or insult was committed by publication in one of the newspapers, the court shall order the publication of the ruling in it and in the same place where the phrases constituting the crime were published. The publication shall be limited to the ruling decision unless the court orders the publication of the decisions of incrimination and judgment. If any of the newspapers specified in the ruling refrains from publishing or delays in doing so without an acceptable excuse, its editor-in-chief shall be punished with a fine not exceeding fifty dinars.” The court has the right, through the content of this article, to publish the final ruling in cases of conviction for serious crimes, whether On its own initiative or at the request of the Public Prosecution. It also gave the victim the right to request the publication of the ruling in cases of slander, defamation or insult that took place through the media, in order to restore honor and redress the aggressor. It also obligated the newspaper to publish the ruling issued by the court, and in the event of its refusal, it shall impose a fine on its editor-in-chief not exceeding fifty dinars.

By reviewing the tax laws, including the provisions of the Iraqi Income Tax Law No. 113 of 1983, specifically with regard to crimes and penalties, we find that the penal legislator's approach was only financial, whether in imposing the fine or doubling it, meaning that its legal texts did not stipulate any additional penalties that affect the economic interest of the taxpayer and his social status. This means the subsidiary and additional penalties mentioned in the penal

laws, such as deprivation of some rights and benefits, publishing the ruling, and other penalties that affect the economic and social status of the taxpayer. The Algerian legislator has addressed complementary penalties in the general rules, specifically in Penal Code No. 66-156 of 1966, as well as in special tax legislation.

The Algerian Penal Code has defined complementary penalties (47) as follows: -

1- Legal interdiction: - This means depriving the convicted person from enjoying and exercising his financial rights during the execution of the original penalty, and this occurs in the event of a criminal penalty ruling, the court issues a mandatory decision of legal interdiction (48)

2- Deprivation of the exercise of national, civil and family rights, which is represented by the following:

A- Dismissal or exclusion from all public jobs and positions related to the crime.

B- Ineligibility to be a sworn assistant, expert, witness to any contract, or witness before the judiciary except for deprivation of the right to vote or run for office and to carry any medal.

C- Deprivation of the right to carry weapons, teach, manage a school or serve in an educational institution as a means of proof as a professor, teacher or supervisor.

D- Incapacity to be a guardian or trustee.

E- Loss of all or some of the guardianship rights.

In the event of a criminal sentence, the judge must order the deprivation of one or more of the rights stipulated above for a maximum period of ten (10) years, effective from the date of expiry of the original sentence or the release of the convict.

3- Determination of residence: - Article (10) of the same law defines it as "obligating the convict to reside within a regional area specified by the ruling for a period not exceeding five (5) years." It begins from the date of expiry of the original sentence or the release of the convict. The ruling is notified to the Ministry of Interior, which in turn issues temporary permits to move outside the area stipulated in the previous paragraph.

4- Prohibition of residence: - This means "prohibiting the convict from being present in certain places, and its period may not exceed five (5) years in misdemeanor cases and ten (10) years in felony cases, unless the law provides otherwise" (49).

5- Partial confiscation of confiscated funds is "the final transfer to the state of a specific amount or group of funds, or its equivalent value if necessary, but it is not subject to confiscation:

1- The residence necessary to accommodate the spouse, ascendants and descendants of the first degree of the convicted person, if they are actually occupying it when the crime is observed, and provided that this residence is not acquired illegally.

2- The funds mentioned in paragraphs 2, 3, 4, 5, 6, 7 and 8 of Article 378 of the Code of Civil Procedure -3- The income necessary for the livelihood of the spouse and children of the convicted person, as well as the ascendants who live under his guardianship" (50).

6- Temporary ban on practicing a profession or activity - A ruling may be issued to ban a person convicted of a felony or misdemeanor from practicing a specific profession or activity if it is proven to the judicial authority that the crime he committed is directly related to his practicing that activity or profession, and that its continuation constitutes a danger if practiced (51).

7- Temporary closure of the establishment or shop (52) which results in preventing the convicted person from practicing the activity in which the crime was committed.

8- Exclusion from public transactions. This penalty results in preventing the convicted person from participating directly or indirectly in any public transaction, either permanently or for a period not exceeding ten (10) years in the event of a conviction for committing a felony, and five (5) years in the event of a conviction for committing a misdemeanor.

9- Suspension, withdrawal or cancellation of the driver's license with a ban on issuing a new license.

10- Prohibition from issuing checks and/or using payment cards.

11- Withdrawal of the passport.

12- Publishing or posting the conviction or decision (53).

As for the tax laws, they included supplementary penalties in their legal texts, similar to the Algerian Penal Code, as follows: -

1- Prohibition from practicing a profession or commercial activity: - By reviewing the text of Article 303 (paragraph three) (54) of the Algerian Direct Taxes and Similar Fees Law No. 51-21 of 2001, the penalty of prohibition from practicing a profession, dismissal from work, and closing the establishment in the event of recurrence within a period of five years results, by virtue of the law, in doubling the penalties, whether tax or criminal, stipulated for initial violations, without prejudice to the special penalties stipulated in other texts.

Article 544, paragraph three, of the Indirect Tax Law No. 46-104 of 1976 stipulates that "in the event of recidivism and multiple crimes proven by a ruling or several rulings, the prescribed penalty shall lead by law to preventing the practice of the professions of businessman, tax advisor, expert or accountant, even in his capacity as a manager or employee, and if necessary, closing the establishment." We conclude from this article that the case of recidivism or repetition of crimes results in preventing the practice of some professions, including the profession of businessman and others. This consequently prevents individuals with a criminal record from returning to practice professions that help commit crimes, which enhances confidence in the tax system. There are two types of recidivism: general recidivism, which occurs when the criminal returns to committing the crime, regardless of its type. This type cannot be achieved in a tax crime, and the second type is special recidivism, which occurs only if the second crime is similar to the first crime. This type is often achieved in tax crimes. Thus, recidivism in a tax crime is "the taxpayer committing a tax crime after being finally sentenced for a previous tax crime" (55).

Article 128, paragraph three, of the Business Tax Law of 2017 stipulates the prohibition of practicing the profession and the prohibition of practicing commercial activity in the event of

recidivism, and if necessary, the establishment shall be closed (56). In this regard, the case of recidivism in committing the crime results in doubling the criminal and tax penalty, and is achieved by committing a similar crime within five years starting from the date of committing the first crime or from the date of issuing a conviction judgment, which is considered an aggravating circumstance (57).

2- Confiscation: - It means a procedure aimed at giving public authorities possession of amounts and items that have been seized and are related to a crime without compensation (58) In other words, transferring ownership of the funds or items to the state treasury to compensate for the damages caused by a crime. It should be noted that confiscation as a security measure differs from confiscation as a supplementary penalty (59) In other words, confiscation is ruled as a preventive measure if there is no original penalty, and this is in the event that the accused is acquitted. However, if the court first issues an original penalty, it is not ruled as a supplementary penalty.

Article (525) of the Indirect Tax Law also stipulates the penalty of confiscation, stating: "The violations that are suppressed within the conditions stipulated in Articles 523 and 524 above, lead in all cases to the confiscation of the objects and means of forgery specified in the section below, and the devices or parts of the devices designated for distillation and not stamped or whose possession is illegal in accordance with the provisions of Articles 64 and 66 of this law are also confiscated. Not only the objects specific to forgery, but also the unauthorized devices, containers, mechanisms and utensils used in the quantities of manufacture or possession, as well as the vehicles and other means, are considered as objects or means of forgery." 3- Temporary closure of the establishment or shop: - This penalty is stipulated in the Tax Procedures Law of 2023 in Article (146) of it, which states: "The decision to temporarily close shall be taken by the director in charge of large establishments and the director of taxes in the state, each according to his area of expertise, based on a report submitted by the accountant being prosecuted. The closure period may not exceed six (06) months, and the closure decision shall be notified by the legally appointed follow-up officer or the judicial officer." This text is understood to have given legal authority to the concerned directors to issue important decisions in cases of tax evasion or serious violations, and sets a specific period for closure not exceeding 60 days, and the judge shall be notified by the legal follow-up officer or the judicial officer. The Algerian Direct Taxes and Similar Fees Law No. 51-21 of 2001 also referred to the penalty of closing the establishment in the event of a return (60).

4- Ban from entering public transactions: - This penalty is stipulated in Article (52) of Presidential Decree 2010236 dated 10/7/2010, which includes "regulating public transactions, provided that economic operators who do not meet their tax and quasi-tax obligations and who are registered in the national card for perpetrators of fraud and those with serious violations of legislation and regulation in the field of taxation, customs and trade are temporarily or permanently excluded from participating in public transactions."

5- Publishing the ruling and posting it at the expense of the convicted person, and this is binding in the event of a return. This procedure is stipulated in the Direct Taxes and Similar Fees Law in Article 303, paragraph three, which states: "The court may order the publication of the ruling in full or in summary in the newspapers it designates and its posting in the places it specifies,

all at the expense of the convicted person." The Indirect Tax Law also stipulated this procedure in Article (550) (61) paragraph two thereof, as well as the Registration Law in Article 120 paragraph (sixth) (62), as well as the Stamp Law in Article (45 (paragraph (sixth) (63). Likewise, the Business Tax Law stipulated this procedure in Article (134) (64).

The second requirement

Accessory penalties

The Iraqi legislator defined accessory penalties in Article (95) of the Iraqi Penal Code No. 111 of 1969, as amended, as "those that are imposed on the convict by virtue of the law without the need to stipulate them in the ruling."

The Iraqi Penal Code defined accessory penalties (65) as follows: -

First: - Deprivation of some rights and benefits (66), including

- 1- The jobs and services that he held.
- 2- Being a voter or elected to representative councils.
- 3- Being a member of administrative or municipal councils or one of the companies or being its director.
- 4- Being a guardian, trustee or agent.
- 5- Being the owner, publisher or editor-in-chief of a newspaper.

Second: - Police surveillance (67)

Article (99) of the Iraqi Penal Code No. 111 of 1969 addressed the placement of a prison sentence under police surveillance after the end of his sentence in the event that he committed a felony that affects the external or internal security of the state, or counterfeited, forged or imitated money, or counterfeited stamps or government financial bonds or official documents, or committed bribery, embezzlement, theft or premeditated murder accompanied by an aggravating circumstance. The court has the authority to reduce the period of surveillance or decide to exempt him from it or reduce its restrictions.

It is worth noting that the penalty is secondary when it follows an original penalty that is obligatory by force of law and is implemented by the competent authority without the need for a judge to issue a ruling on it .

In the same context, the Iraqi tax legislator did not address secondary penalties in its tax laws.

The Algerian legislator did not address the secondary penalties in the Penal Code and special tax legislation. The researcher believes that the secondary penalties "are those that are necessarily attached to the original penalty by virtue of the law, and the competent authority is obligated to implement them without the need for a special ruling from the judge." From the above, it became clear to us that the Iraqi legislator addressed the secondary penalties (complementary and subsidiary) in the Iraqi Penal Code No. 111 of 1969, as amended, and did not address them in the special tax legislation, while the Algerian legislator addressed the

complementary penalties in the Penal Code No. 66-156 of 1966 and the special tax legislation. As for the subsidiary penalties, the Algerian legislator did not address them.

2. Conclusion

After completing our research topic (criminal penalties for the crime of tax evasion in Iraqi and Algerian law), we reached several results and recommendations that can be summarized as follows: -

First: - Results:

1- The main objective of tax legislation is to impose tax obligations on individuals, which is to guarantee the state's right to collect the tax.

2- The Iraqi tax legislator has specified in its tax laws the penalty of imprisonment and considered it a misdemeanor crime, but it did not punish the case of recidivism in committing the crime of tax evasion after the execution of the penalty as the Algerian tax legislator did, and the latter specified in its tax laws the penalty of imprisonment and made it a misdemeanor crime as the Iraqi tax legislator did.

3- The Iraqi tax legislator did not address the penalty of the legal person, but rather referred to the general rules stipulated in the Penal Code No. 111 of 1969, as amended, since the legal person was not punished with imprisonment, but with a fine, while the Algerian tax legislator exclusively defined the liability of the legal person in Article 36, paragraph one, of the Stamp Law with a fine.

4- We note that the Iraqi tax legislator in the Iraqi Income Tax Law No. 113 of 1982 did not address compound financial penalties (fine) or deprivation of freedom (imprisonment), while the Algerian tax legislator in the Direct Taxes and Similar Fees Law and the Algerian Indirect Taxes Law stipulated in their texts compound penalties (fine and imprisonment). 5- The Iraqi tax legislator has specified in its tax laws the penalty of imprisonment and considered it a misdemeanor crime, but it did not punish the case of recidivism in committing the crime of tax evasion after the execution of the penalty as the Algerian tax legislator did, and the latter specified in its tax laws the penalty of imprisonment and made it a misdemeanor crime as the Iraqi tax legislator did, as it addressed the complementary penalties in the general rules, specifically in the Penal Code No. 66-156 of 1966, as well as in the special tax legislation.

6- The Iraqi legislator addressed the secondary penalties (complementary and dependent) in the Iraqi Penal Code No. 111 of 1969, as amended, and did not address them in the special tax legislation, while the Algerian legislator addressed the complementary penalties in the Penal Code No. 66-156 of 1966 and the special tax legislation, but the secondary penalties were not addressed by the Algerian legislator.

Second: Recommendations

1- We recommend that the Iraqi legislator include the crime of recidivism in its legislative texts in order to achieve justice in the application of the penalty, so that there is a distinction between

those who commit the crime for the first time and those who are accustomed to committing it repeatedly, and as a result, this achieves the financial deterrence that the penalty is achieved.

2- We recommend that the Iraqi legislator must tighten the criminal penalties for the crime of tax evasion in its tax texts, whether they are deprivation of freedom or financial or a combination of both.

3- Raising awareness among taxpayers through the media and holding seminars and conferences on the importance of taxes and their role in financing public services that benefit them.

Research margins:

(1) Nash'at Ahmad Naseef Al-Hadith, Short-term imprisonment and its alternatives, Dar Al-Hurriyah for Printing, Baghdad, 1988, p. 5.

(2) Articles (88) of the Iraqi Penal Code No. 111 of 1969 as amended.

(3) Article 88 of the same law.

(4) Paragraph 89 of the same law.

(5) Article 57 of the Iraqi Income Tax Law in force.

(6) These actions are –

A- Whoever refuses or delays in providing information or presenting papers requested by the committees or the court within the period specified for him without a legitimate excuse. B- Preventing members of the committees or authorized persons from entering the property to inspect it in accordance with the text of Article Thirteen of this law.

C- Whoever provides the committees or the financial authority with incorrect information with his knowledge thereof. D- Whoever delays or refrains from submitting the annual report stipulated in paragraph (3) of Article (29) without a legitimate excuse.

(7) Among the controls is also that the representative of the legal entity is responsible for the crime committed and the criminal lawsuit applies to him and to the legal entity as well, and the penalty appropriate to their nature is applied to them. Dr. Abdul Raouf Mahdi, Criminal Responsibility for Economic Crimes, Dar Al Maaref, Alexandria, 1976, pp. 442-443.

(8) Article (37) Paragraph Two of the current Iraqi Income Tax Law states that the appeal committees consist of at least a second-class judge and two members from employees specialized in financial matters.

(9) Article (39) Paragraph Two of the current Iraqi Income Tax Law.

(10) Article 59 of the current Iraqi Income Tax Law.

(11) Haider Najib Ahmed Al-Mufti, Criminalization and Punishment in the Current Iraqi Income Tax Law (An Analytical Study), Diyala Journal, College of Law and Political Science, Diyala University, Issue No. (54), Iraq, 2012, pp. 16-17.

(12) Article 303 Paragraph One of the current Direct Taxes and Similar Fees Law.

(13) Article 303, paragraph two of the same law.

(14) Article 304 of the same law.

(15) Article 531 of the Indirect Tax Law in force, and Article 530, the Algerian tax legislator has decided on the penalty for them in the Algerian Penal Code in force based on Article 208, which states: "Anyone who: 1 - makes a seal, stamp, seal or mark of the state or any authority whatsoever without written permission from its representatives authorized by the state or that authority. 2 - makes, keeps, distributes, buys or sells a stamp, seal, seal, mark or mark that is likely to be confused with similar ones belonging to the state or any authority whatsoever, even if it is foreign."

Article 209 states: "Anyone who: (1) counterfeits marks intended to be placed in the name of the government or any public facility on various types of goods or merchandise, or uses such counterfeit marks, shall be punished by imprisonment from one to five years and a fine from 500 to 10,000 dinars. (2) Counterfeits a seal, stamp or mark of any authority, or uses a counterfeit seal, stamp or mark. (3) Counterfeits, sells, marries or distributes addressed papers or official publications used in the main state agencies, public administrations or various judicial bodies, or uses such counterfeit papers or publications. (4) Counterfeits or forges postage stamps, clearance stamps or reply coupons issued by the postal administration, or separate fiscal stamps, or stamped papers or forms, or sells, marries, distributes or uses the aforementioned counterfeit or forged stamps, marks, reply coupons, or stamped papers or forms, knowing that they are counterfeit or forged." In addition, the offender may be sentenced to deprivation of one or more of the rights mentioned in Article 14 and to a ban on residence for a period of one to five years at most. Attempts to commit the crimes mentioned above shall be punishable by ".

(16) Article 532 of the Indirect Tax Law in force

(17) Article 36 of the Algerian Stamp Law in force.

(18) Mustafa Awadi, Rahal Nasser, *Fraud and Tax Evasion in the Algerian Tax System*, Publishing and Distribution, Ben Moussa Said Library, El Oued, 2010-2009, pp. 30-31-32.

(19) Ahmed Fathi Surur, *Tax Fine, Law and Economics Magazine*, Issue 2, 1969, p. 439.

(20) Aiden Abdul Qader, *Fine Punishment in Iraqi Law and Comparative Law*, PhD Thesis, University of Baghdad, printed at the Police Press, Baghdad, 1984, p. 112.

(21) The amount of this fine was amended to no less than (50,000) one thousand dinars, and no more than one thousand (250,000) dinars in misdemeanor crimes, pursuant to the decision of the dissolved Revolutionary Command Council No. (107) dated 2001/4/26.

(22) Article 56 of the Iraqi Income Tax Law in force.

(23) Article (59) of the same law.

(24) Article (56) Paragraph Four of the same law.

- (25) This article was cancelled pursuant to Article (1) of the First Amendment Law of the Iraqi Land Tax in force. And replaced with the following text: "Every taxpayer must submit a written statement to the financial authority about the plots or shares in his possession, stating their area and locations, and notify the financial authority of any change in the possession of his plots during the period specified by the Minister of Finance."
- (26) Article (8) of the same law.
- (27) Article (93) Paragraph Two of the Iraqi Income Tax Law in force.
- (28) Madhat Abbas Amin, *Income Tax in Iraqi Tax Legislation, Part One*, no place of publication, no year of publication, p. 203
- (29) Article (18) of the Algerian Penal Code in force.
- (30) Article (303) of the Algerian Direct Taxes and Similar Fees Law in force.
- (31) Article (306) of the same law.
- (32) Article (523) of the Algerian Indirect Taxes Law in force.
- (33) Article (532) of the same law.
- (34) Article (38) of the Algerian Stamp Law in force.
- (35) Article (35) of the Algerian Registration Law in force.
- (36) Article 99 of the same law.
- (37) Article (114) of the Algerian Business Tax Law in force.
- (38). Marwan Ibrahim Ne'ma, *The Iraqi Legislator's Approach to Violations of the Provisions of the Income Tax Law*, Master's Thesis, Faculty of Law, University of Nahrain, 2000, p. 183.
- (39) Ahmed Gamal El-Din Moussa, *Egyptian Tax Law Income Tax Law*, 1st ed., Dar Al-Nahda Al-Arabiya, 2008, p. 347.
- (40) <https://www.google.com>
- (41) This article was amended by the decision of the Revolutionary Command Council No. 997 published in the Iraqi Gazette No. 2667.
- (42) Article (96) of the current Iraqi Penal Code.
- (43) Ali Hussein Khalaf - Sultan Abdul Qader Al-Shawi, *General Principles of the Penal Code*, 1st ed., Vol. 1, 2015, pp. 436-442.
- (44) Muhammad Mutlaq Asaf, *Confiscations and Financial Penalties between Sharia and National Laws*, Al-Warraq Foundation for Publishing and Distribution, Amman, 2000, p. 19.
- (45) Article 101 of the current Iraqi Penal Code.
- (46) Article (9) of the current Algerian Penal Code.

- (47) Abdullah Ouhaibia, printed in the explanation of the Algerian Penal Code, General Section, Faculty of Law, University of Algiers 1, Algeria, 2021-2022, p. 150.
- (48) Article (12) of the Algerian Penal Code in force.
- (49) Article (13) of the same law.
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- (51) Razika Taghribet, the crime of tax evasion in Algerian law, an article published in the Journal of Legal and Economic Studies, Volume 5, Issue 3, 2023.
- (52) Amal Al-Marshadi, Legal Research on Types of Penalties and Security Measures in the Law, Free Legal Consultations, on the website: The website was visited on 11/25/2024 (25:19). www.mohamah.net
- (53) Article 303 (Paragraph Three) of the Direct Taxes and Similar Fees Law in force.
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- (62) Article (45) paragraph (sixth) of the Stamp Law.
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