

Registration of Real Estate Sale Contracts in Algerian Legislation

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Abstract:

The process of registering real estate sale contracts is of paramount importance, marking a critical phase in the transition of property ownership. The Algerian legislature has established the Registration Law to meticulously govern this process at the Inspection of Registration and Stamp Office.

This registration is not only pivotal for accruing fees that bolster the public treasury but also serves as a foundational legal procedure aimed at ensuring the stability of real estate transactions and bolstering confidence in these dealings.

Keywords: Registration, Real Estate, Significance of Registration.

Introduction:

Real estate represents one of the most coveted assets, compelling legislations worldwide to meticulously regulate transactions associated with it. This regulation serves a dual purpose: firstly, to ensure the stability of real estate transactions, and secondly, to facilitate the collection of fees that contribute to the public treasury.

The registration of real estate transactions, therefore, emerges as a critical state instrument aimed at promoting economic and social welfare. The Algerian legislature has embedded specific provisions within the general statutes, including the Civil Law and the Commercial Law, further detailed in the Registration Law.

This law mandates fees on all transactions, whether involving movables or real estate, including customary contracts that attain a definite legal status upon registration. These provisions are underpinned by Order 76/105 dated December 9, 1976, which, alongside the Tax Law and annually amended supplementary financial laws, establishes a framework for the registration process.

Jurisprudence does not offer a comprehensive definition of registration, typically describing it as an administrative action executed by a legally authorized public officer within a competent body. This action culminates in the preservation of a legal

transaction's effects in exchange for a registration fee, which is mandatorily paid upon the completion of registration procedures.

The fees can be fixed, proportional, or progressive, contingent upon the nature of the contracts as detailed in Article 08 of the Registration Law. The principal aim of real estate registration is fiscal, designed to collect fees for the public treasury, with an underlying economic goal of addressing the scarcity of capital resources, a fundamental driver of economic development.

The Algerian legislature mandates that any contract or legal transaction concerning real estate be executed before a notary, who must then register it at the Stamp and Registration Service. The registration inspector, who is legally authorized to conduct registrations, must adhere to legally specified deadlines for depositing documents to ensure the fulfillment of registration rights imposed by the legislature on various property-transferring transactions. This leads to a pivotal inquiry:

How has the Algerian legislator addressed the process of registering real estate sale contracts?

Addressing this query necessitates the examination of two crucial aspects: firstly, the legal framework governing the registration of real estate sale contracts; and secondly, the resolution of disputes with the Registration Inspectorate.

First Chapter: The Legal System for Registering the Sale Contract

Real estate registration is an essential procedure executed by the registration inspector, designed to bolster the stability of real estate ownership and augment confidence in property transactions. Recognizing its critical role, the Algerian legislature has rigorously regulated this process through Order 76/105, dated December 9, 1976, known as the Registration Law, alongside annually revised financial and supplementary laws.

This chapter explores the practical and theoretical significance of real estate registration, initially delineating the concept of registration and its differentiation from related legal notions.

First Section: The Concept of Registration and its Distinction from Other Concepts

Registration, especially in the context of real estate sales contracts with the Tax Service, is a legal issue aimed at ensuring the stability of property ownership and enhancing confidence in related transactions. Despite the critical importance of the registration process, it has not been defined comprehensively and conclusively in the legislation. Therefore, we will define it through legal doctrine and distinguish registration from other similar concepts, highlighting its significance.

First Subsection: The Concept of Registration

Registration is a legally mandated procedure for all formal transactions, particularly those involving real estate or proprietary rights. This process also applies to official contracts and agreements, culminating in the collection of a registration fee, a predetermined monetary contribution prescribed by financial and registration statutes, accruing to the public treasury.

Furthermore, registration is characterized as: "An administrative process undertaken by a public officer within a public entity, whereby the legal effect of an operation conducted by natural or juridical persons is either preserved or not preserved, resulting in a tax payment to the officer. This tax is known as the registration right."ⁱ

Additionally, it is described as: "A fiscal procedure that necessitates the logging of certain contracts in official registers, contingent upon the remittance of appropriate fees to the administration responsible for this duty."

From these descriptions, it is evident that registration fundamentally constitutes an administrative procedure performed by a public official, who is legally empowered to register all legal transactions in exchange for registration fees.

Registration is notable for its obligatory and definitive nature; the party responsible is compelled to remit registration fees via administrative measures. This enforcement reflects the principle of state sovereignty, as articulated in Article 64/02 of the 1996ⁱⁱ Constitution, as amended and supplemented.

Non-compliance with fee payment leads to tax penalties designed to ensure compliance. The registration inspector withholds registration services until the tax due on the registration process is settled, as stipulated in Article 82 of Law No. 76/105: "The fees for contracts that must be registered are collected prior to the completion of the procedures."

Based on the foregoing definitions, real estate registration can be conceptualized as an administrative action performed by the registration inspector upon receipt of documents or legal transactions pertaining to the property, during which registration rights are collected.

Second Section: Distinguishing the Registration of Real Estate Sale Contracts from Similar Systems

Given that real estate registration is a procedure conducted by the registration inspector, it is imperative to distinguish this process from other related legal concepts, where there may be overlaps in their relational dynamics. This section will delineate the distinctions between registration and closely linked terms such as real estate registration, notarization, fees, and taxes.

Firstly: Distinguishing Registration from Real Estate Registration

Real estate registration is a specialized procedure designed to document various transactions involving real estate within the administration of real estate registration, aiming to ensure their public accessibility and transparency.ⁱⁱⁱ

Article 793 of the Civil Code articulates that "Ownership and other real rights in real estate do not transfer, either among the contracting parties or with respect to third parties, unless the procedures stipulated by law are adhered to, particularly those laws that govern the real estate registration service."

This differentiates 'registration', which occurs at the Registration Service and is overseen by the registration inspector, from 'real estate registration', which takes place at the Real Estate Registry and is managed by the real estate registrar.

The regulatory frameworks for these processes are also distinct: the registration process is governed by the Registration Law under Order No. 76/105 dated December 9, 1976, while the real estate registration process adheres to Order No. 75/74 dated December 11, 1975, which established the general land survey and created the real estate register.

Despite these distinctions, both processes involve fees payable to the state, referred to respectively as registration fees and real estate publicity fees, as outlined in the first article of the Registration Law.

Secondly: Distinguishing Registration from Registration

The term 'registration' in this context refers to the legal procedure of recording legal transactions at the Real Estate Registry Administration, i.e., the Real Estate Registry, concerning derivative real rights such as official mortgages, possessory mortgages, rights of allocation, and privilege rights.

Conversely, 'registration' as previously mentioned, pertains to registering legal transactions at the Registration and Stamp Service. This distinction underscores the different legal frameworks and administrative offices involved in each process.

Thirdly: Distinguishing Registration from Fee

A 'fee' is understood as a charge levied for a specific service, which may not necessarily correlate with the actual cost of the service provided. In contrast, 'registration' encompasses a procedural act carried out by the registration inspector, resulting in the deduction of registration rights in the form of fees, either proportional or fixed, depending on the nature of the transaction.^{iv}

Thus, while both involve a financial transaction, 'registration' implies a broader legal and administrative procedure, whereas a 'fee' specifically denotes the monetary charge for this or other services.^v

Fourthly: Distinguishing Registration from Tax

A 'tax' is a financial obligation imposed by the state, collected forcibly and definitively, without direct compensation, to support public expenditures or state interventions.^{vi}

Taxes are classified as direct, if deducted directly from income and capital, or indirect, if levied on expenditures incurred by an individual from their capital or income. In the context of 'registration', the registration inspector collects rights, which are categorized as a tax because they are imposed forcibly and definitively.^{vii}

Therefore, registration rights represent an indirect tax, paid to the appropriate service during the registration process. This tax does not directly impact personal incomes and wealth, as it is paid indirectly by individuals utilizing taxable services.

The relationship between the taxpayer and the tax administration in this scenario is indirect, predicated on specific events or transactions. This form of tax lacks the characteristic of stability and continuity, rendering it occasional and intermittent.

Fifthly: Distinguishing Registration from Notarization

Notarization is a legal procedure undertaken by a notary public, who is specifically tasked with authenticating various kinds of documents and contracts that either legally require formalization or are voluntarily formalized by the parties involved.^{viii}

The key distinction between registration and notarization lies in the nature of their execution: notarization is performed by a notary public, whereas registration is conducted by a registration inspector. Notarization is governed by Law No. 06/02^{ix}, which outlines the professional duties and responsibilities of notaries, including their role in authenticating documents to grant them official status.^x

Conversely, registration is regulated under Order No. 76/105 dated December 9, 1976, referred to as the Registration Law. Here, the registration inspector's role is to document all legal transactions, for which registration fees are collected. Unlike notarization, which provides official validation to customary documents, registration primarily assigns a definitive date to these documents, without altering their formal status.

Furthermore, both notarization and registration play critical roles, especially in transactions related to real estate, where formalization is often mandated by law. This overlapping responsibility is supported by Article 324 bis 01 of the Civil Code, which underscores the necessity of formalizing real estate transactions.

The intersection of notarization and registration is further highlighted in Article 40 of the Notarization Law and Article 93 of the Registration Law. The former stipulates that notaries are responsible for collecting all due fees for the public treasury, while the

latter mandates that notaries ensure contracts are registered within set deadlines to avoid fiscal penalties.

When a contract is formalized by a notary, the fees charged include components for both registration and notarization, as specified in Article 393 of the Civil Code. This article requires the buyer to cover costs such as registration fees, real estate registration fees, and notarization fees, unless otherwise specified.

Article 368 of the Registration Law also confirms that notarization fees are the responsibility of the users and are collected by the notary to be forwarded to the state budget.

Third Subection: The Importance of Real Estate Registration

Real estate registration holds substantial significance in both fiscal and legal terms within Algerian legislation. ^{xi}Although its fiscal importance has increased over time, particularly as the state has expanded its fiscal mechanisms in the real estate sector, its legal significance remains vital, albeit secondary to its fiscal role.

Firstly: Fiscal Significance

Registration involves the collection of fees, which constitute an indirect tax paid by those who wish to use taxed services, imposed on certain legal acts or transactions. This tax aims to fulfill multiple objectives, with the primary goal being financial, as it serves as a significant source of public revenue for the state. With the evolution of methods for collecting property taxes, it now also achieves political, economic, and social objectives.

1. Financial Objective:

The primary purpose of real estate registration is financial. This goal may sometimes conflict with economic or social objectives, but priority is given to the financial objective through which the state seeks to fund the public treasury. This objective gives a predominantly financial function to the registration process, contributing to the state's revenue to meet its limited expenses for managing public services.

The financial objective of registration is evident in the frequent amendments to the registration law, which is updated twice annually under the first and supplementary finance laws. The aim of collecting registration fees for real estate is not solely financial; it also serves economic and social purposes.

2. Economic Objective:

Capital is a fundamental element of economic development, and considering that Algeria is a third-world country, it faces a scarcity of capital resources crucial for economic growth^{xii}. Thus, following registration, capital becomes a key component of

economic development because the tax levy plays an economic role in achieving balance and stability through encouraging savings and stimulating investment.

Additionally, it expands tax exemptions and privileges granted to certain sectors, such as the state, which is exempt from all registration fees concerning contracts for the exchange and purchase of properties, and sharing properties with private entities, as per Article 271 of the Registration Law.

Similarly, companies with mixed economies in real estate purchases are exempt under Article 272 repeated 04 of the Registration Law. The state also grants exemptions to institutions investing in underprivileged areas from registration fees for real estate dedicated to their activities, according to Article 272 repeated 03 of the Registration Law.^{xiii}

3. **Social Objective:**

The tax system is based on the principle of justice and aims to achieve it by using registration rights income to help improve the situation for low-income, needy categories. For instance, the states, public institutions belonging to states and municipalities, public hospital institutions, charitable offices, and social protection institutions for seafarers are exempt from registration fees.

Moreover, properties that revert to the state through donation or inheritance, as well as the collection of registration rights, are tools used by the state to achieve general welfare in social and economic fields.^{xiv}

Secondly: Legal Importance

Beyond its fiscal significance, real estate registration also holds substantial legal importance. It is an essential stage in the process of transferring real estate ownership, preceding the phase of real estate publicity.

The payment of registration fees, as mandated by Article 82 of the Registration Law, is required before the execution of registration procedures: "Fees for contracts that must be registered are collected before the completion of the procedures."

Moreover, Article 393 of the Civil Code stipulates that "Expenses for registration, stamp duties, real estate advertising fees, notarization, and others are borne by the buyer unless there are legal provisions that stipulate otherwise."

In addition, Article 29 of the Real Estate Guidance Law dictates that private ownership of real estate and real rights is confirmed by an official contract and must adhere to the rules of real estate registration.

Real estate registration is pivotal in authenticating the date of customary contracts drafted by parties without the intervention of a public officer or notary, as affirmed by Article 328 of the Algerian Civil Code: "A customary contract is not valid against

others concerning its date until it has a fixed date, and the date of the contract is fixed starting from the day of its registration."

Thus, real estate registration serves a crucial role for customary contracts related to real estate transactions, as it confirms the date of the contract and validates its proof through the registration endorsement recorded on the contract by the Registration Service before the enactment of the notarization law.

Second Section: Legal Restrictions on the Registration Process

The Algerian legislator has established a series of rules and restrictions that govern the registration process, specifically the necessity of a real estate sale contract being present.

First Subsection: The Person Qualified for Registration

The law empowers individuals who are authorized to draft official documents and contracts, such as notaries, real estate registrars, directors of state properties, and clerks of judicial bodies, with the right to deposit all documents stipulated by the Registration Law at the regionally competent Registration Office.

In this context, the legislator has delegated the authority to register a real estate sale contract to the notary, as he is legally qualified to draft it. Moreover, the legislator mandates that the notary is responsible for paying the registration fees at the tax office, asserting the state's right to deduct the fees due to the public treasury, as detailed in Article 10^{xv} of Law 06/02, dated February 20, 2006.

Furthermore, Article 40(1) of Law 06/02 elucidates: "The notary collects all rights and fees on behalf of the public treasury from those obliged to pay them on the occasion of drafting contracts and pays directly to the tax offices the amounts due by the parties due to the tax, and is subject to the control of the competent state services according to the applicable legislation." This provision underscores the obligation of the notary to register the contracts he has concluded at the Registration and Stamp Services within the legally specified deadlines.

Second Section: Time Constraints

This refers to the legal deadlines that must be adhered to under the Registration Law by the legally responsible party for registering the contract. The legislator has conditioned the validity of depositing the contract intended for registration on the necessity of respecting the deadlines specified by the Registration Law.

These deadlines vary depending on the nature of the legal transactions, as defined by the Registration Law. According to Article 02 of the law, "Registration fees are fixed, proportional, or progressive, depending on the type of contracts and the property ownership subject to these fees."

The legislator distinguishes between contracts subject to a fixed fee, which means that the share is fixed for all contracts of the same type as defined by Article 208 of the law.^{xvi}

Regarding the registration of contracts subject to a proportional fee and related to the transactions specified in Article 04 of the Registration Law, real estate sale contracts fall under legal transactions with a proportional fee, whereby the real estate sale contract is registered within a month from the date it is specified, as stipulated by Article 58 of the law.^{xvii}

Article 60 of the same law states: "Contracts drafted by notaries, execution agents affiliated with the registries, as well as judicial decisions, must be registered during the month following the month of their preparation." ^{xviii}

However, concerning inheritances, the day the contract is concluded or the day the estate is opened is not counted within the deadlines prescribed for declaring or registering contracts. Regarding deposit times, it is done every day of the week, taking into account the official working hours. ^{xix}

According to Article 73 of the law, registration offices are generally opened at the hour determined by the administration every day except Fridays,^{xx} Thursday afternoons, and on public holidays prescribed by law, and if necessary, in the afternoon on the day designated by the administration for the monthly closing of accounting documents. The days and hours of opening and closing are posted on the door of each service.^{xxi}

It is also worth noting that the day on which the contract is concluded is not considered within the deadlines set for registering the contract, and if the last day of the set deadlines is a day on which the service is closed, the deadlines are extended to the first day following the day of closure, as per Articles 72 and 74 of the law.

Third Subsection: Place of Registration

The articles of the Registration Law designate legally qualified offices responsible for the registration of contracts and transfer of ownerships. Notaries are obliged to register their contracts at the registration office competent within the region as stipulated by the Registration Law.

They must register their contracts at the registration office of the district where their office is located, and if necessary, at the state level where their office is located. Thus, we say that the registration of these contracts by the registration inspector falls within the jurisdiction of the district, and if absent in the state where they practice their functions, as per Article 75 of the Registration Law.

The fees arising from the contracts directed for registration must be paid before the completion of the procedures:

- By the notaries concerning the contracts concluded before them, according to Article 75(1) of the Registration Law, it states, "Notaries can only register their contracts at the registration office of the district, or if necessary, at the state office where their office is located."
- By judicial clerks concerning drafting minutes, petitions, and public auction sales, they register their contracts either in the service affiliated with their residence or in the service affiliated with the place where these contracts were prepared as stipulated by Article 75(2).
- By court registrars concerning judicial rulings and contracts drafted by public administrations as stipulated in Section 03 of Article 75, which states, "Registrars and writers of central and local administrations must register the contracts that must undergo this procedure at the registration office of the district, or if necessary, in the office located within the state where they perform their duties."^{xxii}

For property transfer through death, the declarations related to it are deposited at the offices affiliated with the deceased's place of residence, regardless of the condition of the property values to be declared. However, if there was no residential place in Algeria, the declaration is made at the office affiliated with the place of death. If the death occurred outside Algeria, the declaration is made at the offices designated by the tax administration.^{xxiii}

Regarding transactions concluded outside the country, according to Article 78 of the Registration Law, which states, "Contracts concluded abroad can be registered at all registration services without discrimination," including sale and donation contracts.

As for guardianships, they cannot be executed on properties located in Algeria unless they have been registered at the service affiliated with the place of residence of the testator or at the office of his last known residence in Algeria. In cases where the will includes specific provisions for properties located in Algeria, it must also be registered at the office affiliated with the location of these properties without resulting in double fees.^{xxiv}

Fourth Subsection: Penalties for Non-Registration or Delay in Registration

This subsection addresses the consequences faced due to non-registration, delays in registration, or incorrect declarations:

Firstly: Delay in Registration:

We discuss the case of non-registration, delay in registration, or incorrect declaration:

1. Non-Registration or Delay in Registration:

Notaries, auctioneers, and auction registrars who have not registered their contracts within the prescribed deadlines are required to pay a penalty determined as follows:

- **10%** if the delay in registration ranges from one day to 30 days.
- **3%** for each month or part of a month of delay, provided that the total of the financial obligation and the tax penalty previously referred to does not exceed 25%^{xxv}.

2. Incorrect Declaration:

In cases of incorrect declarations, a penalty equal to twice the additional amount of fees due is imposed. This penalty is not less than 5000 DZD for each incorrect declaration. Furthermore, any individual engaged in maneuvers to evade tax obligations incurs a penalty equal to twice the amount of rights and fees evaded, not less than 10000 DZD.

3. Price Related Issues:

When purchasing or selling a property, parties to the contract may declare hiding the price or give a fictitious price.

A. Insufficient Price or Valuations:

If the declared price or valuations are found to be reduced, penalties are added based on the amount of rights evaded:

- 10% if the rights evaded are 50,000 DZD or less.
- 15% if the rights evaded are more than 50,000 DZD and equal to or less than 200,000 DZD.
- 25% if the rights evaded exceed 200,000 DZD.^{xxvi}

B. Hiding the Price:

Concealing the price is considered a fraudulent act, involving the reduction of the declared price relative to the amounts agreed upon in contracts and declarations. This act is penalized with a fine equal to twice the rights and fees evaded, not less than 10000 DZD.

Fifth Subsection: Exemptions from Registration Fees

The Algerian legislator recognizes exceptions to the imposition of registration fees on certain individuals or transactions related to properties:

- **State and Local Communities:** Exempt from registration fees for contracts concerning the purchase of properties, as stipulated in Articles 271 and 272 of the Registration Law.^{xxvii}
- **Housing Cooperatives:** Contracts presented by housing cooperatives established under Order No. 76-92 dated October 23, 1976, are exempt.

- **Associations and Mutual Benefit Societies:** Contracts and documents concluded by associations and mutual benefit societies recognized for their public utility are also exempt from registration fees.
- **Financial Institutions:** Contracts related to the acquisition of properties carried out by banks and financial institutions in the context of real estate leasing or real estate loans aimed at financing investments by economic operators for industrial or commercial use are exempt.
- **Family Donations:** Donations between ascendants and descendants, as specified in the Finance Law of 2014, enjoy exemption from registration fees.

Second Chapter: Consequences of Non-Compliance with Property Registration Provisions and Ways to Resolve Them

The enforcement of registration procedures is crucial, and the Inspection of Registration must be equipped to collect the requisite registration rights. Positioned under the General Directorate of Taxes within the Ministry of Finance, the Inspection of Registration and Stamp includes five deputy directorates: Deputy Directorate of Resources, Deputy Directorate of Collection, Deputy Directorate of Tax Inspection, Deputy Directorate of Disputes, and Deputy Directorate of Tax Operations.

The latter hosts the Registration and Stamp Office, which oversees the activities of the Inspection of Registration and Stamp, assesses its operations, and offers recommendations to enhance its functions. It also manages the property ownership card, compiles contracts transferring ownership with or without compensation for analysis, and facilitates the verification of fee liquidation, forwarding them to the Inspection of Registration within its jurisdiction.^{xxviii}

Penalties, including tax penalties for these violations, are delineated in the first section of Chapter Six of the Registration Law No. 76-105, applicable both to the actual obligated party and the legally obligated party.

First Section: Penalties for Non-Compliance with Registration Provisions

In instances where there are violations of registration provisions or delays or inaccuracies in declarations, the involved parties face tax penalties enacted by the administration due to non-compliance with registration regulations.

Violations of the registration process provisions lead to tax penalties that could be either criminal, due to the perpetration of the acts, or financial fines as a consequence of the breaches in registration provisions. These penalties are applicable to both the actual taxpayer and the legal taxpayer.

First Subsection: Penalties Prescribed for the Actual Taxpayer

The actual taxpayer, referred to as 'Le contribuable réel', is the individual who disburses the registration fees from their personal funds, whether directly through a notary or indirectly via the tax collector.^{xxix}

The legislation subjects contracting parties to tax penalties if they conspire to conceal part of the sale price, rendering such actions null and void under Article 113, paragraph 01 of the Registration Law.

Additionally, Article 119, paragraph 01 stipulates that anyone who evades or attempts to evade, fully or partially, the tax base or its assessment or the payment of taxes or fees to which they are subject, using deceitful methods, is subject to a criminal fine ranging from 5000 DZD to 20000 DZD and/or imprisonment ranging from one year to five years.

However, this measure is applicable only in instances where the concealment surpasses one-tenth of the taxable amount or an official amount that equals or exceeds 1000 DZD. Therefore, it is incumbent upon the notary to advise the contracting parties against agreeing outside his office to hide the actual sale price

. The registration inspector is endowed with the authority to ascertain such concealment through all legitimate means as provided in Article 213, paragraph 02 of the Registration Law^{xxx}. Moreover, the registration inspector possesses extensive powers that enable him to collect state funds, and the tax inspectorate monitors these violations and may initiate judicial proceedings by filing a complaint with the judicial authority where the tax is levied or the institution is located.

Second Subsection: Penalties Prescribed for the Legal Taxpayer

The legal taxpayer, known as 'le contribuable juridique', encompasses any individual mandated by law to collect registration fees and remit them to the tax collector within specified deadlines, without necessarily being an official or subordinate of the tax administration.

As per the provisions of the Registration Law, the notary who officiates the contract in his presence, and where the parties pay the registration fees, must remit these fees to the tax collector's office within the regionally competent jurisdiction according to the legal deadlines outlined in Article 58 of the Registration Law.

Consequently, the notary is held accountable and incurs tax penalties for non-compliance with registration provisions. Additionally, he is subject to disciplinary actions exercised by the competent authority to which he belongs, without prejudice to other legal penalties that may be imposed. These penalties include:

- Article 93 of the Registration Law requires notaries, clerks, and auction registrars who fail to register their contracts within the prescribed deadlines to pay a penalty of 10% of the evaded rights if the delay in registration ranges from 01 to 30 days.
- A fine of 3% per month or part of a month for delays if the registration is submitted after the final day, with the aggregate financial obligation and tax penalty not exceeding 25% per annum. Notaries, clerks, and agents who do not meet the registration deadlines are also subject to disciplinary actions exercised by the competent authority to which they belong.^{xxx}

If it is proven that a notary was complicit in maneuvers aimed at evading registration fees and there is tangible evidence of his collusion with his clients in concealing the real price, he then becomes an accomplice to the parties liable according to Article 113, paragraph 05 of the Registration Law.

Second Section: Resolving Disputes with the Registration Inspectorate

Tax disputes are more prevalent compared to administrative disputes, and the tax authority can only fulfill its role effectively if it operates on the principle of justice. The assessment of registration rights must be carried out in accordance with the provisions of the Registration Law, without overreach or misuse of authority.

To ensure fairness, it is vital to afford taxpayers the right to contest the imposed tax in cases of errors or misjudgments in assessment. The subsequent discussion will delineate the resolution of administrative disputes and the judicial resolution of disputes.

First Subsection: Administrative Resolution of Disputes

The legislator mandates that the parties affected by the sales contract, burdened by the imposed tax, seek amicable resolution methods to settle disputes concerning the tax base. This resolution process typically occurs at the level of the registration inspector or through a re-evaluation at the investigation office and subsequent re-assessments.

Firstly: Disputes Related to the Tax Base:

This category of dispute arises during the collection of registration rights by the registration inspector, through the Inspection of Registration and Stamp Duty. Disputes may surface when the inspector erroneously exceeds or misassesses the rights.

Given his comprehensive authority, the inspector can recalibrate the contract to appropriately levy the fees. The procedures for resolving tax base disputes are delineated into optional and mandatory categories.^{xxxii}

1. Mandatory Procedures:

These are procedures that a taxpayer must undertake before resorting to the judiciary. If these procedures are not adhered to, the claim will be dismissed on procedural grounds. The taxpayer must submit their grievance to the regional director of taxes in case of a dispute with the registration inspector regarding the taxes imposed before turning to the administrative judiciary.

The grievance must be filed through a complaint submitted within the legal deadlines to the regional director of taxes. It aims to correct a material error made during the tax assessment or to benefit from legal privileges established by statutory provision or to reconsider the tax base.

The complaint must include all necessary information, both in form and substance, according to the text of Article 331 of the Direct Taxes and Similar Charges Law, and must be filed no later than December 31 of the year following the one in which the taxpayer confirmed the existence of improperly imposed taxes. The administration must examine the complaints submitted by taxpayers in terms of form and content as per Article 333, paragraph 01 of the same law.

After an investigation and inquiry by the tax inspector, the decision goes back to the regional tax director, who issues a final decision that may be a total or partial rejection or acceptance. The regional tax director communicates the decision to the taxpayer at their agent's residence or actual address within four months from the date the complaint was filed.^{xxxiii}

In the case of a reduction, the decision is directed to the tax collector, and if there is no response within the previously mentioned period, it is considered an implicit rejection. The party concerned then has the option to either resort to optional appeal methods or to the judiciary.^{xxxiv}

2. Optional Procedures:

These are the methods by which a buyer has the right to appeal before the administrative appeal committees after receiving a judge's decision of total or partial rejection of the submitted complaint, or if four months have passed since filing the complaint without any decision. The complainant initiates these procedures before three committees, the first being the district appeal committees.

The complainant is given a month from the date of receiving the rejection response or from the end of the four months allowed for the regional tax director to respond to the complaint. The response must occur within one month to allow the complainant to proceed to the provincial appeal committee.

This committee, prescribed by Article 301 of the Direct Taxes Law, handles appeals or grievances that were wholly or partially rejected by the district appeal committee and

responds within a month. The complainant can then resort to the central appeal committee, which deals with appeals wholly or partially rejected by the provincial appeal committee, and the response to the grievance must occur within 20 days.^{xxxv}

Secondly: Disputes Related to Valuation

The registration of a real estate sale contract is subject to a fee, and thus, it necessitates the control of the price or value declared by the parties. This task falls to the investigations and valuations office at the deputy directorate of control within four years from the date of registering the contract or document.

The revaluation procedures are completed by the investigations office, and the last owner in possession of the real estate properties is summoned, as well as a visit to inspect the property for valuation purposes based on the study of factors related to the property, whether they are material factors (such as area, electricity, etc.), economic factors (such as location and the state of the real estate market), or legal factors (such as private and public law agreements and land occupation status).

Afterward, the committee drafts a valuation document, which determines the real value of the property, signed by the head of the investigations office, and sent to the deputy directorate for control for approval of this report. Then, the taxpayer is notified through a notice of the real commercial value of the property and the duties due.

If the concerned party agrees with this valuation, they sign a legal commitment acknowledging the revaluation, which is drafted in three copies, each bearing a fiscal stamp, and a payment slip is provided to settle the additional duties.

In case of disagreement and refusal to accept the revaluation, the party has no choice but to appeal before the reconciliation committee^{xxxvi}, which is an administrative body established by the tax directorate at each province as defined by the legislator through Article 102.^{xxxvii} The committee convenes by its chairman and is only valid in the presence of five members, including the chairman.

The taxpayer files a complaint and is summoned to attend via a registered letter with acknowledgment of receipt, notified at least 20 days before the meeting date. During the committee meeting, the concerned party presents their statements or sends written defenses.

In case of disagreement between the taxpayer and the administration or if they do not attend or send their written defenses, the committee issues an opinion, which is communicated to the taxpayer via a registered letter with acknowledgment of receipt. After communicating the committee's opinion within 20 days, an increase is automatically issued via a registered letter with acknowledgment of receipt according to Article 106, with the increase ranging from 10% to 25% of the evaded duties.

This decision is communicated to the concerned party by registered letter with acknowledgment of receipt, and they are given a 10-day period from the date of receipt to pay the due taxes and fines. If the decision is rejected and the 10-day period expires, a collection order with a fine of 25% is issued. If the taxpayer agrees to pay the dues, they can request a reduction in the fine to 25%. If the refusal persists, the taxpayer has a four-month period to resort to the Administrative Court.

Second Subsection: Judicial Resolution of Disputes

Judicial resolution represents the second phase for settling tax disputes between the taxpayer and the tax administration, whether the disputes are related to the tax base or revaluation. When administrative appeal methods are exhausted, the dispute moves to the judicial authorities for resolution.

The legislator mandates prior administrative grievance procedures to reduce the number of cases brought before the judiciary. A taxpayer whose grievance is partially or totally rejected by the competent tax authority has the right to file a lawsuit before the regionally competent Administrative Court as a first degree of litigation, with the possibility of appealing to the Council of State as the second degree^{xxxviii}. Therefore, we will discuss the process of filing a lawsuit before the Administrative Court and appealing to the Council of State.

Firstly: Appeal Before the Administrative Court

According to Article 82, paragraph 01, decisions made by the provincial director of taxes, the head of the tax center, and the head of the local tax center that pertain to complaints which are the subject of dispute, as well as automatic decisions regarding the transfer of shares, must be brought before the Administrative Court^{xxxix}.

The lawsuit must be initiated within a four-month period from the date of receipt of the notification by which the provincial director of taxes, the head of the tax center, or the head of the local tax center informs the taxpayer of the decision regarding their complaint.

Moreover, decisions communicated by the administration after consulting with the provincial, regional, and central appeal committees, as outlined in Article 81 bis of this law, must also be presented before the competent Administrative Court within the aforementioned period.

The Administrative Court is authorized to adjudicate taxpayer lawsuits disputing imposed taxes, considering decisions issued by the director of taxes of the province, including the opinions of the reconciliation committee, within a four-month timeframe following the date the tax schedule for collection is listed.

However, pursuant to Article 76, paragraph 02, the complainant may bring the dispute before the Administrative Court at any time, provided they have not received

notification of the decision by the provincial director of taxes, the head of the tax center, or the head of the local tax center.

To lodge an appeal in the Administrative Court, the complaint must satisfy several conditions as specified in Article 83, paragraph 01. The complainant must file their petition at the registry of the administrative chamber of the judicial council. This petition, either signed by the complainant or their lawyer, must articulate their requests that were not previously included in the complaint.

Subsequent to the exchange of memorandums and documents at the registry, the file is forwarded to the president of the Administrative Court, who decides on it personally or delegates it to one of his advisors.

This advisor may also conduct special investigations represented in an additional inquiry if the taxpayer introduces new evidence before the judgment, and the director of taxes has a 20-day period to review the file and submit his observations in a petition deposited at the registry.

Most cases brought before the Administrative Court are formally dismissed due to non-compliance with litigation procedures and deadlines, particularly in tax matters. If the lawsuit is formally accepted, the judge may order an expert investigation either independently or upon request from one of the parties involved.

After the expert completes their assigned tasks, conducts the study, and carries out special investigations on the cases presented to them, the findings are documented in a written report, and the judge issues a ruling by endorsing these findings, based on either accepting the reduction or rejecting the lawsuit due to a lack of legal foundation.^{x1}

Secondly: Appeal Before the Council of State

The Council of State represents the second level of judicial recourse. Its organizational structure and procedural guidelines are dictated by Organic Law No. 98/01 dated May 30, 1998, which delineates the competencies, organization, and functioning of the Council of State.^{xli}

To initiate a case, the appellant must meticulously adhere to all formal requirements specified for the appeal petition, which is submitted and filed at the registry of the Council of State. This filing registers the case according to its date and serial number in a designated register at the registry.

According to Article 950 of the Civil Procedure Code, an appellant has a two-month deadline from the date of receiving the decision from the Administrative Court to file an appeal with the Council of State. Furthermore, the appellant is afforded an additional one-month period to summon the opposing party by presenting all defenses in a responsive memorandum.

This memorandum must be communicated to the appellant's lawyer within two months from the official notification date of the appeal petition, as stipulated in Article 568 of the Civil Procedure Code. Subsequently, the First President of the Council of State assigns a rapporteur advisor to scrutinize the file in terms of factual and legal aspects.

After a thorough deliberation, the Council of State issues its decision. Additionally, the taxpayer may request a suspension of the execution of the decision either before the Administrative Court or the Council of State^{xlii}. However, if the judicial decision obligates the taxpayer, they are required to comply with the payment, which is then regarded as a state debt.

Conclusion:

The registration process is an essential administrative procedure executed at the level of the Registration and Stamp Inspection. The registration inspector is tasked with receiving contracts related to properties to ensure their registration within the legal deadlines specified by the amended and supplemented Registration Law 06/105.

The inspector is responsible for analyzing and adapting contracts and documents to ensure the collection of necessary rights and also oversees the submitted documents for registration to verify their compliance with legal standards.

Given the pivotal role of the notary in the registration of notarial contracts and the collection of taxes and fees, it is imperative that they remain fully informed of all changes to the registration fees, which are often updated under annual financial and supplementary laws.

Legal professionals who draft contracts and fail to register them within the stipulated legal deadlines are liable for tax penalties and other criminal sanctions, in addition to financial fines for non-compliance with registration provisions. Such non-compliance frequently leads to tax disputes between the administration and the taxpayer.

These disputes must initially be resolved through administrative channels, and if all administrative appeal avenues are exhausted, the matter progresses to judicial bodies. In this context, the taxpayer has the right to initiate a lawsuit before the Administrative Court, which can be appealed before the Council of State. Thus, the Algerian legislator ensures that both parties are afforded legal protections through specific procedures outlined in the Tax Procedure Law.

Finally, we have reached some proposed recommendations:

- To streamline the registration process, it is advisable to incorporate information technology solutions, such as utilizing emails, to prevent the mixing of documents.
- To mitigate the impact of annual amendments to the financial law, inspectors should be thoroughly trained to understand these laws comprehensively.

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ⁱAsia Doua, Khaled Ramoul, "The Legal and Regulatory Framework for Real Estate Registration in Algerian Legislation," Dar Houma for Printing and Publishing, 2009, p. 19.

ⁱⁱ Amended and Supplemented Constitution of 1996, Official Gazette, Issue No. 76 dated 16/10/1996, p. 03.

ⁱⁱⁱ Majid Khaloufi, "The Real Estate Registration System in Algerian Law," 5th edition, Dar Houma, Algeria, 2008, p. 15.

^{iv} Mohammad Abbas Mahrezi, "Economics of Taxation and Taxes," Dar Houma, Algeria, 2003, p. 72.

^v Asia Doua and Khaled Ramoul, op. cit., p. 25.

^{vi} Hassan Awadah, "Public Finance, A Comparative Study of Budget Expenditure and Public Revenues," Dar Al-Nahda, Beirut, 4th edition, 1978, p. 398.

^{vii} Asia Doua and Khaled Ramoul, op. cit., p. 26.

^{viii} Asia Doua and Khaled Ramoul, ibid., p. 26.

^{ix} Law No. 06/02 dated March 8, 2006, on the regulation of the notary profession, Official Gazette, Issue No. 14.

^x Karim Qan, "Transfer of Property in Real Estate Sale Contracts in Algerian Law," Master's Thesis, Faculty of Law, University of Oran, 2011-2012, p. 81.

^{xi} Abd el-Aziz Laoar Kasah and Morad Wafi, "Real Estate and its Taxation in Algeria," End-of-Study Memo for the Advanced Studies Certificate in Finance, National School of Taxes, La Kalaa, 1994-1998, p. 122.

^{xii} Asia Doua and Khaled Ramoul, op. cit., p. 30.

^{xiii} Exemptions included in Chapter 11 of Registration Law 76/105, dated December 9, 1976, Articles from 270 to 347 bis, covering exemptions from registration fees and registration procedures.

^{xiv} Asia Doua and Khaled Ramoul, op. cit., p. 30-31.

^{xv} Article 10 of the Documentation Law states: "The notary is responsible for preserving the contracts he drafts or receives for deposit, overseeing the execution of procedures provided by law, especially registration... He must also open a special account at the Treasury to deposit the amounts he holds."

^{xvi} Article 03 from the aforementioned law states: "A fixed fee applies to contracts that do not establish the transfer of ownership, usufruct, or enjoyment for life, or for an indefinite period for movable or immovable properties... Generally, this fee applies to all other contracts voluntarily submitted for registration even if they are exempted from it."

^{xvii} Article 208 from the aforementioned law states: "A fixed fee of 500 DZD applies to all contracts not defined by any article of this law, and which cannot result in the collection based on a proportional or progressive fee."

^{xviii} Article 04 from the aforementioned law states: "A proportional or progressive fee is established for the transfer of ownership or usufruct or enjoyment of movable or immovable properties, whether between living parties or by death, and also for contracts referred to in Article 221 below, and contracts establishing either a share in a company or division of movable or immovable properties. The rates of the proportional and progressive fee are set under Articles 216 to 264 of this law, and these fees are imposed on the values."

^{xix} Article 58 from the aforementioned law states: "Notary contracts must be registered within one month from their date."

^{xx} See Article 72 from the aforementioned Order 76/105.

^{xxi} Asia Doua and Khaled Ramoul, *op. cit.*, p. 77.

^{xxii} See Article 75 from Order No. 76/105 dated December 9, 1976, on the aforementioned Registration Law.

^{xxiii} See Article 80 from the aforementioned Order 76/105.

^{xxiv} See Article 79 from Order 76/105.

^{xxv} Ministry of Finance, "Tax Guide for Registration," 2017, p. 57.

^{xxvi} "Tax Guide for Registration," *Ibid*, p. 58.

^{xxvii} Article 271 of the same law states: "The state is exempt from all fees concerning contracts related to the exchange and purchase of properties of all kinds, as well as those related to the division of these properties with private entities."

Article 272 of the same law states: "Exempt from transfer fees, which are the responsibility of the buyer, are acquisitions made consensually in return for compensation by provinces or municipalities or expenses of municipalities and public institutions of the province or municipality when they are intended for public education, emergency services, social health preservation, as well as for urban development and construction. These provisions apply when the competent authorities issue a regulatory decision according to the applicable laws and regulations, in an emergency situation for the public benefit of these acquisitions without the need to conduct investigation procedures."

^{xxviii} Asia Doua and Khaled Ramoul, *op. cit.*, pp. 67-68.

^{xxix} Boureouis Zidane, "Procedures and Practices for Drafting a Notarial Contract," Part 05, Journal of the Notary Issue No. 08, National Chamber of Notaries, 2002, p. 33.

^{xxx} Asia Doua and Khaled Ramoul, *op. cit.*, p. 96.

^{xxxi} Order No. 76/105 amended and supplemented.

^{xxxii} Asia Doua and Khaled Ramoul, *op. cit.*, p. 105.

^{xxxiii} Asia Doua and Khaled Ramoul, *op. cit.*, p. 106.

^{xxxiv} Asia Doua and Khaled Ramoul, *op. cit.*, p. 107.

^{xxxv} Asia Doua and Khaled Ramoul, *ibid.*, pp. 107-108.

^{xxxvi} Asia Doua and Khaled Ramoul, *ibid.*, p. 109.

^{xxxvii} According to Article 102 of the same law, the Reconciliation Committee consists of: "The Director of Taxes at the provincial level as chairman, the Registration Inspector, the Special Affairs Inspector for National and Real Estate Properties, the Collector of Various Taxes, a notary appointed by the chairman of the relevant Regional Chamber of Notaries, a representative from the provincial administration."

^{xxxviii} Article 82, paragraph 01 of the Tax Procedures Law.

^{xxxix} Article 82 / 01, amended by the provisions of Article 61 of Law 20/16, concerning the Tax Procedures Law.

^{xl} Karim Qan, "Transfer of Property in Real Estate Sale Contract," previous reference, pp. 104-105.

^{xli} Asia Doua and Khaled Ramoul, op. cit., p. 114.

^{xlii} Abdel Latif Fassila, Mohamed Amin Meziane, "Provisions for the Registration of Real Estate Sale Contracts," Algerian Journal of Legal, Economic and Political Sciences, p. 381.