

RESEARCH ARTICLE

Tax Evasion: A Comparative Study between Algerian Legislation and Islamic Jurisprudence

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Abstract

Taxes have become, in contemporary times, the first and most important financial resource on which states rely to cover public expenditures. This is largely because they constitute the only revenue source over which governments can relatively control the volume of receipts, unlike other revenues—such as hydrocarbons—which are governed by supply and demand and are often difficult to control or accurately forecast. However, the fact that taxes are the principal resource does not mean they are irreplaceable, nor that there is no practical alternative capable of substituting them and perhaps generating even greater revenues.

This paper seeks to demonstrate that it is possible to identify an alternative to taxes and thereby reduce—if not eliminate—tax evasion, while still increasing revenues and covering all expenditures. The state may retain the right to resort to taxation when necessity and urgent need arise. The study further argues that public revenues can be reorganized by activating a neglected and underutilized resource that is no less important than taxation and may yield higher returns.

Keywords: Taxes; Fees/Charges; Tax Evasion.

1. Introduction

The introduction of an academic article should include an appropriate contextualization of the topic, followed by a clear research problem, relevant hypotheses,

and a specification of the study's objectives and methodology.

Although numerous economic studies have addressed taxation—particularly its historical origins, its importance in state-building, collection mechanisms, and its relationship with other revenues—many such works have primarily aimed to persuade taxpayers of taxation's national value, portraying payment as a patriotic contribution while condemning refusal to pay and endorsing legal prosecution of defaulters. Under this approach, the tax claim becomes a debt owed by the taxpayer, and the state is entitled to pursue it when circumstances allow. This orientation has supporters both in Islamic jurisprudence and in legal doctrine, and later economists relied on their positions to justify expanding tax collection.

Even assuming the validity of this approach—and notwithstanding the arguments advanced in its support, many of which are reflected in state legislation and administrative instructions—researchers have continued to question the legitimacy of contemporary taxation practices imposed on taxpayers. This motivates the following research question:

Does taxation truly deserve the degree of importance attributed to it, such that it is made the first and most significant resource upon which the state builds its expenditure policy?

This study addresses that question by examining the legitimacy of taxes, their proper

ordering among state revenues, the reality of their importance, and the evidentiary grounds used to justify them—whether from a **Sharia (Islamic law)** perspective, a **legal** perspective, or an **economic** perspective. The study also presents an alternative view that challenges the prevailing one, clarifies that not everything termed “tax” in common usage is necessarily a tax in substance, and proposes a practical alternative for improving revenue management and rationalizing expenditures.

The significance of this research lies in its potential benefit to researchers and readers alike, as it:

1. reinforces the idea that established practices are not immune to revision, development, reassessment, or even replacement, and that it is unjust to treat subsidiary matters as though they were foundational principles;
2. demonstrates that widespread use and circulation are not reliable criteria for determining correctness, validity, or the absence of defects and alternatives;
3. shows the possibility of reorganizing state revenues by incorporating **zakat** and allocating its proceeds to expenditures previously funded through taxes, while relegating taxes to the last resort—used only in cases of necessity (e.g., war, pandemics, collapse in hydrocarbon prices, or insufficiency of zakat/fees/other revenues to cover expenditures). This must occur alongside rationalizing spending priorities according to: **necessities first, then needs, then embellishments.**

2. First Section: The Conceptual Framework of Tax Evasion

2.1 Definition of Tax

(A) Linguistic meaning

In Arabic usage, “tax” (darībah) can carry meanings associated with **kharāj** (tribute/land levy) (al-Baghdādī, 1964), and it may also derive from “daraba” (to strike/impose), connoting something imposed or “struck”

upon another (al-Azdrī, 1987). It also appears with meanings related to wool/hair prepared for spinning (al-Rāzī, 1986). Lexicographic sources indicate that it may refer to a due imposed upon a servant, often with deferred payment (al-Mursī, 2000), and it is used for periodic dues imposed monthly (al-Sabtī, n.d.). It is also described as a stipulated tribute paid by a servant to a master, pluralized as “darā’ib” (Ibn al-Athīr, 1979).

From these meanings, one may infer conceptual overlap between “darībah” and **maks** (an illicit levy/toll) in classical usage, whereas **sā’ī** refers to the collector of zakat, and **muhtasib** refers to the market regulator who historically also dealt with certain levies such as jizyah and ‘ushūr on non-Muslim residents and treaty merchants.

The term is also used for **maks**, defined as a levy taken from traders at checkpoints (al-Balkhī, n.d.), or what a ruler takes for himself from land produce or from traders’ goods (al-Yamanī, 1999). Classical lexicons describe maks as “collection/levy,” and “mumākkasah” in trade as bargaining down the price (al-Qunaybī, 1988). *Lisān al-‘Arab* states that maks is “collection/levy,” and that in pre-Islamic times it referred to monies taken from sellers in markets; the collector is called an ‘**ashshār**, and “**ṣāhib maks**” (a maks collector) (Ibn Manzūr, 1414H). From this, “**ṣāhib al-maks**” may be understood as one who takes from traders under the pretext of a tenth, while “**sā’ī**” collects charity, and “**muhtasib**” may collect certain dues from protected non-Muslim communities according to their agreements (al-Suyūtī, 1991).

(B) Technical meaning

A tax has been defined as a **mandatory monetary levy** borne definitively by taxpayers **without a direct quid pro quo**, used by the state as a financial instrument to achieve goals consistent with its ideology (Barakāt, 1986). It is also defined as a compulsory financial appropriation taken by the state from private wealth, without specific compensation, for public benefit (Mahjūb, 1971).

Some jurists in Islamic jurisprudence defined it as what the ruler takes from the affluent and wealthy as he deems sufficient to meet a public need (al-Juwainī, 1401H). Al-Ghazālī defined it as what the ruler imposes upon the wealthy when the public treasury lacks funds, to the extent necessary (al-Ghazālī, 1931).

Combining the linguistic and technical definitions suggests that taxation is an old financial practice often imposed by the powerful upon the weak—initially in master-servant relationships and later by states upon citizens and even foreign investors. Modern states treat tax payment as obligatory for those meeting the statutory conditions, reinforced by sanctions for delay, underpayment, or nonpayment.

The definitions attributed to al-Ghazālī and al-Juwainī imply that such impositions are limited to **need/necessity**—specifically, when the public treasury is depleted. By implication, imposing them in times of abundance is not permissible. The critical question, however, is how to determine genuine depletion (as opposed to depletion caused intentionally by wasteful spending). If public funds are consumed on non-essential or impermissible expenditures—such as entertainment, frivolity, and unnecessary projects—then depletion is self-inflicted and does not justify additional levies. If, however, funds are spent legitimately on necessities and are exhausted, then imposing a levy to the extent of need may be justified—consistent with the jurists' reasoning.

Accordingly, the foundational rationale for permitting such levies in Islamic legal thought is **necessity** and **removal of hardship**—i.e., an exceptional measure used only when required. By contrast, modern states often treat taxes as the primary revenue, collected in both prosperity and hardship without restriction.

Working definition (in this paper): A tax is a financial deduction imposed by the state on the wealth of persons who meet the legal conditions of liability.

Classical sources also link “tax” to **maks**, including the well-known report “The maks collector will not enter Paradise,” and therefore many jurists historically treated oppressive taxes as falling under the notion of maks (al-Mutarrizī, n.d.).

2.2 Elements of Tax

Taxes exhibit several defining elements (Ma'yāsh, 2020):

- **Monetary deduction:** imposed as a financial payment collected directly from the taxpayer or through a legally authorized intermediary.
- **Compulsory nature:** paid by force of law; failure or delay triggers penalties and possible prosecution.
- **Absence of direct compensation:** the taxpayer cannot demand a specific individualized service in exchange. A trader may pay taxes for years, yet if he delays for one year he is penalized without regard to prior compliance; and if he becomes bankrupt the state may not assist him despite his long history of payment.

2.3 Social Objectives of Taxation

Beyond financing the public treasury, taxation may serve social functions, including:

- addressing housing shortages via subsidies or public housing for low-income or no-income households;
- preventing excessive concentration of wealth in limited groups without public participation;
- combating socially harmful phenomena through fiscal policy.

2.4 Distinguishing Tax from Related Concepts

(A) Tax vs. Fee/Charge (Rasm)

A **fee** is a sum paid to the state or another public legal person compulsorily **in exchange for a specific service** (Farhūd, 1990).

- **Key difference:** the fee has a clear consideration (service rendered), while the direct basis of taxation is often less explicit.

- **Shared feature:** both are compulsory and entail penalties for delay. Some usage does not sharply distinguish them; if one loosely calls a fee a “tax,” the relationship becomes one of general and specific: **every fee may be viewed as a levy**, but not every levy is a fee.

(B) Tax vs. Fine (Gharāmah)

A fine has been defined as a means to compel a debtor to perform an obligation in kind (al-Sanhūrī, 1982), and also as a judicial financial penalty assessed per day of delay to ensure execution of a judgment or investigative measure (Ahmad, 2002).

- **Source:** taxes are assessed by tax administration; fines are judicial sanctions determined by a judge.

- **Cause:** fines arise from breach/nonperformance; taxes are imposed by law for public finance purposes, often justified indirectly.

(C) Tax vs. Compensation (Ta‘wīd)

Compensation is a sum or remedy equivalent to the harm suffered—loss and missed gain—naturally resulting from damage (al-Bakrī, 1980), and generally what a liable party owes in civil liability (Qutaysh, 2012).

- **Source:** taxes are imposed by public administration; compensation arises via private settlement or judicial award.

- **Cause:** compensation correlates to harm and causation; tax liability is not tied to a specific harm-to-payment relationship.

2.5 Types of Taxes

- **Direct vs. indirect taxes:** direct taxes are paid by the liable person directly to the treasury; indirect taxes are collected through an intermediary (e.g., notary collecting registration fees).

- **Fixed vs. proportional taxes:** fixed taxes remain constant despite changes in the

tax base; proportional taxes vary with the tax base.

2.6 Definition of Tax Evasion (as a compound term)

Tax evasion may be understood as actions by natural or legal persons using various methods intended to avoid paying legally due taxes or to pay the minimum possible amount. Evasion commonly arises within lump-sum/flat-rate systems.

It has been defined as “the failure of the taxpayer to pay the tax wholly or partially to the financial authorities using lawful and unlawful means” (al-Khaṭīb, 2000). This implies two categories:

1. **Lawful evasion (avoidance):** reducing or avoiding taxes through legal methods that do not trigger punishment. Examples include under-declaring the true sale price in a contract and reporting only the official minimum valuation to avoid revaluation tax, or using intra-family transfers to adjust valuation before resale so as to avoid or reduce capital gains taxation.

2. **Unlawful evasion:** using illicit means to avoid payment, including protection through influence within tax offices, forged documents, sham transactions, or simulated debt acknowledgments to create a false appearance of inability to pay, followed by termination of the sham instrument after achieving the intended tax outcome.

3. Second Axis: The Legal and Sharia Positions on Tax Evasion

3.1 The Algerian Legislator’s Position on Tax Evasion

Algerian law treats tax evasion as a financial-economic crime with negative repercussions for the national economy, given the state’s reliance on taxation to manage public expenditures. Any disruption to revenues necessarily affects expenditures: increased revenues enable expanded spending, whereas diminished revenues constrain it.

Accordingly, Algerian legislation criminalizes tax evasion and seeks to reduce it, including through references such as **Article 119 of the Registration Code**, **Article 532 of the Indirect Taxes Code**, and **Article 34 of the Stamp Code**, as well as provisions referenced in **Order No. 76-102**, **Order No. 76-103**, and **Order No. 76-101** (as amended and supplemented).

Elements of the Tax Evasion Offense

A person is not criminally liable for lawful avoidance (lawful evasion), consistent with the legality principle: **no crime and no punishment without a legal text**. Criminal liability arises where the taxpayer violates tax law through deceptive schemes aimed at avoiding payment of a tax, fee, or legally mandated right.

Thus, the offense requires both:

- **Material element (actus reus):**
 1. use of fraudulent/deceptive methods;
 2. evasion or attempted evasion of the tax;
 3. causal link between deception and evasion.
- **Mental element (mens rea):**

Jurist Aḥsan Bousqī‘ah considers tax evasion among crimes requiring criminal intent to ensure justice and the social functions of punishment. As an intentional crime, it requires general intent and (where applicable) specific intent.

Tax Governance Principles to Limit Evasion

- **Effective tax governance framework:** promotes transparency and efficiency and ensures compliance with applicable laws, supported by adequate oversight resources and capacities.

- **Accountability:** powers granted to executive staff should enhance integrity and trust, improve performance, reduce administrative and financial corruption, and preserve taxpayers' right to litigate disputes before competent courts.

- **Disclosure and transparency:** publication and accessibility of tax laws, especially annual finance laws, allow taxpayers to remain informed of legislative updates.

- **Tax audit/investigation:** a key mechanism allowing administrative settlement of evasion without judicial proceedings; it is faster, less costly, and effective in practice—e.g., revaluation mechanisms in real estate transfers and lease contracts where declared values diverge from official references.

3.2 The Position of Islamic Jurisprudence on Tax Evasion

Before addressing tax evasion, Islamic jurisprudence first raises a foundational question: **Is there a mandatory financial obligation in wealth other than zakat?** In other words, apart from zakat, fines, maintenance, and compensation, can additional obligations be imposed on people's wealth?

Islamic jurists have divided on the legitimacy of imposing taxes into two trends:

(A) The Prohibitive View (Those who prohibit taxation)

Among those associated with this view are al-Dhababī and al-Suyūtī; among contemporary scholars: al-Qaraḍāwī and Muhammad al-Hasan Wuld al-Daddū.

They rely on evidences including:

1. Qur'anic proofs:

- “And do not consume one another's wealth unjustly or send it [in bribery] to the rulers so that [they might aid]

(وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُنْهَا بِهَا إِلَى الْحُكَمِ
لِتَأْكُلُوا فِرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْأَلْبَامِ وَأَنْتُمْ تَعْلَمُونَ)
(al-Baqarah 188).

They also cited the saying of Allah, the Exalted

(يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَّحِيمًا). (al-Nisā' 29).

They argue that unjust taxes constitute consumption of wealth unlawfully, unlike fees tied to services and other legitimate dues.

(إِنَّمَا السَّبَيلُ عَلَى الَّذِينَ يَظْلَمُونَ النَّاسَ وَيَبْغُونَ فِي الْأَرْضِ بِغَيْرِ الْحَقِّ أُولَئِكَ لَهُمْ عَذَابٌ أَلِيمٌ) (al-Shūrā 42). Maks collectors are counted among oppressors, as they take what they do not deserve and deliver it to those who do not deserve it (al-Dhahabī, n.d.).

2. Prophetic tradition (Sunnah):

- “The maks collector will not enter Paradise” (al-Suyūtī, 1991). They interpret this as either exclusion from entering with the first group (i.e., without punishment) or exclusion until punished, consistent with orthodox principles of reconciliation of texts.
- “The maks collector is in Hellfire” (Ahmad, n.d.).
- The report: “There is no right in wealth other than zakat” (Ibn Mājah, n.d.). They interpret this as negating any obligatory financial duty beyond zakat.
- The hadith of the Bedouin asking about obligations, in which the Prophet ﷺ mentioned prayer, fasting, and zakat, and said: “No, unless you give voluntarily,” and then said: “He has succeeded if he is truthful” (al-Bukhārī, 1422). They argue that the Prophet ﷺ did not establish state-imposed financial obligations beyond zakat.

(B) The Permissive View (Those who permit taxation)

This view cites:

Qur'anic encouragements to spend, such as: (وَأَنَّى الْمَالَ عَلَى حُبِّهِ ذُوِي الْقُرْبَى) (al-Baqarah 177), and statements attributed to early scholars (Ibn Hazm, n.d.).

- General prophetic teachings on mercy and solidarity, such as “Whoever does not show mercy will not be shown mercy,” and “The Muslim is the brother of the Muslim; he does not wrong him nor forsake him” (al-Bukhārī, 1422).

- Reports attributed to companions, such as statements ascribed to 'Alī regarding a duty upon the wealthy sufficient for the poor, and statements attributed to 'Umar and Ibn 'Umar about “a right in wealth other than zakat” (al-Maqṣūd, 1980; Salām, 1986).

They also argue—following Ibn Hazm—that limiting obligations to zakat conflicts with other recognized duties such as maintenance of needy parents, spouse, dependents, and even animals (Ibn Hazm, n.d.).

(C) Discussion of the evidences

This paper argues that permissive evidences are not conclusive for the modern concept of taxation for several reasons:

- Prophetic hadith indicating no obligatory right in wealth beyond zakat is treated as strong, while many cited companion reports are debated in authenticity and, even if accepted, would not override prophetic statements except as interpretive guidance.
- The classical context often concerned charity and emergency support rather than institutionalized taxation as practiced by modern states. Other financial obligations (e.g., blood money, debt repayment, maintenance, jihad expenditures in specific contexts) have distinct textual bases and do not prove a general taxation power.
- If early authorities witnessed tax revenues being spent on frivolity, entertainment, or morally objectionable projects, they would likely have rejected such levies.

A practical ethical dilemma arises: modern tax systems are frequently **declarative**, requiring the taxpayer to declare turnover or values. Some Muslims may feel caught

between (i) truthful declaration that funds activities they deem impermissible, and (ii) false declaration involving lying. The paper argues that where funds are directed to oppression or harmful ends, some may claim a rationale for minimizing exposure, though this remains a contested moral-legal issue.

4. Conclusion

Based on the foregoing, the paper contends that the Algerian state could increase revenues by activating zakat collection and requiring eligible citizens to pay it in a manner comparable to tax enforcement. It further proposes transferring zakat collection from the Ministry of Religious Affairs and Endowments to the Ministry of Finance due to the latter's greater expertise in financial collection and administration, and suggests similarly improving endowment (waqf) administration and investment.

A transitional option proposed is to grant citizens the choice to pay zakat through local tax centers as an initial step, with corresponding tax relief, moving gradually toward reducing taxes. The paper maintains that coercive zakat collection could be justified (within its framework), whereas coercive taxation remains disputed among jurists except under necessity.

Recommendations

- Restrict taxation to cases of need and necessity, after zakat, fees, and other revenues.
- Move beyond the “night-watchman state” model by strengthening public economic institutions and enabling them to compete globally while supporting the private sector.
- Rationalize expenditures and prioritize according to the five universals: necessities, then needs, then enhancements.
- Assign zakat on trade inventory (zakat ‘urūd al-tijārah) collection to the Ministry of Finance rather than the Ministry of Religious Affairs, collecting it systematically like taxes, and grant tax relief to those who pay zakat as an initial

step toward reducing taxes and mitigating evasion.

- Require citizens to pay zakat and fees rather than burdening them primarily with taxes; this would reduce “tax evasion” since zakat is broadly recognized as obligatory.
- Review and reform fees/charges to compensate for reduced taxes—especially in transfers of movable property (e.g., high-value vehicles) where state receipts may currently be disproportionately low.
- Review stamp and registration laws, including introducing even symbolic pricing for services currently provided free of charge (e.g., civil status documents) via stamps—supporting municipal printing costs, reducing forgery, and creating municipal revenue.
- Reduce wasteful public spending and avoid expenditures lacking economic, social, or religious benefit.

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