Analyzing tax evasion criminalization in Iran

Salman Izadi
Postgraduate, Department of Public and International Law, Farabi Campus, University of Tehran, Iran

Hassan Ranjbar
Graduate, Department of Public and International Law, Qom University, Qom, Iran

Mahmud Habibitabar
Postgraduate, Department of Criminal Law and Criminology, Farabi College, University of Tehran, Iran

Abstract

Preventing or, in other words, mitigating tax evasion has been an important concern of Iranian government in economic arena in recent years due to oil market fluctuations. To this end, devising the draft of Tax System Transformation Act and tax evasion criminalization has been an important step taken by government to increase tax incomes and to mitigate tax evasion. Present paper attempts to analyze different aspects of this issue and discuss on its legal challenges. Hence, criminalization theoretical basics are initially studied and then it's practical realization in Tax System Transformation Act is analyzed and, finally, the laws and regulations on tax crime, its punishment and judgments in courts are studied.

Keywords: Tax System Transformation Act, tax evasion, direct taxes law.
Introduction

Undoubtedly, one of the most important problems in our tax system is high rate of tax evasion\(^1\). Tax evasion means to hide a part or total income of taxpayer. In other words, tax evasion is illegal deductions conducted by individuals to pay tax (Alaa, 1998: 23). The aim of such behavior is to pay only a part or no part of taxes. Put it differently, tax evasion can be described as an illegal way to mitigate tax debt (Vanaki, 2004: 18). Noteworthy, tax evasion is a problem to which even developed nations’ tax systems are confronted and are always looking for guidelines to curb such anti-economy phenomenon. In some countries like Japan, Spain and the Netherlands, reaction to tax offences is predicted by administrative and criminal punishments. Administrative punishments are posed by tax authorities while criminal ones are conducted by Administration of Justice (Shahsavvan, 2005: 40). In German, for instance, tax evasion is considered a crime with punishments such as imprisonment and cash fine (Mahammadi, 2001: 110) while in Iranian tax system, it was emphasized on legal executive guarantees and although penal executive guarantees were felt, they were not paid attention. In terms of such requirement, the draft of Tax System Transformation Act on developing tax information system and the enforcement of tax paying executive guarantee and obliging all executive organs to pursue general laws has criminalized both fields. Although criminalization has short background in both fields and it has been already predicted in laws for public organs (i.e. articles 600, 604 and 571 of Islamic Punishment Law, 1996), determining tax crime is a new issue which should be analyzed and its status in legal system should be investigated. Hence, tax crime is investigated by focusing on provisions of direct tax law (i.e. article 42) even though the title “tax crime” includes the offences in the first field according to article 42. Thus, present paper attempts to explore the aspects of tax crime and answer these questions: what are the components of tax evasion? What are dominating regulations? What are future challenges?

Our methodology is a combination of descriptive, analytical and case study methods. To this end, we describe the regulations mentioned in Tax System Transformation Act and analyze the elements of tax evasion and its dominating rules. Since we focus on Tax System Transformation Act, case study is used. Additionally, our approach is a critical and pathological approach and we would emphasize on deficiencies of Tax System Transformation Act. Likewise, data collection method is library one through different resources such as books, articles and websites.

\(^1\) According to official report by Ministry of Finance (2003), about 60% of Iranian economy refuses paying tax of which 40% evade tax paying illegally. Bu such trend, Iran is changing to a tax heaven (Farhadian, Seyed Mohammad Jawad (2003), estimating added – value potentiality in Iran: the proposal of minimum rate by suing data/output table, dissertation, Mazandaran University, cited by Iran Newspaper, vol. 2466
1. Criminalization basics

Criminalization is a process by which lawmaker forbid an action or leave of an action by society’s values and norms and considers penal execution guarantee for it (Aghababyi, 2005: 11). Such process requires forbiddance or obligation to conduct a behavior, for breaching it, a punishment is considered.

1.1. Criminalization steps

A penal law philosopher believes that when we plan to criminalize a behavior, it should pass continuously and successfully three steps and failure is such transition cannot be seen as crime. According to him, successful filtering is necessary and sufficient for criminalization (Schonsheck, 1994, p64). These steps include:

1.1.1. Principles step

On this basis, it should be initially proved that a behavior is under the competency of the society or government by a series of theoretical principles on criminalization such as the principle of damage. In other words, it should be proved that in terms of a series of theoretical basics and principles, the government has the right to intervene in liberties and citizenship rights through limitations and forbiddances. Therefore, the nature of criminalization is to limit human rights and freedom; to the same reason, it requires principles and rules to justify such limitation. To this end, four norms are considered namely loss principle, patriarchy, legal moralism and legal perfectionism. However, society’s interests are also respected (Ghomashi, 2009: 147).

(a) Loss principle

According to loss principle, those behaviors should be criminalized that damage an individual or society. Loss principle is the only case to which society and governments have the right to intervene in freedom and life of others and can use force when they want to prevent damages. On this basis, one cannot use for someone’s goodness. Likewise, one cannot enforce someone to do or not to do something for rightness or justice or for profitability of doing something which cause his prosperity. We have the right to enforce someone only when we can prove that his/her actions (which we want to prevent) would damage someone else. A person is responsible against society for just a part of his/her actions which impact on other people (Najafi Tavana and Mostafazadeh, 2013: 92).

(b) Legal patriarchy principle

According to patriarchic view, a person has not only no right to damage others but also to himself/herself and administration would prevent his/her damage like a father (Ghomashi, ibid: 148). They justify this principle so that penal legal intervention is better for the wellness, health and welfare of intervened person and would mitigate his/her losses (Katz, 1999: 123). Ordinary justification of patriarchy is to keep the interests of intervened individual; in fact, such interests are defined by what make someone’s life better (i.e. death, catastrophe or emotional moods). If
lawmaker’s intervention is to keep such interests, it is “welfare patriarchy” and if it is to keep ethical interests, it is called “ethical patriarchy” (Suber, 1999: 634).

(c) Legal ethicality principle
According to ethicality, in addition to damaging behavior, those actions should be also criminalized that cause social break of society and breaching ethical values (Ghomashi, ibid). Liberals believe that there is an ethical and unethical sphere which does not relate to law (Wolfendon Committee Report, 1957, paragraph 61). Legal ethicality proponents criticize such approach and believe that there is no theoretical limitation for laws against ethical affairs (Devlin, 1956: 14).

(d) Perfectionism
According to perfectionism, in addition to two mentioned cases, those behaviors should be criminalized that cause spiritual fall and damage to ethical virtues so that one can cause an individual’s perfectionism (Ghomashi, ibid). Noteworthy, one cannot allocate criminology in any legal system to a norm; however, one can say that one legal system is more tended to a norm and it may also use other norms. For instance, legal system in Europe used loss principle further or in Iranian penal lawmakers system, ethicality and, sometimes, perfectionism are used as same as loss principle (ibid). It seems that in criminalizing tax evasion in Iran, one should consider a combination of loss principle and legal ethicality as a basis for criminalization.

1.1.2. Presumptions step
By passing the first step, one should see whether there are other successful ways which can mitigate an action without using criminal justice system or not. Such filter determines that methods with fewer disturbances for people are preferred to other ones. Penal execution guarantee has the highest degree of obligation and it is always criticized by authors in terms of type, necessity and how to execute (Pradel, 2994: 66). One of the features of criminal punishment is ignominy (Tavajohi, 2010: 6). Ignominy shows public blame by which the delinquent is deprived of confirmation by citizens and the trust by country and brotherhood feeling which creates social life (Beccaria, 2998: 82). Furthermore, in many cases, punishments are along with pain and chastisement and in practice, punishments impact on delinquent’s family members and even change normal life and it can cause crises for ruling systems (Tavajohi, ibid: 6 – 7). As mentioned before, in Iranian tax system, it was emphasized on official executive guarantees and it was for the first time that tax system transformation act considered penal executive guarantees and also fostered official executive guarantees.

1.1.3. Functions step
Here, the practical consequences of criminalization are studied. Adopting and executing penal subjective laws has practical outcomes; some of these outcomes are clear and are revealed quickly while others may be determined overtime and place. In fact, one should analyze social cost and benefit of executing or not executing proposed penal law (Habibzadeh, 2005: 4 – 5). Here, it should be noted that on the one hand, criminalization is consistent with the facilities of
judicial system and, on the other hand, it is far and acceptable in people’s view. One jurist writes: “In democratic administrations, government is people’s servant not their boss and, as a result, the law should be the product of people’s will. In such administration, penal law is more successful when most people believe that the law is fair and system can act adequately effective (McCarthy, 2006, p113-114).

Therefore, in criminalizing tax evasion crime, one should note that whether this action is adapted to society’s public culture or not. In response, it should said that unfortunately, due to incorrect perception of tax payment in Iran, tax evasion in not seen as an abnormal social behavior and it is transformed to a positive and normal behavior. in other words, majority of taxpayers in today Iranian society either do not consider government entitle to receive taxes or believe that its amount is not commensurate to their income and it is unfair. Indeed, as asserted by David Metza in the technics of neutralization, delinquents’ desired values are similar to desired values of frank people and what causes that they commit a crime is that they justify criminal act by technics of neutralization such as responsibility denial, violation denial, victim denial, and condemning condemnatory (Najafi Abrandabadi, 2004/2005: 81 – 82). In this section, we briefly describe each technic of neutralization as well as it relation to tax evasion crime.

**Responsibility denial:** it means that a person believes that he/she is enforced to commit a crime due to unemployment or financial needs. In our discussion, taxpayer believe that the sum he/she is going to pay as tax is the right of government but he/she is not to pay it due to his/her immediate requirement and conditions.

**Violation denial** means to deny loss, to downsize committed mistake and to underestimate damages against victim. In our discussion, taxpayer imagines that his/her share is trivial compared to total sum which should be paid by all taxpayers as well as its impact on government’s income and, to the same reason, refuse taxpaying even though he/she believe that the government is entitled to receive taxes.

**Victim denial:** it means to deny victim of an offences and even his existence. It means that criminal believes that victim is merit for loss. In our discussion, taxpayers believe that government is not entitled to receive taxes and it is merit for losses. It can be due to different reasons such a lack of adequate services by government in excess of received taxes.

**Condemning the condemnatory** means to condemn police officers and judges since they are corrupted and discriminate. In our discussion, taxpayers believe that the government is not fair in receiving taxes since it discriminates and, as a result, they imagine that they have commit no offence by not paying taxes and by this way, they achieve their rights and shares from authorities. It would face government with serious problems in receiving taxes. Besides, a major part of tax evasion in Iran is due to underground economy which is latent and uncontrollable and it is wasteless to criminalize it without finding the ways to combat it.
2. Tax evasion crime analysis
2.1. Tax evasion crime implications

Article 64 of tax system transformation has adhered items to Direct Tax Act as the basis of tax evasion criminalization. According to article 274 of Direct Tax Act, below ones are seen as tax crimes and committer can be convicted to six degrees punishment:

1. Drafting the books, documents, and evidences in contrary to reality;
2. Hiding economic activity and generated incomes;
3. Preventing tax officers’ access to their or their parties’ tax and economic information based on article 181 of the law and refusing legal assignments on sending information by articles 169 and 169 (repeated) of Tax Organization on damaging the government;
4. Not doing legal assignments in this law and added – value tax law to receive or deduct taxes of other taxpayers and transferring it to Tax Organization in determined dates;
5. Concluding contracts and transaction with others’ names or in contrary to reality
6. Refusing conducting legal assignment on concluding and submitting tax statements containing income and cost information in three consecutive years;
7. Using commercial cards of other persons to evade taxpaying

2.2. The nature of tax evasion crime

According to categorization of criminal and disciplinary crimes, tax evasion is considered as a criminal offence or tort. Predicted criminal offence in law is obliged to criminal execution guarantee namely penalty while tort includes any action which damages others and the actor is obliged to extradite the asset or to compensate loses. Disciplinary offence means to breach certain regulation on a certain population or job (Golduzian, 2005: 213 – 218). Although tax evasion can yield to civil responsibility (article 274(6) of recent law with also disciplinary punishment(s), in terms of definition, it is seen as an intentional offence.

2.3. Tax evasion crime elements

To consider human behavior as an offence, three elements are necessary:

a. Legal element namely criminal description which should be determined by law.

b. Material element which includes an external operation which suggests a criminal behavior

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2 Article 2, Civil Liability Law and article 24, Administrative Health Promotion and Corruption Combat Act (2008)
c. Mental element which means that criminal behavior is accompanied by criminal intention or criminal fault

Here, we study all three elements of tax evasion crime in Tax System Transformation Act separately.

2.3.1. Legal element

In terms of human right international documents, criminalization should have special traits so that governments cannot use it as an instrument to limit human rights and freedoms. One of the most important features of initial principles in criminal law is criminalization legality. It means that any limitation should be in the format of law and legality means countries’ internal laws. In other words, it is the same internal law which defines the conditions of limitations (Shams Nateri, 2011: 269). Separated study of crime elements does not mean that legal element should be considered in material and mental element. One should note that material and mental element is inside the legal one and legal element is the product of material and mental elements (Mirmohammad Sadeghi, 2013: 57 – 58). Legal element of tax offence includes items 274 – 279 of direct tax law subjected to paragraph 64 of Tax System Transformation Act especially article 274). These items are considered as the implications of tax evasion offences and have determined their material elements.

2.3.2. Material element

Before entering discussion on material element, one should note that in contrary to offences that their material element is single such as steal in theft offence or bad words in insult, tax evasion crime material element is too varied (all mentioned paragraphs in article 274). Therefore, when we discuss on material element of this offence based on quantity, durability or criminal result, the nature of some paragraphs may differ from other ones. For instance, in crime categorization by material element quantity, paragraph 1 is combined crime while paragraph 5 is simple one. This obvious by the variety of mentioned seven behaviors in article 274 as tax evasion crime material elements and an informed reader is fully aware of it. According to what mentioned, the nature of material element in paragraphs 1, 5 and 7 and article 274 (2, 3) in which terms of adjust, use3, prevent and latent are used, are action while according to paragraphs 2, 3, 4 and 6, the relevant terms of hidden, refusal and reject are leave of action. Likewise, in categorizing material element by permanency, material behavior in paragraphs 1 – 7 is immediate offence in terms of not registering marriage (Islamic Punishment Law, 1991, article 645)3 (Matin Daftari, 1951). Therefore, in terms of time passing, the impact of new law, court competency and the validity are all followed by the law on crime occurrence time. Explanation: since in immediate crimes, the offence is committed in short moments and in contrary to continuous crimes, they are not so long, we are facing with any challenge in terms of abovementioned discussions. In crime

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3 Verdicts issued by Supreme Court 16/7/29-60 & 17/1/31
categorization, paragraphs 1 and 2 of combined crime as well as paragraphs 3 – 7 of simple crimes are differed in terms of the impact by time passing rules and determining competent court and the impact of new law on them.

In another categorization, in terms of criminal result necessity or not necessity, it is divided into absolute or obliged crimes. If crime occurrence is obliged to a result it is called obliged crime and if it is committed irrespective of the result, it is called absolute crime (Noorbaha, 2004: 259). Crimes mentioned in paragraphs 2, 4, 5, 6 and 7 are absolute while the crime mentioned in article 274(3) is obliged crime (mentioned behavior in article 274(3) should pose damages against government). One of the effects of such categorization is that starting the crime in absolute offences is hardly recognizable since it is too difficult to decompose starting process and crime commission (Ardabili, 2002).

2.3.3. Spiritual element

In analyzing tax evasion offence mental element, one can say that it is an intentional crime and general bad intention is sufficient for realizing all paragraphs of article 274 as the implications of material element (excluding paragraph 3) since all mentioned six paragraphs are absolutely criminalized and they do not any special conclusion. For the same bad intention (criminal intention) is not necessary for them. In contrary, article 274(3) is an obliged criminalization and preventing tax officers’ access to tax and economic information of them or third parties as well as refusing legal assignment to send financial information subjected to articles 169 and 169 to Tax Organization should pose damages against government. Obviously, since mentioned paragraph 3 needs criminal result namely posing damages to government, it needs special bad intention which is here the same damages to the government.

2.4. Tax evasion crime punishment

Tax crime offence punishment is degree 6 discretionary imprisonment (Islamic Punishment Law, 2012, article 19) only for legal persons between minimum 6 months and maximum 2 years and

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4 Combined crime is a kind of crime in which material organ consists of two or more dissimilar actions. In the case that material organ of a crime consists of two or more similar actions, it is a habit.

5 Article 19: discretionary punishments are divided into 8 degrees:

Degree 6
- Imprisonment between 6 months and 2 years
- Cash fine between 20,000,000 and 80,000,000 Rials
- 31 – 99 lashes for crimes against chastity
- Deprivation from social rights between six months and 5 years
- Publishing final order verdict in mass media
- Prohibition of one or more social activities or jobs for natural persons maximum to five years
is not seen as a religious discretionary (ibid, note 2, article 115). Hence, legal capacities of punishment discount (article 37 of Islamic Punishment Law) include to postpone decision issuance (article 40), punishment suspension (article 46), semi – freedom system (article 56, conditional resale (article 58) and penitence as below: in case of discount, tax evasion punishment can be mitigated to less than three months of imprisonment (article 37(a)). Imprisonment mitigation can be postponed to degrees one to three as well as conviction despite of legal terms and such postponing can be changes to punishment exempt in the case committer’s obligation to court order (article 40 and 45)\(^7\). In the case of conditions to postpone court decision, punishment execution can be also suspended (article 46)\(^8\). It is also possible to offenders to use semi – freedom conditions (article 57)\(^9\). In the case that offenders pass one third of punishment, 

- Prohibition of general invitation to increase the capital for legal entities maximum to five years
- Prohibition of issuing some commercial documents by legal entities maximum to five years

\(^6\) Note 2: the regulations covered by this article as well as article 7(b) and article 8(a, b) and articles (27), (39), (40), (45), (46), (93), (94) and (105) are not subjected to religious discretionary law.

\(^7\) Article 40: in discretionary crimes with degrees six to eight, the court can postpone verdict issuance for two years by considering individual, familial and social conditions and moods in which he/she has committed a crime, provided that below conditions exist:

a. The existence of discount circumstances
b. Prediction perpetrator’s remedy
c. Compensating the losses or its preliminaries
d. Lack of effective penal background

Article 45: after postponing period, the court would determine the penalty or exempt from penalty by considering perpetrator’s obligation to court orders, social worker’s reports and his/her moods.

\(^8\) In discretionary crimes with degrees three to eight, the court can postpone a part or complete punishment between 1 and 5 years, given existing conditions to postpone the verdict. Prosecutor or judge can demand verdict postpone upon passing one third of punishment. Likewise, the convict can demand verdict postpone through prosecutor or judge after passing one third of punishment.

\(^9\) Article 57: in discretionary crimes with degrees five to seven, the court can put the convict under semi – freedom provided that the plaintiff forgives and the convict draws proper collateral and commits to conduct a professional, training, job training, contribution in family life or addiction/illness treatment activity and the process of compensating the victim. Likewise, the convict can ask for semi – freedom grant if he/she enjoys legal circumstances during conviction and the courts tasks to examine this.
they can use conditional release (article 58)\(^{10}\) and in the case of supervising postponing conditions, they can be monitored by electronic monitoring systems (article 62)\(^{11}\).

Additionally, in the case of confirming penitence and renitence and remediying the offender by court, the punishment is canceled (article 115)\(^{12}\). Tax evasion crime has no accessory punishment and does not yield into deprivation from social rights (article 25). In addition to legal benefits and advantages of tax evasion punishment, it contains some legal hardships. For instance, tax evasion

\(^{10}\) Article 58: in conviction through discretionary punishment, issuing court can propose the prosecutor or judge to issue conditional release order for criminals convicted to over ten years of imprisonment after passing half of their condition or (in other cases) after passing one third of their conviction through below conditions:

(a) During punishment, the convicts always shows good demeanor and behavior

(b) His/her moods indicate that he/she would not commit any crime upon freedom

(c) By court’s determination, he/she should pay affordable compensation for private claimant or take necessary measures in this regard.

(d) He/she has not already used conditional release

The expiration of above cases and items mentioned in paragraphs (a) and (b) are confirmed by order execution judge upon the report by local prison head. Order execution judge is tasked to investigate conditions and moods of prisoner and submit conditional release proposal to court

\(^{11}\) Article 62: in discretionary crimes with degrees five to eight, the court can put the convict by his/her satisfaction in a certain spatial scope under electronic supervision system provided that there are relevant conditions on supervising postpone.

Note: if necessary, the court can put the convict under supervised postpone by resecting monitoring initiatives and orders.

\(^{12}\) Article 115: in discretionary crimes with degrees six, seven and eight, the court can cancel punishment if perpetrator repents and the judge confirms his/her penitence. Other discretionary punishments can be discounted by court.

Note 1: repentance regulations cannot be implemented for those ones to whom the regulation on discretionary recidivism are executing.

Note 2: the regulations covered by this article as well as article 7(b) and article 8(a, b) and articles (27), (39), (40), (45), (46), (93), (94) and (105) are not subjected to religious discretionary law.
may offenders be convicted to supplementary punishment (article 23)\textsuperscript{13}. Issuance of final conviction of tax offences in which committed crime is over 1 billion Rials is necessary in IRIB or widely circulated newspapers (article 36). In the case of committing tax evasion offence during postponing verdict issuance or during suspension, both postpone (article 44)\textsuperscript{14} and suspension (article 54)\textsuperscript{15} are canceled. In the case of committing tax crime offence during conditional release

\textsuperscript{13} Article 23: the court can convict someone who has been convicted by it to lash, retaliation or discretionary punishment (one to six degrees) to one or more below supplementary punishment by considering the conditions proportionate to committed crime and his/her characteristics:

(a) Compulsory residence in a certain location
(b) Prohibition of residence in certain location(s)
(c) Prohibition of certain jobs and professions
(d) Dismissal from public and governmental services
(e) Prohibition of owning or driving vehicles
(f) Prohibition of having check-book or issuing commercial documents
(g) Prohibition of possessing weapon
(h) Prohibition of leaving the country (Iranian nationals)
(i) Deporting foreign nationals
(j) Obligation to public services
(k) Prohibition of membership in political or social parties, groups and boards
(l) Blocking crime commission devices or media or the institute involved
(m) Obligation to learn a certain job and profession
(n) Obligation to education
(o) Issuing final conviction order

Note 1: the term of supplementary punishment is not over two years otherwise in cases determined differently by law
Note 2: in the case that both original and supplementary punishments are the same, only original is undertaken.
Note 3: the recipe on the quality of supplementary punishment should be prepared six months after execution of the law by Minister of Justice and ratified by Judiciary head.

\textsuperscript{14} Article 44: during postpone, in the case of committing lashing, retaliation and intentional crimes led into blood money or discretionary to degree 7, the court cancels postpone grant and issues conviction verdict. If court’s orders are not executed, the judge can add half of determined period to postpone period or conviction verdict for one time.

Note: in the case of postpone cancellation and issuing conviction verdict, issuing suspension verdict is forbidden

\textsuperscript{15} Article 54: whenever the convict commits since the date of award issuance toward end of suspension an intentional committing lashing, retaliation and intentional crime (degree 7), upon recent final verdict, the court cancels suspension award and notifies suspension issuing court. In issuing suspension award, the court announces clearly that if one of the above crimes are committed during suspension, in addition to recent crime punishment, suspension punishment with be undertaken again.
remained period of conviction is executed (article 61)\(^6\). Prescription is five years for prosecution and procedure of tax evasion. In the case that the distance between crime commission to the beginning of persecution or between the last persecution/investigation and verdict issuance is over 5 years, punishment prosecution is stopped (article 105). Prescription is seven years for punishment execution (107)\(^7\).

2.5. Tax evasion exploration

In the case of committing any type of tax evasion crime, official authorities should submit their reports (article 9, General and Revolutionary Procedure in Criminal Affairs Act), and lack of

\(^6\) Article 61: whenever the convict during conditional release does not obey court orders without justified excuse, his/her conditional release is added to two years for the first time. In the case of repetition or committing an intentional crime which yields into lash, retaliation or discretionary to degree seven, in addition to punishments for new crimes, remained term of conviction is also executed; otherwise, his/her conditional release is finalized.

Article 105: prescription stops discretionary punishment if the crime is not prosecuted between the data of crime occurrence to the expiration of below items or since the final date of prosecution or investigation toward the expiration of these items, final order is not issued:

(a) Degrees one to three Discretionary crimes with the expiration of fifteen years
(b) Degree four Discretionary crimes with the expiration of ten years
(c) Degree five Discretionary crimes with the expiration of seven years
(d) Degree six Discretionary crimes with the expiration of five years
(e) Degrees seven and eight Discretionary crimes with the expiration of three years

Note 1: prosecution or investigation is an action by judicial authority to undertake a legal task such call up, apprehension, investigation, hearing the informants and witnesses, local investigations and letter regulatory

Note 2: considering postpone grant, prescription starts since the final date in which penal authority should issue the order.

\(^7\) Prescription stops discretionary final verdicts and its term from finalization date is:

(a) Degrees one to three Discretionary crimes with the expiration of twenty years
(b) Degree four Discretionary crimes with the expiration of fifteen years
(c) Degree five Discretionary crimes with the expiration of ten years
(d) Degree six Discretionary crimes with the expiration of seven years
(e) Degrees seven and eight Discretionary crimes with the expiration of five years

Note 1: prescription is computed since the expiration of its date or removing the barriers if executing all or part of punishment is postponed to prescription or removing the barriers.

Note 2: prescription in foreign courts concerning Iranian nationals are subjected to this article in the limit of legal regulations and agreements.
imitative on this field would cause punishments mentioned in article 606 of Islamic punishment laws (1996). In fact, article 29 of General and Revolutionary Procedure in Criminal Affairs Act extends verdicts mentioned in article 276 to all official authorities and article 606 acts as the guarantee of executing article 29 while article 13 of administrative system health promotion act emphasizes on them in new laws.

Decision to establish The Public Prosecutor’s Office and Specialized Courts is to facilitate decisive treatment with tax offences while predictions and assignments to a certain entity to diagnose and confirm tax offences as well as exploring and reporting tax evasion crimes is more useful as clarified in past revisions.

2.6. Perpetration and its criminal responsibility in tax evasion offence

According to articles 274, 181 and 169, tax evasion offence can be committed by natural persons who may be taxpayers or persons for whom this law has posed obligations that are addressed by penal punishments due breaching them. Paragraphs 1, 2, 3, 5, 6 and 7 are only committed by taxpayers and they may be a natural person like a businessman or a legal entity like a business entity. Paragraph 4 concerns the officers who deduct and receive taxes.

In the case of offence commission by a natural person, the relevant is degree 6 conviction as perpetration and if the offence is committed by legal entities, it is conviction between 6 months and 2 years. Although it is necessary to consider article 143 in punishing legal entities, the basis is the liability of natural persons and to consider responsible legal entities, their legal representative should commit the crime in the name or in behalf of legal entity.

The note of article 275 has confirmed article 11 of civil liability law on not liability of the government in posing administrative actions in criminal liability. In such cases, limiting the liability of the offender to administrative punishments has no compatibility with penal punishments and it is one of weaknesses of this act.

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18 All officials of subjected organs are tasked to report immediately the beginning or occurrence of crimes one bribery, embezzlement, fraud, conspiracy in governmental transaction, obtaining commissions in domestic or foreign transactions, penetrations against the right and internal laws, intervention in governmental transaction in cases with legal prohibition, acquiring illegal wealth, illicit utilization or acquisition of public money or wasting them, hypocrisy in governmental transactions, obtaining illegal sums or assets or ordering it, considering an interest for one or others under any title such as commission, reward or salary in transaction or tender or bid and other related economic crimes in their scope to relevant judicial and administrative authorizes, otherwise they are subjected to punishments in article 606 of Islamic Punishment Law.

19 Article 275 (note) of domestic tax system transformation act believes that tax crime exploration is through Tax Organization and relevant executive organs while this not was eliminated by Iranian Parliament.
2.7. Competent authorities on tax evasion offence

General criminal courts address tax offences and among criminal courts throughout the country, those ones are competent that crime material elements are committed in their jurisdiction. Considering article 274 (3 – 6) that are simple crimes, local court in which submitting tax statement is refused or the branch of Tax Organization to which taxes should be paid or the location in which transactions and contracts are concluded in contrary to reality or in the name of individuals other than transacting person, or the location in which the accessibility of tax officers to tax information is prevented or the assignments in article 169 are refused, have the competency of investigation; concerning article 274 (1 & 2) in which the offence is a mixture of two components namely false documents and referring to them (paragraph 1) and hiding economic activity and its income (paragraph 2), the courts of both jurisdiction are competent for investigation if both elements are committed in their jurisdictions. It is necessary to consider personal competency in tax offences since article 169(5) has considered the punishment against managers and punishing the manager of legal entities has its own norms: if government legal entities or nongovernmental/public entities refuse sending information to tax organization, their managers are punished. In the case that tax offence criminal liability is toward persons mentioned in article 2(1) of criminal law against civil servants or persons mentioned in article 4 of Revolutionary and General Courts or the crime is directly committed by abovementioned persons, criminal general courts of the province center followed by Tehran province criminal court have the competency for investigation (article 14 of the recipe of establishing Revolutionary and General Courts, article 8(1) of General Courts Establishment (1979), the verdict on the consistency of Supreme Court (1983) and advisory theory (1996).

Article 278 on establishing prosecutor’s office and specialize3d courts cannot negate the rules on personal and local competency and in the case of establishing specialized courts in judicial jurisdiction in tax offences, these authorities can investigate tax evasion crime.

2.8. Collaboration in tax evasion offence

In committing the crime, other persons may collaborate in addition to offender. Involvement in crime commission can be as perpetration, contribution or collaboration. Whenever, criminal act is conducted by one person. He/she is perpetrator. Whenever it is conducted by more than one person, they are crime partners if all of them have direct involvement on the executive operation while if only one person is involved in executive operation and others support him/her through persuading or preparing preliminaries or providing executive guidelines, that person is called perpetrator and others as assistants.

Crime participant acts like perpetrator in realizing material organ and his/her acts are defined as the implications of criminal act while the act by abettor is not subjected to crime definition and

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20 Article 54 of Criminal Procedure (1999)
he/she is subjected to penal punishment if adapted to implications predicted in the law. To separate abettor and participant, one should note that participation is intellectual accommodation along with involvement in material organ while assistance means intellectual accommodation without involvement in executing material organ. In assistance, the legal and material organ is perpetrator and abettor is independent and they are only similar in mental organ (Habibzadeh, 2002: 174).

2.8.1. Participation in tax evasion offence

Participation in crime means effective cooperation with another person in committing main elements of crime material organ so that whenever several persons commit a crime and their act is a necessary portion of the crime realization, they are seen as abettor (Moradi, 1994: 98). Participation in tax evasion is subjected to general rules mentioned in article 124 of Islamic Penal Law: any person who participates with other persons in criminal executive operation and the crime can be assigned to the act of all of them – whether the act of each one is or is not adequate for crime commission and whether it is or it is not equal, he/she is seen abettor. Considering unintentional crimes, if they are assigned to two or more persons, they are seen as abettors and their punishments are like independent actors.

Participation in tax evasion crime has three pillars:

2.7.1.1. Legal

Article 276 of tax system transformation plan, has expressed legal pillar of contribution in tax evasion crime as below: “any person including accountants, auditors as well as auditing firms and tax officers contribute intentionally and willfully in tax offences mentioned in this law are considered as participant and they are punished like perpetrators otherwise more extensive punishments are predicted for them in other laws so that they are convicted to these more extensive punishments. In auditing firms, managers are participant individually or collectively.”

2.7.1.2. Material

Materially, in terms of article 124 of Islamic Punishment Law, the norm to diagnose participation in tax evasion crime is that “offence is assigned to all acts” which requires the intervention of all participants in crime executive operation even though the act by each participant is not equal in the result of their collective operation. Noteworthy, the important condition in realizing participation in tax evasion crime is – similar to other crime – that the act by each intervener in crime executive operation is a part of crime reason.

Material operation of all interveners may not lead to participation in crime; rather, the operation by some participants just equals with crime preliminaries and accessory (for others). Therefore, only those people can prosecuted that have conducted all or a part of criminal act. An example of tax evasion crime participation is by official accountants or auditing firms as the members of
Official Accountants Association who pave the way for taxpayers’ tax evasion crime by abusing article 272 of Civil Punishment Law. This article reads: “Iranian Auditing Organization and official accountants and auditing firms membered by Official Accountant Association who conduct the tasks of auditing and legal inspection or persons’ auditing are obliged to prepare tax auditing report adapted to the sample provided by Tax Organizational and send it for taxpayer in order to be submitted to Tax Organization. This report should include: (a) statement on the adequacy of accounting evidences and documents for auditing by relevant laws and regulations and by resecting accounting principles, norms and standards; (b) determining the income subjected to tax based on relevant laws and regulations; (c) statement on obliged taxes which taxpayer must deduct and pay them to Tax Organization by law; (d) other cases which can be determined in the sample report by Tax Organization. Likewise, its first note reads: “Tax Organization would accept tax auditing report without investigation and it would issue tax determination receipt based on regulations.

As seen, upon determining the income subjected to tax by auditing firm and its submission to Tax Organization, mentioned income is accepted without investigation. In the case that auditing firm prepares a false report to decrease real tax intentionally and willfully, it would be considered as a crime participant. Article 276 of tax system transformation plan has also elicited this.

2.7.1.3. Spiritual

It refers to participation in committing tax evasion crime and participants’ knowledge on the nature of committed crime. Therefore, to realize mental element by participants in tax evasion crime, each one should have criminal intention and aware of its illegitimate actions and execute criminal act in order to damage national economic system.

Interestingly, article 125 of Islamic Punishment Law deleted the terms “intentionally” and “willfully” in article 124 of previous law and the same procedure can be seen in new versions of new act compared to older one.

2.7.2. Assistance in tax evasion crime

Conceptually, assistance has two broad and narrow meanings:

In broad concept, assistance includes any kind of intervention and contribution in crime commission. In such concept, assistance includes all people who have a share in crime realization such perpetration, participation and assistance (Zaraat, 2001: 320) while in narrow definition, assistance is a certain type of collaboration in crime so that criminal has not direct involvement in executive operation and he has played a minor role only in limiting acts such as preparing the preliminaries and persuading the perpetrator (ibid: 84).

The basis of legal element for assistance in crime is article 125 of Islamic Punishment Law. It reads: “below persons are seen as crime assistants:
(a) Anyone who persuades, threatens or motivates another person to commit a crime or cause crime occurrence by conspiracy, plot and power abuse

(b) Anyone who makes devices for crime commission or give perpetrator the way to commit the crime;

(c) Anyone who facilitates crime occurrence.”

The norm to recognize any crime depends on the main crime. Therefore, if action or leave of action by assistant has no criminal title, assistance cannot be prosecuted and punished. In other word, assistance in crime commission is realizable when assistance operation causes crime occurrence. On the other hand, criminality of action by main perpetrator is the condition of assistance criminality. Hence, assistance is not crime if perpetrator’s act is not crime. Therefore, assistance is not crime per se; rather, it is a function by main criminal act. In our criminal system, the concept and punishment of assistance follows “assistance virtuosity” or “obtaining criminality from main factor. To the same reason, Supreme Court announced in 2002:

If a law is determined based on criminality of an action and punishment is determined for abettor, he/she will be prosecuted and punished and if it is negated, his/her negation is also eliminated by the same law (Borujerdi Abdeh, 2002: 244).

Jurisprudents have also emphasized that abettor’s liability is imaginable only when punishments are considered for perpetrator and participant (Sanei, 1992: 84). However, according to article 128 of Islamic Punishment Law, whenever crime committer cannot be prosecuted due to some legal points or his prosecution and punishment is stopped by some legal justifications, it has no impact on prosecuting and punishing crime abettor. In Iranian lawmaking, assistance in crime is not accepted as an independent crime; rather, borrowed criminality is followed in adopting laws on abettors. However, abettor’s punishment is discounted compared to perpetrator and participant(s). Thus, one can say that Islamic Punishment Law has accepted “the theory on relative borrowed criminality of abettor” (Validi, 2004).

To realize mental element of assistance, in addition to the intention to conduct material organ in article 125, assistant and perpetrator should have single intention and abettor’s acts should prior or simultaneous to perpetrator and his consequent initiatives are not adequate for assistance. Article 125 reads: “for realizing crime assistance, the singularity of intention and priority or simultaneousness between the behavior by abettor and perpetrator is a condition. In the case that main perpetrator has conducted a crime more extensive than what meant by abettor, the abettor is convicted to assistance in more discounted crime.

Laws on assistance and implication of assistance material element in article 125 shows that assistance in crime can be realized only through positive action and legal and judicial procedure dominant doctrine is the same. Silence and not preventing crime occurrence is not assistance and it is not seen as crime legally, provided that it has not been murder (Borujerdi Abdeh, ibid: 248).
It seems that assistance in crime is unique to positive material action; rather, it is possible through leave of action. For instance, Judiciary officer who is responsible to prevent crime or to report it refuses his task or a head or minister who knows that his subordinated officers are involved in embezzlement or bribery makes no action to prevent it; even, he confirms them by his silence (Matin Daftari, 1951: 329). It seems that such silence is an implication of article 125(p).

Accordingly, below items are necessary for tax evasion crime assistance:

(a) Realization of tax evasion crime phenomenon or its outset

(b) Conducting one of the initiatives in article 1254

(c) Temporal preference of the action by main perpetrator or its simultaneousness

(d) Abettor’s intention to conduct assistance implications in order to assist main perpetrator in tax evasion crime

(e) Tax evasion crime occurrence by main perpetrator

In the case that main perpetrator refuses tax evasion operation and hiding or not announcing his income, his abettor is also exempted from punishment and if perpetrator’s action is limited to starting the offence, his abettor is also convicted to start tax evasion. If the nature of abettor’s act is the crime, he will be punished equal to crime.

Tax system transformation plan has clarified tax evasion crime assistance. Its article 277 reads: “any person who persuades or threatens taxpayers intentionally and willfully by the intention of tax evasion and facilitates tax evasion crime or prepares its devices is considered as abettor and punished to three months to one year of imprisonment. In the case that abettor is an accountant, auditor or employee of Tax Organization; he will be convicted to maximum punishments. Concerning auditing firm, the mangers are seen as abettor individually or collectively.

Concerning the instances of tax evasion crime assistance one can point out those individuals who issue false cost invoices and show the costs higher than real figures.

Tax transformation system plan has only referred to assistance by accountants, auditors and auditing firms, tax officers and employees of banks and financial/credit institutes in its article 276 and has considered the minimum punishment for perpetrator and its final sentence has pointed out the punishments of other people based on general rules (article 126 to 129 of Islamic Punishment Law).
2.9. General aspects of the crime

Tax evasion is a phenomenon which negates the certain rights of government and nation by hiding real incomes and not paying the costs and it can have huge negative impacts on domestic economy if not curbed.

Tax evasion impacts on economic growth negatively. Inflation rate increase, not allocating incomes and wealth optimistically and higher distances of social classes are, *inter alia*, other effects of such criminal phenomenon collides with general laws and challenges social and economic security. Its victims are all population who endure huge costs by such crime.

The interests of a society, admired values, acceptable norms and regulating people’s relations are all summarized and manifested in domestic criminal laws. In domestic laws, general discipline includes those norms that are called “imperative rules” whether related to private or general laws. In other words, general order in domestic laws means to respect imperative rules so that people cannot negate them by private rules and disagreement with general order in domestic laws is not a part of subjective rules and regulations (Almasi, 1989: 129).

Therefore, since in tax evasion crime, the economy and all population are damaged, tax evasion laws are considered as imperative ones.

Another point is that in tax crimes and cheats, natural person is not the beginner of prosecution and, principally, prosecution does not depend on private claimant’s complaint and prosecutor general has the task to prosecute since the main victims are people. Therefore, predictions by public awareness organs to acquire information on tax offences from offending taxpayers are necessary to give information to prosecutor genital so that the society can show a clear reaction.

Conclusion

Combating tax evasion is inevitable to increase the incomes and to purvey the costs of the government. Catastrophic statistics on tax evasion in Iran shows serious weakness of domestic tax system. The act on reforming direct axes (tax system transformation act) has attempted to promote tax executive guarantees through penal executive guarantees in direct taxes law and to improve tax system and tax incomes.

Although penal executive guarantees in tax system transformation are consistent with developed tax system, current problems in domestic tax system such as tax culture weakness, distrust to government, lack of an efficient information system and ambiguities in laws and regulations have prevented any curbing policy in Iranian tax system. Despite of such difficulties, tax system transformation act has not pointed of taxpayers’ rights except than one or two cases and it has considered no guideline to promote tax culture promotion and trust building among taxpayers to government.
Another deficiency of this Act on tax evasion criminology is its weakness in treating tax criminal in governmental departments and organs so that only official (administrative) punishments are determined. Perhaps, silence and referring to general articles of Islamic Punishment Law (1996) (articles 598 and 600) are more useful in this regard. The similarity of punishment on tax evasion offenders irrespective of their tax debt may damage the aim of justice and create a kind discrimination among tax debtors while in tax laws of advanced countries like Germany, UK and the Netherlands, punishments are classified by crime type and severity and for excessive tax crimes such as collective and organized crimes, conspiracy, threat and armed crimes, more extensive punishments are decided. Likewise, despite of such serious punishments against tax offences, conditions are predicted to discount or suspend punishment which shows their endeavor for non-penal punishments while in recent reforms in Iranian direct tax law, this important issue is neglected that emphasis on penal punishments especially imprisonment can have huge costs for tax and judiciary systems. Additionally, this act suffers from ambiguities in exploring the crime and it has not point out this issue. Although it was pointed out in the primary version of tax system transformation act – even though ambiguous -, it was eliminated in final version by Iranian Parliament. Therefore, the quality of crime exploration should be clarified and elicited in this act clearly.

According to above considerations, it seems that removing such problems can help to increase the efficiency of tax system. Ultimately, it is recommended to postpone the execution data of penal guarantees after the establishment of taxpayers’ comprehensive information system in Tax Organization. Besides, since de-imprisonment policies are always emphasized in recent years, it is suggested that financial punishment can be predicted in present act as an alternative punishment for imprisonment. Likewise, one can classify punishments for tax debt and evasion offences similar to embezzlement, fraud and bribery. Crime exploration quality, assistance and participation in crime as well as competent authorities to investigate such crimes should be clearly elicited. Respecting the rights of taxpayers along with penal executive guarantees can improve public trust to government and facilitates tax affordability.
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