

## **Criminal Modus Operandi in Bahraini Tax Law No. (40) of 2017**

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### **Abstract**

This study deals with the dynamics surrounding tax evasion in the Kingdom of Bahrain in the context of its adherence to the Common GCC Agreement for Excise Tax. Since the inception of tax obligations, a subset of taxpayers has resorted to evasion, posing a threat to the nation's economic stability. In pursuit of upholding the principles of the aforementioned Agreement and safeguarding the economic integrity of the state, the Kingdom of Bahrain formally ratified the Common GCC Agreement for Excise Tax in 2017 through Law No. (39) of 2017. To integrate this Agreement into its legal framework, the Kingdom also enacted Law No. (40) of 2017, explicitly addressing the issue of Excise Tax. Notably, Article No. (26) of this law introduced punitive measures against tax evasion, aimed at preserving the national economy, while Article No. (27) outlined a spectrum of penalties, including imprisonment and fines, for offenders. Using a content analysis approach, we examine pertinent legal documents and court cases associated with tax evasion to gain a deeper understanding of the legal framework and its practical implementation. The primary objective of this research is to offer a comprehensive insight into the consequences of lenient penalties on tax evasion within the Kingdom of Bahrain, with the ultimate aim of providing valuable insights for the development of effective policymaking and tax enforcement strategies. The study argues that the leniency of the punitive measures in Law No. (40) renders the criminalization of tax evasion less effective. This is particularly concerning given the critical role of taxation in fiscal policy, where it serves as a pivotal revenue source for the state's treasury and plays a significant part in maintaining overall economic stability. Consequently, the study identifies the leniency of penalties as a central issue in need of investigation.

**Keywords:** Bahraini, Crime, Tax, Punishment, Evasion.

### **Introduction**

Since the inception of tax obligations, tax evasion by taxpayers has been a prevalent issue, intertwined with the realm of legal offenses. Such infractions committed by taxpayers in this capacity are legally referred to as "Tax Crimes". Recognizing the pivotal role that taxes play in bolstering the national economy (Al Ameri, 2019), the State of Bahrain inked the Common GCC Agreement for Excise

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Tax on November 27, 2016, and formalized its commitment on December 7, 2017, through the enactment of Law No. (39) of 2017.

To incorporate the provisions of the aforementioned agreement into its domestic legal framework, the State of Bahrain promulgated Law No. (40) of 2017, pertaining to Excise Tax. Among these provisions, Article No. (26) of this law specifically criminalized various modes of tax evasion. In a bid to safeguard the national economy, Article No. (27) outlined corresponding penalties for these modes of operation.

The significance of this study is underscored by the fact that it addresses a contemporary issue, one that is still emerging in the Kingdom of Bahrain, and has not yet received due attention in legal research. This research undertakes to explore the subject of excise tax evasion offenses and their associated penalties, in light of the statutory provisions contained in Law No. (40) of 2017 regarding Excise Tax. The research problem at hand revolves around the provisions delineated in Article No. (26) of the Bahraini Excise Tax Law, which criminalize acts falling under the purview of tax evasion and prescribe lenient criminal penalties, ranging from modest imprisonment to fines. This raises concerns about the efficacy of criminalizing tax evasion in this context, particularly in light of the pivotal role that taxation plays in fiscal policy, serving as a critical source of revenue for the state treasury and contributing significantly to the maintenance of economic stability (Abdel Shafi, 2021; Khadrawi, 2015; Alimat, 2013).

The study seeks to address three key questions: (1) What does the concept of tax evasion entail as stipulated in the Bahraini Excise Tax Law? (2) What are the specific criminal modes of operation as delineated in the Bahraini Excise Tax Law? (3) To what extent are the criminal penalties, as prescribed in the Bahraini Excise Tax Law, effective in addressing the aforementioned modes of operation?

### **Literature Review**

Jurisprudence has offered various definitions of taxation. One perspective characterizes it as 'a compulsory levy imposed by the state without recompense, designed to finance public expenditures' (Hussein, 2004; Yaqout, 2003). Another definition delineates taxation as 'the obligatory fiscal resource withheld by the state from individuals, earmarked for the attainment of public objectives' (Siham, 2022; Qarmoush, 2014; Abu Sneineh, 2008). In a broader context, taxation is viewed as 'a collection of offenses that constitute a criminalized encroachment on the economic policies articulated within the state's economic legislation.' The overarching economic legislation of the state encompasses 'the compilation of provisions invoked by the state to foster its national economy and safeguard its economic policy' (Ehjelah, 2011). Another facet of jurisprudence, as expounded by Sorour

(1990), defines taxation as 'any act or omission resulting in a violation of a fiscal interest, for which the law imposes a criminal sanction'.

Bahraini Law No. (40) of 2017 outlines that while the term 'Excise Tax' is not explicitly defined, it is distinctly applied to certain goods, including tobacco, soft drinks, and energy drinks; furthermore, tax evasion within the same legal framework, as per Article No. (26), encompasses actions such as importing or exporting excise goods without paying due taxes, involvement in the handling and movement of such goods with unpaid taxes to evade payments, the use of deceptive documents or fraudulent means to evade tax liabilities or claim illegitimate credits, and the execution of activities specified in Article (7) without proper registration, with economic jurisprudence broadly framing tax evasion as any act that may cause a substantial loss of state revenue, irrespective of the legal or illegal methods employed, taking into account taxpayers' intent and exploiting tax code variations, while legal jurisprudence, as per Qassas (2017), offers a more specific definition, characterizing tax evasion as individuals resorting to unlawful tactics to either avoid or underpay the taxes mandated by law.

### **Study Methodology**

This study employs an analytical methodology that centers on the examination of legal clauses pertinent to excise tax evasion offenses as delineated in the Bahraini Excise Tax Law. Through the application of a content analysis approach, we scrutinize relevant legal documentation and judicial cases related to tax evasion, aiming to attain a more profound comprehension of the legal framework and its practical application. The principal goal of this research is to furnish a comprehensive perspective on the ramifications of lenient penalties with respect to tax evasion within the Kingdom of Bahrain. Ultimately, the objective is to provide invaluable insights conducive to the formulation of effective policies and strategies for tax enforcement. In order to better understand the topic of the research, we must shed light on several relevant terms and their definitions (Ehjelah, Bani Amer, 2023).

### **Results and Discussions**

#### **a) Exclusivity of Modus Operandi of Tax Evasion**

The provisions articulated in Article No. (26) of Bahraini Law No. (40) of 2017 concerning Excise Tax, delineated under the heading 'Tax Evasion,' specify that, for the purposes of this article, tax evasion is defined as:

- The act of importing or attempting to import Excise Goods into the Kingdom or exporting or attempting to export such goods from the Kingdom without the full or partial payment of the due tax.

- Engaging in the production, transfer, acquisition, storage, transportation, or receipt of Excise Goods with unpaid due tax, driven by the intent to evade the requisite tax payment.
- The provision of incorrect, fraudulent, or falsified documents, returns, or records, or the affixing of false labels with the intent of evading the due tax or illicitly claiming tax credits.
- The execution of any activities referred to in Article (7) without the appropriate registration.

Article No. (26) of the Bahraini Excise Tax Law, titled 'Tax Evasion,' outlines tax evasion as any act involving the import or export of Excise Goods into or out of the Kingdom without the due tax payment, be it partial or full. This pertains specifically to Excise Goods, namely tobacco, soft drinks, and energy drinks, as defined in Article No. (3) of the Bahraini Excise Tax Law.

The elements constituting Customs Tax smuggling crimes designed to evade Excise Tax encompass:

**The Element of the Subject Crime (Goods Subject to Excise Tax):**

These offenses solely pertain to Excise Goods listed in Article No. (3) of the Bahraini Excise Tax Law, encompassing tobacco and its derivatives, soft drinks, and energy drinks, either introduced into the country or aimed to be brought in or transported out of the country.

**Actus Reus:**

The actus reus of these crimes encompasses importing or exporting Excise Goods without paying the required Tax, either partially or fully, and executing these actions through illicit means, which contravene established customs procedures. Attempting to import or export Excise Goods without the requisite tax payment. The Bahraini Tax Legislator treats the criminalization of both full acts and attempts equivalently, given the grave nature of customs smuggling crimes, especially for excise goods.

**The Distinction Between Attempt and Commencement:**

The terms 'attempt' and 'commencement' refer to preparatory actions in some legal systems, and they are often treated as synonymous. The distinction between them is based on three jurisprudential opinions:

Some Egyptian jurisprudence designates preparatory actions as 'attempt' or 'commencement to commence' when the law explicitly criminalizes 'attempting to commit the crime'.

Another opinion differentiates 'attempt' by considering it as any act or series of acts leading to the crime, even if not instantaneous, and it extends to preparatory actions that manifest the perpetrator's intent to commit the crime. In this view, punishment applies to preparatory actions before commencement.

A third perspective aligns somewhat with the second opinion, viewing 'commencement' as closer to completing the crime, while 'attempt' refers to preparatory actions.

The researcher suggests that the Bahraini legislator, by using the term 'attempt,' refers to the act of commencement, implying that punishment requires the initiation of implementation rather than preparatory work, which is generally not punishable. This interpretation is based on the legislator's criminalization of both full acts and attempts, omitting the term 'commencement.' It is unlikely that the legislator would criminalize preparatory work without criminalizing the initiation, especially when the latter is less hazardous.

**Mens Rea:**

Article No. (25) of the Bahraini Penal Code indicates that intent is a prerequisite for the perpetrator's willful act or abstention, with the intention of causing a criminal result. The definition of Tax Evasion in Article No. (26) of the Excise Tax Law implies that tax evasion crimes are intentional in nature, and it is implausible for them to be committed unintentionally. Thus, the mens rea for these crimes is characterized by criminal intent.

To establish this intent, both general and specific criminal intent must be present. General criminal intent arises when the perpetrator directs their will toward committing the crime, being aware of all its legal elements, akin to intentional crimes. In this category of crimes, the intent is achieved by the perpetrator's deliberate actions, such as importing or exporting Excise Goods with knowledge that the required tax has not been paid.

For criminal intent to exist in Customs Tax smuggling for Excise Goods, the physical acts constituting these crimes must be undertaken with the specific goal of avoiding full or partial payment of the Excise Tax, as delineated in the first paragraph of Article No. (26) of the Excise Tax Law."

**b) Fraud and Forgery Crimes related to the Excise Goods Tax**

The third paragraph of Article No. (26) of the Excise Tax Law stipulates: "Providing incorrect, fraudulent or fabricated documents, returns or records..." It is clear from the legal construction of the text of this paragraph that submitting incorrect tax documents or returns to The General Tax Authority constitutes a crime of forgery in these documents or returns, and from here we will explain the following elements of this crime:

**Actus Reus** element is achieved by providing incorrect, forged, or fabricated data in the tax returns and other tax papers that must be submitted in accordance with the Excise Tax Law and the regulations and resolutions issued in implementation thereof. Whether these data relate to the base of the tax, the date of its emergence or maturity, the status of the taxpayer, and other data contained in documents,

returns or tax records that affect the determination of the tax, when such a change must be made by one of the methods of forging documents.

It is worth noting that the Bahraini Excise Tax Law considers, in the third paragraph of Article No. (26), that the false data contained in individual returns is a crime of forgery, and the reason for this is to expand the scope of criminal protection for the country's tax interest, and the protection of its national economy.

**Element of subject (Tax Returns or other Tax Papers):** This element is achieved by providing incorrect, forged, or fabricated (untrue) data in the documents of the tax returns and other tax papers that must be submitted in accordance with the Excise Tax Law and the regulations and resolution issued in implementation thereof. It should be noted here that this crime does not occur until these false returns are submitted to the Ministry of Finance (i.e., it does not occur until after use). In contrast to what is the case with the crimes of forgery of documents, stipulated in the Bahraini Penal Code, which are carried out by simply forging the document with the intention of using it as a genuine document, by the provision of Article No. (270).

**Mens Rea:** This crime is classified as an intentional crime, and its mens rea is criminal intent. If this intent is not proven, then this crime does not occur. The third paragraph of Article No. (26) of the Excise Tax Law in this crime requires, in addition to general intent, there is a specific criminal intent, which is to evade payment of the due tax or to claim credit for it unlawfully.

The third paragraph of Article No. (26) of the Bahraini Excise Tax Law stipulates that "... or placing false labels with the intention of evading due tax or claim credit for it unlawfully."

Here we must clarify the following:

- **What is meant by placing false labels on Excise Goods?**

This means placing false tax labels on Excise Goods to indicate that the tax has been paid on these goods, with the intention of evading due tax or claiming credit for it unlawfully.

This definition is deduced from the third paragraph of Article No. (26) of the aforementioned Excise Tax Law, as well as from Paragraph (B) of Article No. (20) of the Executive Regulations of the Excise Tax Law, which states: (Placing the distinctive label on the excise goods for which tax is due in accordance with the provision of Article No. (44) of these Regulations, should be done by only the supplier approved by the Authority...).

This is also inferred from Paragraph (A) of Article No. (6) of Resolution No. (1) of 2022 regarding the Distinctive Label to be put on Excise Goods, which states: "It is necessary to place a distinctive label on excise goods in the manner determined by

the Authority and must activate it before releasing it for consumption in the Kingdom of Bahrain.”

**The researcher believes** that the wisdom of the legislator in stipulating the necessity of placing distinctive tax labels on excise goods is to provide protection for the country’s tax interest. Placing false labels on excise goods may result in a reduction of the due tax rate, or evading paying it completely, on the one hand.

On the other hand, by imposing the obligation to place these distinctive labels, the legislator seeks to extend some kind of control over the prices of excise goods, in order to protect the consumer from misleading and deception.

- **Elements of the crime of placing false distinctive labels on excise goods**

**Element of subject:** The subject of this crime is excise goods on which false distinctive labels have been placed with the intention of evading due tax or claiming credit for it unlawfully.

**Actus Reus:** The Actus Reus in this crime consists of three elements: the criminal behavior, which is represented by placing false distinctive labels on excise goods, secondly and outcome of evading due tax or claiming credit for it unlawfully. Thirdly, a causal relationship proving that this evasion was due to placing false distinctive labels on excise goods, regardless of the fraudulent means used to place these labels.

**Mens Rea:** The crime of placing false distinctive labels on excise goods is characterized as intentional, and its Mens Rea is criminal intent. If this intent is not proven, this crime does not occur. The third paragraph of Article No. (26) of the Excise Tax Law requires in this crime, in addition to general intent, a special criminal offense, which is evading payment of due tax or claiming credit for it unlawfully.

The general intent in this crime assumes that the perpetrator knows that he has committed a fraudulent act - which is placing false distinctive labels on excise goods and knows that this will lead to evading the payment of the due tax or claiming credit for it unlawfully. The perpetrator must also have the will of this fraudulent act. The specific intent in this crime is represented in the perpetrator’s desire to evade paying the due tax or claim credit for it unlawfully.

**c) Various other crimes depending on the activity carried out on Excise Goods**

The second paragraph of Article No. (26) of the Excise Tax Law stipulates that: “Tax evasion means 2. Producing, transferring, acquiring, storing, transporting or receiving Excise Goods with unpaid Due Tax with the intent of evading due Tax payment.”

The researcher will illustrate the Modus Operandi stipulated in the aforementioned paragraph as crimes that the Bahraini legislator included as a form of tax evasion in Article No. (26) of the Excise Tax Law. The elements are illustrated as follows:

**Element of Subject:** The subject of the crime here is the Excise Goods that were produced, manufactured, acquired, stored, transported, or received without paying the tax due on them, with the intention of evading payment of the tax due.

**Actus Reus:** The Actus Reus that constitutes any of the crimes stipulated in the second paragraph of Article No. (26) of the Excise Tax Law is the performance of any of the following acts:

**Production or manufacture of Excise Goods for which the tax due has not been paid:** The production of Excise Goods in this context (**Taqah, 2009**) means any work that includes manufacturing or cultivating these goods without paying the tax due on them with the intention of evading its payment.

In the same context, manufacturing Excise Goods means changing their composition from one form to another to the extent that results in imposing Excise Tax on them without paying the tax due on them, with the intention of evading its payment.

**Acquiring or storage of Excise Goods for which the tax due has not been paid:** Actus Reus of the crime of acquiring Excise Goods exists if the acquiring of these goods is in a tax suspension arrangement with the intention of evading the tax due. Actus Reus of the crime of storing Excise Goods exists if they are stored in the territory of the Kingdom of Bahrain and outside the specified area without paying the tax due on them with the intention of evading its payment.

**Transporting or receiving Excise Goods for which the tax due has not been paid:** Actus Reus of the crime of transporting Excise Goods exists if they are transported from one place to another within the Kingdom of Bahrain and outside the specified area without paying the tax due on them, with the intention of evading its payment. Actus Reus also exists in the crime of receiving Excise Goods if they are received inside the Kingdom and outside the specified area without paying the tax due on them, with the intention of evading its payment.

**Mens Rea:** These crimes (i.e. crimes of production, manufacturing, acquiring, storage, transportation, or receipt of Excise Goods) are considered intentional crimes, and their mens rea is criminal intent. If this intent is not proven, these crimes do not occur.

The second paragraph of Article No. (26) of the Excise Tax Law requires in these crimes, in addition to general intent, a specific criminal intent, which is to evade payment of the tax due on Excise Goods when they are produced, manufactured, acquired, stored, transported, or received.



**d) Crimes of producing, importing, and acquiring Excise Goods under a tax suspension arrangement without registering them with the Ministry of Finance**

These modus operandi are stipulated in the fourth paragraph of Article No. (26) of the Excise Tax Law, which says: “For the purposes of the provisions of this article, tax evasion means: practicing any of the activities stipulated in Article No. (7) of this law, without registration.”

Article No. (7) mentioned above stipulates that: “Any person who wishes to conduct any of the following activities shall file an application for Registration for Tax purposes with the Ministry: 1- Importing Excise Goods. 2- Producing Excise Goods. 3- Acquiring Excise Goods under a tax suspension arrangement. The Ministry shall register the applicant if his application meets the conditions and procedures provided for in the Regulations.

**e) Punity for criminal modus operandi limited to Bahraini Law No. (40) of 2017**

**Criminal penalties for modus operandi are limited to Bahraini Law No. (40) of 2017:** Pursuant to the first paragraph of Article No. (27) of the Bahraini Excise Tax Law “Any person who engages in any form of tax evasion, as referred to in Article (26) hereof, shall be punished by imprisonment for at least one month and at most one year and fined at an amount not less than one time the amount of tax due and not exceeding two times the amount of tax due or one of these. Moreover, the perpetrator shall be condemned to pay the amount of tax due.”

In accordance with the provision of Article No. (28) of the same Law, “Without prejudice to any criminal liability of the natural person, the juridical person shall be criminally punished by an amount equal to double the prescribed fine if any of the crimes referred to herein has been committed in its name, for its account or for its own benefit.”

The researcher believes the aforementioned penalties are extenuated, as they range from extenuated imprisonment to a fine. This leniency makes the criminalization of tax evasion here ineffective, especially since the tax is considered an important tool in fiscal policy, as it represents an important resource for the State’s treasury, and it also contributes to maintaining the economic stability ( Al-Jaafra, 2023. Issa, 2017 . Bisharat, 2022, .Al-Halbousi, 2019. Al-Samarrai, 2012).

**The criminal measures prescribed for the modus operandi limited to Bahraini Law No. (40) of 2017:** Pursuant to the second paragraph of Article No. (27) of the Bahraini Excise Tax Law, and in the event that any of the modus operandi stipulated in this law is repeated within three years from the date of issuance of the final

judgment of conviction, the court may rule to double the maximum penalty prescribed and to temporarily suspend the license or revoke it permanently.

In consideration of Article No. (29) of the same Law, “The Court may order the confiscation of smuggled Excise Goods and their respective means of transportation or whatsoever of an equal value where confiscation could not be conducted.”

**The impact of reconciliation on the prosecution of modus operandi is limited to Bahraini Law No. (40) of 2017:** Article No. (30) of the Bahraini Excise Tax Law stipulates that” Without prejudice to any heavier penalty provided for in any other law, reconciliation may be sought in respect of some, or all offences referred to in Article No. (26) hereof.”

The Minister of Finance or whomever the latter delegates may, at the written request of the person concerned, accept reconciliation in tax evasion cases, be it prior to the filing of a lawsuit or during its consideration, and before the preliminary judgment is rendered.

This is especially true if the concerned person settles an amount equivalent to the minimum prescribed fine for the crime, in addition to the amount of tax due - Reconciliation shall entail the end of criminal proceedings ( Al-Eidani,2020).

### **Conclusion**

While Bahrain has introduced a dedicated legal framework for Excise Tax through Law No. (40) of 2017, it is noteworthy that this law does not provide a precise legal definition for Excise Tax itself; instead, it explicitly identifies Excise Goods in Article No. (3) of the same law, which encompass tobacco, soft drinks, and energy drinks. Conversely, Bahrain's legislator has taken a commendable step by offering a legal definition of 'Tax Evasion as a crime' within Article No. (26) of the Excise Tax Law. This approach aligns with the principles of clarity and precision essential for effective criminalization and punishment.

Bahrain's legislator is lauded for recognizing various modus operandi falling under the umbrella of tax evasion, given its adverse impact on the nation's public treasury and overall economy. However, it is the researcher's contention that the legislator's approval of lenient criminal penalties for such offenses is subject to criticism. In light of these considerations, the researcher advocates for the Bahraini legislator to bolster the legal protection of the Kingdom of Bahrain's financial interests by identifying tax evasion crimes that pose a direct threat to these interests. Furthermore, it is proposed that the legislator should impose more stringent criminal penalties than those stipulated in Article No. (27) of the Excise Tax Law as a means of upholding the economic stability of the Kingdom of Bahrain

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