

Article

The Phenomenon of Tax Evasion: Its Legal Dimensions and Legislative Frameworks

Samah Hadi Alrubaye¹, Akeel Hameed Alhelo², Aymen Hasan Mandal³

1. Assistant Lecturer, Dep of Law, AL-Muthanna University, Iraq
* Correspondence: samah.alrubaye@mu.edu.iq
2. Prof. Dr., Dep of Administration and Economics, Imam Jaafar AL-Sadiq University AL-Najaf ALashraf, Iraq
* Correspondence: akeel.alhelo57@gmail.com
3. Lecturer, Dep of Law, AL-Muthanna University, Iraq
* Correspondence: aimen.hass.123@mu.edu.iq

Abstract: Tax evasion is one of the significant issues facing countries worldwide, including both developed and developing nations such as Iraq. To combat this phenomenon, most countries strive to review and amend their tax laws and regulations to ensure the collection of financial revenues necessary to fund public expenditures. The research problem arises from the fact that tax evasion reduces tax revenue, thereby depriving the state of important financial resources through the exploitation of legal and legislative loopholes by taxpayers. The aim of this research is to study the phenomenon of tax evasion, analyze the legal and legislative provisions, and evaluate their effectiveness in mitigating tax evasion. The research adopts a descriptive analytical approach based on available information, statistics, and data related to tax evasion. The study concludes that instances of tax evasion in Iraq have increased, especially after 2003, due to economic, political, and security conditions, as well as the weak qualifications of some employees of the General Tax Authority and frequent amendments to tax laws, which have created a state of legal instability. The study recommends enhancing transparency in the tax system by providing all necessary information to taxpayers, improving tax quality, raising public awareness, and considering the automation of tax processes and linking tax institutions with state agencies and the private sector.

Citation: Alrubaye, S. H., Alhelo, A. H., & Mandal, A. H. The Phenomenon of Tax Evasion: Its Legal Dimensions and Legislative Frameworks. Central Asian Journal of Literature, Philosophy, and Culture 2024, 5(4), 92-100.

Received: 21st July 2024
Revised: 28th July 2024
Accepted: 4th Aug 2024
Published: 11th Aug 2024



Copyright: © 2024 by the authors. Submitted for open access publication under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>)

Keywords: Tax, Tax Evasion, Tax Legislation and Laws, Preventive and Legal Measures

1. Introduction

Importance of the Research

This research highlights the role of legislative and legal texts in reducing tax evasion. It emphasizes how countries seek to maximize tax revenue and reduce tax evasion, especially in developing countries, by reviewing and amending tax laws and regulations to ensure sufficient financial resources for public expenditures.

Research Problem

Tax evasion is a problem faced by many countries, including Iraq, as it leads to reduced tax revenue and deprives the state of essential financial resources due to taxpayers exploiting legal and legislative loopholes.

Research Objective

The research aims to study the phenomenon of tax evasion and its impact on tax revenue, analyze legal and legislative measures, and assess their effectiveness in combating tax evasion.

Research Hypothesis

There is a relationship between the phenomenon of tax evasion and the legislative and legal measures to curb it.

Research Methodology

The research employs a descriptive analytical approach based on available information and data related to tax evasion.

Scope of the Study

1. Geographical Scope: The study focuses on the tax system in Iraq as the basis for examining tax evasion.
2. Temporal Scope: The study covers the period from 2010 to 2020, based on the availability of relevant information and data.

Structure of the Research:

The research is divided into three main sections:

1. Theoretical Framework of Taxes and Tax Evasion.
2. Legal and Legislative Framework for Combating Tax Evasion.
3. Effectiveness of Legal and Legislative Texts in Reducing Tax Evasion.

Tax evasion is one of the most significant problems faced by many countries, whether developed or developing, considering the extent, nature, and causes of tax evasion, as well as methods for combating it and its impact. Since tax revenues are fundamental to economic and social development, most countries strive to minimize opportunities for tax evasion through regulatory measures and legal provisions to address this phenomenon. Tax evasion causes severe damage to society, both materially and economically, and represents a form of financial and administrative corruption. It leads to a decrease in tax revenue and prevents the state from fulfilling its economic and social roles. Additionally, it affects compliant taxpayers who bear the tax burden while others avoid it, thus violating the principle of tax fairness. To address tax evasion, it is essential to focus on the legal and legislative texts of the Iraqi Income Tax Law and assess their impact on mitigating this phenomenon, which Iraq suffers from due to various reasons including weak tax administration and lack of tax fairness due to inadequate or ineffective tax legislation. Taxes hold significant importance in the constitutions of most countries, with legislation and laws regulating their imposition, assessment, and the possibility of appeals. The existence of penal laws is crucial for ensuring social and tax justice, especially when taxpayers violate tax laws and regulations.

2. Materials and Methods

The research employs a descriptive analytical approach based on available information and data related to tax evasion.

3. Results and Discussion

Theoretical Framework of Taxes and Tax Evasion

1. Theoretical Framework of Taxes:

Definition of Tax: Various definitions of tax exist. Some define it as a compulsory payment made to the state without direct compensation, aimed at financing public expenditures. Others view it as the state's means to collect money from taxpayers to achieve economic, political, and social goals, such as discouraging the consumption of harmful goods. Another definition is that it is a financial deduction made by the state or one of its public bodies on the economic resources of enterprises without compensation, with the burden distributed according to the taxpayer's ability to pay.

From these definitions, we infer the following characteristics of taxes:

- Taxes are monetary or in-kind contributions from taxpayers, typically paid in cash.
- Taxes are paid by the taxpayer without the option to accept or reject the amount, as the legislator sets the type, rate, and all other legal procedures.
- Taxes are paid definitively and without compensation; taxpayers cannot claim refunds or expect benefits in return.
- Taxes are paid according to the taxpayer's ability to pay, reflecting the principle of sharing the burden of costs to ensure the continued provision of public services.
- The purpose of taxes is to cover state expenses and achieve economic and social goals.

2. Basis for Tax Imposition:

Tax imposition is based on the following theories:

- **Social Contract Theory:** It was developed by a French philosopher Jean Jacques Rousseau during the 18th century based on the input of a social contract between the government and people whereby people agree to surrender a portion of their wealth in return for the protection and benefits offered by the government.

- **Social Solidarity Theory:** This modern theory asserts that the government has the right to impose taxes based on the idea of social solidarity among individuals, requiring them to contribute according to their ability to pay, enabling the government to perform public functions such as providing services and protection. Individuals pay taxes based on their ability rather than the benefits received.

3. Tax Principles:

In his 1776 book "The Wealth of Nations," principles of tax legislation, according to Adam Smith, should follow:

- **Equity:** Justness in the imposition of taxation on people. Tax policy should have equity by considering the low-income people and different rates of tax for different income groups.
- **Certainty:** Clearly defined tax rates, bases, and payment times. Tax laws have to be certain, unaltered with infrequency so that they do not disrupt economic behavior, and clarity should be easily followed.
- **Convenience:** Taxes should be payable at times convenient to the taxpayers when possible, at the same time as or just after the receipt of income.
- **Economy:** Collection of taxes should be at a low cost because very high administrative costs reduce the returns from tax revenues

Tax Evasion

Tax evasion is the act of hiding actual income or inflating expenses to drive down tax liability, which is done by providing false financial facts. Tax evasion is constituted as a crime and is punishable by law. It can take the form of complete or partial illegality of non-compliance with tax legislation.

Parties Involved in Tax Evasion:

- Taxpayer: The individual or entity who is required to pay taxes.
- Tax Administration: Poor competence among tax administration staff can lead to incorrect interpretation of tax laws and inefficient tax collection.
- Legal Tax Evasion: Through the use of legal loopholes, one can

avoid tax liabilities.

Types of Tax Evasion:

- Complete Tax Evasion: Amounts to hiding the entire liability through fraudulent means.
- Partial Tax Evasion: Concealing part of taxable income or inflating expenses.
- Geographical or Regional Evasion: Occurring within or across national borders.
- Legal Tax Evasion: Using legal loopholes to avoid tax liabilities.
- Illegal Tax Evasion: Employing illicit methods to evade taxes.

Forms of Tax Evasion:

- Accounting Concealment: Creating separate accounts to avoid taxes.
- Physical Concealment: Hiding parts of income or resources.
- Misrepresentation: It may be misstated about the nature or the quality of

transactions.

Causes of Tax Evasion:

- Social Causes: Lack of tax awareness and misconceptions about tax benefits.
- Administrative and Technical Causes: Inefficient tax administration and lack of expertise.
- Legislative Causes: Complex and unclear tax laws that allow for exploitation.
- Economic Causes: Economic crises and high tax rates leading to increased evasion.

Legal Nature of Tax Evasion:

Factors that result in tax evasion are legislative overlap, unclear laws, and weak penalties. These include the following:

- Double Taxation Of the same income or asset in the country or across countries.
- Unclear Legal Texts Ambiguous legislation that disputes and exploitation.
- Multiple Tax Laws Which change quite often being difficult to administer.
- Ineffective Penalties Weak penalties that do not deter tax evasion.

Effectiveness of Legal and Legislative Texts in Reducing Tax Evasion in Iraq

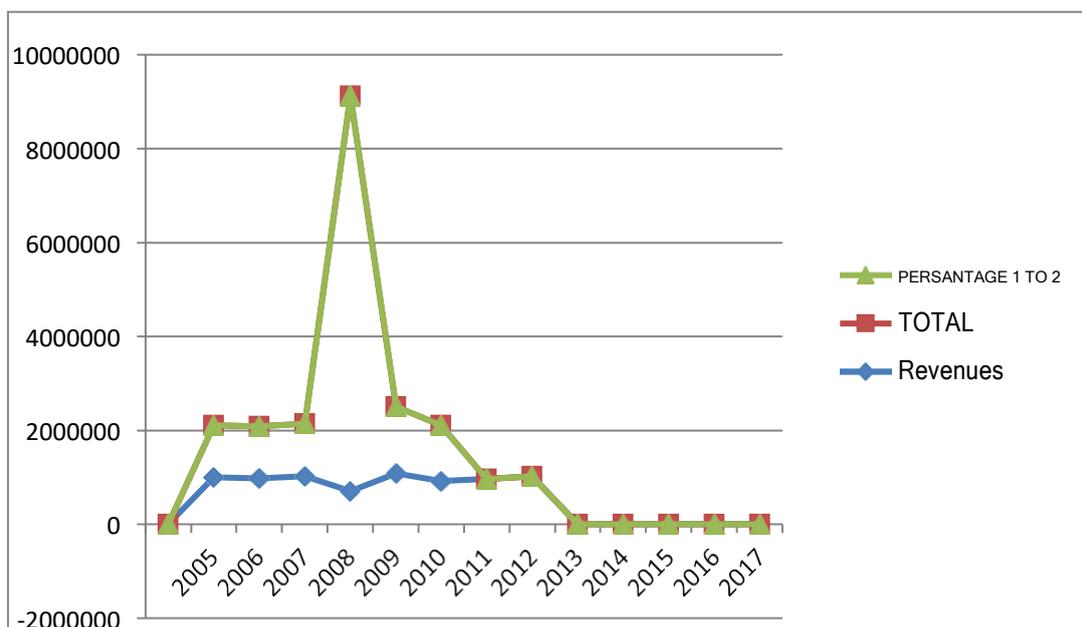
1. Analysis of Tax Revenue Trends in Iraq:

Post-2004 saw Iraq tax revenues fall off a cliff due to the destruction of production capacities and the closing of most factories and plants. For instance, in 2004, tax revenues amounted to 73,658 billion dinars, constituting 2.23% of total revenues. By 2008, they had dropped to 529,797 billion dinars, or 0.66% of total revenues. This downward trend continued, with revenues falling to 430,747 billion dinars by 2021, representing 3.95% of total revenues. The data illustrates the fluctuating share of tax revenues in Iraq's total revenues from 2004 to 2021.

Table 1. The fluctuating share of tax revenues in Iraq's total revenues from 2004 to 2021

Year	Total Tax Revenues (1)	Total General Revenues (2)	Ratio of (1) to (2)
2004	73658	3298885	2.23
2005	184219	4043574	4.56
2006	309014	49055545	0.63
2007	442679	54599451	0.81
2008	592797	80252182	0.66
2009	608802	55243528	1.1
2010	739090	70178223	1.05
2011	893081	108807392	0.82
2012	1173540	119817224	0.98
2013	1388396	113767395	1.22
2014	1495309	105386623	1.42
2015	1870784	66470252	2.81
2016	3956369	54409270	7.27
2017	5712987	77335955	7.39
2018	4846987	106569800	4.55
2019	3767538	107567012	3.5
2020	4480062	63199689	7.09
2021	4307477	109081464	3.95

Source: Ministry of Finance for various years.

**Figure 1.** Total Tax Revenues as a Percentage of Public Revenues

Source: Researcher's work based on Table 1

2. The Reality of Tax Evasion in Iraq

Tax evasion is a contemporary economic reality and is considered an economic crime due to the severe damage it causes to the national economy. Additionally, tax evasion disrupts justice and creates inequality among taxpayers, with some fulfilling their tax obligations efficiently while others evade them. This issue becomes more critical when the government, due to its need for public funds, imposes new taxes or increases existing ones, leading to a higher number of taxpayers avoiding payment.

In Iraq, tax evasion is a persistent issue within the Iraqi tax system. However, the rates vary from year to year due to economic, administrative, legislative factors, and the challenging security conditions the country has faced.

Table 2 illustrates the number of taxpayers, their movement, and the number of cases of tax evasion during the research period (2005-2017), as well as the proportion of these cases to the total public revenues according to the General Authority for Taxes in Iraq. It is known that the tax burden on compliant taxpayers increases, exacerbating the tax evasion gap. In 2005, the proportion of cases of tax evasion to the total taxpayer movement reached 90%. This high rate continued through 2006-2008. However, in 2009 and 2010, the proportion of tax evasion cases decreased to 76% and 77%, respectively.

The reasons for the high rates of tax evasion in 2005-2008 include the weak tax administration, deteriorating security conditions, and the failure of some taxpayers to submit tax returns due to ongoing terrorist activities, which forced some to close or suspend their businesses, negatively affecting tax revenue. In 2012-2013, there was a noticeable decrease in the rate of tax evasion due to relatively improved security conditions and better performance by the tax administration in Iraq, along with increased tax awareness among taxpayers.

Table 2. Proportion of Tax Evasion Cases to Total Taxpayer Movement in Iraq for 2005-2017

Ratio of (1) to (2) ³ (grand total) ² (tax cases 1	Year
%90	1108865	1002359	2005
87%	1116306	970358	2006
%91	1124386	1019761	2007
%83	8422929	698069	2008
%76	1418343	1080988	2009
%77	1189295	920209	2010
%74	1285306	960872	2011
73%	1393921	1023694	2012
72%	1489911	1079050	2013
77%	1573540	1213980	2014
79%	1392994	1098667	2015
80%	1514550	1223766	2016
79%	1635451	1293073	2017

Source: General Tax Authority Statistics for Various Years.

When calculating the ratio of suspensions to the total movement of taxpayers for the period from 2005 to 2010, the ratio was 84%, representing the number of individuals evading tax payment. This ratio is high and has a significant impact on reducing tax revenue due to taxpayers not declaring their economic activities and failing to document their activities with the General Tax Authority branches, despite the expansion of companies and numerous projects in the country.

However, when calculating the ratio of suspensions to the total movement of taxpayers for the period from 2011 to 2017, it reached 76%, which is also a high percentage.

Methods and Ways to Address Tax Evasion in Iraq

Tax evasion is considered one of the illegal behaviors punishable under Iraqi law, as it involves intentional violations of the law, where an individual or taxpayer refuses to pay taxes. Therefore, methods and approaches have been established to address cases of tax

evasion. These methods and approaches vary from country to country according to their applied financial system. One of the most important methods used to reduce tax evasion is the implementation of withholding tax at the source, in addition to granting tax employees the right to review various documents and records related to the taxpayer, as well as the possibility of imposing additional taxes on the taxpayer, among other methods. These methods and approaches can be divided into two main types:

First Method: Preventive Measures

Preventive measures relate to tax laws and regulations. It is necessary to prepare tax legislation and laws that are consistent and interconnected with the needs and requirements of the national economy within a comprehensive development plan. To ensure collection, the state should prepare preventive measures to reduce the effects or burdens of tax evasion. Essential components of this system include:

1. Stability of Laws and Regulations: Instability in laws and regulations contributes to tax evasion.
2. Simplification of the Tax System: Making the tax system clear, flexible, and simple to help taxpayers understand the legal texts.
2. Reporting by Third Parties: Establishing laws requiring relevant entities to report taxpayer information to tax authorities.
3. Affidavit-Backed Declarations: Requiring declarations submitted to financial authorities to be sworn in, allowing for penalties related to false statements.

Second Method: Legal Measures

Legal measures involve legal and criminal procedures through which financial or non-financial penalties are imposed. These legal texts should relate to the submission of reports, financial statements, and accounts, as well as penalties for delayed submissions or incomplete or inaccurate declarations. These penalties include:

1. Moral Penalties: According to Law No. 35 of 1999, the minimum financial penalties were adjusted to 50,000 dinars for taxpayers who delay submitting their tax declarations.
2. Physical Penalties: For hiding accurate information, which is considered a serious violation due to its extensive scope and difficulty in detection. Penalties in this category range from at least 3 months to no more than 2 years.

4. Conclusion

1. The increase in tax evasion due to political and economic conditions, especially after 2003, and the lack of security and economic stability in the country, as well as non-compliance by taxpayers.
2. The existence of tax evasion issues indicates structural and annual imbalances in the tax legislative system in Iraq.
3. The inadequate technical and scientific qualifications of the General Tax Authority staff, with some not matching the nature of the positions and professions, due to a lack of qualified accounting and administrative specialists.
4. The high rates of tax evasion in Iraq negatively impact state revenue, and thus, adversely affect the state budget.
5. Tax evasion in Iraq is influenced by government policy due to insufficient taxpayer conviction to pay taxes, due to the poor quality of services provided by the state.
6. Frequent amendments to tax laws create legal instability in application, resulting in increased ambiguity and lack of understanding among taxpayers, leading to more tax evasion.
7. The Iraqi legislator has not provided adequate penalties to deter tax evasion, as the maximum prison term is two years, which is low compared to other countries' laws.

5. Recommendations

1. **Transparency Gaps:** There isn't enough information to help taxpayers make judgments about the level of tax compliance that exists in a given country. This, in turn, creates apprehensions on a general level regarding how much citizens trust their country's tax system.
2. **Create Programs:** Develop programs that will help in improving the quality of taxes and also in making more people aware of the significance regarding taxes and also how to combat tax evasion.
3. **Legislation Updates:** Updating tax legislation and regulations with a view to enhancing more transparency, stringent measures against defaulting taxpayers, and more incentives for compliance.
4. **Promote International Cooperation:** Initiate and bolster international cooperation for the fight against tax evasion through the activation of bilateral tax agreements and participation in specialized international organizations.
5. **Close Legal Gaps:** Close all loopholes in the legal provisions so that taxpayers cannot escape paying their share of taxes.
6. **Ensure Tax Justice:** At the heart of this is the pursuit of tax justice— through the formulation of reasonable and fair taxes and rates that will discourage tax flight.
7. **Tax Collection Automation:** Implement an electronic system between tax institutions and connect them with other governmental and private organizations to supervise control activities overtax and limit tax evasion.
8. **New Legislations:** The newly proposed legislation of tax needs proper collaboration, coordination, and consultation with experts and scholars in the state

REFERENCES

- [1] R. N. Ahmed, *Public Finance Science and Financial Legislation in Iraq*, 3rd ed., Beirut, 2018.
- [2] A. M. Khalil and S. A. Al-Louzi, *Public Finance*, 1st ed., Amman, Jordan: Zahran Printing House, 2013.
- [3] T. Al-Janabi, *Studies in Public Finance*, Baghdad: Higher Education Printing House, 1990.
- [4] Q. N. Atiya, *Tax Law*, 1st ed., Cairo: Al-Hidha Publishing House, 2015.
- [5] M. Z. A. Amer, *Criminal Law: General Part*, Beirut: University Publishing House, 1993.
- [6] M. W. Badawi, *Studies in Public Finance*, Cairo: Dar Al-Ma'arif, 1996.
- [7] M. M. Younis, *Principles of Public Finance*, Cairo: Al-Nahda Publishing House, 2004.
- [8] H. Al-Jaafari, *Principles of Public Finance and Financial Legislation*, 3rd ed., Baghdad: Salman Al-Azami Printing House, 1968.
- [9] H. S. Al-Omari, *Economics of Public Finance and Fiscal Policy*, 2nd ed., Baghdad: Higher Education Printing House, 1988.
- [10] N. T. Al-Majali, *Explanation of the Penal Code*, Amman: Dar Al-Thaqafa, 1998.
- [11] Z. Y. Hussein, "Effectiveness of Penal Provisions in Combating Tax Evasion Crimes," *Legal Journal*, University of Baghdad, 2010.
- [12] M. H. Qassem, "Tax Crime and the Competent Judiciary," Master's Thesis in Tax Disputes, Graduate Studies College, An-Najah University, Palestine, 2004.
- [13] A. W. A. Razzaq Al-Tahafi, "Economic Crimes in Iraqi Legislation," *Police Magazine*, no. 28, Iraq, 1985.
- [14] A. M. Az, *Egyptian Tax Legislation*, Cairo: Al-Nahda Publishing House, 1985.
- [15] N. Mourad, *Tax Evasion and Fraud in Algeria*, 1st ed., Algeria: Dar Qurtuba, 2004.
- [16] J. T. Mohamed, "The Phenomenon of Income Tax Evasion in Iraq," *Baghdad University College of Economics Magazine*, no. 48, 2016.
- [17] I. Bashour, *Public Finance and Financial Legislation*, Damascus: Al-Rawda Printing House, 1993.
- [18] R. Amoura, *Tax and Tax Evasion*, Published on the website <http://www.tahasoft.com/Library/370 #Uay-Lwglwfpk>.

-
- [19] L. Zourk, "Tax Evasion and Its Impact on the Algerian Economy," Master's Thesis in Economic Sciences, Blida University, Tlemcen, Algeria, 2012.
- [20] J. T. Mohamed, *Previous Source*.
- [21] M. Mahfouz, *Public Finance Science and Financial Legislation: Comparative Study*, 2nd ed., Beirut, 1997.
- [22] M. K. Al-Muhaini et al., *Principles of Public Finance*, Damascus: Al-Dawoodi Printing House, 2000.
- [23] K. S. Al-Khatib et al., *Principles of Public Finance*, Amman: Dar Wael Publishing House, 2005.
- [24] M. K. Al-Muhaini et al., *Previous Source*.
- [25] A. F. Khalaf, "The Role of Internal Control Systems in Reducing Tax Evasion," *Al-Muthanna Journal of Administrative and Economic Sciences*, vol. 8, no. 3, 2018.
- [26] S. A. Kshkook, "Tax Evasion and Its Impact on Development in Iraq," *Journal of Accounting and Financial Studies*, vol. 5, no. 4, 2013.
- [27] R. Daragi, "Analysis of Economic, Legislative, and Administrative Factors of Tax Evasion," *Journal of Tax Studies*, vol. 8, no. 1, 2019.
- [28] Y. M. Al-Samarrai and Z. K. Al-Aidi, "Analysis of the Tax Evasion Phenomenon and Its Treatment Methods in the Tax System in Iraq," *Al-Anbar University Journal of Economic and Administrative Sciences*, vol. 4, no. 9, University of Baghdad, College of Administration and Economics, 2012.
- [29] Y. M. Al-Samarrai and Z. K. Al-Aidi, *Previous Source*.