

Defenses in tax evasion

First

The crime did not occur and was not conceived as stated in the investigations, due to the Tax Authority's violation of the substantive law in the legislative evidentiary rules for proving the incident established to impose and accrue the tax debt subject to evasion. And suspending all the provisions and provisions of the Procedural Law No. 206 of 2020 and its amendments, regulations, decisions, books and executive instructions regarding the assessment and collection of the tax alleged evasion?

First: Article No. (2) of Law No. 67 of 2016 regarding the issuance of the Value Added Tax Law stipulates that " the tax shall be imposed on goods and services, including the goods and services stipulated in the table attached to this law, whether local or imported, at all stages of their circulation, except for what is excluded by a special provision."

Article (5) of the aforementioned law stipulates that "the tax shall be payable upon the fact of selling the commodity or performing the service by the taxpayers at all stages of its circulation in accordance with the provisions of this law and regardless of the means of sale, performance or circulation, including electronic means.

Article (1) also stipulates definitions of the same law to define sale as "sale: transfer of ownership of the commodity or performance of the service from the seller, even if he is an importer, to the buyer:

The aforementioned article also defines three forms and methods of proof of sale, as it stipulates:

The following shall be deemed to be a sale under this Law, whichever is earlier:

- 1- Issuing the invoice.
- 2- Delivery of the commodity or performance of the service.
- 3 - Payment of the price of the commodity or the consideration of the service, whether in whole, part, term or other forms of payment of the price in accordance with the different terms of payment.

These methods are special methods contained in special texts within a special law and therefore they restrict the general texts and rules in proving the fact of sale as a material fact, and since the lawsuit papers came without any of these images and thus the fact of selling the goods assigned to the defendant is not proven, which does not verify the fact of imposing and entitlement to tax, which is imposed as indicated in the text of Article (5) on the realization of the sale incident, which has become unrealized.

This cuts off the Tax Authority's violation of Substantive Law No. 67 of 2016 on the imposition of value-added tax due to the failure to achieve the incident establishing the imposition and entitlement of the tax in question.

Second: Disabling all chapters, texts and provisions of the Tax Procedures Law No. 206 of 2020 on unified tax procedures.

Law No. 206 of 2020 on Unified Tax Procedures, published in the Official Gazette No. 43 (bis c) was issued on October 19, 2020 and stipulated in the first article of the articles of issuance that "its provisions shall apply regarding the procedures for linking and collecting value-added tax." This is the way and tool to put the substantive law into practice, this law, which contains a set of procedures and rules governing the imposition and collection of value-added tax, its rules are related to public order, and the omission of these procedures entails nullity and the court rules on its own without the need for a text or request. These procedures do not fall within the jurisdiction of the Criminal Court, which are bound in proving the path set by the legislator.

This legislation, which consists of ten full chapters, did not enter the Tax Authority while it was in the process of imposing the tax in question and demanding its collection from any chapter, but rather deliberately disrupted the entire law referred to, which requires refraining from application and eliminating the invalidity and illegality of the tax claimed as it is outside the limits of the law.

Second

The lack of basis and scope of criminalization represented in (tax) as the infringed right as a presumptive condition prior to the validity of the attribution, and the crime is not achieved in its material and moral elements except with its availability:

The defendant is assigned according to the assignment order that she evaded the payment of value-added tax, this accusation in order for the attribution to be correct and upright, there must be evidence that it is necessary to pay the debt in question, which is devoid of papers.

This is because the papers, investigations and the list of evidence are devoid of evidence of:

1- The correct and conclusive debt bond considered as a law represented in the tax assessment form and its value form (3 payment) defined in Article (1) and (45) of the Tax Procedures Law, and Article (52) of its Executive Regulations.

2- Tax entitlement definitively, due to the lack of evidence of the availability of one of the cases of obligation to pay listed exclusively in Articles (31) (56) (59) of the Value Added Tax Law, Article (41) of its Executive Bylaws, Article (45) of the Tax Procedures Law and Article (52) of its Executive Regulations.

3- The defendant's knowledge of the debt through his notification of the bond pursuant to Articles (3 item c) (43) (45) of Law No. 206 of 2020 and Articles (50, 52) of its executive regulations.

4- Supporting the defendant's claim for debt as a witness to the realization of the act of non-performance pursuant to Articles (45 to 49) of Law No. 206 of 2020 and Articles 52 to 55 of the Executive Regulations.

All this is in the following detail:

The basis and scope of this crime is the right infringed, which is (tax) as a presumptive condition prior to the validity of the claim of evasion and the attribution of the accusation was based on a non-existent and collapsed basis, where does he have the decision?

This basis is the field on which the crime is based, and there is no room for searching for the material or moral element in the absence of this basis and field, and in order for us to realize that the absence of tax, we must identify the nature, nature and form of tax as follows:

The nature and nature of the tax:

The tax is a financial obligation required by the state forcibly from individuals without benefiting them privately, and it is in this description, as the Constitutional Court, the Court of Cassation, the administrative courts and the decisions of the tax committees said that it is a "legal assignment", meaning that the tax is a "legal fact" and the legal incident focuses on "known legal actions" These known legal actions "are organized by explicit legal rules." "These rules in the field of tax legislation and procedures are considered "jus cogens" legal rules related to "public order" whose omission entails nullity and is ruled by the court on its own without the need for a request or text and the judiciary refrains from applying if the Egyptian Tax Authority exceeds the limit of those rules, and as a result, two very important rulings were issued by the Supreme Constitutional Court.

First: The collection of funds is not a goal in itself protected by the constitution, even if it is with the aim of achieving a public interest and a legitimate goal represented in obtaining the public treasury to obtain its financial resources, but the legislator aimed to impose taxes to preserve "the right of the public treasury to collect funds - and the right of those who are committed to collect them and collect them within the limits of the law."

Second: A tax that lacks formal templates and substantive grounds is not payable.

The image and legal form that reflects the tax presence and the absence of papers:

Based on the foregoing, and since the Tax Procedures Law No. 206 of 2020 has defined tax as any financial obligation of any kind that the Egyptian Tax Authority attaches and collects. From these texts combined, the Egyptian Tax Authority must act legally in accordance with the system of explicit legal rules that end up with this act and in accordance with the legal rules to link the tax, and the link means the final determination of the tax debt and proven under a debt bond represented in the linking model

This linkage made the legislator a reflection and a tangible material image that can be easily identified, represented in the legal linkage model and the tax debt bond?

Whereas Article No. (45) of the aforementioned law stipulates that " the collection of unpaid tax, delay and additional tax due under the tax law shall be through enforceable claims issued in the name of those who are legally obliged to pay or supply them without prejudice to the right of recourse they may have against those who owe them, on the forms prepared for this purpose, which are issued by a decision of the Minister, and these claims shall be

sent by a recommended letter accompanied by With acknowledgment of receipt or by any electronic means that have legal authority in proof, or delivered at the workplace or mission according to a record signed by the financier, taxpayer or his representative.

Whereas, the Minister of Finance Decree No. 286 of 2021 regarding the executive regulations of the Unified Tax Procedures Law was issued, and Article (52) stipulates that "In the application of the provisions of Article (45) of the Law, the collection of unpaid tax, delay consideration, additional tax and other amounts shall be under enforceable claims on Form No. (3SADAD)

(The papers are devoid of the tax bond represented in Form No. (3) Payment Form Linkage)

Lack of taxation:

This form - the linking form - is issued in the name of the Ministry of Finance by the Egyptian Tax Authority, including the debtor's tax data in addition to the type of tax, period, value, reason for entitlement, additional tax, financial penalties and total indebtedness, which achieves with him the second element of the tax obligation by identifying "the reason for the final entitlement and the obligation to pay the tax in five legal cases contained exclusively in the text of Article 41 of the Executive Regulations of the Value Added Tax Law, which stipulates that in the application of the provisions of Articles (31), (56) and (59) of the Law, and Article (45) of the Tax Procedures Law (52) of its Executive Regulations, the tax shall be payable in the following cases:

First: From the submitted tax return.

Second: From the reality of notification, receipt and non-appeal.

Third: Based on approval of the decision of an internal committee after the appeal.

Fourth: Based on the decision of the tax appeal committee in the event of non-approval of the decision of the internal committee

Fifth: Based on the judgment of an enforceable court.

(The papers did not verify any of the five cases mentioned above)

What is the nature and nature of the bond of knowledge of the accused of the debt through his notification of the bond?

By virtue of reason, logic, custom and law, the debtor must be aware of the debt alleged to have been evaded, as it is not right and it is not correct to claim that any person evades paying a debt - regardless of the nature of this debt - unless he is aware of the indebtedness in which his financial disclosure is preoccupied and this knowledge is not in the tax field except through notification of the debt bond by the means of notification stipulated and where Article No. (3) of Law No. 206 of 2020 has been stipulated on: "Subject to the provisions of the Tax Law, this Law shall guarantee to the concerned parties the following rights:

(c) Notification of the tax measures taken in his regard in any form of notification provided for in this Law. Article (45) of the aforementioned law stipulates that " the collection of unpaid tax, delay and additional tax due under the tax law shall be through enforceable claims ... These claims shall be sent by a certified letter accompanied by acknowledgment of receipt or by any electronic means that have legal authority in proof, or they shall be delivered at the workplace or mission under a record signed by the financier, taxpayer or his representative.

(The papers are devoid of any of the aforementioned means of notification)

The defendant's claim for debt as evidence and witness to the fulfillment of the act of evasion and failure to perform

In order to infer evidence of non-performance in order to be correct with the basis of the accusation of evasion by refraining from performance, the tax administration must carry out the procedures of claim, collection, warning, warning and taking collection procedures. (Articles 45 to 49) Law No. 206 of 2020 on Tax Procedures and Articles 52 to 55 of the Executive Regulations, which was not achieved and therefore the incident establishing the claim and collection was not realized, and the tax administration was unable to take these measures and it is lacking in reality and law

(The case papers did not take any of these actions)

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