

## **The constitutionality of the local tax**

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### **Abstract**

This study aims to reach the right of governorates that are not organized in a region to impose local legislation, including tax legislation, and the extent of the constitutionality of this legislation and its consistency with constitutional texts and legal rules. The imposition of local taxes finds its constitutional and legal basis in the Iraqi constitution for the year 2005 and the law of governorates not organized in a region. The imposition of local taxes corresponds to the principle of tax legality, which is reflected in the necessity of issuing tax laws from a competent authority, whether this authority is federal, regional or local. Rather, it is sufficient that it be competent.

**Keywords:** local tax, local legislation, constitutional basis, tax legality.

### **Introduction**

The 2005 constitution was issued, including the decentralization of the administration of the governorates, and based on it, the law of governorates that are not organized in a region was issued. It gave the governorates broad administrative and financial powers to manage their affairs in a way that does not contradict the constitution and federal laws. To carry out its functions, and to meet the local needs of the local community, and among these revenues is the local tax.

The importance of the research lies in reaching the right of governorates that are not organized in a region to impose local legislation, including tax legislation, and the extent of the constitutionality of these legislations and their compatibility with constitutional texts and legal rules.

The idea of the local tax raised many theoretical and practical issues, the most important of which is, can local authorities impose taxes?

And in the case of imposing local taxes, is it outside the limits of the constitutional principle, the principle of legality?

Is it a departure from the powers of the central government?

Because taxes are an act of sovereignty, what are the legal and practical problems facing the imposition of tax by local authorities?

Is the local tax linked to the general tax, and in this case, it is bound by what this tax is bound to and is subject to what it is subject to and is the branch of the origin, or is it independent of the general tax, standing alone and serving as an original resource for local units?

Therefore, our approach in the research is the descriptive analytical method in light of the analysis of the constitutional and legal texts, and half of those texts are through what jurisprudence and the judiciary went to.

***First: What is the local tax ?***

Tax as a resource has a special importance, not because it achieves political, social and economic purposes, but because of its important role in economic stability. There is a close relationship between tax and political authority. It is an act of sovereignty. In terms of the taxable base, it is either general, qualitative or uniform. In order to determine what the local tax is, we must delve into its definition and ways of imposing it, and then we delve into the relationship between tax bases.

***1- Definition of local tax.***

The local tax is every financial tax that is obligatory received by a local public authority within the administrative units it represents without regard to a specific consideration with the intent of achieving a public benefit, or it is that tax that is imposed on a specific regional scale such as governorates, states or provinces and is considered Tax is a sovereign act in many political systems, which is limited to imposing it on the central authority, but in light of the development of federal systems, competencies are often distributed between the center, regions, states, or local bodies, which have the duty to work within the legally established limits to satisfy the local needs of the local community in its jurisdiction.

***2- Methods of levying local tax***

There are several ways in which the local tax is imposed, and it appears in three forms. The first is that the local tax is imposed at a certain rate in favor of the local authorities for some central taxes so that the central authority imposes and collects them and puts them at the disposal of the local authorities, or the second is tax participation, which is meant to share the central government and local bodies for the tax collected in the local region, and the third is that the local body imposes and collects the local tax it deems appropriate without interference from the central government (). It is collected with the central tax supplied by the local authorities to the central government by deduction from the beginning or supplied in full to the central government, and for the latter it transfers it as revenue in the budget of local units. Any proceeds from the general tax, neither by adding nor by subscribing Examples include the agricultural land tax, property tax and inheritance tax. The local government authorities in England enjoy almost absolute tax freedom. All local government authorities have the right to impose and collect local real estate taxes, which are the only taxes in England and are purely local and based on the rental value (Choudhury, Pandey, & Bhattacharya, 2021; Soltannia et al., 2020).

***3- The relationship between tax bases.***

- 1) This relationship takes one of the following four forms
- 2) The independence of each of the central government and the administrative units with special vessels on which the taxes entrusted to them are imposed by law, which is the method followed in the United Kingdom.
- 3) The participation of the central government and administrative units in some bases and the independence of each of them by determining their own tax rate on the basis of unified estimates for their base, and often the price determined by the administrative units is much lower than the price determined by the central government, and this

method has been applied in the United States of America.

The link between local taxes and national taxes on a percentage basis, meaning that the local tax is linked based on a percentage of the value of the national tax on a specific base (local taxes added to the national tax), and this method is applied in France.

The link between local taxes and national taxes on a percentage deducted from central taxes for the benefit of administrative units, and it is called withholding taxes, which is the method followed in China (Yosef et al., 2021).

### ***Second: The basis for imposing local tax***

#### ***The constitutional basis for the imposition of the local tax.***

The constitutional basis of tax is embodied in the principle of tax legality. This principle, which is one of the most important constitutional principles that aims to establish a general rule based on the rule of law in tax matters, is that the tax is not imposed, collected, nor amended, and no one is exempted from it except by virtue of a law issued by the legislative authority. It is not permissible for the executive authority to interfere with the imposition or modification of the tax. This principle is one of the important gains that peoples have obtained in their struggle with the absolute powers of government

This principle was stipulated in the Iraqi constitutions, where the Basic Law of 1925 denied that taxes or fees may not be established except by law, and taxes and fees may not be established except by decree ( ) as well as the Law of State Administration for the Transitional Phase of 2004 in Article (18) ( ) and this is what the Constitution adopted Iraqi for the year 2005 in Article (28) ( ) If this principle is established in the Iraqi constitutions, the question raised about the extent to which this principle has changed by changing the shape of the state from a simple state to a federal or compound state, in a simple state the authority competent to impose taxes is the legislative authority. If a tax legislation is issued Without the competent authority, it becomes unconstitutional. Legislation is the only source of tax law, and the latter is similar to the penal code. It cannot be measured or changed except in a narrow scope as it is an exceptional law ( ) As for the federal or compound state, which is characterized by the presence of several legislative, judicial and executive powers and several federal constitutions And regional ones, where the problem of distributing competencies arises, which was resolved by the Iraqi constitution by defining the powers of the federal authority and mentioning them exclusively and leaving the competencies that do not fall within the exclusive competencies or the buyer In spite of the constitutional and legal developments and the form of the federal Iraqi state after 2003, there is a discrepancy in deciding the issue of the legality of the local tax by the directly elected local government, while the constitutional texts guarantee this and strengthen the constitutional judiciary These powers ( ) represented by the Federal Supreme Court, which the constitution made a final reference for the interpretation of the constitution and have the ability to interpret legal rules on the occasion of the exercise of its other competencies and its exercise of control over the constitutionality of laws and regulations ( ) in the decisions issued by it, such as the decision it issued regarding the inquiry submitted by the Babylon Provincial Council regarding Interpretation of Article (115) of the 2005 Constitution on the law enacted by the provincial council or the regional council is considered amending or not canceling the federal laws. of the federal authority ( ) and that the Federal Court, by its decision No. (16/Federal/2008), has decided the matter by the eligibility of the provincial councils to impose and spend taxes, as well as to impose fees and fines, by considering these statutes as one of the financial powers of the provincial councils()

Nevertheless, we find that the executive authority represented by the Council of Ministers has obstructed the powers of the governorates to issue tax and fees legislation

because it interpreted the principle of tax legality that the tax law must be issued by the federal legislative authority (), and thus changed what was stated by the constitutional legislator at all, and contrary to what was clarified by the Federal Court competent to interpret The constitution, as well as it is based on the jurisdiction of the legislative authority to draw up financial policy, which obscures the competences of the local government to impose local taxes, and if the financial policy is a branch of the general economic policy in the state and the tax policy represents part of the financial policy, but the tax policy depends on three elements, the objectives The environment and tax legislation in a set of integrated programs planned by the state using all its actual and potential tax sources to create desirable economic effects and avoid undesirable effects to contribute to building and achieving the goals of the local community. Locality specific to a part of the country, but to the extent that it does not conflict with federal legislation In addition to the fact that the decision contradicts itself, at a time when it suspends the powers of the governorates, meaning that it recognizes them, it returns to decide that the governorates do not have the authority to impose taxes except by the issuance of a law enacted by the House of Representatives. ) of the constitution, and we find that the Iraqi legislation granted the provincial councils broad powers through the issuance of local legislation, regulations, and instructions to organize administrative and financial affairs in a way that enables them to manage their affairs in accordance with the principle of administrative decentralization and in a manner that does not contradict the constitution and federal laws () 21 of 2008 amended, which in light of Article (7/Third) of which the provincial councils were given the power to enact tax laws at the governorate level, provided that they do not conflict with the constitution and federal laws()

### ***The legal basis for the imposition of local tax***

Within the scope of financial studies, the research revolved around the nature of the basis from which the state derives the imposition of tax, and several theories emerged, including those that enjoy acceptance at the present time. It is the theory of social solidarity that the state is a historical and social necessity, and only social solidarity, which is the basis of the group. The state, as a historical and social necessity, fulfills social needs and to achieve solidarity among individuals by satisfying those needs, then resort to imposing taxes to achieve revenues with its sovereignty in order to achieve social solidarity in bearing public burdens()

What is approved of the general tax is that its legal basis is the theory of social solidarity. It also applies to the local tax, as there is no problem in the presence of a local community and a local government that has local needs and goals after it is issued by the competent local authority based on the law of the governorates not connected to a region No. (21 ) for the year 2008, which clearly and explicitly stipulates that the provincial councils have the highest legislative and oversight authority within the administrative boundaries of the governorate and have the right to issue local legislation (), but jurisprudence and the judiciary differ in that, as part of the jurisprudence sees that the governorate councils do not have the right to issue local legislation and is based on This is to the text of Article (121 / first) of the Iraqi constitution, which delegated the legislative powers to the regions without the provinces, and that the law is not supported in the issuance of another law, and another aspect sees that the provincial councils have the authority to issue local legislation and this is supported by the text of Article Two of the Provincial Law and the text Articles (115 and 122) of the Constitution and what the Federal Court went to in the interpretation of Article (115.)

As for the ordinary judiciary, represented by the State Consultative Council, it almost insists on the lack of legislative powers for the governorates, through fatwas and decisions issued by it, and the legal principle was that the provincial councils do not impose enclosures or impose fees and taxes except by law, in Resolution No. 61/2005 and Resolution No. 45

/2007 as well as the decision on 3/11/2008 ( ). Despite the foregoing, the imposition of local tax by the authorities of the regions and governorates not connected to a region is permitted by constitutional and legal texts and supported by the Federal Court.

### ***3-The effect of imposing a local tax (double taxation)***

In the compound federal state in which there are several legislative powers, as in Iraq, there are powers of provincial councils and a legislative authority of the regions in addition to the federal legislative authority, which from a legal point of view all have the right to impose and issue local tax legislation, as there is no problem with that, but from In the economic aspect, the phenomenon of double taxation occurs if all these authorities issue tax legislation, in addition to the transfer of the tax burden on the taxpayer resulting from imposing tax at high rates or accompanied by imposing a tax more than once on the same base creates a feeling of loss of tax justice, which the state calls for in distributing The tax burden, which creates a belief in injustice, which leads to non-compliance with the tax duty, which causes the taxpayer to either evade or try to avoid being subject to tax.

Double taxation means subjecting the same taxpayer to tax more than once for the same tax and the same money during one period of time ( ) and double taxation is either internal, and the legislator intervenes by enacting laws in a precise and court manner to avoid the occurrence of this phenomenon. In the international field, international conventions regulate how to combat this the problem at the international level, and in light of the definition of double taxation, it is possible to reach the conditions of double taxation, which are the taxpayer unit, the imposed tax unit and the taxable substance unit ( ). The natural persons working in it may be subject to actual, realistic or economic double in the event that their incomes are subject to tax and their profits are subject to tax, from a legal point of view there is no double taxation due to the difference of the legal person from the natural person. The unit of the taxable base is that the taxpayer pays the tax more than once for the same type and on the same taxable base Although the fact that gives rise to the tax is the same and is achieved only once, and the tax unit is by the taxpayer being subjected twice or more during the tax accounting period for the same money, this is considered double taxation, and this condition applies only to periodic taxes such as income and real estate tax ( ) so double taxation The internal law will happen when the governorates that are not organized in a region exercise their legislative powers without the existence of federal legislation defining tax bases

## **Results**

- 1) Governorates that are not organized in a region have the power to impose local taxes
- 2) The right to impose local taxes finds its constitutional and legal basis in the 2005 constitution and the law of governorates not organized in a region
- 3) The imposition of local taxes conforms to the principle of tax legality, which is reflected in the necessity of issuing tax laws from a competent authority, whether this authority is federal, regional or local. Rather, it is sufficient that it be competent.
- 4) Local taxes are divided into two types, the first is the accessory tax, and the second is the independent and independent local tax, which leads to double taxation in the absence of specifying the bases for its imposition.

## **Recommendations**

Enactment of a law by the central government that defines the tax bases under which local units impose local taxes.

Amending the existing federal tax legislation by granting a percentage of those taxes to local units.

Choudhury, S. S., Pandey, M., & Bhattacharya, S. (2021). Recent Developments in Surface Modification of PEEK Polymer for Industrial Applications: A Critical Review. *Reviews of Adhesion and Adhesives*, 9(3), 401-433. <https://doi.org/10.47750/RAA/9.3.03>

Granting local units, the right to collect taxes and supply them to the federal government after deducting the prescribed percentage, because it motivates local units to implement tax laws and prevents the federal government from controlling the amounts sent to local units

## The References

- 1) Dr. Hammoud Al-Qaisi, Public Finance and Tax Legislation, 3rd floor, House of Culture, Amman, 2018.
- 2) Dr. Ekramy Bassiouni Abdel Hai, Tax Principles in the Judiciary of the Constitutional Court, Faculty of Law, University of Alexandria, 2019.
- 3) Dr. Raed Naji Ahmed, The Science of Public Finance and Financial Legislation in Iraq, 4th Edition, Al-Atak Book Industry, Cairo, 2020.
- 4) Dr. Sami Hussein Najm Abdullah, Local Administration and its Applications in Iraq and Comparative Countries, 1st Edition, The National Center for Legal Publications, 2014.
- 5) Dr. Suzy Adly Nashed, Fundamentals of Public Finance, 5th Edition, Al-Halabi Publications, Beirut, 2020.
- 6) Dr. Syed Attia Abdel Wahed, Taxes on Real Estate Revenues, Dar Al-Nahda Al-Arabiya, Cairo, 2000.
- 7) Amer Ayyash and Ahmed Khalaf Hussein, The constitutionality of taxes in Iraq, Volume 13, No. 49, 2011.
- 8) Yosef, T. N., Timor, Y., Dodiuk, H., & Kenig, S. (2021). Polymer/Nanoparticle Interface in Polymer Nanocomposites: A Critical Review. *Reviews of Adhesion and Adhesives*, 9(3), 368-400. <https://doi.org/10.47750/RAA/9.3.02>
- 9) Dr. Othman Salman Ghaylan, The Principle of Tax Legality and Its Applications in Tax Legislation in Iraq, Ph.D. thesis, Al-Nahrain University, College of Law, 2003.
- 10) Dr. Ali Hadi Attia Al-Hilali, New Trends in Direct Taxes, College of Law, Dhi Qar University, 2014.
- 11) Dr. Ali Hadi Attia Al-Hilali, The General Theory of Interpreting the Constitution, 3rd Edition, Al-Sanhoury Library, Baghdad, 2011.
- 12) Imad Farag Al-Khayat, the financing system in the local administration - a comparative study, PhD thesis, Ain Shams University, Faculty of Law, 2015.
- 13) Qatada Saleh Al-Saleh, The Legislative Organization of the Work of Local Councils in Iraq, Research published in Resalat Al-Haqq Journal, No. 3, 2013
- 14) Dr. Muhammad Hafez Al-Rahoon, Principles of Public Finance, 3rd Edition, Cairo, 2017
- 15) Soltannia, B., Duke, K., Taheri, F., & Mertiny, P. (2020). Quantification of the effects of strain rate and nano-reinforcement on the performance of adhesively bonded single-lap joints. *Reviews of Adhesion and Adhesives*, 8(2), S1-S19. <https://doi.org/10.7569/RAA.2019.097305>
- 16) Dr. Muhammad Reda Al-Adl, Public Finance in Theory, Policies and Financial Planning, Al-Asriyya Press, Cairo, 2015.
- 17) Muhammad Talib Abd, Administrative Central in Application to Local Councils, Master Thesis, Faculty of Law, Al-Nahrain University, 2010.

- 18) Dr. Yousra Abul-Ela, Public Finance, Benha University, Faculty of Law, Open Education Center, 2000.

***The laws***

- 1) Law of Administration for the State for the Transitional Period 2004 repealed
- 2) The repealed Basic Constitution of the Republic of Iraq for the year 1925
- 3) The 2005 permanent Iraqi constitution
- 4) Provincial Law No. 21 of 2008 Amended

***The legal decisions***

- 1) Federal Judicial Authority website <http://www.iraqja.iq/q.2008>
- 2) Federal Supreme Court decision, No. 6/Federal/2009/on 4/2/2009.
- 3) Iraqi Council of Ministers Resolution No. 27 of 2012 on 17/1/2012
- 4) State Shura Council Decision No. 39/2008 dated 11/3/2008