



The Right of Investor in Tax and Customs Exceptions under Investment Laws of Kurdistan Region and Iraq: A comparative study

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Abstract

Investors' exemptions from taxes and customs are considered an important step to facilitate the investment process and encourage investors to attract and invest their capital. Therefore, many countries, especially developing countries are interested and regulated it by their investment law. Customs duties imposed on goods and products or exports and imports in general in the entry and exiting of the border, but there are many legislations exempts of the investors from customs taxes that aims to make the facilities and encouragements of the investment process.

Iraq and the Kurdistan Region have the investment law and both of the laws issued in 2006, the Iraqi parliament has made two amendments in 2010 and 2015, but the Kurdistan Investment Law retained as it is. And both of the laws interested in this subject and gave great importance in order to provide the facilities to the investor for the investment of his capital in the country. Therefore, in this paper, we try to explain what are the most important legal guarantees owned by the investor in the field of tax and customs exemptions in both laws and then compare and evaluate between them and express our views on it.

Keywords: investor, considered, exemptions, Kurdistan

1. Introduction

There wasn't much knowledge about investment in ancient times. It is highly regarded in the present times even at the international level. Foreign direct investment operations had evolved from the fifties until the early seventies of the last century under the effect support development ideology at that time.

Investment is (using the Money in Production either directly by purchasing of machinery and raw materials or by indirectly buying Stocks and shares). In another aspect it is (dealing with the money for getting profits). (Investment is one of the means to address a person with money to the idea of taking profits). It also depends on different aspects such as Industrialization and Tourism. Others defined it as a (Utilitarian Aspect) which is considered a way to increase production capacity, or in other words, investment is a factor in the growth of the aggregate economy. (Flowing of expenditures allocated to improve or to support the shares of the reality capital). (Put money, effort, time, etc. into something to make a profit or get an advantage to succeed).

2. Definition of taxes system

Taxes system has been defined as: "a system which seeks to achieve the political, social, economic and financial goals of the community within the territory of a particular country through the use of its authority to impose and collect taxes from that region ^[1].

The tax has been defined as "The duty of finance and monetary that all citizens must pay to the state without any return to finance public expenditures and achieve the goals

of political philosophy ^[2].

In other definition, it is " The cash deduction which the state or one of its public bodies takes on the resources of different economic units with a coverage of public burdens without any return and the distribution of these burdens between economic units according to their particular ability ^[3].

3. The Conditions of tax and customs exemptions in Kurdistan investment law

Kurdistan Investment Law has regulated the tax and customs exemptions under Chapter two, Section one. It has put the cases and conditions of the exemptions in addition to paragraph (3) of an instruction No.(1) of 2007 ^[4] which was issued by the Supreme Investment Council in the Kurdistan Region. As a main rule, it has selected those projects which include the taxes and customs exemptions in Article (4, 5, 6) and their capital must be more than (250000) US dollars.

Regarding the investment project in general, Kurdistan investment law gives this right to the investor in the exemption of the project for (10) years from the date of the project begins offering its services or of the time of actual production ^[5].

The exemptions also include the vehicles, machinery, equipment and imported machines for the project. It requires the following conditions ^[6]

1- Dr.Abdullah Mahmoud Amin, Evaluate the effectiveness of the Tax System for Income Tax in Iraq, PHD Thesis, University of Mustansiriya, 2006, P.46 .

2- Adel Ali Falih, Public Finance and Tax Legislation, First edition, 2007, Hamid Dar for publication and distribution , Jordan, Amman, P.91 .

3- Dr. Taher Al-Janabi , Science of Public Financial and Financial Legislation, Baghdad, P.136 .

4- ((Any investment project its capital less than US \$ 250,000, does not include the benefits, taxes and customs which are contained in Articles (4,5,6) of Investment Law No.(4) of 2006, even that contained in the list of the Investment projects)).

5- Article (5/First) of Iraqi Kurdistan Investment Law No.(4) of 2006 .

6- Ibid, Article (5/Second to Sixth) .

1. The investor must obtain the import license.
2. The goods must be imported through the border crossings of the region within two years from the date of the approval of their lists by the chairperson of the board.
3. The investor must use them exclusively for the project. Otherwise, it will not be included in these exemptions, and the investor will be compelled to pay the tax and will be penalized by paying double the sum of the due tax.
4. The raw materials needed for production exempt of customs duties for five years provided the types and quantities of these materials be determined by the board; while giving priority to the use of locally available raw materials that are suitable for the investment project in amount and quality.
5. The machinery and equipment must be for the purpose of the expansion, development or modernization.
6. Regarding the spare parts imported for the project must not be more than 15% percent of the price of the machinery and equipment upon the prior approval of their lists and quantities by the chairperson of the board.
7. Exemption of all imported needs, including machinery and equipment; provided they enter through the border crossings of the region and are used exclusively for the project.

4. Additional Exemptions in Kurdistan investment law

Kurdistan investment law has provided the additional exemptions to the exemptions mentioned above as well in the following cases:

1. The exemptions of the projects that established in the less developed areas in the Region. The investment laws, one of the factors influencing the decision to choose the location of the investment project includes benefits and tax breaks aimed at encouraging investment in certain areas^[7]. According to instruction No.(1) of 2007 which was issued by Supreme investment council has classified the areas to the following classification:
 - A. Relatively developing the areas, including the borders of municipalities and the city of Erbil, Sulaymanya, and Zakho.
 - B. Medium-growth areas, including districts: Soran, Shaqlawa, Harer, Koya, Ranya, Chamchamal, Kalar, Amedei, and Aqre.
 - C. The few growth areas, including all fields, townships, and districts in the Region, which has not mentioned in paragraphs (A, B) and considered to be within this category of the agricultural sectors, tourism, industry and education in all areas of the region.
 - D. The Commission is to consider re-distribution in the fields above from time to time in the light of the development of each sector and shall submit its recommendations to the Supreme Council for approval.

There is no doubt the investment process in these fields aims for development. Therefore, Kurdistan Investment Law has given the authority to the Investment Board to

7- Dr. Mohamed Diab, Economic and Social Feasibility Studies for Projects, Second edition, Beirut, 2009, P.77 .

grant additional incentives and facilities to investment projects that licensed under the provisions of this law which are established in the less developed areas in the Region^[8].

2. The exemptions of the joint projects by national and foreign investors is mentioned in our previously study where the definition of each of the project and the joint venture was mentioned^[9]

There are many projects regarding areas including economic, industrial, commercial, and agricultural and commodity^[10] and regarding the percentage of the project capital among the investors is divided into the individual project and the joint venture. Investment board can grant additional incentives and facilities to investment projects that are joint projects by national and foreign investors^[11]. Perhaps the legislator intends the participation of a substantial capital investment in the project. Therefore, they are granted additional exemptions of those projects which are joined by national and foreign investors.

The last exemptions that have been provided by the Kurdistan Investment Law are: " the board may grant investment service projects that are established by the provisions of this law according to their nature especially Hotels, Hospitals, Tourist Cities, Universities, and Schools. There is an additional exemption of duties on their purchases of furniture, furnishings and other items for modernization and renewal once every three years. Provided they are imported into the region and used exclusively in the project within one year from the issuance of the approval of the list of purchases and their quantities by the chairman of the board "^[12].

5. The Conditions of tax and customs exemptions in Iraqi Investment Law

Regarding the Iraqi Investment Law No. (13) of 2006 that has dealt with exemptions under the Chapter Five in articles (15,16,17,18). In addition to the organizing of the exemptions system through the second amendment law No.(50) of 2015^[13]; it has amended article (15/First) and article (17/First) by adding (Fifth) paragraph to the same article.

Definitely that there is a difference between the two laws because of the recent amendments of the Iraqi Investment Law to address the legal obstacles to the exemptions system; Therefore, we have to show the articles first then compare both laws with each other after that the similarities and differences can be determined.

Article (15)

First (A): The project that has obtained an investment license from the Commission shall enjoy exemption from taxes and fees for (10) ten years from the date of commencing commercial operations in each stage of the establishment of the project, and it does not include exemption from customs duties with observance to the paragraphs (First and Second) of Article (17).

8- Article (6/First) of Iraqi- Kurdistan Investment Law No.(4) of 2006 .

9- See(Investment Project) in Chapter Two of our Study .

10- Dr. Saied Salem Arafa, Management of the Investment Risks, First Edition, Amman, 2009, P. 57 .

11- Article (6/First) of Iraqi Kurdistan Investment Law No.(4) of 2006 .

12- Ibid, Article(6/Second) .

13- Second Amendment Law No.(50) of 2015, It has issued by Iraqi Parliament in 27/10/2015 and published in the Official Newspaper Iraqi Gazette No.(4393) in 4/1/2016 .

(B): Exemption of residential investment project from secretion fees, real estate registration fees and including fees of the transfer of housing units for citizens (justice charges) ^[14].

Second: The Council of Ministers shall have the right to propose draft laws to extend or grant exemptions in addition to the exemptions stipulated in paragraph (First) of this Article or provide incentives, guarantees or other benefits to any project or sector or region and for the years and percentages. It seems appropriate by the nature of the activity, its geographical location and its contribution to manpower employment and its effect on driving the economic development and for considerations of national interest.

Third: The National Commission for Investment has the right to increase the years of tax and fees exemption in a way directly proportional to the rise in the Iraqi Investor share in the project to reach fifteen years if the Iraqi Investor share in the project is more than %50.

Article (16)

If the project is moved during the granted period of the exemption from a development area to another; The project shall receive exemption during the remaining term of the projects in the development areas. It is moving to according to the purposes mentioned in paragraph (First) of Article (15), provided that the Commission be informed of such move.

Article (17)

The project that obtains an investment license shall also enjoy the following:

First: Assets imported for the investment project shall be exempted from taxes and customs duties that enter into Iraq through the stages of the project and before the start of commercial operation of each phase of the stages of the basic design of the project and the period for its implementation ^[15].

Second: The imported assets required for the expansion, development or modernization of the project shall be exempted from fees in case they led to an increase in the designed capacity, provided they be brought in within three years from the date of notifying the Commission of the expansion or development. Expansion according to this law shall mean adding fixed capital assets aimed at increasing the designed capacity of the project in commodities or services or materials by a percentage exceeding (15%) fifteen percent. Development according to this law shall mean replacing project machines with more developed ones wholly or partially or making development on the standing devices and equipment of the project by adding new machines and devices or parts with the aim of raising the productive efficiency or improving and developing the

14- Article (10) of Second Amendment Law No.(50) of 2015, The Ancient text was ((The project that has obtained an investment license from the Commission shall enjoy exemption from taxes and fees for a period of (10) ten years as of the date of commencing commercial operations in accordance with the areas of development defined by the Council of Ministers at the suggestion of the National Commission for Investment based on the degree of economic development and the nature of the investment project)).

15- Article(11) of Second Amendment Law No.(50) of 2015, The Ancient text was ((Assets imported for the purposes of the investment project shall be exempted from fees, provided that their entry to Iraq is made within (3) three years from the date of granting the investment license)).

quality of the products and services.

Third: Spare parts imported for the project shall be exempted from fees if the value of these parts does not exceed (20%) twenty percent of the fixed assets value, provided that they not be to be used for any other purpose.

Fourth: Hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organizations projects shall grant additional exemptions from duties and taxes on their imports of furniture, furnishings and requisites for renewing and updating purposes at least once every four years. Provided that these items have brought into Iraq or used in the project within (3) three years from the date of the approval decision of the Commission on the import lists and their quantities provided that these items not be used for purposes other than purposes of import mentioned.

Fifth (A): Exemption of imported raw materials for commercial operation of the project from taxes and customs duties in the manufacture of the ration card items materials. Medicines and construction (except the available raw materials and produced in Iraq) on the basis that the requirement is good for the environment.

(B): Except as provided in paragraph (a) of this item. Exemption of the imported raw materials from the taxes and customs duties which are for purposes of commercial operation, according to the proportions of the contribution of local materials in the manufacturing of a product that should be regulated according to the controls which are put by the National Commission of Investment in coordination with sectoral bodies.

Article (18)

If it has found that the fixed assets exempted, in whole or in part. From taxes or fees were sold in violation of the provisions of this law or were used in anything other than the projector for purposes other than the authorized purposes, the investor must pay the taxes, fees and fines incurred under the law.

6. Comparing and evaluating of both laws

Through these articles we can compare the exemptions between both laws in the following points:

1. The Kurdistan Investment Law provided exemption on the project from all non-customs taxes and duties for (10) ten years from the date on which the project begins offering its services or as of the day of actual production. While the Iraqi Investment Law provided on the exemptions of the investment projects from taxes and fees for a period of (10) ten years from the date of commencing commercial operations in each stage of the establishment of the project and does not include exemption from customs duties exclusively for residential projects include exemptions from secretion fees, real estate registration fees and including fees of the transfer of housing units for citizens (justice fees).
2. The Kurdistan Investment Law has provided exemption from taxes and duties for the machinery and equipment needed for the expansion, development or modernization of the project while Iraqi investment law has determined this kind of exemptions with providing of the following conditions:
 - A. In case they led to an increase in the designed capacity
 - B. They must enter into Iraq within three years from

the date of notifying the Commission of the development or expansion^[16].

4. The spare parts imported for the project in Kurdistan Investment Law can exempt provided that their value is not more than (15) percent of the price of the machinery and equipment upon the prior approval of their lists and quantities by the chairman of the board. While Iraqi Investment Law Spare parts imported exempt for the project from fees if the value of these parts does not exceed (20%) twenty percent of the fixed assets value provided that they not be to be used for any other purpose.
5. The Kurdistan Investment Law has determined the period of exemption the raw materials needed for production which it (5) five years provided that the Board must decide the types and quantities with giving priority to the use of locally available raw materials that are suitable for the investment project in amount and quality. Regarding Iraqi Investment Law, there has not been determined any period of the exemption of imported raw materials. It also selects the scope of those materials under the following conditions:
 - A. They must be for commercial operation of the project in the manufacture of the ration card items materials, medicines, and construction.
 - B. This kind of exemption does not include the available raw materials produced in Iraq.
 - C. They must be good for the environment.
 - D. Except as provided for items (1,2,3). There is an exemption for the imported raw materials from the taxes and customs duties which are for purposes of a commercial operation according to the proportions of the contribution of local materials in the manufacturing of a product that should be regulated according to the controls which are put by the National Commission of Investment in coordination with sectoral bodies.
6. Regarding the additional exemptions, both of them have confirmed on it that the Kurdistan Investment grants the additional exemptions in following cases:
 - A. Projects that are established in the less developed areas in the region.
 - B. Joint projects by national and foreign investors.
 - C. Investment projects that are according to their nature, especially hotels, hospitals, tourist cities, universities, and schools grant additional exemption of duties on their purchases of furniture, furnishings and other items for modernization and renewal once every three years. Provided they are imported into the region and used exclusively in the project within one year from the issuance of the approval of the list of purchases and their quantities by the chairman of the board.

The same situation is of the Iraqi Investment Law in the case of projects relating to Hotels, tourist institutions, hospitals, health institutions, rehabilitation centers and educational and scientific organizations. It grants additional exemptions from duties and taxes on their imports of furniture, furnishings and requisites for renewing and updating purposes. The different point is only the period between both of laws which were selected in Kurdistan Investment Law which is once every three years and in Iraqi Investment Law it is once every four years.

7. In the last point both of them agreed to the signing of the penalty for the investor in the case of non-commitment to the exemption system or if he did not use the exemptions for the project purposes but rather is used for other purposes.

7. Conclusion

The system of exemptions and taxes is one of the most important issues regulated by investment laws in many countries. Through our study in this paper, we have found that both of the investment laws in the Kurdistan region and Iraq are interested in issuing tax and customs exemptions to the investor. Regarding the Kurdistan Region Law, the exemptions include only the strategic projects stipulated in Instructions No. (1) of 2007. These considerations are no doubt to support and encourage the investment projects and attract foreign capital to raise the level of production and infrastructure. Consideration in any investment legislation, especially in Iraq and the Kurdistan Region, which are in the poor stages in the economy, energy and industry sectors, and the development of all these and other sectors requirements provide for a regulatory investment legislation financial exemptions in order to facilitate the investment process.

8. References

1. Dr. Abdullah Mahmoud Amin, Evaluate the effectiveness of the Tax System for Income Tax in Iraq, PHD Thesis, University of Al Mustansiriyah, 2006.
2. Adel Ali Falih, Public Finance and Tax Legislation, First Edition, 2007, Hamid Dar for publication and distribution, Jordan, Amman.
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4. Dr. Mohamed Diab, Economic and Social Feasibility Studies for Projects, Second Edition, Beirut, 2009.
5. Dr. Saied Salem Arafa, Management of the Investment Risks, First Edition, Amman, 2009.
6. Iraqi Investment Law No. (13) of 2006 which has amended in 2010 and 2015.
7. Kurdistan Investment Law No.(4) of 2006.

16- "Expansion, for the purposes of this law, shall mean adding fixed capital assets aimed at increasing the designed capacity of the project in commodities or services or materials by a percentage exceeding (15%) fifteen percent. Development, for the purposes of this law, shall mean replacing project machines with more developed ones, totally or partially or making a development on the standing devices and equipments of the project by adding new machines and devices or parts thereof with the aim of raising the productive efficiency or improving and developing the quality of the products and services".