

The New Customs Points and the Imposition of Customs Tax Between the Iraqi Cities a Legal Discussion

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Abstract

The customs points between Iraqi cities: discussion of the legality of imposing and the principal of equality in the Iraqi tax law. This paper discuss the case of establishing a new places so called (customs points)by the Iraqi prime minister on march 2018 between the Iraqi cities especially Kurdistan region and Ninawa "Mosul" province, imposing customs tax(tariff) on the goods transactions, this process cause highly rate of prices in the local markets and a dilemma of this action :Is it legal or illegal according to Iraqi law.

Keywords: custom's law, Iraqi constitution, administration authorities, tax law

Introduction

Any regulation needs to put its Articles in action, this can called the power of legislation in execution laws and its restricted principal with higher shield from the law makers. If something happened in this process prohibited this routine ,no words can explain such action with less than a violation of law ,and what the case would be thinking of it if the public authorities take this action? This is the case happened earlier this year in march 2018 the prime minister of the republic of Iraq make a decision of establishing a new customs houses near the internal road of Iraqi cities a way far from the Iraqi boards where it should be .this paper discuss this action from its legality and the outcomes of it on the daily life of Iraqi civilians both positive and negative one.

Iraqi customs tax

Customs tax (Tariff) one of the modest taxes in the financial systems all over the world, and its connected mainly with the trade especially in their movements towards the board imported or exported or just as transit trade. Iraq have two Acts dealing with customs taxes: the first one is the customs law tax No.23 /1984() as the general Acts which implement the custom tax and all the procedures including the administration and its authorities, the second is the customs tariff law No.22/ 2010() which contain the schedules of names and the specifications of goods which the customs tax is imposed. Both laws are federal law while the Kurdistan region have their legislation of customs law with different rates and prices in according to the Iraqi constitution2005.if we get back to the federal laws we find that first one is the general law with defining meanings, conditions, legal concepts connected to the administrated booth customs and taxes applied throughout the territory of the Iraqi state including Kurdistan region.

This law explain the meaning of tariff-which is an Arabic linguistic term in original- as the "schedules contains specific goods and the rates of customs tax within its rules. notes."(, meanwhile in the third chapter of Iraqi custom law regulated the cases of which and when taxes should be paid by resuming every gods enter Iraqi official boards in any type, shape ,weight must pay custom tax according to the Iraqi custom law and customs fees also the other taxes which are regulated by active law ,except if there are an exception by the power of law or an agreement(),This is the main concept of custom tax in general.

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The establishment of custom tax (tax –creating entity)

The establishment of custom tax is the basic reason for paying tax, when an act happened made the obligation of paying tax arise, in the case of custom tax there are three legal acts made this obligation alive (import, export, transit) goods by its movement through customs house. Connecting to this discussion there must be a main legal principle which is the sovereignty of a state; where the state have the power and influence to impose taxes on every single action according to the domestic law inside state territory acted by national, foreign people(), this principle produce some facts:

- A. There are a specific area where every goods should have clear-through customs house inside customs buildings.
- B. There is a places called the corresponding line which is an area near to political boundaries of the state where the power of customs law have its activity.

In respect to this concept the Iraqi custom law in Article1, paragraph V give the definition of corresponding line as: "it's the corresponding line between republic of Iraq and neighboring states, and the beaches of the surrounding seas" so this is a restricted concept nothing should break it in any case, beside this there is an essential principal give the strict power of tax law enforcement which is intended as the principal of legality, which is stipulated in Article 28 of Iraqi constitution () "Not to impose taxes or duties and to amend, collected, exempted shall be only by law " this

Article produce another important conclusions:

1. every single tax or duty must have its legal base to be enforce.
2. The official authority by federal law (Iraqi constitution) only have the right to enforce this public financial burdens.

The Real Problem

Recently Iraqi government take a decision of establishing a new customs house not in its natural area near the boards, but inside the state on the outer roads separating Kurdistan region and other Iraqi cities such as Mosul, Kirkuk by making the whole procedures of imposing and collecting custom tax where all the trucks drivers enforced to stop and paying tax and duties in much more prices that been paid earlier through the custom house in Ibrahim AL-Khalil north of Iraq on the official boards line with different prices not agreed by the Iraqi federal authorities in Baghdad. This situation make a huge negative impact on the Iraqi markets through the increasing of goods prices as a logical fact, if we discuss the law situation we well find that a law called tariff law passed since 2010 as a federal law in Iraq contains the prices and their rates that imposed over the goods import, export or transit through Iraqi official customs house, but this law was suspended for many years under the demands of Iraqi politicians, some groups of Iraqi community for political, economies reason or just a way of groups deals with money corruptions. Until this year where the Iraqi authorities change the legislations system by starting a new process, using federal budgeting law through some Articles in it dealing with customs tax and duties on specific economic actions () alongside to this Act the Iraqi tariff law implement inside Kurdistan region especially at the boards points with prices till 5% on each goods that transported through these places, while the prices of the federal Iraqi custom tax reach in some cases to 200% of the goods value.

This difference between the tax price that implemented in booth Iraqi cities and Kurdistan region enforced Iraqi federal authorities to re- collect custom tax again by another customs house established on the outer roads separating some Iraqi cities such as Mosul with Erbil and Dohuk-Kurdistan's region- where they imposed much more prices of custom tax than it paid far to the north where the real customs house be, the federal authorities impose different prices on each goods as the law provided plus 25% as a protection of the national products.

In 2016 the federal government reached an agreement with the authorities of Kurdistan region to remove these temporary customs points and stop tax collections, further to that Kurdistan authorities issuing instructions to increase tariff prices in order to reach the federal numbers till 25% of the value of the goods, unfortunately this agreement failed and was not implemented by the end of 2017 because of the political conflict between the federal authorities and Kurdistan region. if any one may be asked why is all that about? It's all a logical conclusions of political conflicts resulting from legal and political chaos led to the independence of Kurdistan region materially and imposes its own prices without attention to the laws imposed by federal government in Baghdad.

In 2018 the Iraqi prime minister issued a directive to the Iraqi border crossing authority cancelled al-saffra customs point and establishing the points near Mosul and Kirkuk. The main result of all these actions is a wave of high prices in the local markets in Mosul and Kirkuk and other Iraqi cities and the lack of influence in the cities of Kurdistan.

Legal Discussion

The establishment of new customs buildings inside the state rather than to be in the border area. Is it legal or illegal, and this kind of decisions taken under the political pressure, what kind of results-legally- may provide?

We can answer this question through two ideas may result from these kinds of actions: First ,the establishment of customs points is consistent with the provisions of Iraqi customs law No.23 ,1984; stipulated the following meanings :by the decision of the minister of finance, and according to his authority to establish or abolish customs departments ,offices, stations ,further than this ,by the decision of the director general authority of customs all these administrative divisions determine by only his authority.()

While there is a provision in the law prevents the inspection procedures doing outside the officially customs buildings with taking into account the provisions of Article 63 of the customs law ,which allows in some cases the inspections of the goods outside the restricted area-customs house- at the request of the goods owner and at his own expense, according to these Articles the action taken by the prime minister of Iraq is legal according to his authority by law, with respect to Article10 of Iraqi federal budgeting law which assumed the non-paying of federal incomes by Kurdistan's authority as permission to the Iraqi ministry of financial affairs to cut its estimated shares by law() and make the financial settlement later, this idea consider the establishment of this customs points legal according to the legal proofs that mentioned earlier.

Second stems from the lack of legal basis and may considered as a serious legal violation for the following reasons:

1. This action contrary to the text of Article24 of the Iraqi constitution in clear way. Which stipulated on freedom of transfer of funds and between the Iraqi provinces and regions .and all actions contrary to this concept is a clear breaking of law.

Beside the economics influence and the financial burden on the domestic importer.

2. All official books towards the Iraqi federal border authority are directives and not an official resolutions as it should be according to the regular system of the Iraqi administration law ,the first directive issued towards the ministry of defense ,the second one to the Iraqis border security authority ,where booth contains the directions of establishment of customs points near the city of Mosul and city of Kirkuk in order to re-controlling the collecting of public funds through the estimating, checking and collecting federal custom tax, this act may consider illegal for the reasons mentioned above according to the Iraqi constitutional law and the principal of equity towards the law which assumed to practice over all the Iraqi people despite their residences as long as being inside Iraq .

Regardless these booth points of views and the legitimacy of this action ,this procedure will produce several problems especially connected to the Iraqi consumers despite the other big problems which the Iraqi society forces through the social welfare ,the conditions of national economy-high prices in the national markets ,the decreasing of the average income of Iraqi citizens- after the crisis of defending against ISIS and the challenges of re-building the cities damaged after this war, all these problems are serious and having a new one is something cant Iraqi people to forced.

Conclusions

After the discussion of establishing a new customs points. There be several recommendations may have the properly acceptance to change this situation to legal actions:

1. The problem of double taxation resulted from the double imposing and collecting custom tax in the official border -which controlled by complicated system regards to the political problems between Baghdad and Kurdistan region- will introduce several negative influences especially in Iraqi economy ,for that the removes of such points will eases the negative influence of such actions .
2. We recommend in order of preventing double taxation to text in the Iraqi constitution on preventing double taxation as a principal to maintain the financial statues and stability of financial transactions.

3. Working on re-positioning the customs points to the border crossing points to control what is entering and leaving Iraq to prevent the growing of smuggling in addition to emphasizing Iraq's sovereignty and territorial integrity.

Resources

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