

How to Investigate Tax Trial Fairly and its Role on Economic Epic

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Abstract

One of the most significant purposes of economic epic is paying attention to the issue of tax in order to increase the government's revenue. This is possible through observing fair trial in the country's tax system which can lead to more national production, an eminent economic growth and an enormous decrease in the rate of unemployment. Having the right of the just trial includes a set of rules and regulations which are predicted to observe the rights of both sides while investigating their claims in Iran's tax system there are some positive points like compensating people's losses in case there are any violation or mistakes by the authorities and tax agents, but there are some drawbacks such as lack of exemption of special endowments which requires clear laws to settle gender bias, lack of education about human rights and the constitution for tax agents. This article is going to make some recommendation to lower and eliminate these shortcomings. So fair trial in tax issues will lead to the respect of the laws and cooperating of people with the government and finally the decline of tax avoidance, which is one of the primary purposes of economic epic.

Keywords: Tax, Fair Trial, Equality, Economic Epic contaminated

Introduction

Concepts like trial and justice are as old as the human history and since the very old time, justice has been an inherent characteristic of judgment. In addition, just trial has been paid attention to in all judiciary systems, especially in Islamic judiciary.

The right to enjoy just trial involves a set of

rules and regulations which are foreseen to observe the right of both sides while exploring their claims. These guarantees are mentioned in international human right documents like the world human right proclamation, political and civil right conventions (article 14), European human right convention (Maleki Moghadam et al., 2003), and American human right convention (Musgrave, 1993; Ghamami, 1997). In addition, they are the basis of uniformity of trial in different areas such as tax system. Tax system is composed of two vital processes; determining the tax and receiving it. Tax trial and the authorities dealing with tax objections are one of the main elements in reception phase. Handing tax objections in a just manner at this phase can increase people's confidence and lead to observing the laws and cooperation by people. Following justice while dealing with tax discrepancy and ensuring people's rights of fair judgment will cause the society to respect the laws, cooperate with tax agents, and decrease tax avoidance which will result in the purposes of the economic epic. The purpose of the study is to investigate the nature of tax trial in Iran based on just principles and to discover its weak and strong points and finally to explore its impact on realization of the economic epic.

Tax and its importance

Tax can have different definitions, one of comprehensive definitions follows: "Getting parts of people's revenue legally in order to contribute the government to perform its responsibility and pay its expenses in a way which is beneficial to all members of the society". Although tax is one of the incomes of the government, the government can have other source of income.

The government collects tax for different rea-

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sons and purposes. For example, one government may follow economic goals and control the amount of cash in the markets by raising or lowering the tax. On the other hand, another government may collect tax to reduce the distance between the social classes and make a balance. It's possible by determining progressive rates on tax. Thus, tax cannot be trusted as the only source of income. It is necessary to regard various aspects of tax financial, economic, social and political to enhance the culture of taxpaying and also provide an atmosphere to persuade people to accept it and consider the necessity of tax in one's country. Tax system should be based on the social, political and economical necessities of each country.

One of the concepts of economic epic is increasing the government's revenue through following and respecting the fair trial of tax system and consequently enhancing the national production, growing the economy rate, and at the same time lowering the unemployment rate. Therefore we should look at this issue with a new view.

The place and principles of tax fairness in novel tax rights and tax judiciary in Iran

In a qualified tax system there are several general principles that should be observed. They are as follow: justice and equality, specification and distinctiveness of the tax (confidence principle), the ease with which the tax is collected, and economy which are one of the most integral principles of tax rights. Besides the old and conventional principles, there are some new principles in modern tax rights which state that tax should be individual.

Tax rate and the service price should be progressive and payable. Human right principles should be respected. Sacrifice, distinctiveness of the tax should also be regarded (Rostami et al, 2009; Rahpeyma, 2012). However, we should not ignore this principle that tax can be objected to and tax trial is multi phased, people should have reasonable and adequate time to object, also they should be given sufficient time to put forward the essential documents to tax agents and courts to pay their tax.

The principle of tax trial improves the productivity and effectiveness of the tax system. In order to succeed in performing the tax parity, at first, the tax criteria for various social classes should be clarified. Some social classes should be socially protected a little more than others. As a result, they should pay less tax. The tax acquired from

this group should be proportional to their earnings and at this stage, sometimes, some groups can be explored distinctively and consequently the law makers can involve these special conditions while setting the tax laws (as an example, the family condition [51]) which are not taken into consideration in tax laws in Iran.

At the second stage, taking a fixed criterion for a group of citizens (whether real or legal) does not mean that the some criterion can be applied in the same way to that group; it's possible that some citizens enjoy some tax protections in the same group. Maintaining the general interest is the answer to these discriminations. In all modern tax systems (including: modern tax right) positive tax discrimination is approved to support the maintenance of general interests (Maleki Moghadam et al., 2003), in these cases, the law makers regard some tax exemptions for special economic and cultural activities to consider the general interest as a significant priority. As an example, we can refer to tax exemptions in article 132(direct tax law) which are passed and approved in 1380 /11/27 or the tax exemptions for book publications and the press, cultural and artistic organizations which are included in bill (L) article 139 mentioned above. The exemptions and facilities which are included in article 139 (direct tax law) are to encourage people to do charity and something for the sake of community (Rahpeyma, 2012).

A look at the advantages and drawbacks of tax system in Iran

Several factors can influence the effectiveness of the tax system, people and agent's knowledge of their rights and responsibility are one to mention. There are some general advantages and also drawbacks in Iran's tax system. One of these shortcomings results from the numerous laws and regulations regarding the right of the people. There is no specific part dedicated to people to know their right. Secondly, in present laws people are not treated fairly for example it's possible for the agents to reveal people's tax secrets but it is prohibited in Islamic punishment laws. In addition, reviving the revision of investigating law objections is a positive step which supports people and it can be one of privileges of Iran's tax system (Ghamami, 1997). Other positive steps are as follows.

1. Value added tax (V.A.T): It is a law to support tax fairness. This law is approved in 1387/12/17. The

economic commission of the Islamic council parliament approved it regarding the article 85 of the Constitution and let it perform for 5 years experimentally. This law supports the social equity since this kind of tax is paid depending on percentage of the goods price by the consumer; it is an effective means to lower consumption, to determine the real amount of tax and to pay the authentic tax. In addition, it helps to enforce tax fairness. It is characteristic of authentic tax. On the other hand, it is not paid by the producers. As it relies on the rate of consumption, the amount of tax this law permits is collected from people, determining it and collecting it, based on documents and proofs so it can be followed more justly. It is not determined or collected based on arbitrary guess or people's liking and preferences (TaHERI Tari, 2011).

2. Compensation harms of not following justice in Iran's tax rights: In the Constitution of Islamic republic of Iran, the judges and the judiciary are responsible to compensate if justice is not followed. The judge, government's employees and also the government's urban responsibilities are conditionally accepted (Musgrave, 1993).

Several different ways are predicted to compensate the harms in case the tax agents and the nation's tax organization do not treat fairly with people. Objection, investigation and exploring the tax determined and mediation council verdicts in direct tax laws (article 170, 216 244 and 251) are predicted. The supreme tax council is at the head of all and is allowed to investigate the direct or indirect objections to verdicts issued by mediation councils regarding contradicting laws and regulation or lack of suitable investigation.

The supreme tax council and its general board regarding the responsibilities mentioned in four bills of the articles 255 and article 258 related to direct tax laws for preparing directives or performing direct tax law, studying and exploring the purpose of the methods of performing and enforcing the tax rules and also suggesting the revision and alteration of laws and principles of tax and expressing views about issues and problems of tax and issuing verdicts on uniform approaches regarding tax.

This has a significant role in realization of tax justice, prevention of violating the rules or regulations, and handling the shortcomings of the laws or the way the authorities enforce them. However, after the revision of the law was passed in 2011/11/27 its significant role has been weakened; in addition, its dependence has been questioned so much that it

cannot be discussed here and it requires a new research.

In addition to boards, mediation councils for tax discrepancies, and supreme tax council, the three individual boards mentioned in article 251 relating to the direct tax laws is the only article among the whole 273 articles of direct tax.

Laws which directly claim tax as unjust whose opposite meaning refers to tax justice. The article 251 which is mentioned above was added to the revision approved in 2011/11/27 in Islamic Parliament and it did not exist before. It was an admirable innovation that the law makers designing it in the draft could predict a special judgment reference that exclusively had the right and qualification to explore the claim relating to the unjustifiability of tax. The article 251 expresses that the taxes directly relating to this law and indirect taxes which can't be discussed in any other reference and the claim relating to unjustifiability of tax with sufficient documents is to explore, the wealth and economy minister can refer the case to the board including three individuals whom he himself chooses for the exploration.

We should not forget that although this three individual board can play a positive role in realizing tax justice, all members of this board are chosen by the minister of wealth and economy. Therefore, from the legal aspects, their independence and neutrality is doubted. Justice, cases and its applications, criterion and framework for realizing the unfairness of the tax are not clarified in this article. None of these three individuals represent those who are going to pay tax. No clear condition has been determined in this law. All these conflicts with the principle that tax should be just and the board should be just; Besides the above mentioned authorities who can mediate to settle the discrepancies, based on the article 13 of the Supreme Court of just office, people who are going to pay tax can complain about the measures and decisions of tax agents, approvals of board of government, wealth and economy minister and verdicts of tax commissions. In addition to what mentioned before tax agents and mediation are responsible for violating the laws and not observing the justice and fairness. If it is discovered that the mediation boards or tax agents or the representatives of tax organizations intentionally or unintentionally without exploring the documents and without adequate inspection made a mistake in estimating the right amount of tax, the supreme court of tax may punish them and deprive them from gov-

ernment posts from 3 months to 5 years. (The article 270 of direct tax laws approved in 2011/11/27)

From what is said we can conclude that in spite of the fact that no separate law has been predicted to compensate the losses resulting from performing the laws unfairly, there are some rules among direct tax laws which are set in order to compensate the harms people suffer from due to performing the laws in an unjust manner. As an example, it's stated in article 600 of Islamic punishment law that: "if each of government employees and the authorities responsible to determine or collect the tax for the government ask for more than the legal amount, they may be sentenced to prison for a term of two years. The above mentioned can be applied to municipality employees who violate the laws. It should be stated that the extra amount of money will be returned to the original owner."

3. New measures taken for concluded tax affairs: New measures taken for concluded tax cases are clear examples of violating justice and contradicting general legal principles. In direct tax laws "concluded tax affairs are not defined but the conditions under which tax imposed on wealth is concluded are mentioned in article 239. In article 239 of direct tax laws (approved in 2011/11/27), it is stated that if a person who is going to pay tax accepts the amount determined for him or pays it or settle the discrepancies relating to the determined amount of tax, the case is concluded".

The tax agents' new attempts toward a concluded tax case may have civil, legal, official and statutory responsibilities for the tax agent. It should be said that regarding the first and second bill of article 270 of direct tax laws, the cases of the tax agent's violation regarding compensating not applying justice which may have civil, legal, official, and statutory responsibilities are as follows: determining some body's income less or more than the actual amount, new attempts toward the concluded case, giving false reports which may lead to suing people, collecting tax without exploring the essential documents and getting tax out of the period determined for it.

Consequently, not only should the tax agents follow the justice in all process of determining, collecting, and getting the tax and consider them in tax trial, but also not following the justice or violating the law will give people the right to sue the tax agent and ask him/her to compensate their losses. They can refer to tax agents, tax organizations or other authorities like courts to make up for the losses

they suffered from due to neglecting just trial. This can be concluded from the inner laws approved in Iran, or based on (Ghamami, 1997) of civil laws and the social and civil international charter or the cultural, social and economic charters approved in Iran's parliament in 1354. This responsibility that the losses of the people who undergo inequality and unfairness should be compensated can be observed from human right's aspect.

The general board of justice, court of offices based on the view 76/21/101 approved in 1997/4/24 by the council of justice regardless of the concept of bias special endowments are exempt from tax. However, special endowments, in contrast with general endowment, belong to special people.

Conclusions

In European convention of human rights like most of international conventions related to fair trial and in judiciary process and organizations responsible for respecting these documents a set of guarantees has been predicted for the both sides which consists of the following: just handling with a lawful independent and unbiased court in a suitable period of time by observing the right to defend and provide the opportunity for that, meaning that the right to access the case and the essential documents, the right to have a lawyer, the right to receive some financial support if necessary, the right to have a two processed judgment and of course some guarantees based on the judiciary court are regarded too. On the whole, the rules and criterion based on which the government set or approve the tax so that the tax is effective are influential in the process of trial and settling the conflicts. They are so effective that without regarding them tax trial can't be considered justly. In other words, the best tax management is not the one which receives the highest amount of money, but how this tax is collected, how it affects the tax trial, what the effects are on the governments and how it impacts the economic comfort level are all important. Therefore, in just tax handling, in addition, to observing the fair trial rules and principles, regarding the nature and effects of tax, the standards of approving and collecting tax should be taken in to consideration to preserve its aims and functions. Although in the rules and principles approved, there is no reference to just trial, it can be remarked that in Iran's judiciary system different elements of fair trial has been respected. For example, in the constitution of Is-

Islamic Republic of Iran, there are a large variety of laws such as law 19, law 32, law 34 and law 39 which prohibited all kinds of insults to a person who is arrested, imprisoned or exiled and some punishments are considered for those who violate these laws. Moreover, following some lawful references and authorities should be available, they should be unbiased, independent, people should have the right and power to handle the case, the official authorities should be independent and also unbiased, the case should be two- processed, the decision should be based on documents and evidence, the trial or the court should be held in public.

Some of the rules and regulations that several special and official authorities have been established, applying these rules in special authorities should not be doubted, but how and how much of the mentioned rules should be applied can be determined through special characteristic. Looking at tax laws developmentally and through human rights necessitates some responsibilities and following the fair trial laws both from the view of tax laws, economics and human rights. Neglecting such a view, lacking transparency in tax laws not having a developed tax culture, existing no tax morality which condemns tax avoidance and cheats, having no trust in governments and tax agents, lacking a tax system which obliges itself to observe human right standards and laws which are necessary to handle tax fairly and justly, having some tax exemptions which are unscientific and discriminating, lacking any guarantee to enforce the laws in order to prevent any kind of tax avoidance and cheat all these lead to encourage tax injustice. This means lack of respect for human nature while in chapter 6 of law 2 in Islamic Republic of Iran's Constitution, respecting human nature are regarded as important. To solve the mentioned problems and shortcomings, some solutions are suggested:

1. Approving suitable and transparent laws

While preparing the draft of the tax laws, it is necessary to ask lawyers, economists, managers, government authorities, private sectors, civil organizations, different unions, and even a person who is capable and proficient in the grammar and writing law to contribute in the process. In a transparent and appropriate tax law, the legal framework of getting tax, the right and ability to set and prepare the directives and the general rules related to limitations of law setting should be taken in to account. For example, tax should be just and fair, people's confidence in tax should be increased, the tax

should be proportional to people's income.

2. There are some gender discriminations in direct tax laws which should be revised. For example, we can mention note (Ma'soumi, 2006). From bill 57 and bill 101 of direct tax law states: "this law will not be applied to those young who are in custody of their father. "We can conclude from it that if a person is in custody of his or her mother the law should be applied to him or her. In note 101 of the some laws it is stated that in civil cooperation, if a couple are partners and they have a common business. Only the man has the right to enjoy the tax exemption and not the woman; however, if the partner is not somebody's spouse, both partners can utilize tax exemption. This is violation of laws 19-21 of the Constitution and legal equality principle of international charter of human right. So the writers of the draft of tax laws and tax lawmakers should be aware of the equality, justice and lack of discrimination.

3. The existence of a fair, independent, unbiased tax handling system can play a significant role in relations of people and tax organizations. Bills 170, 244 to 251, 255 to 257, 216 of direct tax laws and bill 13 of official court have predicted several authorities to handle the objections and complaints. But while reaching equality and tax justice, there are several drawbacks and shortcomings in the structure of the organizations responsible to settle tax conflicts which prevent us from applying equality and justice. On the other hand, the boards in charge of settling tax conflicts pay no attention to principles and standards determined by human right. Nevertheless, in 1975, Iran's parliament approved the political and civil international treaty and also the economic, social and cultural international treaty. Based on the bill 9 of the civil laws, these treaties are as laws and they should be enforced.

Therefore, boards for settling tax conflicts, supreme board of tax, the commission of bill 251 of direct tax laws, judges, magistrates, the supreme military board of tax are responsible to enforce and follow the international laws and human right principle that Iran's government has accepted, but in practice, there are several shortcomings and drawbacks the most important shortcomings in tax conflicts which violate equality, tax justice and fair trial are as follows:

- a) Lack of clear definition and examples in tax trial
- b) Lack of independent and biasedness of authorities

c) Lack of public handling of the problems in court.

d) The extension of the time of handling the conflicts.

So it is necessary for the tax system to improve its devices and its official location and also employ specialists.

4. If we have any special purpose while offering any presents, awards exemptions or facilities, it will help us to apply equality and trial especially; tax exemptions should be done in poor stricken areas which can help attract wealth and investment.

5. Since income tax is naturally a kind of tax imposed on goods purchased and services received. Its true application will stop and prevent people from consumerism especially consuming unnecessary goods which are imported from China and south eastern countries and damaged the producers of our country. From the other view, it's a tool to get a higher tax from the rich who use unnecessary luxurious goods. In addition, it paves the way to apply social justice and helps the government to distribute the public wealth fairly.

6. The process of tax handling is longer than usual.

Handling the conflicts at a reasonable time is one of the principle laws in human rights. Alteration of tax laws, abundance of conflicts and complaints relating to tax, lack of human resources capable of handling tax conflicts, lack of enough courts to handle tax conflicts, traditional system and instruments, shortage of modern equipment to receive complaints and objections, some law deficiencies and so on lead to prolonging the process of handling the conflicts. Thus, it's necessary for tax organization to reform tax laws, renovate the equipments and devices, and employ skillful agents.

7. The necessity of teaching human rights and Constitution to tax agents, law makers and policy makers.

Since the principles of human rights and the Constitution are very important in different phases including determining the amount of tax and collecting it. So it is necessary for tax agents and tax judges to be aware of laws, principles of human rights, and the Constitution and also know the treatise and documents that Iran is internationally responsible

to follow. Part of this awareness and knowledge is possible through training. But the other part will be available when these laws and rules are enforced in different phases including policy making, law setting, determining, and collecting tax.

8. Preparing a text about the right of the tax payers and tax collecting organizations, like what we have in Canada and United states.

9. Informing the tax payers about how their tax is spent so that people have trust in government and will be encouraged to cooperate and do their legal responsibility.

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