



## **Legal Criteria for Maximizing Iraq's financial resources**

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Received: December 27, 2022; reviews: 2; accepted: January 21, 2023

### **Abstract**

With the issuance of the Fiscal Deficit Financing Law No. (26) for the year 2021, which confirmed the existence of a deficit in the general budget amounting to (15,634,300,000) fifteen trillion, six hundred and thirty-four billion dinars, in light of the instability of oil, the main funded source of the budget, and the increase in the volume of public expenditures due to many factors, including the growing population size and exhaustion of the state budget with job slackness, represented by the appointment of approximately 160,000 one hundred and sixty thousand job degrees. This confirms the traditional role of the state in economic and social life, as well as the increased inclusion of families in the Social Welfare Law. All of these factors mentioned, for example, but not limited to, lead to the fact that the state is primarily responsible for satisfying public needs, and also the lack of clarity of the strategic vision of the administration, whether federal or local, in increasing financial resources through the available legal and administrative methods and means. Thus, the maximization of resources cannot be achieved unless there are solid rules and legislation and efficient and effective administration topped by the political will primarily through an effective administrative and institutional system to establish a clear and sound legal and financial policy.

### **1. Introduction**

One of the main tasks of the state is to collect revenues and maximize them to meet the increasing expenditures in the public budget. There are undoubtedly several factors affecting the administration's work when it makes estimates of revenues, especially when major sources of revenue financing are prone to fluctuations due to low oil prices or economic and health crises (the coronavirus pandemic) and the collapse in oil revenues. This in turn has

affected the financing of the budget by the time that all States have recognized the need to pursue a legal, financial, and economic policy to provide the budget with revenues. Therefore, there are several criteria that the State must follow to maximize financial resources. Revenue collection is recognized, but more important is the diversity and increase of revenues.

## **Chapter One: Research Methodology**

### **1.1 research importance**

The importance of the research stems from two things. The first is that the study deals with economic and financial issues from an administrative side, which helps the reader to see the balance between the sectors and their management. Second, there is no way out of the rent economy unless there is prudent management based on economic, legal, financial, and social programs and plans.

### **1.2 Research problem: The problems of this research arise through**

Talking about increasing revenues is no longer a theoretical topic, but rather it must be on the ground because of the tendency of most countries to move away from rentier sources to finance the budget with the increase in spending by the state in various sectors and the limited other revenues of the budget which in turn leads to a financial deficit in the general budget, which prompts governments to find various sources to enhance revenues through administrative methods.

### **1.3 research objectives**

1. Learn about proper management, which is the basis for maximizing resources and diversifying revenues.
2. Activating the role of the competent non-oil financial department, which can supplement the general budget through increasing investments and available legal methods.
3. Developing sources of revenue through available legal means by rehabilitating them and providing an effective legal framework.

### **1.4 Research methodology**

The methodology used to write our research is analytical descriptions through reliable professional and scientific sources that provide the vocabulary of our research with objective and formal evidence.

Our research will be divided into three requirements. The first requirement is related to the constitutional criteria adopted in regulating the financial resources

of the state. The second requirement is the administrative standards for the regions and governorates that are not organized in a region to maximize the financial resources of the state. The third requirement is the obstacles facing the administration in maximizing the financial resources of the state.

## **2. The first requirement: the constitutional criteria adopted in maximizing the financial resources of the state**

The general budget is considered a law belonging to the branch of public law, public finance because it includes legal texts that clarify the mechanism for collecting revenues and disbursing expenditures within a period, usually a year (1).

In essence, revenue collection and its maximization mechanism are carried out by the Government through its administrative organs of federal and other local authorities. These revenues benefit the State treasury. Therefore, it is the constitution that lays down the general rules and principles for any legislative or regulatory action or instructions. We find that the Iraqi constitution of 2005 has defined the competencies of the federal authorities in Articles (105, 109) (2) as well as the powers of the regions (116-125) (3).

The constitutional articles stipulate that matters related to fiscal policy, the most important of which is the state's general budget, and what is related to money and the central bank, are within the competence of the federal authorities. The constitution gives the regions the right to exercise some legislative, judicial, and executive powers, provided that they are not within the jurisdiction of the federal authorities. The constitution indicated that the governorates that are not organized in a region have wide financial and administrative powers (4) in accordance with the state's policy of adopting administrative decentralization, and the constitution stipulated that these legal issues be regulated by legal legislation (5).

Today, the economy of all international systems is the backbone of policy, because the strength of the economy is the strength of the financial system and thus reflects the influence of one another (6).

Therefore, it is recognized that it is not possible to imagine any strong political system unless there is an economic system that enjoys stability and strength. Therefore, states develop a legal and financial policy to enable them to implement their political program, and this cannot be done unless there is an increase in revenues to cover expenses by maximizing resources from non-traditional sources or on which their economy depends. Government departments adopt transparency and fairness in distributing roles to their affiliated authorities, whether they are federal or local, to develop and maximize resources, manage them effectively, and achieve coordination between the various departments, which in turn helps raise the level of imports (maximizing them), which is reflected in the necessary services (7). Most democratic systems have adopted the transparency standard for the optimal use of financial resources and the fight against corruption.

We find that the Iraqi legislature has adopted this standard through the General Budget Law (8), by which all ministries and entities not associated with the Ministry as well as the governorates are authorized to modify or charge wages or fees except sovereign fees in the light of instructions issued by the President. The abolished Financial Management and Public Debt Act also indicated that “the principles of inclusiveness, transparency, and compatibility are of great importance when formulating and implementing the budget for the new Iraq and other related works” (9).

Through this text, it is clear that it is general and comprehensive (other related works) to include government measures to maximize financial resources. It is noticeable in the Iraqi budget laws that explicitly stipulate the division of additional resources between the party that collects the revenue and the state treasury.

Therefore, transparency can be defined from the political side as “the accuracy through which people can observe political actions” (10), and it has also been defined as: “the increasing flow of approved and exported political, social, and economic information” (11), and that transparency in its general sense represents correct and accurate information about all sectors that collect revenues and maximize them, and because of the nature and specificity of the budget law in Iraq, we find that it is prepared on an administrative basis only (items for expenditures and revenues). The lack of clarity in the criterion of transparency and defining the role of the budget in development (12), and the term justice cannot be defined by a specific concept, as it is a relative term and subject to change with the surrounding circumstances of time and place. Rather, it is difficult to define fixed criteria, as it is not a material thing, but rather a moral state that gives satisfaction to the soul, including a sense of repelling injustice and achieving equality (13).

Justice means that morality prevails over the law. We find that the most important basis for justice or social justice is the General Budget Act, mainly because one of the budgetary priorities is the distribution of national income or the reallocation to achieve justice and the distribution of financial resources (revenues) according to the Act and its instructions, as well as under constitutional rules governed by the Constitution (14).

The researcher believes that the military and security allocations took the largest share of the general budgets of Iraq since 2003 compared to other service sectors because of the security conditions that prevailed at the time, as well as the lack of clarity of vision related to the economic aspect according to a clear and scientific strategy, which led to a large gap in obtaining and maximizing revenues due to dependence on rentier sources, fluctuating prices, and not using effective means to maximize resources and diversify revenues for the public budget.

### **3. The second requirement: Administrative criteria for the**

## **regions and governorates that are not organized in a region to maximize the State's financial resources**

The administrative measures taken by the administration in maximizing and collecting resources are based on legal bases in their collection (15). Legislations, regulations, and instructions are binding on the administration when exercising its executive duties, which include maximizing the resources it has, and if the administration refrains from carrying out its tasks, it will have committed a mistake and will be responsible according to the legislative authority. After the administration carries out maximizing procedures, a right to collect revenues arises, provided that the collection of additional resources is according to two important elements (appropriateness and economy) and it is intended that the increased resources be collected promptly that does not increase citizens' financial burdens and that their collection be economically and with less expenses in collecting and obtaining these resources (16).

The Ministry of Finance in the Kurdistan region is responsible for financial policy and prepares and prepares the general budget for the region in preparation for discussion, voting, and approval in Parliament. After its approval, the budget law returns to the Council of Ministers and then to the Ministry of Finance for the administration to implement and distribute funds to the ministries to cover expenses and collect revenues according to the instructions issued by the Ministry of Finance in the region for spending units and adhere to them (17). Several administrative standards must be followed when the administration collects local and major revenues, and these standards must be as follows:

1. The collection of the original and maximum revenues can only take place through the realization of the incident that constitutes them, i.e. the taxpayer owes the state the amount of the fee or tax in return for the service performed (18).
2. The objection by the taxpayers or others does not lead to stopping the collection, but the taxpayer pays first, and then the amount of the amount is objected (19).
3. The time factor is one of the important criteria according to the provisions of the law because it depends on the financial ability of the taxpayer to pay, as well as non-extravagance and economy in the process of collection (20).

The administration in the region is responsible for maximizing financial resources as well as collecting public revenues in a common container by supplying them from the various government agencies in the region to the treasury in the region's Ministry of Finance, whether indirectly, as in the case of government debt, and then transferred to the Ministry of Finance. As for taxes, fees, and fines, they are based on their collection laws if the controls issued by the minister have an impact on the collection rates in terms of the amounts received or authorize the administration according to the laws to

change or amend the fees, but they must not violate the federal laws and legislations, as well as the regulations and instructions of other laws should not be violated (21).

The governorates' revenues are detailed in the law (22). Maximizing the financial resources of the governorates is one of the important stages because it obliges the administration to rely on two basic criteria, namely (the legal basis for maximization, the criterion for maximization and its collection) in accordance with the principle of separation between the executive and specialized administrative functions. Therefore, it is not permissible for the administration to collect any amounts unless there is a law permitting that or by relying on authorization from the competent authority (23). The most important revenues for the governorates that are not organized in a region are (taxes and fees). Since the services provided by the state are many and fees are mostly collected by the administration, it is inconceivable that the legislator continues to issue laws to collect or amend the fees, but rather authorizes the decentralized administration and ministries by law with this authority, although the majority of legislation supports imposing financial obligations by the legislative authority, the Iraqi legislator has deviated from this rule in the General Budget Law for the year 2015 and beyond. We find that the administrative and financial system in the governorates that are not organized into a region is characterized by several characteristics (24):

1. Local authorities exercise their powers in accordance with the constitution and its principles in addition to other legal rules. The constitutions regulate the administrative and financial powers enjoyed by the decentralized regimes (provinces) and the legislation related to their daily work (25).
2. The administrative and financial system is characterized by principles that require justice in distributing revenues and achieving equality in financial, economic, and social matters because management in a decentralized system requires the local government to actively contribute to addressing the difference between revenues and expenditures. Therefore, we find that (Turkish law), for example, obligated the central governments to finance what was decided by half of the municipal budget based on the population (26).
3. It is a common system between the powers vested in the administrative units as well as the responsible ones, so there is a related relationship between the duties and tasks delegated by law to the administration in the governorate and the administration in the central system. It follows that the responsibility is shared between them in the field of operational and investment expenditures (27), as well as their authority to maximize resources to finance local spending within the program, priorities, and plans of the governorates and their administrative units (28).
4. It is the administration in the governorates that determines its financial

position through the amount of revenue expected from the sources of revenue as well as its procedures in maximizing the resources because it expects its revenues depending on the prevailing conditions, whether financial, economic, or social, and the direction of the governorate administration to increase or reduce the financial burden on the population, including the tax burden. Also, the reason for assigning the local administration in the governorate to determine the financial burdens is because it is (a government elected by the people of the governorate) and the elected member bears full responsibility for his decisions. Although some European jurists rejected that, such as (Prudhomme) (29) and (Davey) (30), and they supported their opinion that the local administration is often weak in terms of efficiency, as well as a contradiction between the actual expenditures and the local resources, the reliance of many local administrations on central funding and the weakness of some governorates' domestic revenues owing to non-investment in productive sectors (31).

5. The administrative and financial system of the governorates that are not organized in a region is distinguished by the diversity and multiplicity of sources of revenue, whether these resources have been determined by law or by regulations or instructions that authorize the local administration to amend or change fees and other prices (32).

It is noted that decentralized administration enables local governments to perform their duties by providing public services that were carried out by federal governments (33), away from the state of waste of public money as well as administrative corruption and the consequent decrease in costs and increase in efficiency, which contributes to achieving development in the province at all levels. The decentralized administration contributed to increasing economic growth in the United States of America for the period (1948 to 1994), and decentralized administration also contributed to achieving social development in developing countries (34) and European countries (35). The Provincial Law referred to the formation of a higher inter-governorate coordination body headed by the Prime Minister specialized in governorate affairs and local administration to deal with problems, obstacles, and matters related to inter-governorate affairs (36). Referring to the letter of the Iraqi Ministry of Planning/Government Investment Programs Service, the book was intended directly to support decentralization for development and increased resources (37).

The book of the Presidency of the Council of Ministers / the Supreme Authority for Coordination between the governorates indicated the link of the Revenue Maximization Department within the structural administrative and financial departments in the governorates (38). Accordingly, the (canceled) Diwaniyah Governorate Council issued a local law in the name of (the Local Revenue Law) based on the provisions of Article (122) of the effective Constitution of the Republic of Iraq and Article (7/Third) and Article (21) of



the Law of Governorates that are not organized in a region. The Inter-Provincial Coordination Commission issued its book No. (50/74) on 18/1/2018 regarding maximizing local imports (39).

We also believe that there should be a comprehensive plan to maximize the State's revenues in coordination with decentralized administration. Geographical, economic, and social criteria are taken as a basis for maximizing.

#### **4. The third requirement: Obstacles facing the administration in maximizing the state's financial revenues**

The issue of estimating the volume of public revenue is one of the most complex problems facing the administration when drawing up the general budget because the revenues are affected greatly and clearly by the political, economic, social, local, and international conditions because the main source on which the general budget depends as revenue is oil and the drop in prices that afflicts it from time to time. Likewise, taxes are also unstable because they depend on the commercial activity practiced by people and are affected by political and economic conditions. Also, the fees imposed on public utility services are affected by the economic situation. A depreciation of the currency and a rise in exchange rates are stagnating markets and customers are reluctant to buy unnecessary needs. If the origin of the income has been afflicted with a certain damage, then the issue of maximizing is very complex and difficult (40).

It is recognized that the general budget consists of two sections: (expenditures and revenues) and because of the traditional methods of preparing the general budget in Iraq, there is a financial deficit affecting the budget each year, namely, increased expenditures while the volume of income remains the same (41).

There may be a decline in the rate of revenues and the deficit in the general budget can only be filled by (maximizing resources) because one of the advantages of the general budget is that it is annual, this period is during which sectors carry out their activities funded by the budget or that supply the budget with revenues (42).

Factors that affect the maximization of resources, such as the general budget, and the maximization of revenues are closely linked to economic factors. If the country is in an economic recovery and there is a rise in oil prices and an increase in exports, then the maximization has already taken place without the need for it to be stipulated in the budget law because the surplus has already been achieved in revenues, and the matter is different in the case of a decrease in global oil prices and an increase in expenditures. The government's financial and legal policy is one of its priorities to find alternatives to financing the budget by maximizing resources, whether these measures are taken at the level of annual budget laws or through other legislation. Despite this, the government policy is insufficient and useless, because by observing the revenues generated from taxes and customs, we find that the percentage of completion in 2019



reached (76%), but the contributions to this revenue in the general budget do not exceed (8%) (43).

The measures taken by the administrative and financial authorities have achieved a high rate of achievement in collecting fees and taxes. It should be noted that the budget law, which depends mainly on rentier revenues and pursued a policy of maximization, included provisions that came with new texts, such as adding revenues obtained by the Ministry of Health and municipal departments to their allocations for the purchase of medical supplies and medicines, although this work contradicts the principle of not allocating a specific revenue to enhance specific public expenditures (44). The goal was to speed up the procedures and avoid red tape and other transfer, allocation, and financing procedures.

The researcher believes that the lack of a well-defined legislative policy forces the executive authority to maximize resources and not rely on rent sources through a well-thought-out plan with economic and social dimensions, because not every increase in taxes or fees is a maximization of resources. Rather, some sectors cannot generate revenue at present, but in the future, they have fruitful results in maximizing resources like the education sector.

### **Conclusion**

Having completed our research that is entitled "Legal criteria for maximizing financial resources in Iraq", we focused on maximizing the resources and laws on which the administration relies to increase its revenues. In our research, we reached a set of conclusions and recommendations.

### **5. Conclusions**

1. The approved constitutional standards for revenues automatically affect the procedures for maximizing financial resources and do not do justice to the governorates that have no revenues, indicating that the region refrains from paying what it owes to the federal government and that any maximization of revenues in the provinces that are not organized in a region, especially those that include natural resources and border outlets that go directly to maximizing the volume of revenues in the public budget.
2. It turned out that there are broken laws that would maximize the financial resources of state departments, especially self-financing, due to the Ministry of Justice's refusal to publish them on the pretext that the President of the Republic did not ratify them, and this is a clear constitutional violation of the text of Article (73) of the Iraqi Constitution 2005, the Ministry of Justice published the law on February 20, 2023, that is, nearly 7 years after it was approved by

Parliament.

3. Due to government policies that were not successful in managing Iraq's oil file, political changes, successive wars, and economic blockade that led the Iraqi economy to be an exceptional country in all sectors and the lack of clear visions of the volume of oil exports that would have been better invested to maximize imports and what would be reflected in the economic, social and political aspects.
4. The fiscal policy in Iraq was not at the required level and legal and financial strategies were not adopted that would have an impact on the optimal investment of imports and the resulting diversification of revenues and the maximization of the state's financial resources, which in turn led to the fact that the Iraqi budget so far is subject to fluctuations in prices, sources of rents.

## **6. Suggestions**

1. The need to raise the level of self-financing departments so that these important sectors, represented by companies, can pay their contributions to the public budget from their profits at the rate of (45%) based on the text of Article (11 / Fourth / 1) of the Public Companies Law No. (22) of 1997.
2. Developing and maximizing federal and local resources, making diversification of revenues the basis for supplementing the budget, and not following a policy of foreign loans to cover expenses due to lack of revenues because it affects all aspects of the state and its impact extends to future generations and bears the burden of paying off debts with the interest that accrues from them and often exceeds the amount of the debt.
3. Expedite the legislation of laws of the utmost importance in maximizing resources and make them the basis of the work of the Government Administration because the legal regulation of partnership or joint operation contracts does not include specific legal texts to work, except for reference to the instructions for implementing government contracts (appendix).
4. Reconsidering all tax legislation and making tax revenue one of the main sources in financing the budget and maximizing resources and notifying all governmental and private sectors of activating Instructions No. (1) in 2007 related to tax deduction using the direct deduction method.

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