

جامعة النجاح الوطنية  
كلية الدراسات العليا

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بسم الله الرحمن الرحيم

المعاملات الوهمية في ظل القوانين الضريبية  
السارية المفعول في فلسطين.



اعداد

احمد عزت لطفي الشريف

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أعضاء اللجنة

التوقيع

أ. د. أحمد مبارك الخالدي  
أ. د. حسن السفاريني  
أ. د. غسان عليان

١ - د . احمد مبارك الخالدي /جامعة النجاح الوطنية : مشرفا ورئيسا للجنة

٢ - د . حسن السفاريني /جامعة النجاح الوطنية : ممتحنا داخليا

٣ - د . غسان عليان / الجامعة العربية الامريكية جنين : ممتحنا خارجيا

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إلى والدي الحبيب رحمه الله تعالى الذي غرس في الجسد والاجتهاد،

إلى والدتي الحبيبة التي أمدتني دوماً بالعزيمة والأمل ،،

إلى أخي وأخواتي الذين دعوني بكل طاقتهم ،،

والى أرواح شهداء الشعب الفلسطيني ،،

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**An-Najah National University**  
**Faculty of Graduate Studies**

**False Transactions in the light of Tax Laws**  
**Currently Applied in Palestine**

**Prepared by**  
**Ahmed Izat Lutfi Elshareef**

**Supervised by**  
**Dr. Ahmed Elkhaldi**

Submitted in Partial Fulfillment of the Requirements for the Degree of  
Master in Taxation Disputes, Faculty of Graduate Studies, at An-Najah  
National University, Nablus, Palestine.

2004



**False Transactions in the light of Tax Laws  
Currently Applied in Palestine**

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**Abstract**

The term 'false transactions' appeared as a way of tax evasion with the appearance of proportional taxation (which means that the higher the income the higher the tax percentage due on it.) As a result, some taxpayers resorted to fragmenting their income falsely by transferring ownership of part of their income resources to others fictitiously. In order to combat this form of tax evasion, the tax legislator set the rule that the tax assessor can reject a transaction if it seems false and assess on these grounds. The legislator then put lawful indications to indicate the falsehood of some common transactions in order to lift the burden of proving its falsehood off the assessor's shoulders.

The concept of false transactions in tax law has a strong connection with the concept of formalism in civil law and other laws, where 'formalism' is defined as an agreement between two parties in a legal contract to hide their real purpose under a deceitful pretence to realise a certain aim undisclosed to others. It requires the unity of contractors and subject in both contracts as well as the unity of declaration time, and that one of the contracts is declared while the other is concealed with the agreement of both parties.

There are two types of formalism: absolute formalism which means that the declared contract does not really exist. The other is relative formalism which means that there is a legal connection between the contractors but the formalism conceals part of it such as concealing the contract type, the identity of the other contractor or one of the conditions.

As for the status of formalism, it is not, in itself, considered a reason for voiding the contract. If both parties concealed a real contract with a fictitious declared one, the operative contract would be the real one. However, the party that claims formalism should present proof of their claims. As for the other party (those who were not part of the contract or a general successor for one of the contractors,) the status of formalism to them is that they can hold on to the fictitious contract or choose to hold on to the concealed contract and prove it with all possible means.

Despite the similarity between the concepts of false transactions in tax law and formalism in civil law, there are substantial differences. The main one is that the tax authority does not need to resort to the legal system to establish formalism but can do that by itself. This raises the question about the legal basis for the theory of false transactions. To answer this question we need to go back to the distinctive characteristic of tax law which springs from the importance of tax for the state since it is considered the blood that feeds its veins. Therefore, this distinctiveness has developed on the basis of the necessity of continuous tax flow to the state without interruption. It is manifested in the principles of taxation law which specifies tax debt very clearly, takes into account reality rather than

formality and gives the tax establishment special rights and privileges to insure the determination of tax debt and its collection. This distinctiveness gives tax debt priority over other debts and influences the interpretation of tax legislative texts so that they can only be interpreted within the frame of taxation principles and according to the special meaning implied by taxation law.

This distinctive characteristic is the basis for the theory of 'false transactions in taxation law,' although it is important to emphasise that the scope of applying this theory is limited and is restricted to matters regarding tax assessment.

The conditions necessary to apply the rule of false transactions are that:

1. there is a legal transaction between two parties.
2. the transaction is issued on behalf of the taxpayer.
3. the transaction aims to reduce tax.
4. the assessment officer believes that this transaction is false and did not actually take place.

Types of false transactions: the tax legislations provided specific forms of common false transaction which are considered legal proof of its falsehood. Some appear in our current tax legislation while others appear in the comparative legislation. Some of these forms are: ownership transfer for the benefit of the offspring, ownership transfer that can be retracted,

ownership transfer for the purpose of blocking or stopping tax collection, fictitious partnerships between parents and offspring or between spouses, the transaction of the apparent taxpayer who actually works for another, transactions that differ from common market dealings, transactions between residents and non residents and the salary of a partner employee or director. Each of these transactions has conditions for applications which were considered in detail.

False transactions in taxation law differ from formalism in other laws in many regulations. Some of these are: not requiring good will on the part of the taxation authority which means not knowing about the concealed contract, giving advantage to the state that holds on to the concealed contract over the other party who holds on to the declared contract when dealing with the taxpayer's money, not requiring the tax authority to prosecute for formalism and making the burden of contradicting the charge of a false transaction fall on the taxpayer.

The relation between a false transaction and tax crimes: the false transaction contains the same components as forgery, fraudulent bankruptcy and debtor's fraud which are: altering facts, actual or possible damage and premeditation or wilfulness. In addition, a false transaction targets state money for which the law gives severer penalties. Therefore, the taxation law should criminalise false transactions; the income tax law number 25 for the year 1964 stated the criminality of two forms of false transactions while the other forms could be included under the clause 'trickery, deception or manoeuvre' that appear elsewhere.

For the false transaction to be considered a tax crime, it needs to have the two basic elements of crime: The material element which is the external appearance of the crime; although tax crimes are considered danger crimes which do not require the realisation of outcome as the action itself is considered sufficient.

The moral element is the criminal intention; the false transaction crime requires a specific intention which is that the culprit's actions aim to dispose of all or part of tax.

The taxation legislations give the tax assessor considerable authorities in order to verify the existence of a case generating tax and deciding the amount of tax debt required, such as the authority to disclaim any transaction if convinced of its falsehood without having to prove that falsehood. In addition, the legal evidence for the falsehood of transactions listed by taxation legislation obliges the tax assessor to reject the transaction and form the assessment on this basis.

To prevent the tax assessor from abusing this authority, the taxation legislator imposed legal supervision by granting the taxpayer the right to appeal against any injustice if the objection to the tax assessor is turned down. The court responsible for dealing with appeals is the income tax cases Appeals Court and it has complete authority to assess the information given by the taxpayer without complying with the tax assessor's assessment. The law has granted income tax lawsuits urgency quality and limited the right to appeal to the taxpayer or the legal representative. The

appeal case is examined privately, and if the Appeals Court is convinced with the information that proves the seriousness of the transaction, it can rule to reduce the assessment or cancel it if it was against the law or return the case to the tax assessor with instructions on which to assess.

There is another form of legal supervision represented by the Cassation Court which is a law court rather than a proceedings court. Its role is limited to the verification of the validity of applying both the assessment decision and the decision of the Appeals Court for the principles and law without dealing with the information. Both the taxpayer and the tax assessor have the right of cassation against the ruling of Appeals Court.