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Law Principals of Tax Payers and Surveying It in Iran's Law

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ABSTRACT

Given that the rights of the tax payer's laws are not mentioned integrated in Iran's tax law and its sanctions are not expressed accurately, so we have to point out the general sanctions of the law in this context. Direct taxes of law are predicted in order of investigation on monitoring this law by special references of tax agents and officials who include tax disciplinary prosecuting attorney as reference of detection, research and prosecution of official offenses of mentioned agents in tax affairs and disciplinary excellent staff as the main reference of hearing the mentioned offences. General supervision of these references can include supervision on observance of tax payer's rights as well.

Keywords: Taxes, Taxpayers, Tax Justice System, The Tax Office.

INTRODUCTION

In most of the countries, the main part of the government income source is funded through taxes. The tax share of the total of public revenues among the countries is different and its amount depends on the development and economic structure level of them. In the meantime, tax fraud and tax evasion in the countries have led to the tax income of the countries to be less than what is estimated and all countries do their best to reduce these two phenomena through reforming the tax system. Among all of these, observing the payers' rights are one of the very important issues that must be observed and no extortion should not be done.

According to the tax laws of some states about the taxpayer rights, including the law of American taxpayer rights and the carried out studies, the most important examples of taxpayer's rights is discussed below, and meanwhile we will review and explain these rights in Iran's tax right system as well. Considering that these rights are related to the tax office and its agents and officials on the one hand and are related to the tax conflict resolution councils on the other hand, they must be observed by these two authorities. Accordingly, they are divided into two general categories and have been studied and discussed.

1. THE CONCEPT OF TAX PAYERS' RIGHTS

The concept of tax payers' rights is controversial. Richard Gordon, the adviser of the Legal Affairs Office of international cash and Professor of Law in University of London and Harvard

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and expert on the tax law, stated: "In the literally meaning, the taxpayer' right may include" rights "(such as the right to privacy, and the right to levy description), as well as everything else that is obviously not expected from him (such as the right to not to hold unnecessary documents and the right to not tolerate the surtax because of the amounts that are not legally upon him) ".

First, the meaning of tax in here is the popular concept of that includes tax, in the meaning of charges or quasi-tax. Because both of them have mandatory aspect and are administrate by law. However, the charge has direct relationship with services presenting contrary to tax and it is received from the users of a particular service.

So, the meaning of taxpayer is payer of taxes as well as the charges and his right must be searched in all of the related laws to the taxes and charges. But, according to the comprehensiveness of direct taxes of law, we do enough in this writing to review this topic in mentioned law. Of course, in the viewpoint of clear-sighted people, the appropriate solutions in this regard is focus and concentration of taxpayers' rights on a unified law entitled as the "management law and tax procedures" and similar titles that supervise all types of taxes. Secondly, the necessity of taxpayer' knowing from his rights and the need for his information and education in this area is very important and highlighted by the experts. In this regard, the tax office must make the taxpayer aware of his rights and provide comprehensive description from the taxpayer' rights for him before undertaking any audit and assessment of tax. This can be done in the regulating and communicating form of the charter or statement of taxpayer rights extracted from tax laws (such as some countries), or at least it can be done in the form of taxpayer rights guide booklet. Of course, preparing and implementing training courses of citizenship rights, informing and educating the mass media, particularly radio and television and improved knowledge of public law, including financial and tax law are effective in this area.

This important topic is not considered in the tax right system of Iran. So, Article 26 of the Civil Service Management Law approved in 21.10.2007, ordered the executive agencies to familiarize the people with their rights and duties in interaction with executive agencies and promotes public awareness in this area and gives the necessary information in appropriate and favorable method to the people through the mass media, especially the Islamic Republic of Iran Broadcasting (IRIB). It is clear that the tax system can provide taxpayer awareness and acquaintance background with their rights in the implementation of this article.

Thirdly, observing the clients rights such as taxpayer is been stated as one of the related important theories to the ethical management in government services in the new view of governmental management. This can lead to the trust, cooperation and collaboration of taxpayers with the tax system.

Fourthly, the rights of taxpayers should have adequate and effective sanctions. In some countries, including France in related tax law which stipulates that not communicating and explaining these rights leads to the repealed of done audit.

2. THE RIGHTS OF TAX PAYERS IN TAX ADMINISTRATION

These rights that should be observed by the tax office authorities when dealing with tax payers can be itemized as follows:

2.1. The Right of Fair Treatment with Taxpayer

The principal of fair treatment or procedural justice in office that is the equivalent of fair judgment in judgment centers, in official rights of countries with common law system and at the top of them, England have a high position. The principal of fair treatment with taxpayer means that the taxes identify and collect authorities and tax officials and officers have fair treatment in behavior and intercourse and treat him with fairness and justice.

About how to exercise this right, the experts say:

"First, the tax authority shall communicate any possible action from itself for taxpayer. Secondly, in the era of tax settlement, it imparts the taxpayer from all of his rights in the settlement process.

Thirdly, he should be required to enforce his own interpretation of the law about the special status of the taxpayer."

The mentioned principals have exceptions as well in the condition that do not harm the principal itself, for example whenever the tax official determine in a sensible way that there is the possibility of eliminating the documents and evidences on behalf of taxpayer or his exit from jurisdiction, we can take action against him without any communication.

About the third feature of the principal that can be said as the most important feature of procedural fairness, it should be noted that the tax payer can invoke the law interpretation on behalf of tax agency even if this interpretation is wrong unless the mentioned device understands his wrong. However, if the taxpayer complies in good faith from the interpretation of the tax agency, it shall not be subject to penalties and fine.

In Iran, the mentioned principal is unexpected in administrative and tax laws. But recently, in Article 90 of the Civil Service Management Law, this topic is totally mentioned without any criterion. According to this article: "the employees of executive organs are obliged to fulfill their functions with accuracy, speed, honesty, integrity, openness, fairness and compliance with general and specific laws and regulations of related devices." Indicating the word of fairness in this article can be a basis for fair treatment in the office and will be clear in the mentioned law of implementation.

2.2. The Right of Not to Disclose Tax Information

Tax system in the diagnostic and receipt process of tax would accesses important information of the income and financial and economic situation of taxpayer. Especially, it has great legal authority in this area.

In Iran, direct Taxes of law under its Article 229, the taxpayer is obliged to put all of his documents and legal offices in the author of organization's tax affairs to provide tax recognition.

In addition, pursuant to Articles 230 and 231 of mentioned law, all legal individuals of private and public law are ordered to allow any information, documents and evidence that have about the business and income of taxpayer in case of request of tax system. Otherwise, they will face mentioned sanctions in these cases. Obviously, a little disclosure of this tax information in the field of economic competition may have adverse effects for the taxpayer and his economic activities and even make him bankrupt. Therefore, it is necessary that the tax payers have the right of tax information confidentiality and non-disclosure and confidentiality to the possible maximum degree.

Article 232 of Iran direct taxes of law predict this principal and explain: "Tax affair office and other taxes authorities should interpret the information that get during the review of taxes affair of taxpayer confidential and prevent to disclosure it except in the income and tax recognition affair near the related authorities at the need level, in the case of disclosure. It will be treated based on the Islamic punishment law (Article 648 of the law).

It should be noted that the expression of other tax authorities in this article is indicated properly and will expand the inclusion scope of this right and it is in favor of the taxpayers. In addition, Article 33 of the value-added taxes of Law extended the mentioned article ordinance to the established taxes of this law.

2.3. Right of Information

Today, the right of citizens to access to the governmental information is one of the important rights of citizens. This right has more importance in relation with the taxpayers. Based on the mentioned right, the taxpayer shall have the right to get information about how to recognize taxable income, any action and making decision about solving the tax disagreement and any action in order of coercive levy from his properties and the tax device is ordered to allow the required information in these cases to him.

The only exception that is stated in this case is: possessing the inevitable danger regarding the income and property transfer on behalf of taxpayer with purpose of escaping from tax and that should be sensible and documentary.

Iran's direct taxes of law are not so loud and accurate in this area. Merely the article 237 of this law about the getting information of taxpayer from how to recognize tax after definite diagnostic form issuing of tax have an ordinance and assignment that diagnostic form should be based on the correct reference and relying on the adequate reasons and information and to be set in such a way that all related activities and revenues of it mentioned in it explicitly and be clear for taxpayer. Its signatories in case of taxpayer inquiry from how to recognize the tax are ordered to announce the details of report that is the basic of communicating the diagnostic form to the taxpayer and give him any explanation to him in this regard.

However, although the information from the tax diagnostic form is more important than other mentioned cases, the law has no specification about the taxpayers inform possibility from other mentioned cases, and to content oneself merely to the necessity of communicating these articles including opinion communication of tax conflict resolution council and the notice executive of coercive receipt of the tax. It should be noted that value-added taxes of law in this area are quiet and even do not have any referred to the mentioned article of direct taxes of law.

2.4. The Right of Reasonable Audits

In tax laws of some countries including America, it is stipulated that the taxpayer should have the right of the financial audit to be done at reasonable opportunity in a reasonable place and in appropriate range.

This right is named as the "time principals and sensible notification" about this topic of the article 156 of direct taxes of law to predict a sensible time for hearing to the tax payer submission declaration and communication of tax diagnostic form that is actually accounted as the audit time and tax diagnostic. According to this article, "the tax administration is ordered to hear the declaration of taxpayers income tax about any resource that is sub missed in due date, if he do not communicate the income diagnostic form during the mentioned time or do not communicate the listed income diagnostic form until three months after the expiration of above mentioned one year to the taxpayer the declaration of taxpayer will be counted as definitive".

The added-value taxes of law do not have such this ordinance about the hearing of tax system about the taxpayer declaration despite the specification to the duty of submission the declaration by taxpayers in article 21.

About the tax audit limits, the above law has stated provisions in respect to any kind of tax in the related chapter that seems reasonable enough. For example, in the fourth chapter of second quarter about the tax of business income, the taxable income of this type of taxpayers in Article 94 is first stated and then in Article 95, counting the kinds of sufficient positive documents for recognizing their income has come.

About the law of value-added taxes in articles 18-21, the determination of audit limit to the tax affair organization to the extent was entrusted. This is more dominant in article 18, because the

taxpayers are ordered to present the required information of mentioned organization in an order that is determined and announced. Of course, this ordinance is in order of limit determination or scope of value-added taxes and so it is reasonable.

About the tax audit place however, the listed law has no clear ordinance but it is presumed from all of its articles including the above articles and the location of tax affairs office and the job place of taxpayer are as the intended location of law. This topic can be interpreted from the article of law of added-value taxes as well.

2.5. Right to Acquire the Necessary Explanations

According to this right, the taxpayers must have the right to receive the necessary explanations about the method of assessment and recognition of the tax from the tax authorities and about tax disputes resolve votes from the relevant authorities.

The last part of Article 237 of direct taxes of law obliges the signatories to declare the taxpayer from the details of the report that are the basis for diagnostic form of communication and give him any explanation in this regard, in the case of taxpayer inquiry from recognizing the method of accrued tax. As it was mentioned earlier, value-added taxes of law is silent in this area.

But the above law is quiet about the duty of tax conflict resolution councils in giving the necessary explanations to the taxpayers regarding the taken judgments. Merely, the article 248 of the mentioned law provides that the vote of tax conflict resolution council should comprise the acceptable and proved opinion rather than the protest of taxpayer. For sure, this ordinance is positive and is in interest of the taxpayer. This topic is ruling about the value-added tax because the article 33 of law of value-added tax rules the third chapter of fifth quarter of the law of direct taxes and is related to the tax conflict resolution reference to the topic taxes of this law. It should be noted that observing this common right between administrative and quasi-judicial authorities is the tax conflict resolution and therefore we do enough to review it here and prevent from restating it in the next paragraph about the tax conflict resolution authorities.

2.6. Right of Having a Tax Consultant

Basically, the tax is a specialized technical subject. Tax rules have also complexities and special rules that dominate special expertise require and experience on them. Taxpayers should have the right to use consultant and competent professionals' representation in the process of any negotiations and deal with the tax agency.

In Iran, the legal status of tax consultants in direct taxes of law is not enacted. From what is informed, the taxes affair agency of the country has this topic in the agenda and the parliament put a legal program in this area in the way of approval until this important matter in the article 28 of value-added taxes of law approved in 6.5.2008 in a general rule about all of the taxes and in relation to all tax authorities and offices and even all relevant government agencies. This article stipulates: "In order to promote the tax culture of taxpayers and presenting correct consulting services in tax affaires to the taxpayer based on the tax regulations and laws of the country as well as providing correct consulting services representation in tax affaires to the taxpayers based on the tax rules and laws of the country and their required representation services presentation in order to refer to the tax agencies and authorities, an institution called" Iranian tax official advisor society" was founded to operate in this regard with the acceptance of the competent members".

All relevant state authorities are ordered to cooperate with them after presenting a valid representation on behalf of Tax consultants of the Association in their legal obligations and in the limits of tax regulations.

2.7. The Right of Recording the Negotiations and Meetings

According to the tax laws of some countries including America, the taxpayers has the right of recording their negotiations and meetings with tax officials and agents and all negotiations, arguments and judgments between the parties recorded.

In Iran tax laws, including the law of direct taxes, value-added taxes of law and customs acts of law such a right are not predicted for the taxpayer.

2.8. Right to Review Tax Time

Basically, reviewing the time is based on the public discipline. Reviewing the tax time for taxpayers and especially their economic activity regulation are very important. Thus, in most of the countries in the steps of recognition and received the taxes, this kind of time review is predicted to the interest of taxpayers and can be counted as a right for taxpayer. However, tax laws of countries are granted exceptions to the right of taxpayers in case of violation. In Iran's direct taxes of law, this type of time review is only forecasted in the tax detection phase.

In accordance with Article 157 of the mentioned law: "rather than the taxpayers of income tax that have declined from submission of the declaration in the deadline or basically according to the provisions of this law are not ordered to submit the declaration due to the date of payment, the tax time review is five years from and due date of tax payment and after mentioned five years, the belong tax is not claimable. Unless the taxpayer's income determined and the tax diagnosis form export during this time and at most within three months after expiration of mentioned five years the diagnosis form export and communicate to the taxpayer".

Although the term of tax reviews time is used in this Article, no exporting and communication the diagnosis form, there is no doubt that it means review the time of tax diagnosis according to the recent part of mentioned article that announce its condition.

3. THE RIGHTS OF TAX PAYERS IN THE TAX CONFLICT RESOLUTION AUTHORITIES

Considering that most of the countries including Iran hearing the tax conflicts are in the jurisdiction of specific authorities or in term of quasi-judicial that is normally dependent to the executive branch and has special hearing rules. So, observing the right of taxpayers in these authorities will lead to a fair hearing as necessary. Therefore, in this paragraph, the form of tax payers' right is discussed in this connection.

3.1. Right to Protest and Complain

This right can be considered as the most important right of taxpayer. According to that, the taxpayer should have the right to refer, protest and complain about the tax recognition and collection to the independent judicial authority or administration.

In accordance with Article 244 of direct taxes of law, the main reference to hear all tax conflicts are tax conflict board (formerly was called the Tax Commission). Each conflict board is composed of three people. One person is representative of state tax affair organization, one person is working or retired judge by the introduction of the head of judiciary and one representative is from the chamber of commerce and industry and assistant or community room or certified public accountants or professional associations or trade formations or city Islamic council by the choice of taxpayer. The mentioned right can be known as the justice right or the right to access the justice authorities that today are among the principles of fair trial and accordingly should be independent and impartial.

According to the note 2 of mentioned article: “managing the tax conflict resolution board affair and responsibility of board sessions formation is the responsibility of state tax affair organization and fees of conflict resolution board members will be payable based on the regulation and according to the suggestion of state tax affair organization will be approved by property and economic affair minister from the credit source that is predicted because of this purpose in the budget of mentioned organization.” So, it can be said that the mentioned board bodies are related to the tax system in terms of structure and budget.

This dependency of tax conflict resolution authorities to the tax device put to question their required feature but presence of an election by taxpayer representative and one representative of judiciary branch in its combination eliminate its objection. In fact, this authority is somewhat independent in terms of members’ combination and can hear the conflicts impartial. In addition, according to Article 33 of value-added taxes of law, the law of direct taxes in the contest to the taxes identifies and collection includes this kind of tax.

3.2. Right of Access to Information and Documents of Tax File

This right is stated in relationship with tax justice and hearing the claims and resolute the tax conflicts. According to the mentioned right, the taxpayers should have the right to access the documents of their tax file before the hearing start of the mentioned authorities for providing the defense from themselves until they defend from their right truly.

The law of direct taxes in third chapter of fifth quarterly is silent about the conflict resolution authorities. But, the recent part of article 237 that stated before report the necessary explanations to the taxpayer in the case of his inquiry and can provide this possibility for taxpayer to the extent by clearing the clarity of tax diagnosis form and the necessity of announcing the details of its export baseline.

So, it seems not enough and clear and it is necessary in the related tax conflict resolution chapter. According to Article 33 of value-added taxes of law that stated the provisions of the mentioned chapter to this type of taxes, it can be said that this is true in the case of value-added taxes of law taxpayer.

3.3. The Right of Hearing Descriptions or the Defend Right

Base on this right that it is better to named it as a defense right, the taxpayers should have enough time to present their explanations before making decision of tax conflict resolution authorities in tax claim and these explanations or replies should be heard by the mentioned authority.

Today, in the light of fair justice principal, it is said that the taxpayer in tax justice not only should have the right to defend himself but also should benefit from the equal and corresponding tax device defend rights that are called correspondence principal.

The right of presenting or denying the reasons of other side, the right to assistance a lawyer can be outlined as the taxpayer rights of defense. Given that the procedure in the Iranian taxes of law are very brief and slight, the tax is merely foreseen in Article 246 to 248 of direct taxes of law, nothing of these rights is mentioned explicitly.

Under Article 246, the time of hearing of tax conflict resolution board about each file should be communicated to them in order of presence of taxpayer or his representative and dispatched of tax administration representative. This provision could provide the field of hearing the description and defenses of taxpayer and introduction of representative on behalf of taxpayers (which can be a lawyer).

But footnote of this article undermine this right that announces the absence of the taxpayer or taxpayer representative as well as the tax administration representative as the obstacles of board hearing and pronouncement.

It is worth to note that the right to having a lawyer in quasi-judicial authorities has been approved by the Guardian Council. The mentioned council, in a letter dated in 19.5.1994 No. 6617 in response to the enquiry of chairman commission of Article 90 of constitution of the parliament about the inclusion circle of principal 35 of the constitution, has responded to the disciplinary courts of head offices and other quasi-judicial authorities that: " the issue was discussed at the formal meeting of Guardian Council and the opinion of council will be announced as follows:

In terms of the principle 35th of the constitution, it does not negate the right to choose a lawyer in non-courts; therefore, the mentioned principal does not need interpretation.

Based on the above theory, the right to choose a stipulated lawyer in principle 35 of the constitution had released and includes all judicial and quasi-judicial authorities. So, the above principle in this context has such a directness that does not require interpretation.

According to the above principle, litigants have the right to choose a lawyer in their own will in all courts. If they do not have the ability to choose a lawyer, a facility of choosing a lawyer should be provided for them.

3.4. The Right of Research or Reconsider Appeal

This right is also mentioned in connection with tax conflict resolution authorities and tax claims. Accordingly, the taxpayers should have the right to appeal the research or reconsider the decisions of the mentioned authorities in independence administrative and reconsider authority and final judicial authority. Today, in the light of the principle of fair trial, it is said that this reconsider appealing must have substantive aspect.

In the law of direct taxes according to the 2001 approved amendment, the substantive amendment in administrative reference in tax claims has been removed and this reconsidering has the shaping aspect. Based on the Article 251 of mentioned law, "the taxpayer or the tax affair administration can appeal the complaints, vote defects and hearing renewal within one month of the date of definite vote notification of the tax conflict resolution board according to the non-compliance of regulations or hearing failure with presenting sufficient reasons to the tax supreme council".

Article 33 of the value-added taxes of law during specification on the flow of tax related to the tax conflict resolution authority, the subject of the third chapter of fifth quarterly of direct taxes of law about the value-added taxes specify at the end surprisingly that the provisions of article 251 of direct taxes of law approved in 16.2.2002 would not be applied to this law. So, the right of involved shaping administrative reconsidering about resolving the value-added tax conflicts is rejected that is without reason, objectionable and critical.

In addition, pursuant to paragraph 2 of Article 13 of the 2006 approved administrative fair court of Justice and the last part of Article 257 of direct taxes law of taxpayer can complain and protest from the vote of tax conflict resolution board exclusively in terms of violations from the laws and regulations (the shaping aspect) to the mentioned court.

The way of listed protests, according to unity vote of Iran's general board, administrative fair documentary to the Article 173 of the constitution is allocated to the taxpayer.

The amendment of 2001 approved taxes of law according to the elimination of administrative substantive reconsidering from the votes of taxes conflict resolution board in repeated 251 article predict a kind of remarkable rehearing that can eliminate the problem of lack of foresight of administrative substantive rehearing partially.

CONCLUSION

Defending from the right of citizens toward the government and create a solution to guarantee it from the main occupations of intellectuals of law and defend the citizens right toward the government and create a solution to guarantee it from the issues that is located from the most conflicts between citizens and state and judge about the happened conflicts in this case which is from the important and involved issues in administrative rights. What is certain is the theoretical principles and approach to the issue of taxation in different societies influenced by cultural, religious, ideological and historical conditions prevailing in those societies.

Basically, the tax is as the first and most important source of public revenues and plays an important role in providing public spending and has great significance and position for the government in this regard. Accordingly, in tax law of all countries including Iran, special rights and authorities are been granted to them what is called "tax authority" in order for the tax device to be able to do its duties and responsibilities in this case truly. Nevertheless, participation and cooperation attraction of taxpayers are emphasized prior to using this powers and authorities and the Iran taxes law is not an exception. Reviewing and explaining the topic truly show that the tax is accounted from the symbols of state sovereignty and it is blended with its power and survival continuity.

In general, the tax is the symbol of state sovereignty and given the important role that plays as the first and most important source of public revenue to meet public expenditure need has a very significant and special place for the government. So, in all the countries, some special rights and powers are allocated to them that are called "tax authority" in order for the tax system to be able to do its duties in relationship with tax and provides the sums that are necessary for public spending providing and in fact in order of saving and continuity of the government.

Anyway, the tax device in Iran' tax right have special powers and authorities that seem they are favorable and sufficient. But, their correct, accurate, fair and justice execution especially with observing the right of taxpayer is more important. So, more accurate explanation of these public power scores as well as the right of taxpayer toward their actions is recommended.

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