

# The Dual Nationality in the Iraqi Constitution and its Impact on the Increasing of the Tax Evasion (A Case Study)

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The citizenship/nationality is the legal framework that regulates individuals' relationship with the state . individuals who have a nationality of a country are allowed to get and obtain the rights granted by this country , and accept the commitments imposed on them . from these commitments , it is the the payment of tax due on them which are imposed according to the legislations and the applicable tax laws .this tax differs from someone to another and depends on a basis , that one of most important of it is the nationality which individuals enjoys .the research has reached a set of conclusions as the dual nationality ( multiple nationalities ) is the most important of it and which arouse many problems like political , social , and economic problems . also , it raises other problems such as the increasing of the tax evasion .this dual citizenship was after the adoption and approving the new Iraqi constitution in (2005 ) , and the most important recommendations were : the necessary of updating the Iraqi laws and instructions and make them compatible with the Iraqi constitution.

**Key words:** *Dual nationality, constitution, tax evasion.*

## Introduction

Taxes are the most important internal financing sources ; as it considers the most important resource for many countries as they are stable and permanent , unlike the petroleum revenues and loans which have an impact and related to the international markets prices and conditions of getting them . this led to pay the attention to taxes which has become one of the most important resources that cover the state expenditures and achieve the economic and social goals especially in directing the economic activities .individuals evade from the payment of the tax in what is called the tax evasion or avoiding it by using the Iraqi constitution or the loopholes in the legal texts that regulate imposing taxes on taxpayers through what is called by multi nationalities or what is known by ( dual nationality ).it considers one of the problems that has serious effects which represented by the increasing of the tax evasion which lead to a reduction in the tax revenues and depriving the state from an important percentage of revenues , thus reducing the state ability of practicing its role in providing its services well . also , the tax evasion leads to distributing the tax burden unfairly . it is certainly that some taxpayers suffer from more tax burdens which other taxpayers escaped from paying it . the prevalence of the tax evasion leads to the deficiency of the state revenues to meet its expenditures , so the state if forced to impose new taxes or raising the prices of the existing taxes ; which increases the unfair distributions of public burdens among tax payers . the research discussed its four topics as below:

**The First Topic:** The previous studies and the research methodology .

**The Second Topic:** Nationality and residence in the Iraqi income tax law .

**The Third Topic:** The lawful and the illegal income tax evasion .

### The First Topic

#### *The Research Methodology and the Previous Studies*

##### *First: The Research Methodology*

##### *The Research Problem*

The financial authority suffers from the problem of evading some taxpayers from paying the amounts due through using the Iraqi constitution and the loopholes in the tax legislations that regulate the payment of tax to avoid the incident that lead to imposing taxes or reducing it to the minimum which affects the tax revenues .

The research problem focused on the next question :

( does the dual nationality through the Iraqi constitutions and the tax legislations and laws of taxes that regulate the imposing of taxes lead to the increasing of the tax evasion ?)

### ***Research Importance***

The importance of the research embodied with the following matters:

- 1- highlighting methods and operations of the tax evasion that are performed by using the Iraqi constitution .
- 2- identifying the implications of the tax revenues because of the tax evasion .
- 3- being acknowledge of most of the legal clauses that prevent the dual nationalities and have not been updated to accommodate the constitution .

Aims of the research :

- 1- studying and analyzing the dual citizenship (multiple nationalities ) in the Iraqi constitution and the applied tax legislation and laws .
- 2- illustrating the implications of using the dual nationality by the taxpayer to avoid paying tax and its effects on the tax revenues .

### ***Research Hypothesis***

The research is based on the following hypothesis:

(using the dual citizenship (multiple nationalities ) by the taxpayers in the Iraqi constitution and the tax legislations leads to the increasing of the tax evasio )

Secondly : the previous studies

- 1- Abd 2013 : " the tax evasion and its effect on the economic development in Iraq ."

The study aimed to explaining the causes and the methods of evading taxpayers from paying the tax due in them whether by lawful methods or by illegal ways , with clarifying the proposed methods of addressing the phenomenon of the tax evasion and eliminating it . the study reached a set of conclusions ; which one of the most important of it was that the increasing of the tax evasion phenomenon effects on the economic development and its projects ,and thus it will be a loss in the state revenues . the most important recommendations were the necessity of grantinf the complete flexibility to apply the mechanisms of the Iraqi tax system in terms of increasing the state revenues to achieve the required economic and social development.

- 2- Sabri 2016 : " the phenomenon of the income tax evasion in Iraq "

The study aimed to illustrating the phenomenon of the income tax evasion in Iraq and to what extend the tax revenues affected by this phenomenon and the ways and methods adopted to reduce this phenomenon .the study reached a set of conclusions which one of the most important of them was that om=ne of the reasons of the tax evasion is the

government spending policy and its aspects that do not create enough persuasion among the taxpayers to pay the tax imposed on them ; because of the low level and quality of the provided public services to citizens . the most important recommendations were rationalizing the government spending and using it in services benefit to the good command ( the public interest ) to make the taxpayer feels that the public resources returns to him in a form of direct and indirect benefits and services .

3- Sahr 2018 : " the income tax evasion and the factors that causes it and the mechanisms of addressing it " .

The research aimed to highlighting the ways and methods are used by the income taxpayers to continue evading from the payment of the tax whether were by legal or illegal ways with clarifying the factors that lead to the continued the taxpayer's evading from paying the income tax in Iraq .one of the most important conclusions was its employees' weak feeling of belonging to the tax authority , especially among appraisers ; due to the imbalance of their salaries , and this make them subject to illegal stresses leading to the various forms of evasion .the most important recommendations are the necessity of improving the employees' income in the tax in away commensurate with the requirements of life according to the economic conditions , taking into consideration the annual inflation rates to prevent and keep him away from the administrative corruption .

4- Shabi 2018 : " the disputing of laws in the tax field " .

The social solidarity arises among a group of individuals who are politically subject to a specific country and they are linked to the state by a political and legal bond which is the nationality and it is called the political dependence .the nationality laws approved a number of rights and duties on citizens and may be the most prominent of these duties is the payment of the tax ; as citizen of any country are socially solidarity in the payment of the tax to finance the public expenditures , namely the social solidarity associated with the sovereignty imposed by the state over its citizens as it is the one that establish the right of the state to impose taxes . because of the inadequacy of the idea of the political dependence as a basis to impose taxes on citizens and foreigners , the idea of social dependency emerged as a relationship link individuals with the state ; because of their residence in it either regular or continuing residence even if the foreigners did not have its nationality . according to this , the state can impose the taxes on the foreign individuals' incomes and wealth whenever they are residing regularly in the country like and similar to its native citizens . based on this criterion , the country has the right to impose taxes.

## ***The Second Topic***

### ***The Taxpayer***

The taxpayer is the one who the law make him paying the tax amount compulsorily . the taxpayer may be an individual or a legal entity , also being a resident or non –resident , there are several ways and methods adopted by the country to make her citizens or foreigners paying the tax , and from these methods are (Al-Ali, 2009)

1- The principle of the political subordinating:

This principle is based on the necessity and obligatory of subjecting the citizens of the country to pay the tax wherever they are practicing their activities and applying this matter based on the nationality law that individual or the legal entity has it .the Iraqi nationality is granted to the Iraqi according to the constitution of 2005 article (18 ) which states:

The Iraqi nationality is a right for every Iraqi and it is the basis for his citizenship.

anyone was born to an Iraqi father or an Iraqi mother is considered an Iraqi citizen and this will be regulated according to the law.

It is permissible for Iraqi to have multiple nationalities and the one who hold a high sovereign or security position must relinquish or give up any other acquired nationality , and this regulated according to the law.

2- the principle of the economic dependence : (Sabri, 2016)

This principle is based on the basis of that the country which their individuals citizens earned their incomes on its territories , regardless of its type or source , has the right of subjecting them to pay the tax whether the income owner resides in its territory or not .once the income is achieved on the territory of the state , it will subject to the tax of the state .

### ***The Principle of the Social Dependence***

It is called the principle of residence , and it means subjecting individual to the tax of the state because of the individual correlation to the state either in the form of permanent or temporary residence within the state and once an individual resides in the territory of the state and earns money because of his work , so the state has the right to subject him to tax and be participated in the public burdens as long as he get benefit from the public services provided by the state based on this criterion, the state has the right to impose taxes on individuals who resides and existing in her territories for a period of time and the tax legislations differs concerning of determining amount of the duration that a person must be

stay in the territory of the state to be considered a resident of it, and thus becomes subjecting to its tax . (Ismail, 2001)

In Iraq, the resident was defined by the Iraqi income tax law No (113) of the year 1982 and its amendment in the first article 1 , clause (10 ) as follow : (Legislature, income tax law , 1982)

1- An Iraqi individual has lived in Iraq for a period of no less than four month in the year in which income gained , or if his residence outside Iraq is temporary and he has a permanent home in Iraq and a main place of work in it .

2- the Iraqi who lives outside Iraq who is working in official positions, socialist sector facilities , and retirees or who the government loaned his services to a legal entity outside Iraq if he is exempt from tax in his workplace.

3- the Arab citizens who work in Iraq whatever their duration of residence.

### ***The Non- Iraqi and Non-Arab Citizens Who***

Stayed at Iraq during the year of the achieving income for a total of no less than six month or a period of no less than four successive months.

The one who resides in Iraq , regardless of the duration of his residence if he works for a legal entity or he is a technical specialist and worked at an industrial project , has the right to exempt from taxes according to the law of developing and organizing the industrial investment.

Every legal entity founded under Iraqi or others law whose work , administration , or control in Iraq.

((about what discussed above individuals reside in Iraq are granted tax deductions ( allowances ) according to the law. The citizenship / nationality is considered the most important criterion for the foreign individuals citizens and as we presented it before, the Iraqi constitution allowed to get multiple nationalities which led to the tax evasion and this what will be discuss later. ))

### **The Third Topic**

#### ***The Tax Evasion***

The tax evasion is one of the main reasons that effect on the tax revenue . also , it is the evading of the taxpayer wholly or partially from the payment of the tax without transferring its burdens to other , which effects on the state revenues of taxes and lost its right.

The tax evasion is represented by the taxpayer's disapproval of his duty toward paying the tax imposed on him either by not giving the required information and data according to laws in accordance with or submitting misleading and incomplete data to the financial authorities /administrations . also , through reducing the tax revenues by various methods such as cheating , fraud to evade from the tax , or reducing its amount .this is done either by the taxpayer is trying to deny the reason / incident of the tax base , or to disclosure an amount less than the actual amount of the tax base (Ismail H. A.-K., 2018)

Forms of the tax evasion

1- illegal evasion (tax fraud).

It is the violation of the taxpayer to the legal provisions and texts through

cheating and fraud methods and the circumvention of the legal texts ; to not abiding by the payment of the tax , and these are violations punishable by the law ; as he does not exceed the regional borders and subject to the tax and administrative sovereignty of the state . (Yousri ( basri ) Al-Samrai, 2012).

2- The legal evasion (the tax avoidance ) :

It is the taxpayer's disposal of tax burdens totally or partially without violation or breach the provisions of the law . the taxpayer uses one of his constitutional rights considering that his freedom to perform any act or not is constitutionally guaranteed . the tax avoidance is performing without violating the legal system , but benefits from its insufficiency ; this is at both the internally and externally levels . the tax avoidance begins in the stage of formulating and drafting the income tax law when some legislators have special interests ; such as bank managers , merchants , or professionals on the pretext of involving the private sector in formulating the income tax law and they formulate its texts according to their interests . consequently , if the legislator missed or neglect a point in the legal texts , he gives them the opportunities of avoiding the tax and these are considered legal acts that will not be punished by the law (Al-Shafai , Principles of the tax accounting , 2006).

The evasion is legitimate in two cases:

The first case : the case of benefiting from the legal loopholes that are included in the tax legislation ; as individuals distribute their money on their heirs during their lifetime to avoid the inheritance tax that their heirs were subject to after their death . the tax –evader ( dodger ) in this case resorts to experts of the law and specialists to achieve their purpose of evasion (Al-Batric, 2005)

The second case : is about avoiding the incident of imposing taxes . in this case , the individuals refrain from doing the work that is subject to the tax like refraining from

purchasing commodities that they know that there is an indirect tax imposed on it, they will bear if they buy this commodity, or maybe he finds an activity is not subject to the tax. so he can practice it and invest his money in it such as agriculture and animal projects, etc. this is what is called the tax avoidance. (Sahr, 2018) the tax avoidance:

Taxes are a burden on the individual, so he resists it either by evading from it or transferring its burden to another person. although there are multiple definitions and different economists' opinions on defining and naming the tax avoidance, the following definition can give an illustrating explanation for this case. the tax avoidance is the act in which there is no offense in it; as the individuals avoid paying the tax or abiding by it without violating the provisions of tax legislations through avoiding the incident or reasons of imposing taxes or benefiting from some loopholes in the law. (Khalid Shahada, 2003). It also knows by the procedures individuals resort to them to avoid the payment according to the conditions and law procedures through exploiting some loopholes and gaps involved in the tax law texts, especially in the countries which do not have tax expertises. consequently, the tax system they that they have is easy to penetrate and its article can be manipulated (Draz, 2003)

In Iraq, the tax legislator depended on the criterion of the economic dependency with both branches, the source of income, and the region as a basis for imposing the tax. on the other hand, the Iraqi legislator uses two criteria which are the nationality and the citizenship to define and determine the cases of residence in Iraq. so the non-resident who living in Iraq, his income and collected profits in Iraq are subjected to the tax; as the law stipulate imposing a tax on the non-resident income that achieved in Iraq even if he did not receive it in Iraq (Al-Ali, 2009)

#### **The Fourth Topic** ***The Practical Side***

This chapter tackles with the practical side which is study cases explaining and indicating the (the tax evasion) processes through using the Iraqi constitution issued in (2005) and the tax legislations that regulate imposing tax on the taxpayer and its impacts on the tax revenues which are summarized with the following cases:

Firstly, a case study about (the income tax).

A taxpayer (x) has the Iraqi nationality and the (Jordanian) nationality possess a factory for preparing and supply the soft drinks materials knowing that he entered Iraq in 18/11/2019 and left it in 25/11/2019. the taxpayer has provided these following information to the tax authorities for the year 2019.

The taxpayer is married and his wife is a house wife and has 8 children under the age of (18).

His sales to the private sector reached only two hundred and eighty nine million , five hundred and forty thousand dinars.

The taxpayer submitted a request application in 15/1/2020 to merge the inputs with his wife.

Notice : the profits of importing is calculated according to the regulations of the ministry of finance edition in 8/1/2017 , with 20% from the value . the taxpayer demanded to be treated as a resident and according to the income tax law no. (113) in 1982 that amended ;as he is an Arab citizen , because the Iraqi is only considered a resident if he stayed in Iraq for a period of no less than four months . as for the Arab citizen , he is considered a resident regardless of the duration of his residence . we will explain the way of calculating the tax according to the table (1).

**Table 1:**

Detail	Resident	Non-resident
The amount of sales	289540000	289540000
Controls ratio	%20	%20
Import Profit	57908000	57908000
Subtracts from it		
Personal allowances *	4500000	0
**the children's allowances(8*200000)	1600000	0
Net taxable amount	51808000	57908000
Tax amount		
(%3*250000)	7500	7500
(%5*250000)	12500	12500
(%5*500000)	50000	50000
More than that 15%	7621200	8536200
Difference	915000	

From the case above , we see that the difference between the two cases is (915000) dinars . this is because of allowing the Iraqi to obtain more than one nationality in the Iraqi constitution of (2005 ) , all of this because of the following reasons :

Tax deductions ( allowances ):

Only the amount of four millions and five hundred thousand dinars is reduced in case of being the wife (a housewife) or if their income were added and with the approval of the financial authority, this is according to (the eighth chapter) article 12) of the amended income tax law no (113) in (1982).

Amount of two hundred thousand dinars was reduced for each child and applying the tax law, the clause and according to the article mentioned above

Secondly: the case study about (property tax - real estate tax):

A taxpayer (y) has (Iraqi) and (German) nationality, and we have these following information about him:

He has a residence home in Baghdad (Al-mansour) and the estimated amount for rent is only seven hundred and fifty thousand dinars monthly, he lives with his married children in it.

He has another residence home in Karada where he lives with his parents and the estimated value is only six hundred thousand dinars monthly.

He has stores prepared for storing the agricultural crops and the estimated value of the rent is only four hundred and fifty thousand dinars monthly.

He has a residential building in Baghdad (new Baghdad) the value of the rent per month is only one million dinars.

Note: the taxpayer has a second wife who lives in Germany, and that he comes to Iraq irregularly (from time to time). also, all of these properties were in the name of his wife who lives in Iraq; because he can not own the property according to (foreigner ownership law for property / real estate in Iraq no. (38) of (1961) article (8) which stipulate that (if the Iraqi acquired other non-Arab nationality or if his nationality withdrawn from him, he will treated as a foreigner when this law applied). after issuing the Iraqi constitution in (2005) which permit for the Iraqi to have more than one nationality, the taxpayer transferred all his properties in his name in 2017. at below, there is the calculation of the (property /real-estate tax) before and after transferring the property. (Legislature, The foreign ownership law, 1961)

**Table 2:**

	Detail	Annual estimate		Annual estimate	
		Before	Situation	After	Situation
1	House of residence (12*750000)	9000000	Non-Taxable	9000000	Non-Taxable
2	Karrada House 12*600000)(	7200000	Taxable	7200000	Non-Taxable
3	Agricultural warehouses (12*450000)	5400000	Non-Taxable	5400000	Non-Taxable
4	newly Baghdad building (12*1000000)	12000000	Taxable	12000000	Taxable
	tax base complex	19200000		12000000	
	<b>The consumption is subtracts 10%</b>	1920000		1200000	
	Net tax base	17280000		10800000	
	Tax calculation				Difference
	Base tax 10%	1728000		1080000	684000
	Additional Tax				
1	5%*500000)(	25000		25000	
2	(10%*500000)	50000		50000	
3	(15%*500000)	75000		75000	
4	More than that 20%	2810400		1644000	
	Total additional tax	2960400		1794000	1166400
	Sum of difference				1814400

We note from the table above that the difference before transferring the property and after transferring it reached only one million eight hundred and fourteen thousand and four hundred dinars and this difference due to that the house in Karada was subject to the tax in the first case ; and this back to that the property tax law did not exempt the husband's father from the tax , but in the second case he was exempted from the tax according to the law.

## **The Fifth Chapter**

### ***Conclusions and Recommendations***

#### ***First: Conclusions***

Based on the research results at below , the most important conclusions are: 1- the dual nationality ( multiple nationalities ) arouse several problems included political , social , and economic problems . also , arises other problems such as the increasing of the tax evasion . the dual nationality was after approving and adopting the new Iraqi constitution in (2005). 2- the legislator during regulating and drafting legislations did not try to assign the legal texts that guarantee eliminating or reducing the percentage of people who enjoys another nationality beside their original nationality of being belong to it by blood and territories . 3- the legislator did not apply justice in using the nationality right concerning of the duration of residence ; as there is no determine period of time for the one who has the Iraqi nationality for those who are Arab and work in Iraq whatever their period of residence in Iraq , even though the period of residence was determined for the Iraqi as four months to the year of receiving income . 4- there is a deficiency in the text of the eighth article in the foreigner ownership law in Iraq no (38 ) of the year 1961 ; as it dealt with the Iraqi who has a non – Arab nationality as a foreigner . 5- the inadequacy between the Iraqi constitution and the tax legislations can be used by the taxpayer to evade from the tax , which has a bad effects on the tax revenues . 6- the tax evasion compels the government to increase the tax burden imposed on the employees , workers , and others whose their income taxes are deducted directly from the source ( direct deduction ) .

#### **Secondly: The Recommendations**

It can be reviewing and presenting a set of the suitable recommendations of addressing the problem of the research as follows:

- 1- The necessity of avoiding the phenomenon of the dual nationality ( multiple nationalities ) in dealings inside the same country through setting legal tests by the legislators cannot be violated and guarantee the elimination or reducing the number of people who enjoy multiple rights .
- 2- the necessity of revising the tax legislations from any texts may emerge loopholes that are exploited by th taxpayers to evade from the payment of the tax ; and this by the consistency of these texts with the provisions of the Iraqi constitutions and other laws .
- 3- the necessity to amend ( article 1 , tenth clause ) of the Iraqi income tax law no. (113) of 1982 and its amendments .



- 4- the need to amend ( the eighth article ) of the foreigner ownership law no . (38) of the year 1961 to be compatible with the iraqi constitution .
- 5- the necessity of applying justice in distributing the burdens of the public expenditures in a balance and appropriate way with the ability of contributing among individuals through establishing a tax system characterized by justice .

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