

SUMMARY OF
Real Estate Rental Tax Law
And
Vacant Tax Law

Prepared by
Jafar Sultan AL- Hasani
Director of Real Estate & Vacant Land Dept.

INTRODUCTION:

Tax is one of the most important national and ethical obligations that links the individuals to their society. And the ownership (as real estate ownership) represents one of these obligations that link the individuals to their society and nation. In addition, the ownership has a great deal of concern by the politicians, ideologists and legal experts. The society that respects ownership and believes in justice will achieve progress and prosperity step by step.

In order to accomplish the goals mentioned above, the property should be protected and developed. Therefore, the general commission for taxes tried to reduce the burden over the taxpayer by merging the basic and additional taxes in one tax with a fixed rate of 10% of the rent total value.

The real estate rental tax is an old tax which was imposed in Authomanian state and passed through different stages, diminished in some of them and appeared in others.

It is clear that the taxes always depend on the governor's philosophy and its way of administration in order to make money available for general funding. Given that the rental tax contributes in a considerable amount of the total annual tax revenues and occupies a very important position in structure of the Iraqi tax system.

Justice plays an important role in tax administration. It is achieved whenever the administration understands the real function of tax a way from the concept of "collecting taxes" only.

Since the certainty is one of the most important features of tax awareness and also one of the most important tax principles stated by (Adam smith); therefore, we focused on taxpayer's education campaigns and publishing tax guides and handouts to increase taxpayers' compliance.

The following summary of the real estate, vacant lands and rental laws is a sample of the initiatives made by the general commission for taxes to fulfill the taxpayers' requirements.

We also would like to acknowledge the efforts made by Mr.Jaafar Alhasani (head of real estate & vacant land department) and Mr. Ibrahim Mehdi Ali (head of the real estate ownership transfer department) in developing and publishing this guide.

God may bless all the efforts that contribute in building this country.

TALB M.JABER ABU JAAELA

General director

5th April 2004

Real estate tax law no.162 (1959) Amended

After 14th of July revolution 1958 took place, four laws had been legislated. These laws are income, real estate, inheritance and vacant lands laws. The real estate law came into force on 1/4/1960, which consists provisions illustrating the tax rates (whether the tax is basic or additional), all the real estates that are subject to law and the real estates that are partially or totally exempt

We are trying in this brief study to illustrate the provisions of the up to date amendments (CPA order 49 in 2004). Given that the real estate law has undergone many amendments that started from the date of issue to the last amendment No.66 in 2001 which come into force for the following fiscal year 2002. While its provisions are valid on the additional tax for the fiscal year 2001.

The definition of Real Estate

In language: The real estate is everything that has source and settlement such as house, land ... etc.

In civil code: real estate is everything which has fixed settlement where can not be displaced or transferred without causing damage, and this includes land, buildingetc.

Tax rate

The law imposes a basic rental tax at a rate of 10% of the real estate annual rental revenue. It became 12% (1/4/1970-31/3/1974), and then it became 10% on 1/4/1974.

While the additional rental tax is imposed as follows:

A legal allowance of 1000 ID is granted to the taxpayer. If taxpayer's rental revenues exceed 1000 ID, the taxpayer will be subjected to tax under the following tax rates:

- 2% what exceeds 1000 to 2000 ID.
- 4% what exceeds 2000 to 3000 ID.
- 6% what exceeds 3000 to 4000 ID.
- 8% what exceeds 4000 to 6000 ID.
- 10% what exceeds 6000 to 8000 ID.
- 12% what exceeds 8000 to 10000 ID.
- 15% what is over 10000 ID.

On 1/1/1980, the legal allowance became 2000 ID and the additional tax rates were modified as follows:

5% what exceeds 2000 to 4000 ID.

8% what exceeds 4000 to 6000 ID.

10% what exceeds 6000 to 8000 ID.

15% what exceeds 8000 to 12000 ID.

17% what exceeds 12000 to 16000 ID.

20% what exceeds 18000 to 20000 ID.

25% what is over 20000 ID.

On 1/1/2001, the legal allowance became 750,000 ID and the additional tax rates were modified as follows:

5% what exceeds 750,000 to 1,250,000 ID.

10% what exceeds 1,250,000 to 1,750,000 ID.

15% what exceeds 1,750,000 to 2,250,000 ID.

20% what is over 2,250,000 ID.

The real estates that are subject to law are houses, commercial or industrially independent shops that were not exempt by special laws .While the exempt real estate can be divided into two groups based on the type of exemption ,whether it is permanent or temporary:

Tax plan for 2003

1. According to CPA order no.(37) , section 2 states that all types of taxes to be suspended from 16th Apr. 2003 to the end of the year 2003.This includes real state rental tax pursuant to law no.(162) (1959) and its amendments , as well as, unspecified taxes.
2. The CPA issued a resolution No. 84 in 30th Apr. 2004 to suspending the Real estate rental tax for the year 2003.

Tax plan for 2004

According to CPA order No.49, the real estate rental tax law no(162) in 1959 and its amendments has been amended. The tax rates under this amendment are made as follows:

- 1-The tax is assessed and collected at a rate of 10% of the annual revenue, this is valid since 1/4/2004. The first three months are exempt.

- 2- 10% of the real estate annual revenue to be deducted before calculating the tax for maintenance and depreciation.
- 3-The tax is to be collected in two equal payments; the first is due the first of January of the financial year and the second is due the first of July of the same year.
(The tax for 2004 is to be paid in one payment and it is due in the 1st of July 2004 in the same governorate in which the estate is located.
- 4-The additional tax mentioned in item 2 of article 21 above should not be collected.

Permanent Exemption

It is a permanent total exemption for certain real estates according to the law

- A- State owned real estates - Real estates that belong to the public institutions and departments if not rented - Real estates of Amanat Baghdad, municipalities and subdivisions that are financed by the central budget - Real estates prepared to store corps, agricultural machines, - Not rented real estates that is dedicated to legally recognized mosques, churches and - Real estates owned by legally recognized religious groups and charitable foundations and used by them as schools, hospitals, medication centers, orphanages, or old people residences - Real estates tax exempted permanently or temporarily due to special laws, treaties or agreements between the government and foreign governments or international commissions - Real estates owned by foreign states and based on reciprocity - Real estates owned by ministries or religious organizations the revenue or any other rights of which belong to it -Real estates belong to Awqaf (Religious Affairs) - Real estates whose revenue is dedicated to legally approved formal or semi-formal foundations, charities or scientific foundations provided that the real estate is occupied by those foundations - Real estates owned by legally approved political parties, committees, unions, societies of public concern, and athletic clubs.
- B.** The residential houses or apartments shall be exempt from 1/1/1980 and prior to this date, and tax for a house which its rental revenue less than 400 I.D shall not be collected.
Given that the residential allowances in Baghdad, Mousil and Basra was 200 I.D .While in other cities centers was 150 ID.

The owner occupied real estates was exempt. On 1/1/1987 it was considered to be residential houses. Then in 1/1/2002 a second real estate of the owner is to be exempt if it is occupied by one of his sons according to amendment No 66/ 2001.

Temporary exemption

To be granted according to the law for certain cases and for limited periods as follows:

Recently constructed houses, estates & buildings are exempt from rental tax for a period of (3) years starting from the date of completion of construction, which is determined by the estimation committee. Then the period of exemption was extended to 5 years under the amendment 66 in 2001.

The real estates that are used to conduct activities subject to income tax, to be exempt from rental tax since 1/1/1995.

Vacant real estates: the taxpayer should inform about his vacant real estate, and then the deduction is decided by the estimation committee, if the vacancy period was not less than 3 months. Given that the amendment 66 in 2001 determined the maximum vacancy period included in exemption to be 6 months. A minister of finance approval is required for further extension.

Exemption under the law of industrial development

Industrial factories having establishment licenses used to be exempt for (5) years from real estate rental tax. According to the latest amendment on industrial development law, the exemption has been extended to (10) years from the date of issuing the establishment license.

General and special estimation

The real estate annual revenue should be estimated in two methods:

First: General estimation

To be conducted every (5) years, and it covers all real estates that are located in cities included in the announced general assessment, according to a statement issued by the minister of Finance in a formal newspaper indicating the starting and valid date of assessment. This estimation is to be started at the 2nd half of the last year for the last general estimation.

Iraq divided into three areas each area is subjected to the general estimation within a limited period of time.

Baghdad, Ninewa, wasit, Babil, Duhook, Al-Anbar, Basra (1/1/1984 - 31/12/1988).

Kerbla'a, Karkuk, Arbil, Dyala, Al-Qaudsiya, Thequar, Misan, Al-Muthna, Nejef, Salahudin (1/1/1983- 31/12/1987).

Sulymainya from (1/1/1986 - 31/12/1990).

Second: Special estimation

To be conducted after the general estimation, the special estimation covers the following cases:

- a- At the completion of the real estate construction.
- b- When real estate is not estimated by general estimation.
- c- When the estimation is needed to be reconsidered due to some updates.

Real estate assessment principles (assessment of rent price)

1- Annual rent is considered at the time of assessment as revenue for the rented real estate. The committee should take under consideration the following:

- a- Privileges of the real estate as to the location, area, construction materials, the present situation, the garden, the attachments and whatever makes the land better than others
- b- The use of the real estate
- c- The annual rent for a similar real estate in the same quarter.

2- The law excludes some of real estates from the process of estimation , the real estates annual revenues are estimated according to the reports presented by those entities:

- a. Real estates administrated by governmental entities such as juvenile care.

- b. Real estates under the administration of state establishment – Jews properties and properties of displaced people.
- c. State owned properties that are leased to others.

2. Article (25) of the law mandated the financial body to approve the estimation of annual revenue for real estates rented by governmental establishment.

Re-estimation:

Upon article 8 of the law, the real estate estimation is reconsidered in the following cases:

1. When the tax subject makes an appeal claiming that the revenue from his real estate has been reduced due to damage or some other cause or that the real estate is used for a purpose that makes it eligible for an exemption under this law.
2. When the subject makes an appeal, more than one year from the last estimation, claiming that his rental real estate revenue has been reduced 15% or more.
3. When it appears to the Financial Authority that the annual revenue of the rented real estate has increased 15% or more since one year from the last estimation.
4. The new estimations according to items 2 and 3 of this article cannot be applied more than once in one year.

Estimation committees:

The Minister, or his procurator, orders committees that he thinks appropriate and each one will contain the following:

- a- In the center of governorates and cities:
 - Financial employee – chief

- Two employees (one of whom is the tribunal secretary) – members.

b- In the center of towns:

- Town manager or financial official – chief
- Two employees (one of whom is the committee secretary) – members.

The staff is completed in estimation committee meeting with the presence of all the members. Decisions are made by either all or the majority of the members. The minister or his procurator has the right to add one or more expert as a member in any estimation committee.

Audit committees:

Audit committees to be formed in governorates' and cities' centers to review the appeals presented by financial body or taxpayers against estimation committees' decisions. The audit committee consists of the following:

- Financial employee – chief.
- Employee – member.
- Two real estate experts – members.

In the other quarters:

- The district commissioner or a financial employee – chief.
- A financial employee – member.
- Two real estate experts –members.

Duties of assessment committees:

- 1- Estimation of real estate annual revenue or its total value.
- 2- Determination the date of construction completion.
- 3- Determination the type of use (residential or rental).
- 4- Determination the description of real estate (whether it is shop or store ...etc).
- 5- Issuing documents that certify the demolition of the real estate.
- 6- Determination of real estate vacancy period.

Authorities of audit committees

- 1- Rejecting or approving appeals upon decisions made by estimation committees.
- 2- Amending decisions made by estimation committees depending on reliable facts.
- 3- Increasing or decreasing the annual revenue made by estimation committees
- 4- cancelling decisions made by estimation committees.

The real estate tax board

The purpose behind forming the real estate tax board is to review objections of the financial authority or the taxpayer against audit committees' decisions. It should consist of 3 members:

- 1- A first-level judge nominated by the Minister of justice – chief.
 - 2- An architectural or civil engineer not less than a second degree in employees' system- member.
 - 3- A financial employee not less than the degree of a manager – member.
- The quorum of the center is not met unless all members are present and the decisions are either by consensus or by majority.
 - The taxpayer has the right to object at the real estate tax board or the procedures of the Financial Authority concerning the application of the rules of this law within 30 days from the date of notification.
 - The subject objecting to the board must pay a fee to the general tax commission equivalent to (2500) two thousands and five hundreds ID.

Real estate tax collection:

The basic tax is to be collected in two equal parts; the first is due the first day of January of the financial year and the second is due the first day of July of the financial year. While the additional tax is collected in the first half of the financial year following the assessed tax year.

Factors enhancing real estate rental tax collection

1. If the basic tax is not paid during the financial year, an interest of 10% of that amount is to be added for the amount of that non paid year.
 - An interest should not be charged from taxpayer who are renting their real estates to to the governmental entities
 - The Minister, or his procurator, may exempt the subject from paying all or part of the addition, or refund it if it was paid, if he is convinced that the subject failed to make the payment on time due to a legitimate excuse.
2. All bank transactions are to be suspended until real estate rental tax dues paid.
3. The Minister, or his procurator, may ask the governmental entities to deduct the basic rental tax for the leased real estates.
4. Any appeals or re-estimation request shall not be accepted until rental tax due are remitted.

Refunds:

The amount that exceeds the assessed amount of the remitted tax must be refunded to the taxpayer under the following conditions:

1. If the amount paid is more than the assessed tax dues.
2. The taxpayer should submit a request for a refund within five years starting from the end of the financial year that the extra amount was paid in.
3. The receipt of the amount paid must be presented.
4. If the taxpayer owes tax on other real estate, the amount of the refund must be reduced by that debt.

Deletion

To erase extra amounts resulted from a mistake in tax estimation or future exemption.

The Vacant Land Tax Law# 26 of 1962

What is a vacant land?

The land that lies within the city borders of Baghdad, and the central areas of other cities and suburbs if there is no building for accommodation or investment purposes or if it is not used economically .

Lands considered as vacant lands:

1. Farms that their trees are allowed to be cut.
2. Lands that are leased to build huts.
3. Lands during construction period approved by an estimation committee.
4. Demolished houses.

Lands not considered as vacant lands:

1. Land used to build real estates (house, building).
2. Lands used to construct industrial or economical premises on (factory, market ...etc).
3. Lands used for agricultural uses.
4. Lands used as a farm.

Estimation of vacant lands value:

Vacant lands are estimated as for the value of 1 square meter according to an estimation committee.

General Value of a vacant land = value of 1 square meter * area of vacant land

Tax on a vacant land for one year = general value of a vacant land * tax rate

Tax rate:

1 % of the vacant land value, for the period from June 1st, 1962 - March 31st. 1970.

5% of the vacant land value, for the period from April 1st. 1970 - October 31st. 1970

2% of the vacant land value, for the period from Nov. 1st, 1970 - current date.

Estimation bases

When estimating the price of a vacant land, the committee considers the common values of similar lands, location, type of usage in the city's basic design (industrial, economical, agricultural...etc.) and its shape (square, triangle, rectangle).

Date of estimation

Vacant lands are estimated in the general estimation for vacant lands. The first one was held on oct.1st. 1962, while the last one was on Jan.1st, 2002.

And in the special estimation:

- After being merged with another vacant land.
- After being divided into many vacant lands.
- After changing the type of usage from agricultural to real estate.
- After an increase in prices according to a request from the financial authority, or decrease in prices according to a request from the taxpayer.

Objection on the estimation

The financial authority and the taxpayer have the right to object on the estimation committee's decision to the audit committees and also to object on the decisions of audit committees to the real estate tax board. The decisions of real estate tax board are final.

Exemptions from vacant land tax

Exemption process passed several stages since the validation of the law on 1 June 1962 till amendment No. 18 in 1994 valid since 2 January 1995.

1. Starting from 1 June 1962 till 31 March 1970, exemption was general for a vacant land do not exceed 800 meter square.
2. From 1 April till 31 March 1974, exemption limited to 3 years for a vacant land not exceeds 800 meter square, without the ownership of a residence house.
3. On 1 April 1974, exemption for 6 years for a vacant land not exceeds 800 meter square, without the ownership for a residence house.

1. Starting from July 1st, 1981, another 3 years exemption was added according to resolution #483 of 1981, in addition to that of Para. 1 above, without the ownership of a residence house condition
2. Starting from Jan.2nd, 1995, an absolute exemption was granted for every taxpayer (natural or judicial) for one vacant land not exceeds 800 square meters, without the ownership of a residence house condition.
3. A vacant land that 15 years of its ownership had expired was exempted.

Juvenile orphan

The juvenile is subject to the vacant land tax from the date of registration by his name until his adulthood.

Poor juvenile orphan would be exempted for one vacant land that does not exceed 800 square meters until his adulthood, in contrary to the case of rich one.

Rich juvenile orphan is subjected to the law like the adult person.

Juridical person

Juridical person is exempted from vacant land tax according to resolution No. 483 / 1981, amendment 18 / 1994 as well, for 3 years since 1 July 1981 for 800 meter square generally.

Totally exempted vacant lands

1. The vacant land that belongs to official offices and semi-official offices.
2. Vacant lands that are not rented and whose benefits or any other of its rights goes to the Ministry of Religious Affairs (Awqaf) and the Ministry itself is to pay tax on its behalf.
3. Vacant lands specialized for worship, schools and associations, academies, unions, moral and charity institutes and graveyards.
4. Vacant lands that belong to foreign governments provided a similar treatment.
5. Vacant lands the borders of which cannot be determined or vacant lands that cannot be assessed for legal reasons.
6. Vacant lands specified for general benefits or purposes only after the approval of the Minister's Council.
7. Vacant lands in towns and villages starting from Jan.1st, 1982.

Lease of real estate Law # 87 for 1979 and its amendments

Since the validation of the mentioned law, many modifications were made such as resolution #25 of 1996 considered valid since March 7th 1997 and the modification according to law #56 of 2000 that is considered valid since oct.16th, 2000 for some of its provisions, while its other provisions were postponed to 3 years after its publishing, i.e. to Oct. 16th, 2003, but it was delayed due to the circumstances of the country, to another year.

The latest amendments are explained below:

Application of the law

The provisions of this law are applicable for the built real estate that are leased for residency of Iraqis and Palestinians who are resident since 1948 and their generations. The following are excluded from its provisions:

- a. Residency real estates that are leased by governmental or public juridical persons for their employees.
- b. Residency real estates that that are leased by governmental or public juridical persons whom the Minister of Finance issues an exclusion statement for them.
- c. Real estates leased for non Iraqi persons or entities.
- d. Recently built real estates or those finished at Jan.1st 1998, or later.

Lease contract period and lease amount

The lease contract shall be considered valid after the expiry date as long as the lessee still occupies the real estate and continuously paying the lease amount, for 12 years.

The annual lease amount was determined by the law as a ratio from its general value as a land and construction, as estimated by the estimation committee. Two ratios are used:

5% of the general value, for the real estate rented annually.

7% of the general value, for the real estate rented annually as separate rooms.

How to pay the lease amount?

The payment is in advance for real estates included by the provisions of this law in monthly installments, regardless the contract expiry period, and any agreement in contrary to this is not valid. The payment may occur through the notary public or by bank transfer to the account of the leaser.

If the owner refused to receive the rent price, the lessee may deposit the amount at the notary public in the same city where the real estate is located within 15 days of due date.

Which Persons are allowed to live with the lessee in the real estate?

Article 13 of the law has stipulated that nobody is allowed to reside with the lessee in the real estate but those mentioned in the contract unless having a written approval from the owner. An exclusion from this are:

Fathers and ascendances and their spouses, non-married brothers and sisters, divorcee and widow sisters and legally or traditionally eligible persons, provided that there is a space for them and that none of them owns a real estate in the city where the real estate is located in.

Evacuation request cases

It is allowed to submit a request of evacuation according to article 17 of the real estate lease law as amended in the following cases:

1. If the lessee did not pay the lease amount before 7 days from its due date, and a leaser warranty through an notary public to pay within 8 days from the warranty notification date.
2. If the lessee has leased or waived part or whole of the real estate without having a written approval from the owner.
3. If the lessee has caused major damage of the real estate either on purpose or through carelessness.
4. If the lessee has made major change in the real estate without having a written approval from the owner.

5. If the lessee has used the real estate for different use than that in the lease contract.
6. If the use of the lessee for the real estate causes harm to the reputation of the owner.
7. If the real estate has become empty for more than 45 days without a legitimate excuse.
8. If the lessee or his (her) spouse or juvenile children has built a residence house within the city they live in usually.
9. If the lessee or his (her) spouse or juvenile children has owned a residence house within the city they live in usually, that can be legally evacuated or was evacuated even if he (she) has leased it to others after being evacuated.
10. If the owner desires to demolish the real estate so as to build it to again to include two residence unit or more, or as a block according to the basic design of the neighborhood.
11. If the owner desires to add new floors to the real estate, and it was necessary for this work needs to evacuate the real estate partially or totally.
12. Forcing cases:
 These forcing cases include:
 - a. If the leaser is a governmental or public sector's employee either in or out of Iraq and was transferred to the city where the real estate is located, according to the needs of public interest, or his employment was finished for any reason.
 - b. If the leaser among those mentioned in (a) above has finished his study or training outside Iraq and got back to the city where the real estate is located.
 - c. If the leaser was an employee who was temporarily works abroad or a scholarship or a study leave student or a student who studies abroad under an approval from the official Iraqi bodies and got back to the city where the real estate is located.
 - d. If the leaser is a governmental or public sector's employee and was notified to evacuate the state owned residence of his, by an authorized body.
 - e. If the leaser has been notified by a final court decision to evacuate the residence he occupies as a lessee provided that the evacuation is not due to an intentional act or his stop payment.
 - f. If a prisoner/missing of war has got back to the city where the real estate is located whether the leased real estate was registered by his name or his wife's of juvenile child's name.
13. If the real estate is about to demolish.

14. If 12 years were expired on the leas contract.

* Real estates leased by governmental or public sector's directorates could be evacuated.