

Exercising the right to tax inspection between the privileges of the tax administration and the rights of the taxpayer in Algerian law

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Abstract---The tax administration establishes the tax based on determining the tax base for the taxpayer, and the law has enabled it to carry out a set of investigative procedures to collect evidential proof to confront the taxpayer in case they contest the administration's assessment. Among these procedures is the right to access, which allows tax administration officials to verify the accuracy of the information declared by the taxpayer and its consistency with their financial obligations. The tax right of access is considered one of the privileges of public authority used by the administration; however, it is obligated to uphold the rights of the taxpayer, or it will be subject to judicial oversight. Has the legislator organized this right in a way that preserves the rights of both parties: the tax administration and the taxpayer?

Keywords---tax verification procedures, tax access rights, administrative judicial oversight, privileges of the tax administration.

Introduction

There is no doubt that taxes is one of the most important resources that the state relies on to implement its policies, as it support the public treasury with large sums that can make a difference in the country's economic growth.

Effective individual compliance with tax compliance depends on the level of awareness among taxpayers. Tax collection is fraught with problems such as tax evasion, fraud, and manipulation of taxpayers' statements. Taxpayers lack a sense of responsibility, often due to their lack of awareness of

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the importance of taxation in improving the lives of the entire community in various areas, including services, facilities, and welfare, in addition to strengthening the national economy.

Algerian tax law has enabled tax administration to combat fraud and tax evasion. This includes a set of powers and rights that ensure the effectiveness of this oversight. Among these rights is the right to access tax information.

The right to access tax information is represented by examining the documents and papers of the taxpayer, with the aim of proving the accuracy of the information and elements contained in the declarations submitted by the taxpayer, and whether they are consistent with the total profits and income generated by the commercial activity he practices. In exchange for this right, the law has restricted the Tax Administration to a set of procedures to preserve the rights of taxpayers, the most important of which is maintaining professional secrecy.

Through the above, we will address the following problem: What measures has the legislator adopted to balance the right to access tax returns as a privilege exercised by the administration and the rights of taxpayers in Algerian tax laws?

To answer the problem, we use the inductive approach to review the content of legal texts and analyze their content to arrive at conclusions and proposals regarding this topic.

We divide this study into two axes: the first is devoted to the legal regulation of the right to access tax information, and the second is devoted to guarantees for the taxpayer.

1. The Legal Regulation of the Right to Access Taxes

To define the concept of the right to access tax information, it is necessary to address its definition and distinguish it from some similar systems. We will attempt to give a linguistic and jurisprudential description of the right to access tax information before defining it legally so that everyone may grasp what it means.

1/1/ the conceptual framework of the right to access taxes

Abdul Majeed Zallani defined the right as: A power recognized by law for a person who has a proven value or to whom he is entitled, directly or indirectly, as a privilege in relation to others. Its extent and nature are determined by the type of social relationship expressed or the type of right.¹

As for the jurisprudential definition of the right to access tax information "Right of communication" is: "The recognized right of the administration to obtain information from others to verify the seriousness of their statements."²

The right to tax inspection is also defined as the legal authority granted by the legislator to tax department officials to inspect all books, documents, papers and records of the taxpayer, whether a natural or legal person or a private government entity.³

Legislation usually does not address definitions and concepts, leaving that to jurisprudence. However, we find that the Algerian legislator has referred to the right to tax access in Article 45 of the Tax Procedures Code, which states the following: "The right to tax access allows tax administration employees, in order to establish and monitor the tax base, to examine the documents and information stipulated in the articles mentioned below."⁴

According to the article, the Algerian lawmaker gave tax administration staff the power to view tax returns so they could conduct tax control and establish the tax base in compliance with the established legislative requirements and protocols.

1/2/ Differentiating the right to obtain tax information from certain comparable legislative frameworks

Employees of the tax authority use a set of powers provided by the Tax Procedures Law to accomplish effective and efficient oversight. In addition to the right of access, these powers are embodied in

various supervision mechanisms, such as the right to inspect and the right to ask for explanations and explanations. The right to customs access is likewise extended to the Customs Administration. As a result, we will quickly go over how these systems differ from the right to tax access and how much ambiguity needs to be eliminated.

Distinguishing the right to access tax from the right to assistance

The regionally competent court in the tax district grants the right of examination by the tax administration. The court gives agents permission to use surveillance in order to find, collect, and confiscate any records and papers that support the taxpayer's transactions. The inspection's goal is to confirm that the taxpayer's declaration is accurate. Both processes are comparable in that they are regarded as tax audit procedures, which allow for the determination of the accuracy of income-related data and information. Their locations, however, are different. While the right of access occurs at the tax administration headquarters, inspection necessitates that tax collection agents visit the taxpayer's place of employment and examine the documents there.⁵

Distinguishing the right to access tax information from the right to request clarifications and justifications.

The power to request clarifications and justifications, or that the taxpayer supply it with information regarding the points of uncertainty and doubt, is an additional advantage that the Tax Administration possesses in addition to the two previously granted privileges. This procedure is conducted either orally or in writing since it effectively captures the communication between the taxpayer and the Tax Administration.⁶ This method is no different from its predecessors in that it aims to determine the tax base and impose control over taxpayers, while it differs from them in that it is implemented after the previous control methods have been exhausted.

Distinguishing between the right of tax access and the right of customs access

The right of customs inspection is a privilege granted to the customs administration, unlike tax inspection, which is exercised by the tax administration. The legislator has specified, through Articles 14 and 15 of the Tax Procedures Law, the controls for exercising the right of customs inspection.⁷

This right allows customs officials in various Algerian administrations to access all documents relevant to their activities without any objection, in order to ensure greater effectiveness in the field of post-clearance control. In return, the Customs Administration is committed to the same principle in the field of exchanging information with other government agencies and departments.⁸

Customs officers, by exercising this right, monitor and inspect goods, whether they are licensed for transport or are susceptible to fraud. Customs officers may also enter a residence, provided that they are accompanied by judicial police officers.⁹

2. The authority responsible for exercising the right to tax inspection

The legislator has entrusted the task of overseeing tax matters to a specialized authority, which is the tax administration. It is defined as: "that administrative body responsible for implementing laws and ensuring their proper application to protect the rights of the state on one hand and the rights of taxpayers on the other, whether they are individuals or institutions. It is also responsible for issuing tax instructions and legislation that elevate the tax system to the highest levels of perfection and precision. At the same time, it is the entity entrusted with putting tax policy into practical application, ensuring the necessary means for its success, and achieving its tax directives to assist the state in achieving its goals."¹⁰

2/1/ The administrative structures specialized in the tax inspection process

The tax administration relies on a set of structures in carrying out its tasks, which are represented by:

A. External control departments: which are composed of

A.1 Regional departments for research and reviews

- A.2 Department for tax material investigation
- A.3 Department for research and interventions
- B. External control directorates: which are composed of
 - B.1 Sub-directorate for tax research and investigations
 - B.2 Directorate of tax information and documentation

2/2/ Human resources responsible for exercising the right to tax review

The tax inspector, who is defined as "an employee who works for the tax administration and has the rank of inspector or higher, who carries out all verification operations on the spot, i.e. within the offices of taxpayers, including contractors, institutions, merchants, and other taxpayers who have a tax file with the tax administration and information available to the tax administration," represents human resources in exercising the right to have a tax inspection."¹¹ The question that arises here is what is the legal status of the tax administration assistant? Does he or she have judicial police status?

The tax inspector has the status of a judicial police officer when exercising the right to review since the legislator has granted them powers and rights that are regarded as the privileges of the public authority. "Employees and agents of public administrations and departments shall exercise some of the powers of judicial police entrusted to them by virtue of special laws, in accordance with the conditions and within the limits set forth in those laws," according to Article 27 of the Code of Criminal Procedure, which is what a jurisprudential opinion has adopted.

They shall be subject, in carrying out the judicial control duties assigned to them, to the provisions of Article Thirteen of this Law.¹² By referring to the laws related to taxes, especially the Tax Procedures Law, we find that the Algerian legislator did not declare that the tax inspector has this capacity.

3. The Scope of exercising the right to access tax information

Being aware of all the information and going over all the documents that could be used to help determine the tax base and establish control is part of the process. Public administrations, particularly those that interact with individuals on a regular basis to keep them updated on various elements of their financial lives, may own these papers. Information about the existence of numerous tax evaders can also be found in financial institutions, particularly banking institutions. Third parties and taxpayers may also review papers and information.

3/1/ Right to access information from official authorities

Official bodies include all public administrations, bodies, and financial institutions approved by the state that carry out disbursement operations.

A_The right to access information from public administrations, bodies and institutions

Through Article 46 of the Tax Procedures Code, the Algerian legislator has designated the public administrations, entities, and institutions that are able to access information without being able to use professional secrecy. "State administrations, states, municipalities, private institutions, and institutions under the administrative authority's control may not, under any circumstances, invoke professional secrecy before financial administration agents who request access to the service documents in their possession," the first paragraph reads.

The documents that can be inspected under Articles 46 to 50 of the Tax Procedures Code have been determined by the legislator. We will simply give a few instances, such as the contracts listed in Article 58 of the Registration Law, the list of those covered by unemployment insurance, and the medical records from social security organizations that are presented to the Tax Authority each year. Because of their significance, these organizations must save all of the records that the Tax Administration examines in order to establish the tax base. The employee will be subject to a personal penalty, which is a

monetary fee ranging from 5,000 to 50,000 DZD, as specified in Articles 62 and 63 of the Tax Procedures Law, if they fail to submit the necessary documentation.

3/2/ Right to Information in Financial Institutions

Algerian law requires financial institutions, primarily banks, to provide information to the state's administrative authorities, and thus, professional secrecy cannot be invoked against them. Here, the protection of the public interest takes precedence over the preservation of private interests and allows individuals to evade taxes and launder money.

Among the information that can be accessed at these institutions are bank account cards, financial institution accounts, insurance contracts, etc.

Financial institutions are also obligated to provide the customs administration with all required documents, as well as to submit notifications of account openings, closures, or changes, and to send monthly statements from banks to the regionally competent tax director regarding payment vouchers for clients, among other data they are required to provide.

The legislator has imposed penalties for failing to send notifications in accordance with Article 51 of the Tax Procedures Law, which consist of financial fines.

3/3 Right of Access by Third Parties

Access can be granted to third parties, which are not specifically defined in the tax procedures law, including brokers' books as stated in Article 58 of the tax procedures law, and the right of access through the registration authorities as stated in Article 59 of the tax procedures law.

From the above, it is noted that the legislator has expanded the scope of entities that the tax administration can contact in order to determine the tax base and verify the declarations of the taxpayer, and these entities cannot refuse or invoke professional secrecy; otherwise, they would be subject to penalties.

4. Taxpayer Guarantees

The guarantees of the taxpayer are represented in the restrictions placed on the exercise of this right by the tax administration and the right of appeal granted to the taxpayer. These guarantees are essential to set limits on the actions of the administration and to prevent it from abusing the privileges granted to it.

4/1 Restrictions on the Tax Authority's right to access tax information

So that the Tax Administration does not abuse its right to access tax information, the legislator has restricted its exercise of the right to access tax information in order to protect the taxpayer. The restrictions are:

4/1/1/ Commitment to professional confidentiality

In order to protect people's dignity and the sanctity of their private life, the Constitution and legislation both guarantee respect for their right to privacy. On the other hand, it is a responsibility placed on those who are legally obligated to follow it. Agents must be trusted since, as part of their job, they are aware of information about the person they are charging and their personal lives.

Many complicated concerns arise when professional discretion is maintained in financial matters. In many situations, collective rights may be lost if this concept is strictly followed in order to protect individual rights. Thus, the Algerian lawmaker has tried to control the matter in order to strike a compromise between the rights of taxpayers and administrative authorities' access to numerous secrets.

Any information or topic that a professional learns while doing his or her job or being entrusted with it and whose revelation would be detrimental to its owner is considered a professional secret.⁷¹³

Therefore, within the scope of exercising the right to access tax information, professional secrecy is defined as the obligation of tax service employees to keep confidential any information they become aware of in the course of performing their duties, under penalty of being subject to the penalties stipulated in Article 301 of the Algerian Penal Code.

The legislator has included in Articles 65 to 68 of the Tax Procedures Code exceptions to the obligation of professional secrecy, and employees are not subject to penalties if they inform others of them. We will mention some of them as examples:

_ Notifying the appeal committees, which are informed of all useful information, including comparison elements derived from the statements of other taxpayers. These committees are specified in Article 81 bis of the same law.

The Algerian legislator also excluded the exchange of information with the financial administrations of countries that have concluded mutual cooperation agreements in the field of taxes.

_ The assistants are not bound by professional secrecy towards the investigating judge when filing a complaint against a debtor, nor towards the employees assigned the duties of state representatives to the Organization of Certified Accountants and Chartered Accountants.

Article 69 stipulates that tax administration officials may provide information in their possession in the event of a dispute regarding the assessment of the turnover achieved by the taxpayer, which would clarify and demonstrate the importance of what the taxpayer is doing.

4/1/2/ Rights and obligations prior to exercising the right to access

In addition to maintaining professional confidentiality, administrative staff are required to adhere to pre-review procedures, including compliance with rules of jurisdiction, prior notification, preparation time, and the use of a consultant.

As for the rules of jurisdiction, the legislator has organized them to control the scope of work of each employee, whether related to personal jurisdiction stipulated in Article 21/2 of the Tax Procedures Law. The right to access, according to the article, is assigned to an assistant whose rank is not less than that of an inspector. This requires high experience so that errors committed during the performance of their duties are reduced, or in terms of time or place. It is a matter of public order and these rules result in the administration not being permitted to violate them, and it does not have the right to agree with individuals to violate them. The appellant and the judge may raise a plea of lack of jurisdiction on his own initiative at any stage of the dispute.

The legislator also obligated the Tax Administration to inform the taxpayer before taking any investigative action. This is to guarantee the right to information and preparation for auditing, as stipulated in Article 20/4 of the Tax Procedures Law. The law also gives the taxpayer a period of time to prepare his defense and benefit from the assistance of a consultant.

4/1/3/ The taxpayer's guarantees during the re-evaluation phase.

The right to access information determines the tax base. Therefore, the legislator has provided strong guarantees, including notification of the assessment and the right to respond. The assessment notification consists of informing the taxpayer of the results even if the tax administration has not made any correction or reassessment of the taxpayer's tax situation. A detailed and reasoned assessment must be provided to allow the taxpayer to reconfigure the basis for imposing the tax, indicating the reasons and methods of assessment used.

The right to respond, also known as the objection procedure, is an oral or written discussion between the investigator and the taxpayer. This discussion allows the taxpayer to inquire about the progress of the tax audit process, on the one hand, and to learn about any amendments made, on the other. This builds trust between the taxpayer and the administration, which will reduce the frequency of future disputes.

The taxpayer has the right to respond to all the results contained in the correction notice addressed to him, and he may respond by accepting the results, or rejecting part or all of them. One of the most important guarantees is the finality of the procedures.

4/2/ The right of the taxpayer to file an appeal before the judiciary

The right to appeal before the judiciary is guaranteed by a constitutional provision, as Article 168 of the constitutional amendment of 2020 states that "the judiciary shall consider appeals against the decisions of the administrative authority."¹⁴

Based on the constitutional text, the taxpayer in Algerian legislation has the right to appeal the results reached by the tax administration, and he has the right to review all the documents and papers on which the administration relied, especially in the event of a violation of the principle of legality.

Administrative errors may arise from a failure to follow legal restrictions when performing obligations, such as going beyond the bounds of authority, failing to give notice, or using the right to access information after the legally allotted time. A tax dispute may result from a breach of the rules of legality, which inevitably renders legal activities illegal when processes and formalities are not followed.

A disagreement that emerges between the taxpayer and the tax administration about the legality of the implementation of tax legislation in the context of imposing a particular tax or fee is known as a tax dispute."¹⁵

Under particular procedures, these conflicts are handled before the administrative judiciary. Another definition of a tax dispute is: "The taxpayer demonstrating that the tax levied against him or the methods used to collect it are inaccurate, or that he is in a financial position that prevents him from paying the tax due to the public treasury."¹⁶

The Algerian legislator has assigned the consideration of tax disputes to the administrative judiciary, based on the provisions of the articles of the Code of Civil and Administrative Procedure, particularly Articles 800 and following,¹⁷ and the provisions of the Tax Procedures Law and the Finance Law. This choice is a confirmation by the legislator of the role of the administrative judiciary in considering tax disputes to protect the rights of taxpayers.

Conclusion

To sum up this crucial subject the right to tax access which is regarded as a crucial instrument in the administration's arsenal to counteract tax evasion and declaration manipulation, lawmakers must enact sufficient legislation to fairly safeguard both private and public interests. We can make some inferences and offer some recommendations regarding the subject from the above:

Although the law provides a guarantee for the taxpayer and frames the tax access process, the profusion of tax-related legislation has created a gulf between the taxpayer and the tax administration. Any individual or organization that denies the administration's representatives the opportunity to exercise their right of access is held accountable by the lawmaker.

Upholding professional confidentiality is a legal privilege, as long as it does not interfere with the tax administration's ability to carry out its duties.

The administrative judiciary is a powerful safeguard that equally upholds the public interest and taxpayer rights. Any actions taken by the customs administration that violate the taxpayer's rights are void under the legality principle.

We recommend the following to improve the access process's efficiency and benefits: In order for taxpayers to interact with them and submit their statements without being deceived, laws and procedures must be made simpler.

the necessity of conducting awareness and education campaigns on the importance of filing taxes and the correct procedure to avoid taxpayers committing immoral errors that could have legal ramifications. Bringing the tax administration closer to the public for knowledge increases the confidence betw

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