

## القرينة كوسيلة للإثبات في المنازعات الضريبية: دراسة تحليلية في إطار منازعات الضرائب وقواعد الإثبات

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(تاريخ الاستلام 2026/02/18، تاريخ القبول 2026/03/19)

### Presumptions as Evidentiary Tools in Tax Disputes: An Analytical Study within the Framework of Tax Litigation and Rules of Evidence

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(Received 18/02/2026, Accepted 19/03/2026)



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## المخلص:

تتناول هذه الدراسة الإطار القانوني للإثبات في المنازعات الضريبية وفقاً لقانون ضريبة الدخل الفلسطيني، مع التركيز على الدور المحوري الذي تؤديه القرائن القانونية والقضائية بوصفها وسائل غير مباشرة للإثبات، وتبرز الدراسة خصوصية المنازعة الضريبية من خلال عدم توازن المراكز القانونية بين الإدارة الضريبية والمكلف، وطبيعة الحق المالي محل النزاع، إضافة إلى القواعد الإجرائية التي تمنح الأولوية للسرعة والفعالية في حسم النزاع.

كما تبحث الدراسة في توزيع عبء الإثبات بين طرفي العلاقة الضريبية، إذ يتحمل المكلف عبء إثبات المصروفات القابلة للخصم، أو توقف النشاط، أو الطعن في التقدير، في حين تلتزم الإدارة الضريبية بإثبات بطلان الدفاتر التجارية أو تبرير رفض الإقرارات الضريبية.

وتُميّز الدراسة بين القرائن القانونية التي قد تُحدث نقلاً لعبء الإثبات، والقرائن القضائية التي تستند إلى السلطة التقديرية للقاضي وتتطلب أدلة مساندة. وتخلص الدراسة إلى أن الإطار التشريعي الحالي لقواعد الإثبات في المنازعات الضريبية لا يزال بحاجة إلى مزيد من الوضوح والتنظيم بما يعزز العدالة والشفافية والتوازن الإجرائي بين الإدارة الضريبية والمكلف.

**الكلمات المفتاحية:** المنازعات الضريبية، عبء الإثبات، القرائن القانونية، القرائن القضائية، قانون ضريبة الدخل.

## Abstract:

This study examines the legal framework governing evidence in tax disputes under the Palestinian Income Tax Law, with particular emphasis on the central role played by legal and judicial presumptions as indirect means of proof. The study highlights the distinctive nature of tax disputes, which arises from the imbalance between the legal positions of the tax administration and the taxpayer, the financial nature of the right in dispute, and the procedural rules that prioritize speed and efficiency in adjudication.

It further explores the allocation of the burden of proof between the parties, noting that the taxpayer bears the responsibility of substantiating deductible expenses, cessation of business activity, or objections to tax assessments, whereas the tax administration is required to prove the invalidity of commercial books or justify the rejection of tax returns.

The study also distinguishes between legal presumptions, which may shift the burden of proof, and judicial presumptions, which rely on the discretionary authority of the judge and require supporting evidence. The findings indicate that the current legislative framework governing evidence in tax disputes lacks sufficient clarity and coherence, underscoring the need for more precise regulation that enhances fairness, transparency, and procedural balance between the tax administration and the taxpayer.

**Keywords:** Tax disputes, Burden of proof, Legal presumptions, Judicial presumptions, Income tax law.

### **Introduction:**

In its linguistic sense, evidence refers to affirming a right and demonstrating it through proof. In legal terminology, however, evidence denotes the process of establishing a claim before the judiciary using the methods prescribed by the legislator to prove a disputed right that carries legal consequences. The significance of evidence emerges from its role as a fundamental pillar in resolving disputes before various judicial bodies, particularly in tax disputes, which are characterized by their technical nature and procedural complexity. Evidence serves as the primary tool enabling the tax judge to ascertain the facts giving rise to the tax obligation, for any right that is not supported by admissible proof remains a mere allegation with no legal weight.

Against this backdrop, the need arises to examine the means of proof, determine the scope of their probative value, and assess their legal strength within the context of tax disputes. Special attention is given to legal and judicial presumptions as two of the most important indirect methods of proof. Their relevance stems from the role they play in easing, shifting,

or supplementing the burden of proof, thereby contributing to a balanced relationship between the tax administration and the taxpayer and ensuring fairness in adjudicating tax disputes.

### **Research Problem:**

The core problem addressed in this study revolves around identifying the party that bears the burden of proof in tax disputes, given the unique nature of the relationship between the tax administration and the taxpayer, and the inherent imbalance in their respective legal positions.

The study also seeks to clarify the role played by presumptions—both legal and judicial—as key indirect means of proof in tax litigation, and to assess the extent to which they influence the outcome of the dispute by shifting, reinforcing, or supplementing the burden of proof.

This problem is further compounded by the absence of a detailed legislative framework governing the rules of evidence in tax disputes, raising fundamental questions regarding the limits of the tax administration's authority, the taxpayer's procedural safeguards, and the standards

that should guide the tax judge in evaluating evidence and presumptions.

### **Significance of the Study:**

#### **Academic Significance:**

This study contributes to filling a clear knowledge gap in the legal literature concerning evidence in tax disputes. It does so by analyzing the nature and characteristics of such disputes and by outlining the theoretical framework governing the applicable rules of evidence, particularly legal and judicial presumptions. The academic value of the study further lies in its treatment of the doctrinal challenges associated with allocating the burden of proof between the tax administration and the taxpayer, especially in the absence of a detailed legislative framework regulating this aspect. Accordingly, the study's findings represent a substantive addition to the field of tax law scholarship.

#### **Societal Significance:**

The societal importance of this study is reflected in its contribution to promoting tax justice and safeguarding taxpayers' rights by clarifying the standards that should guide evidentiary procedures before competent judicial bodies.

Moreover, the study supports transparency and strengthens the relationship between the tax administration and the public by proposing clearer criteria for evaluating evidence and presumptions. Such clarity enhances public trust in the tax system and encourages voluntary compliance, thereby contributing to a more equitable and efficient fiscal environment.

#### **Research Objectives:**

1. This study seeks to achieve a set of interconnected scientific objectives, which can be summarized as follows:
2. To analyze the nature of tax disputes and identify their structural characteristics, thereby clarifying their legal and procedural dimensions and establishing the conceptual framework upon which the study is based.
3. To interpret the rules of evidence applicable in tax disputes and examine their fundamental principles, while highlighting the distinctive features that set them apart from evidentiary rules in other branches of law.
4. To determine the allocation of the burden of proof in tax disputes and to elucidate the legal foundations governing its distribution between the

tax administration and the taxpayer, in light of relevant legislation and judicial precedents.

5. To analyze the role of legal and judicial presumptions as key indirect means of proof, and to assess their effectiveness in supporting the legal positions of the parties and influencing the judicial decision-making process.

### **Research Methodology:**

This study adopts two complementary scientific approaches— the descriptive method and the analytical method— in a manner consistent with the nature of legal research in the fields of public finance and tax legislation.

The descriptive method is employed to present the theoretical framework of tax disputes by utilizing legal definitions, reviewing fundamental concepts, and identifying the structural characteristics of tax disputes and the evidentiary rules governing them. This method also includes an examination of the relevant legislative texts, thereby providing a clear knowledge base that facilitates a deeper understanding of the issues under investigation.

The analytical method is used to examine the legal and practical dimensions of evidentiary mechanisms in tax disputes, through an analysis of doctrinal and judicial trends and an assessment of the probative value of various forms of evidence and presumptions. This approach enables a critical evaluation of the effectiveness of these evidentiary tools in achieving a fair balance between the tax administration and the taxpayer, ultimately contributing to the formulation of precise scientific conclusions that support the development of the legal framework governing evidence in the tax domain.

### **Study Structure:**

This research is organized around a coherent methodological framework consisting of two main chapters, each of which is divided into detailed sections, as follows:

#### **The General Framework of Evidence in Tax Disputes:**

Tax disputes constitute one of the most intricate and multifaceted areas of litigation, owing to the theoretical and practical challenges they raise concerning their nature, underlying causes, and legal implications. Scholarly interest in this field

extends beyond the examination of the statutory framework governing such disputes to encompass the evidentiary mechanisms that form the core of tax adjudication. Evidence serves as the decisive instrument for establishing rights and obligations, as any claim unsupported by legally admissible proof is deemed devoid of legal effect. (Gerard Meussen, 2025, p5).

This pivotal role has prompted contemporary tax legislation to accord heightened importance to evidentiary rules, particularly in light of the distinctive relationship between the parties to the dispute: the tax administration, vested with extensive statutory powers, and the taxpayer, who is often regarded as the comparatively weaker party. (Dionysios Pelekis, 2021).

In view of this significance, the present chapter examines the general framework of evidence in tax disputes through two principal axes: the first addresses the concept and defining characteristics of tax disputes, while the second focuses on the allocation of the burden of proof and the determination of the party responsible for bearing it within the context of tax litigation.

### **The Conceptual Framework and Defining Characteristics of Tax Disputes:**

Understanding the concept of a tax dispute constitutes a fundamental step in identifying the legal framework governing the relationship between the tax administration and the taxpayer, particularly given the distinctive nature of such disputes, where procedural and substantive elements are closely intertwined. To provide a precise and comprehensive treatment of this subject, this section offers a systematic analysis of the concept and characteristics of tax disputes through two main subsections:

Subsection One: This part examines the definition of a tax dispute and identifies its essential components, while clarifying its legal nature and distinguishing it from other administrative and financial disputes.

Subsection Two: This part outlines the defining characteristics of tax disputes, including the identity of the parties involved, the nature of the financial right at issue, and the procedural rules governing the dispute, thereby highlighting the unique features that set tax disputes apart from other forms of litigation.

This structure is intended to provide a clear and progressive analytical framework that facilitates a deeper understanding of the rules of evidence, which constitute a central pillar in the adjudication of tax disputes.

### **The Concept of Tax Disputes:**

The concept of a tax dispute is fundamentally derived from the linguistic meaning of the term dispute in the English language, which is defined as “an argument or disagreement, especially an official one.” This linguistic foundation contributes to shaping the conceptual framework of the tax dispute as an official disagreement arising between the tax administration and the taxpayer concerning the determination of the tax base, the assessment of liability, or the interpretation of tax rules. From this perspective, the tax dispute constitutes a legal phenomenon of a distinctive nature, in which technical and financial considerations intersect with procedural safeguards, rendering it a fertile field for academic analysis—particularly in light of the extensive powers vested in the tax administration, which may influence the balance of the relationship between the parties. This linguistic framework

underscores the importance of examining the tax dispute and its underlying characteristics. (Cambridge Dictionary).

From an Arabic linguistic perspective, the term *munāza‘a* (dispute) is derived from the trilateral root *n-z-‘*, which denotes disagreement or divergence. Al-Munjid (1994) notes that the expression “*tanāza‘a al-qawm*” signifies the occurrence of conflict or contention among people. The term *ḍarība* (tax), on the other hand, is the feminine form of *ḍarīb* and is used to denote a compulsory financial levy imposed by the state on wealth, labor, or income in accordance with prevailing laws and circumstances, as defined in Al-Mu‘jam Al-Wasīṭ (2011). Based on this linguistic foundation, a tax dispute may be understood as a disagreement centered on a specific tax obligation, regardless of its type or scope.

From a legal standpoint, a dispute is commonly defined as a conflict arising between two opposing and irreconcilable claims that necessitates judicial intervention for resolution (‘Abd al-Ra‘ūf, 1998). Within the field of tax law, the concept of a tax dispute is generally understood as a disagreement emerging

from the processes of tax assessment, adjustment, or collection, particularly when the controversy concerns the legality, validity, or accuracy of administrative tax decisions and directly affects their substantive outcomes (Khilāf, 1951). Some scholars adopt a more restrictive approach, viewing the tax dispute specifically as a challenge to the correctness or legality of the tax assessment itself, thereby limiting the scope of the dispute to the core determination of tax liability (Bayyūmī, 1974). This diversity in doctrinal perspectives underscores the multifaceted nature of tax disputes and highlights the need for precise conceptualization within legal scholarship.

The Egyptian Court of Cassation has embraced a broader interpretive approach, holding that any conflict arising from the application of tax legislation constitutes a tax dispute, irrespective of its procedural form or substantive dimension (Egyptian Court of Cassation, 1965, 1966).

This multiplicity of definitions reflects the absence of a single, comprehensive, and universally accepted concept of tax disputes. As a result, three principal doctrinal trends have emerged: a

narrow approach that confines tax disputes to matters of assessment and collection (Şiddīq, 2006; Al-Biqālī, 2007–2008; Al-Ḥarāzī, 2011); a broad approach that extends the concept to include actions for annulment and compensation (‘Aṭā, 2005; Al-Najjār, 2008); and an intermediate approach that applies general administrative and criminal dispute rules to tax matters, thereby diminishing their conceptual distinctiveness (Bayyūmī, n.d.).

In light of these divergent definitions, it becomes evident that none of the proposed formulations has been definitively endorsed or critically preferred over the others.

For a dispute to qualify as a tax dispute, three conditions must be met:

the tax administration must be a party to the dispute,

the dispute must relate to an administrative act affecting the determination of tax liability, and

the disagreement must concern the interpretation or application of tax law.

Accordingly, a tax dispute may be defined as any conflict arising between the taxpayer and the tax administration

concerning a legal act performed under tax legislation and submitted to a judicial or quasi-judicial authority. This definition further indicates that a tax dispute is broader in scope than a tax lawsuit, as it begins with the emergence of the tax obligation within the taxpayer's legal sphere (Şiddīq, 2006).

A dispute does not qualify as a tax dispute if it pertains to the interpretation of non-tax legislation, even if connected to the activities of the tax administration, unless tax law constitutes the primary legal reference (Egyptian Court of Cassation, 1999).

Tax disputes may be categorized into those relating to the tax base and those relating to tax collection, reflecting the multiple stages of the tax process—identification, audit, assessment, and collection. At each stage, disagreements may arise between the taxpayer—often the weaker party and the debtor—and the tax administration, which possesses broad statutory powers that place it in a position of relative strength within the tax relationship.

### **Characteristics of Tax Disputes:**

A legal dispute, by its nature, signifies the existence of a conflict between two parties concerning the establishment of a right or the refutation of a claim. However, tax disputes—although they may be subject in certain aspects to the general rules of law—possess distinctive features that set them apart from civil or administrative disputes. This distinctiveness stems from the nature of the financial right at issue and from the role played by the state in confronting the taxpayer. While the state seeks to establish its entitlement to the tax, the taxpayer attempts to demonstrate the absence of liability or to reduce the amount claimed.

The financial right at stake in a tax dispute differs fundamentally from other financial rights contested in civil litigation. In civil cases, the defendant is typically someone who has received money or a direct benefit. In contrast, the taxpayer in the tax context is compelled to pay the tax without receiving a direct corresponding benefit (Şiddīq, 2006). Consequently, tax disputes have developed a set of characteristics that distinguish them from other forms of litigation (Bayyūmī, 1990).

These characteristics may be summarized as follows:

**a) Inequality of the Parties' Legal Positions:**

The state—represented by the Ministry of Finance—enjoys the privileges of public authority, placing it in a stronger position than the taxpayer. It possesses broad powers to obtain evidence and may compel the taxpayer to pay the tax even before the final adjudication of the dispute. Administrative tax decisions also enjoy a presumption of validity, and the burden of proving otherwise rests with the taxpayer.

Egypt's Supreme Administrative Court has consistently held that the administration's refusal to submit documents necessary for adjudication must be interpreted in favor of the claimant. The administration is further required to produce documents not in the taxpayer's possession and may even be compelled to provide evidence exonerating the taxpayer, contrary to the general rule that no person is obliged to produce evidence against themselves (Şiddīq, 2006).

Additional privileges include the non-suspension of tax liability upon filing a lawsuit, the imposition of penalties on tax

evaders, the tax lien over the taxpayer's assets, and the ability to resort to administrative seizure and expedited enforcement.

**b) Application of Tax Law as the Governing Legal Framework:**

Although tax law intersects with other branches of law, it maintains a distinct and autonomous character (Aṭīyya, 1960). When a tax dispute is brought before the judiciary, two scenarios arise (Al-Ḥarāzī, 2011):

Where a specific provision exists in tax legislation, it must be applied as written.

Where no such provision exists, reference is made to the Civil Code or other relevant laws (Egyptian Court of Cassation, 1953), including matters such as retroactivity (Egyptian Court of Cassation, 1979), limitation periods (Egyptian Court of Cassation, 1979), and certain corporate tax rules (Egyptian Court of Cassation, 1965).

**c) Connection of the Tax Dispute to the Taxpayer's Economic or Financial Activity:**

Tax disputes require expedited adjudication to ensure stability in legal positions and to prevent the erosion of the

real value of the tax due to delays (Decree-Law No. 8 of 2011, Article 29/4). Taxpayers may not exploit the multiplicity of litigation stages to unjustifiably postpone payment.

The Egyptian Court of Cassation has affirmed that “a dispute concerning the assessment of tax does not suspend its enforceability” (Egyptian Court of Cassation, 1952, 1954). To promote efficiency, the law permits electronic communication in lieu of formal service (Decree-Law No. 8 of 2011, Article 24) and requires the administration to use multiple notification methods for certain taxes.

#### **d) The Financial Right in Dispute Is Claimed by the State and Contested by the Taxpayer:**

For this reason, tax legislation typically provides for an administrative phase prior to judicial proceedings, enabling the parties to attempt an amicable resolution, whether in whole or in part.

#### **e) Adaptability of Tax Disputes to Legislative and Administrative Developments:**

The tax field is highly dynamic due to its close connection with economic,

social, and political developments. This necessitates continuous updates to tax legislation and procedures, as well as adaptability on the part of the tax administration and the judiciary (Al-Ḥarāzī, 2011).

#### **The Special Nature of Evidentiary Methods in Tax Litigation:**

Evidentiary methods in tax disputes differ from those in civil law. The state’s right cannot be made contingent upon an oath or witness testimony due to considerations of public order (Bayyūmī, 1990). Nevertheless, testimony may be accepted for corroborative purposes or to support expert opinions. Evidentiary tools include accounting records, written documents, admissions, expert reports, inspections, and presumptions (Al-Shawābika & Al-Kasāsba, 2006; Al-Ḥarāzī, 2011).

#### **The Allocation of the Burden of Proof in Tax Disputes:**

The evidentiary system in tax disputes has evolved in parallel with the development of taxation itself and with the transformation of the relationship between the state and the taxpayer. In

earlier stages, the taxpayer was responsible for delivering the tax to the state, and the facts requiring proof were extremely limited. As a result, the burden of proof rested entirely on the taxpayer, while the tax administration enjoyed broad discretionary powers without being constrained by clear legal rules.

With the emergence of the modern state and the expansion of its role in regulating public finance, responsibility shifted to the tax administration, which became the party asserting the tax claim. Consequently, it became obligated to prove the taxable event against the taxpayer, in addition to demonstrating the legality and correctness of the assessment and collection procedures it undertakes.

The importance of evidence in tax disputes is reflected on both theoretical and practical levels. Theoretically, evidence serves as the mechanism through which the legality of the tax administration's decisions is established, while also validating the taxpayer's objections and defenses. This dual function reinforces the principle of legality and ensures that both parties remain subject to effective judicial oversight. Practically, evidence plays a preventive role by reducing the likelihood

of disputes, as it enables each party to substantiate its claims and persuade the other of their validity.

Accordingly, the burden of proof in tax disputes is distributed between the two parties to the tax relationship. In certain circumstances, the burden falls on the taxpayer—an issue addressed in Subsection One—while in other circumstances, it rests with the tax administration, as examined in Subsection Two.

#### **i. The Burden of Proof Imposed on the Taxpayer:**

Debate persists within legal scholarship regarding the party that bears the burden of proof in tax disputes. While one doctrinal view assigns this burden exclusively to the tax administration, another adopts a shared-responsibility model in which the burden shifts between the taxpayer and the administration depending on the nature of the disputed fact.

An examination of the Palestinian Income Tax Law No. 17 of 2004 reveals that the legislator did not expressly specify the circumstances in which the burden of proof rests with the taxpayer, thereby necessitating reliance on general legal

principles and inferences drawn from related statutory provisions. In practice, however, the taxpayer assumes the burden of proof in several key situations. This includes the obligation to substantiate expenses, costs, and losses claimed as necessary for generating taxable income, in accordance with the general principle that the burden of proof lies with the claimant—a principle reinforced by Article 8 of the law, which requires documentary evidence for such expenditures.

The taxpayer must also demonstrate the existence of compelling grounds when requesting installment arrangements for tax payments, as derived from Article 33, which grants the minister or his delegate the authority to assess the justification for such requests. Furthermore, when a taxpayer claims cessation of business activity for the purpose of reducing taxable income, he must provide adequate evidence to support this assertion, consistent with Article 16(4), which obliges the liquidator to notify the tax director in writing of the commencement of liquidation procedures and to submit the relevant tax return.

Judicial precedent similarly places the burden on the taxpayer to prove that a tax assessment is excessive, as affirmed by the Jordanian Court of Cassation in 1964. Collectively, these instances demonstrate that the burden of proof does not invariably rest with the tax administration; rather, it may shift to the taxpayer whenever the claim originates from him or when he is in a better position to provide evidence concerning facts within his knowledge or control.

#### **ii. The Burden of Proof Placed on the Tax Administration:**

The instances in which the burden of proof rests with the tax administration are illustrative rather than exhaustive, much like the cases in which the burden is placed on the taxpayer. This is because such instances are derived primarily from doctrinal analysis and practical application rather than from explicit statutory provisions. The most significant examples include:

When the taxpayer submits duly kept and properly maintained commercial books, a presumption of accuracy arises in their favor. In such cases, the burden shifts to the tax administration, which must

establish the existence of errors or inaccuracies, as it is the party alleging the contrary. This principle reflects the broader evidentiary rule that the party challenging the validity of a document bears the responsibility of proving its inaccuracy.

A similar allocation of the burden of proof appears in relation to tax returns. The Palestinian legislator has expressly placed the responsibility on the tax administration to demonstrate the incorrectness of the information contained in the taxpayer's return. Article 19(1) of Income Tax Law No. 17 of 2004 requires the assessment officer to substantiate any claim that the return is wholly or partially inaccurate, thereby reinforcing the presumption that the taxpayer's declaration is correct unless proven otherwise.

The burden also rests with the tax administration when it undertakes audits or investigations without prior notice. Because such measures constitute exceptions to the general procedural guarantees afforded to taxpayers, the administration must demonstrate the existence of serious grounds justifying the absence of notification. Article 22 of the same law—particularly its first and second

paragraphs—sets out the conditions governing these exceptional actions, including the requirement that the assessment officer possess evidence or indications before initiating an audit or seizing documents.

Likewise, when the administration proceeds with administrative seizure without prior notification, it must justify the legality of its actions. As a general rule, the taxpayer must be informed of the tax due and granted a period for payment, consistent with the principle that no obligation arises without notification. Article 32 of Income Tax Law No. 17 of 2004 stipulates that payment must occur within one month from the date of the assessment notice or the decision of the competent court. Accordingly, if the administration bypasses this requirement and initiates enforcement measures without prior notice, it bears the burden of proving that such action was legally justified.

### **Evidence in Tax Disputes Based on Presumptions:**

Presumptions constitute one of the most significant indirect means of proof, as they operate by deriving a specific conclusion from an established and known

fact in order to infer another fact that remains unknown. This inferential process is grounded in rational reasoning that contributes to the formation of legal positions and the establishment of rights. The Palestinian legislator has affirmed this approach in Article 106 of the Evidence Law, which distinguishes between legal presumptions—formulated directly by the legislator and binding upon the judge—and judicial presumptions, which are derived by the judge from the facts of the case pursuant to his discretionary authority and in accordance with principles of logic and inference. Contemporary Palestinian legal scholarship further underscores the importance of this discretionary power as an essential component of the judge’s role in evaluating evidence and determining its probative value. (Abu Jaber, 2020).

Both legal and judicial presumptions share the characteristic that they do not relate directly to the primary fact in dispute. Instead, they pertain to another fact that is sufficiently connected to the disputed one, such that proving the secondary fact leads indirectly to proving the primary fact.

The Palestinian legislator has accorded particular importance to legal presumptions, granting them a stronger evidentiary force than judicial presumptions. This is because legal presumptions operate as an exception to the general rule governing the burden of proof, as set out in Article 2 of the Palestinian Evidence Law, which provides that “the creditor must prove the obligation, and the debtor must prove its discharge”.

Through legal presumptions, the legislator may shift the burden of proof between the parties. These presumptions are classified into conclusive presumptions, which cannot be rebutted, and simple presumptions, which may be challenged by contrary evidence. In addition, final judicial decisions that have acquired the authority of *res judicata* enjoy a special evidentiary status.

Legal and judicial presumptions constitute essential tools in tax disputes due to the inherent difficulty of obtaining direct or conclusive evidence regarding the taxable event or the elements of the tax base. Taxpayers may not always possess complete documentation or properly

maintained accounting records, while tax authorities often rely on estimation or incomplete audits, making presumptions necessary to fill evidentiary gaps. Legal presumptions are particularly significant because they establish predetermined legal positions set by the legislator, thereby reducing the burden of proof on one of the parties and expediting dispute resolution. Judicial presumptions, on the other hand, enable the judge to infer facts through logical reasoning, which aligns with the nature of tax disputes that require flexibility in evaluating evidence. Accordingly, the relationship between presumptions and tax disputes is an organic one, as presumptions serve as a fundamental mechanism for addressing the absence of direct evidence and ensuring procedural balance between the taxpayer and the tax administration. (Gerard Meussen, 2025).

The primary objective of this chapter is to examine the extent to which presumptions—recognized as a means of proof under the Palestinian Evidence Law in civil and commercial matters (Law No. 4 of 2001)—may be employed to establish disputed rights in tax litigation. To achieve this objective, Section One analyzes legal presumptions and their role in proving tax-

related claims, while Section Two focuses on judicial presumptions and their contribution to evidentiary processes in tax disputes.

### **Legal Presumptions and Their Role in Evidence in Tax Disputes:**

The Palestinian Evidence Law defines a legal presumption as “a presumption established by law, which exempts the party in whose favor it operates from any other method of proof, unless the contrary is established by evidence, unless otherwise provided by law” (Palestinian Evidence Law, Article 107). This definition indicates that a legal presumption may only arise through an explicit legislative provision, and that it is the legislator who determines its scope and probative value. This distinguishes legal presumptions from judicial presumptions, which are derived by the judge from the circumstances of the case.

The rationale behind requiring a statutory basis for legal presumptions lies in achieving several key objectives:

- a) Preventing circumvention of the law, particularly in areas where proof is difficult or technically complex, such as tax disputes.

- b) Alleviating the burden of proof for the party who faces difficulty in producing evidence, by shifting the burden to the opposing party—consistent with global legal doctrine, which views legal presumptions as an instrument for achieving procedural fairness.
- c) Relying on common practice and prevailing norms, a principle reflected in comparative jurisprudence, including the work of the French scholar Planiol, who emphasized that legal presumptions are often grounded in what is customary and most likely to occur in practice.

Legal presumptions in tax disputes are generally classified into two main categories (Al-Biqālī, 2007–2008):

**A. Irrebuttable Presumptions:**

These are presumptions that cannot be challenged by contrary evidence and constitute one of the strongest forms of proof. They relieve the benefiting party of any evidentiary burden. An example is the presumption of correctness of a tax assessment agreed upon between the tax administration and the taxpayer, which cannot be contested once accepted. This aligns with French tax jurisprudence, which

treats final tax agreements as conclusive instruments that may not be challenged, thereby ensuring stability in legal and financial positions.

**B. Rebuttable Presumptions:**

These presumptions relieve the benefiting party of the burden of proof but allow the opposing party to present evidence to the contrary. An example is the presumption that commercial registration indicates the commencement of business activity and, consequently, the beginning of tax liability. This approach is consistent with Anglo-Saxon legal systems, where business or professional registration is considered a strong indicator of activity, though it remains open to rebuttal.

Examples of Legal Presumptions in Palestinian Tax Legislation. The Palestinian Income Tax Law No. 17 of 2004 incorporates several legal presumptions, including:

1. Attribution of income to the person who disposes of property in favor of a minor child, as provided in Article 13(1), which states that income arising from a transaction conducted for the benefit of a child under eighteen is deemed income of the person who carried out the transaction. This presumption aims

to prevent tax avoidance through income shifting to minors—a practice similarly addressed in Canadian and U.S. tax systems through attribution rules designed to prevent income diversion to family members in lower tax brackets.

2. Presumption that income from a revocable transaction remains attributable to the original disposer, under Article 13(2), where the transaction includes provisions allowing the income to be retransferred or controlled by the disposer. This mirrors the British settlements legislation, which prevents the use of gifts or sham transfers to avoid taxation.

The Importance of Legal Presumptions in Tax Disputes. Legal presumptions play a central role in tax evidence for several reasons:

1. They restore balance between the tax administration and the taxpayer, particularly given the inherent inequality in their legal positions.
2. They contribute to combating tax evasion, a point emphasized in international literature, including OECD studies on preventing tax avoidance

through intra-family transfers or artificial arrangements.

3. They enhance efficiency and expedite dispute resolution, consistent with modern trends in comparative tax legislation.

### **Judicial Presumptions and Their Role in Evidence in Tax Disputes:**

Article 108 of the Palestinian Evidence Law defines a judicial presumption as “a presumption not established by law but inferred by the judge from the circumstances, facts, and documents of the case, based on his discretionary authority.” This definition indicates that a judicial presumption is the product of an intellectual process undertaken by the judge, who relies on established facts presented in the case to infer an unknown fact that requires proof. The Palestinian legislator reinforces this understanding by equating the scope of proof through judicial presumptions with that of witness testimony, classifying them as restricted forms of evidence that may only be invoked in situations where testimony is admissible, pursuant to Article 109 of the Evidence Law.

The Palestinian Court of Cassation affirms the distinctive nature of judicial

presumptions as an inferential evidentiary mechanism through which an unknown fact is deduced from a known one, distinguishing them from direct means of proof. In its judgment in Civil Case No. 17 of 2009, the Court held that judicial presumptions may only be relied upon within the limits in which the law permits proof by witness testimony, and therefore may not be used to establish obligations exceeding two hundred Jordanian dinars. This judicial approach indicates that judicial presumptions constitute a supplementary rather than a primary means of proof, and that their scope remains constrained by the formal requirements of written evidence. Such an approach reflects the Court's commitment to preventing an expansive use of presumptions that could undermine transactional stability or weaken the strict evidentiary standards applicable to financial and tax-related matters. This judgment reinforces the conclusion that judicial presumptions in tax disputes are insufficient on their own to establish the taxable fact and must be supported by stronger evidentiary elements, particularly in cases involving mandatory financial obligations. (Palestinian Court of Cassation, Ramallah).

A judicial presumption is thus grounded in a logical inference drawn by the judge from the circumstances and surrounding elements of the case. It is based on a known fact from which another, unknown fact is deduced. The judge's role in this context is an active one, as he exercises discretionary reasoning, unlike legal presumptions, which operate as a passive mechanism that relieves the judge from examining the evidence and obliges him to apply the presumption once its conditions are met. Hence, judicial presumptions derive from the judge, whereas legal presumptions originate from statutory provisions.

Judicial presumptions constitute an indirect means of proof, as they do not relate directly to the primary fact in dispute but rather to a secondary fact closely connected to it. Establishing this secondary fact enables the judge to infer the primary fact indirectly. However, the judge's discretion in this domain is not absolute. His inference must be grounded in clear, consistent, and established facts, free from ambiguity or contradiction. He may not base a judicial presumption on a speculative or incomplete fact, nor may he

rely on a single, uncorroborated testimony or on a presumption derived from another presumption (Saad, 1995).

Despite the conceptual similarity between judicial and legal presumptions—both being indirect means of proof based on the likelihood of occurrence—there are fundamental differences between them. Legal presumptions are expressly defined by statute, whereas judicial presumptions are unlimited in number and are derived by the judge in each case according to his discretionary assessment. They also differ in evidentiary effect: judicial presumptions are not conclusive and may only be used in situations where testimony is admissible, while legal presumptions may be rebuttable or irrebuttable. Moreover, judicial presumptions are not subject to review by the Court of Cassation, as they pertain to factual matters, whereas legal presumptions concern matters of law and must be applied by the judge whenever their statutory conditions are met (Al-Mansour, 2011).

The judge enjoys broad discretion in selecting the facts upon which he bases a judicial presumption, whether these facts relate to the parties themselves or to external circumstances, provided they are

included in the case file. He is not bound by a specific number of presumptions; he may rely on a single presumption or on a set of interconnected presumptions that collectively form a coherent evidentiary basis for his conclusion. These presumptions must be assessed as a whole, and it is impermissible to challenge each presumption individually, as their probative value derives from their cumulative effect.

Accordingly, the judge exercises a dual freedom: the freedom to select the established fact on which he relies, and the freedom to infer the unknown fact from it, so long as his reasoning is logical, coherent, and acceptable.

The legislator has expressly permitted proof through judicial presumptions in situations where the facts indicate voluntary performance—whether partial or complete—of the obligation in question. An example is the delivery of goods by the seller, which constitutes a judicial presumption of the existence of a contract of sale.

Judicial presumptions are considered non-conclusive forms of evidence and resemble simple legal presumptions in their susceptibility to

rebuttal. The legislator has placed them below written evidence in the hierarchy of proof and equated their probative value with that of witness testimony. Accordingly, judicial presumptions may be rebutted by written evidence, testimony, confession, oath, or legal presumptions, and may even be contradicted by another judicial presumption (Al-Mansour, 2011).

### **Conclusion:**

The study demonstrates that evidence in tax disputes constitutes the cornerstone of achieving tax justice and ensuring a balanced relationship between the tax administration and the taxpayer. The findings reveal that the Palestinian legal framework continues to rely primarily on the general evidentiary rules set forth in the Evidence Law, without a specialized regulatory structure tailored to the technical nature of tax disputes. The study further highlights the pivotal role of legal presumptions in alleviating the burden of proof, in contrast to the limited reliability of judicial presumptions due to their discretionary nature. Accordingly, the development of a comprehensive legislative framework governing evidentiary rules in tax matters has

become an urgent necessity to enhance legal certainty and improve the efficiency of dispute resolution.

### **Findings:**

1. The Palestinian Evidence Law No. 4 of 2001 remains the principal source governing evidentiary methods in tax disputes, in the absence of specific provisions within tax legislation.
2. The study finds that written evidence plays an important role in tax disputes due to its objective and precise nature; however, the study does not conclude that courts reject legal or judicial presumptions, but rather that written evidence often provides stronger probative value in practice.
3. The study finds that legal presumptions may contribute to facilitating evidentiary procedures in tax litigation, particularly in cases where direct evidence is difficult to obtain, although further detailed examination of their practical impact remains necessary.
4. The study recommends supporting judicial presumptions with additional evidence in tax disputes, given their reliance on the judge's discretionary assessment, which necessitates

reinforcing them with other evidentiary methods to ensure greater legal certainty.

### **Recommendations:**

1. The legislator should introduce explicit provisions within tax laws specifying the admissible means of proof in tax disputes, rather than relying solely on the general reference to the Evidence Law.
2. The legislator should define the probative value of each evidentiary method to ensure greater clarity in practical application and reduce inconsistencies in judicial interpretation.
3. A clear legislative framework should be established to regulate the allocation of the burden of proof between the taxpayer and the tax administration, identifying the circumstances in which each party bears this burden, thereby reinforcing procedural equality.
4. There is an urgent need to enact a unified tax procedures law that governs all stages of tax disputes, including evidentiary rules, in a manner that promotes legislative coherence and administrative efficiency.

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