

## TAX EVASION OF VALUE ADDED TAX(VAT) IN LIGHT OF THE PROVISIONS OF FEDERAL LAW NO. (8) OF 2017

**DR. MOHAMED FAWZY IBRAHIM**  
Professor of Criminal Law  
Sharjah Police Sciences Academy

### **Preamble:**

Taxes represent the most important resource of the state at the present time, but their performance by financiers collides with their lack of tax awareness, and this is confirmed by the financiers or taxpayers hiding their activities from the knowledge of the Federal Tax Authority completely, or hiding a large part of the size of their real revenues from the knowledge of the Federal Tax Authority with the intention of evading the payment of the tax due on them, and exploiting the legal loopholes that prevent them from falling under the law.

Hence, there has been a lot of talk about the nature of tax evasion in its various types and forms in recent times, especially with the issuance of the Federal Value Added Tax Law No. (8) of 2017. Opinions have varied and the legal and economic definitions of evasion have varied, so we must first focus on the concept of evasion as a linguistic term. As a legal term, we then explain the opinions of jurists on the ways the new law addresses the problem of tax evasion, through the following sections:

- The first topic: identifying tax evasion
- The second topic: The basic concepts of tax avoidance and evasion.
- The third topic: mechanisms for combating tax evasion.

### **The first topic**

#### **Identifying tax evasion**

There is no doubt that trying to agree on a specific and agreed definition of evasion will help to stand on the best ways to treat this phenomenon, or reduce it, and here we address the topic as follows:

#### **First Requirement**

##### **Definition of tax evasion**

Due to the importance of defining the phenomenon of tax evasion because it is a global phenomenon that exists where taxes exist, and it results in serious structural differences that affect the level of the economic system, which results in weakening the state's ability to carry out its assigned functions.

In light of this, we try to reach the definition of evasion in the language and among financial jurists.

#### **Section I**

##### **The concept of evasion in language**

Linguists almost agree on one meaning of the definition of evasion where Ibn Manzur defined it as fleeing - escape and flee escaped escaped escape be for humans and other types of animals and escaped hard to go panicked <sup>(1)</sup>.

Imam al-Zamakhshari goes with an article that escaped towards the previous meaning, where he says that the grandfather escaped and the evader. <sup>2</sup>From here it is clear to us that linguists unanimously agreed that the word means fleeing and serious in escaping to get rid of something and be for man and others.

(1) Ibn Manzur: Lisan Al Arab - Dar Al-Maaref Edition - undated, vol. 6, p. 4664.

(2) Imam Al-Zamakhshari: The basis of rhetoric - edition of Dar Al-Tanweer Al-Arabi - Beirut - 1984 AD - part 4 - p. 482.



- This word comes in English meaning Evasion, meaning that tax evasion means Evasion<sup>1</sup> Tax.

## Section II

### The concept of evasion in jurisprudence

There are two trends that prevailed in financial jurisprudence when dealing with the definition of tax evasion, one of which is characterized by being expanded to include evasion and others, and the other: narrow so that evasion is seen from the angle of criminalization only.

First, evasion is defined as "any means used by a financier in order to get rid of a tax burden that is supposed to fall on his shoulders<sup>2</sup>".

Some defined it as "the elimination of the obligation to pay<sup>tax</sup>".<sup>3</sup> It is clear the extent to which the owners of this trend expand in the definition of evasion until it includes, and includes other types such as tax avoidance.

It was also defined as "a means of tax disposal because it involves tampering with the law and violating its provisions, as it is limited to avoiding action or conduct that may lead to the collection of tax<sup>4</sup>".

The definition here is broad enough to include evasion and tax avoidance, although there is a big difference between them, as tax avoidance is not punishable by the legislator, and it is not considered tax evasion, as in the case of refraining from performing the tax-creating incident. We find that the jurist Seligman is trying to clarify the behavior of the individual towards the tax, as he limited it to two things: -

The first: His attempt to get rid of it, but without the state treasury being affected by this behavior, by transferring the burden of the tax to those who are not responsible for it (the non-taxpayer).

Second: The individual gets rid of the tax, but the State treasury is affected by this behavior, as he resorts to tax evasion, whether legitimate or illegal<sup>5</sup>.

#### Second direction :

This is a narrow trend in its approach to defining tax evasion, as it stipulates the availability of specific controls in order for the act to be considered a crime punishable by law. Therefore, we find among them<sup>6</sup> those who define it as "the attempt of a person who meets the conditions for being subject to the tax not to pay it in whole or in part, following methods and methods that are contrary to the law and carry within them the nature of fraud."

The fact of the matter here is that this specific trend to define evasion required the act to be associated with ways and methods contrary to the law, in addition to carrying with it fraud, which means that evasion here involves only one form only, which is illegal evasion, which is associated with punishment, and then criminalization.

However, it should be noted here that in order for a financier to be considered an evader, methods and methods specified by law must be used exclusively.

Here, while we are about to talk about the jurists' definition of tax evasion, we cannot fail to point out the jurisprudential trend that looks at the crime of evasion from a different point of view, as it believes that all previous definitions look at this crime from the perspective of the person evading the person rather than the money, which leads to the presence of loopholes that prevent taking the

(2) Munir Ba'alak AL\_MAWAID. DAR EL\_LiMil. MILLIONS. V.98 P.952

(2) √/ Hassan Sadiq Al-Marsafawi: Criminalization in Tax Legislation, Dar Al-Maaref Edition, Cairo, 1963, p. 346.

(3) Dr. Dollar Ali, Dr. Abdel Moneim Fawzy: State Finance - Edition of the Knowledge Foundation - Alexandria - 1962 - p. 120 .

(4) Dr. Magdy Mohamed Ali El-Khouly: Encyclopedia of Tax Evasion Crimes in Egyptian Legislation, PhD Thesis, Faculty of Law, Cairo University, 1995, p. 32.

(2) Seligman E (Dwin. R.A) : the shifting and incidence of taxation Mac lillan. Co.: .1932 p. 10.

(6) Dr. Zain Al-Abidin Nasser: Science of Finance and Tax Legislation, 1982 edition, p. 157.

right. The public treasury of the state in many cases, such as in the case of the death of the financier, or failure to confirm his identity; Therefore, the proponents of this trend <sup>(1)</sup>defined evasion as “every property on which tax is legally due that is owed by one or more natural or legal persons without the tax authority being aware of it, and for which due taxes have not been paid.” This trend, although it has its validity, is that evasion is a behavior that requires a person to carry out it, whether he is a natural person, a legal person, or in other words, evasion is an act that must have the presence of an actor.

There are those <sup>who believe</sup><sup>2</sup> that the predominant definition is “the legal taxpayer gets rid of its burden, in whole or in part, to the detriment of the public treasury, by using methods outside the law” ...

This is called traditional evasion, but there is what is called modern tax evasion, in which contemporary technological means are used based on the information revolution, e-commerce via the Internet, and other things that have emerged recently that need hard training, and special capabilities for tax authority employees so that they can monitor and address these cases in order to preserve public treasury funds.

Evasion by criminal law scholars has also been defined as “the financier’s use of an illegal means that would lead to the loss of the State’s right to tax<sup>3</sup>”. This can be considered as the same trend as the prevailing definition of financial jurists.

It is necessary to refer here to the so-called tax avoidance, which is not criminalized, and the law does not determine a punishment for it, and planning TAX is called tax planning, which is one of the legitimate rights, whether for the state or the individual, and has several forms, including <sup>(4)</sup>:

- 1- The person refrains from performing the incident that gives rise to the tax.
- 2- The financier benefited from the gaps in the law to avoid tax without being attributed to him any violation of a provision of the law, for example: the legal entity of the activity changed from a limited partnership to an individual in order to avoid tax.
- 3- Businessmen benefit from establishing their projects in specific areas of the country determined by the state to benefit from tax exemption. Countries resort to this with the aim of reconstructing those areas and accelerating the pace of development.<sup>5</sup>

This is very different from tax evasion. After listing these definitions, we find that the concept of tax evasion can be defined as:

“Any activity that generates taxable income and is concealed from the tax authorities using one of the fraudulent methods provided for by law with the aim of evading the payment of tax<sup>6</sup>.”

This definition has its relevance for the following:

- 1- He looked at the activity itself and did not look at the person or the financier.
- 2- It is stipulated that the activity is subject to tax, and therefore the exempted activities do not fall within the definition.
- 3- The definition clarified that the taxpayer conceals the activity from the tax authorities in order to evade the payment of tax, and this concealment is only by using one of the fraudulent methods stipulated in the law exclusively. “It is a definition that reassures the research to a great degree.”

(1) Dr. Mahmoud Mohamed Nour: The concept of tax evasion - Alexandria Chamber of Commerce Journal, Issue 434, September - October 1984, p. 40.

(2) Dr. Mohamed Naguib Mohamed Gado: The phenomenon of tax leakage and its financial and economic effects, an applied study in Egypt, Dar Al-Nahda Al-Arabiya, 2003, p. 42.

(3) Dr. Mohamed Mohamed Mesbah Al-Qadi: Crimes of the financier harmful to the public treasury - Dar Al-Nahda Al-Arabiya - Cairo 1996 AD. Introduction.

(4) Cowell. f.: cheating the Government (the Economics of Evasion of the MIT press (Cambridge Massachusetts). 1990 p.10.

(5) The number of investment projects in Egypt until the end of 1997 was about 5384 projects, of which 4669 projects operate inside the country and 715 operate in the free zone system Tax Authority bulletin, third issue, August 1997, p. 12.

(6) Dr. Abdel Moneim Mohamed Daoud: Tax evasion, legislative and judicial dimensions under the Unified Tax Law, Customs and Tax Research and Reference Center, 2002, p. 7.

It is understood from this that the jurists have stipulated that there are three elements for the occurrence of the crime of evasion:

- Eliminate the tax burden.
- Violation of the rules of law.
- The use of fraudulent methods stipulated in the law.

Therefore, the legislator does not punish the taxpayer for simply trying to evade paying the tax, but rather he must use fraudulent methods and methods that are mentioned in the law exclusively, unlike the sales tax, where the legislator criminalizes attempting to evade it <sup>1</sup>.

In short, it is clear here: - Every tax law determines its rules the acts and actions that the financier must do and refrain from in order to limit the tax base exclusively accurately and real and to link the tax and collect it.

These rules vary from one tax law to another depending on the nature of the taxable item.

Therefore, it cannot be said that there is tax evasion unless there is a violation or breach of a tax legal rule, which requires punishment for the violator, especially since the tax legal rules are of an orderly nature, because tax laws are sovereign laws that may not be agreed to be violated<sup>2</sup>.

### The second topic

#### Basic concepts of tax avoidance and evasion

The jurists used to divide tax evasion according to the criminalization of the act by the legislator, or not to criminalize it into: legitimate evasion, and illegal evasion. Reality does not recognize the existence of so-called lawful evasion, and if evasion is applied to an act, it must be unlawful<sup>3</sup>.

However, in cases where the taxpayer is able to get rid of the tax permanently or partially by taking advantage of loopholes in the law, this can be called lawful evasion (tax avoidance).<sup>4</sup>

Tax avoidance differs from tax planning, although they are similar in many things, the most important of which is not paying tax, but avoidance always involves bad intention from the financier aiming to circumvent tax legislation even if his behavior agrees with the text of the law, but in fact it is completely contrary to the spirit of the law, which means that tax avoidance is only by the financier, as it is not reasonable for the state to aim to lose tax revenues.

As for tax planning, it is different, because it can be by the state with the aim of achieving economic and development goals from which the return exceeds the tax revenue, and it can also be from the financier, but there must be good faith.

**In light of this, the requirement will be divided into the following:**

#### The first section: tax avoidance

#### Section Two: Tax evasion in light of Federal Law (8) of 2017

##### Section I

##### Tax avoidance

There are several forms used by the taxpayer in order to avoid performing them, taking advantage of the defects found in economic legislation <sup>5</sup>, including:

- **Transfer of the tax burden**

Which can be considered one of the cases in which the taxpayer resorts, to avoid paying the taxes owed by him by exploiting the shortcomings found in the legal texts. It is defined as: "The legal taxpayer who is obligated to pay the tax places its burden on another person, through market

(1) Dr. Mohamed Sorour: The validity of the provisions of criminalization and punishment prescribed by the Income Tax Law No. 157/81 and amended to combat tax evasion crimes A working paper presented to the first tax conference under the title "Tax and the twenty-first century, a future vision" 12-13 December 1998, Cairo, p. 335.

(2) Dr. Abdel Hadi Moqbel: Studies in Public Finance, 1989 edition, pp. 220-221.

3- Dr. Mahmoud Mohamed Aref: Planning between government intervention and economic liberalization (Second Edition) (City Library In Zagazig 1997 p. 119 .

4- Dr. Hassan Sadiq Al-Marsafawi: Criminalization in Tax Legislation, Dar Al-Maaref Edition, Cairo, 1963 AD 346 .

5 - Dr. Haitham Mohammed Harami: Combating tax evasion في The Light of Egyptian Law, A Comparative Study, PhD Thesis, Faculty of Law, Benha University, 2012, p. 45

forces, knowing that this other person can also follow the same path until the tax is settled on the final taxpayer<sup>0</sup> (the final taxpayer<sup>1</sup> is known as the actual taxpayer, and this situation is called in financial jurisprudence the term Shifting Tax. The fair distribution of the tax burden is one of the most important reasons for reducing the phenomenon of shifting the tax burden, and it is also the goal of tax administration. And the legislator<sup>2</sup>.

If the public treasury is not affected by the taxpayer's resort to transferring the tax burden, because in the end the prescribed tax is paid, but not by the taxpayer as a basis for its performance, there is no doubt that the process of transferring the tax burden is one of the cases of tax avoidance, which must be addressed and reduced.

In order for this phenomenon to be realized, the following must be available:

(a) The existence of a commercial relationship between the person obligated to pay the tax and the actual taxpayer.

(b) The possibility of controlling the price of the taxable item<sup>3</sup>.

From here, the obligor to pay the tax can transfer the burden either in a forward direction "consumer", or backward "factors"

"Production" with the emphasis that the process of transferring the tax burden, which is based on equality in the distribution of tax burdens

Among all funders, the following is noted:<sup>04</sup>

1- The transfer of the tax burden shall be "total" when the obligor to pay it permanently gets rid of it, and it is partially by getting rid of part of the tax imposed on him.

2- The process of transferring the tax burden in indirect taxes is easier than transferring it under direct taxes, because the former relates to the production and circulation of goods.

3- The lower the tax rate, and the more favorable, the less the taxpayer's desire to transfer the tax, and vice versa

- **Tax depreciation**

This process takes place when the buyer reduces the price, in order to offset the taxes imposed on the money he intends to buy. For example, when we find someone who comes to ask about the annual tax for a car and ask him about the reason behind this inquiry, knowing that he does not own a car, we find that he has a desire to buy a car and determines the tax due on it in order to try to reduce its price in order to bear it the first owner.

**Conditions for the tax depreciation process:**

(a) The purchased money should be characterized by stability and stability, such as: real estate, stocks, and bonds, and since

Tax depreciation is made for the future, which also requires that this money be with renewable revenue.

(b) That the tax is also renewable during the life of this money and not a one-time tax.

(c) The tax imposed shall be a special tax on this property because the buyer is free to choose the money that is not subject to tax, and under the influence of this, the seller accepts the deduction of the value of the tax from the sale price.<sup>5</sup>

- **Tax capitalization or tax freeze**

1- Dr. Refaat Al-Mahgoub: Public Finance, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 346.

2- Richard Musgrave Peggy Mosgrave: Public Finance in Theory and Practice, Mars Publishing House, Kingdom of Saudi Arabia, Riyadh, 1412 AH / 1992 AD, p. 265.

3-Seligman: The shifting and incidence of Taxation, op .ct pp.202-214

1- Harriet You'll bet. Marry o Malley Borg: "Horizontal Equity Implications of the lottery Tax" National Tax Journal {March 1998) opcit, p 71.

5-D/ Jamal Fawzi ShamQ: The phenomenon of tax evasion,Combating them and the role of the police in pursuing them·PhD thesis ·Faculty of Law

university Ain Shams 1982, p. 45.

It is the reverse phenomenon of tax consumption, and it is achieved when the seller of a money that enjoys a degree of stability and stability, manages to increase its sale price due to its exemption from tax. Or to treat him with excellent tax treatment, in the sense that he succeeds in reducing the tax imposed on him by charging the buyer part of it, and also here <sup>the public treasury</sup> is not harmed<sup>1</sup>.

- **Tax compensation, or tax transfer**

Here, the producer of the commodity who cannot transfer the burden of tax to the consumer puts pressure on the elements of his production expense by introducing improvements and renovations to the production processes, in order to compensate for the decrease in his expected profit as a result of bearing the tax. This situation is beneficial to the national economy by helping to increase production, as well as reduce its expenditures and, consequently, increase the tax base.<sup>2</sup>

**From the above, it is confirmed** that tax evasion must include the financier's use of fraudulent methods and methods contrary to the law, with the intention to deceive the Tax Authority, and not to pay the taxes due from him. But the matter is different in tax avoidance, where the financier resorts to the use of legal methods, taking advantage of some loopholes in tax laws, aiming to get rid of or reduce the tax. Therefore, it is formally acceptable, but objectively unacceptable, and this is what prompted some jurists to call it legitimate evasion (because the financier's resort to it does not entail any punishment or criminalization).

## Section II

### Evasion of value added tax(VAT)

#### In accordance with Federal Law No. (8) of 2017

Evasion is perceived as falling into the tax on added value when those charged with paying it resort to disavowing it altogether.

Unlawful means, whether the taxpayer is a company or a person <sup>(3)</sup>

Federal Law No. (8) of 2017 specifies cases of evasion, as Article 26 states: "Without prejudice to any more severe penalty stipulated in any other law, the penalty shall be imprisonment and a fine not exceeding (5) times the amount of the tax that was evaded, or one of these two penalties , shall be punished by:

- a- A Taxable Person who has deliberately withheld payment of Tax Due or Administrative Penalties
- b- A Taxable Person who deliberately reduces the actual value of his business or does not combine his related business with the intention of not reaching the required registration threshold
- c- A person who has charged and collected amounts from his customers claiming that it is a tax without being registered.
- d- A person who deliberately provided false information, data and incorrect documents to the Authority.
- e- A person who deliberately conceals or destroys documents or any other materials is obliged to save and provide them to the Authority.
- f- A person who has stolen, misused or caused damage to documents or other materials in the possession of the Authority.
- g- A person who has prevented or obstructed the Authority's employees from carrying out their duties.

1- Dr. El-Sayed Abdel Mawla: Public Finance, Dar Al-Fikr Al-Arabi, 1976, p. 333.

2- For more see here:

- Dr. Ahmed Maher Ezz: Tax Evasion in Egyptian Law, PhD thesis, Faculty of Law, Cairo University, 1980, p. 49.

- Dr. Abdel Hadi Moqbel: Tax Theory, Tanta University Library, 2003, p. 258.

<sup>3</sup> -Alan A.Tait" Value Added Evasion and Tax Avoidance Undermine anational Retail Sales Tax :op .cit, pp 63-69

- Quoted by: Dr. Abdul Sattar Salmi: Tax On the added value and the extent of its application in Egypt magazine Legal and Economic Research 'MajalD10 Number 19, Faculty of Law, Menoufia University, Egypt, 2001p. 315



h- A person who deliberately reduced the value of the tax payable through tax evasion or complicity in tax evasion.

2. The imposition of any penalty under the provisions of this Law or any other law shall not exempt any person from the responsibility of paying the tax payable or administrative fines in accordance with the provisions of this Law or any Tax Law .

### **The third topic**

#### **Preventive mechanisms to combat tax evasion**

Prevention is the most effective method to address the phenomenon of tax evasion and includes this prevention the establishment of tax ethics is considered a necessity and its task is to establish tax awareness among taxpayers, based on saying that the steps to establish tax ethics start from the collection itself, and we will address this section through the following demands: The first requirement: improving the effectiveness of the tax system.

Tax evasion is considered as a result of the ineffectiveness of the tax system, so improving its effectiveness will contribute to addressing the phenomenon of evasion, taking into account <sup>the</sup> following<sup>1</sup>.

#### **First: Simplifying the tax system.**

The tax system must be transparent in the procedures for imposing taxes, and tax stability contributes to the clarity of legislation and the facilitation of administrative procedures related to linking and collection, while tax legislation is complicated by the large number of amendments to it, and the complexity and instability of harmful legislation leads to the emergence of a state of sensitivity towards tax, Therefore, it is necessary to work on simplifying and stabilizing tax legislation, in addition to clarifying it to the extent necessary in order to combat tax evasion.

#### **Second: Establishing a fair tax system.**

The sense of tax arbitrariness is one of the most important factors that lead to the exacerbation of the phenomenon of tax evasion, and to address this situation, the legislator works to establish a fair tax system, by taking into account the following: -

- To adopt the principle of tax personality.
- Tax comprehensiveness.
- Moderate tax rate.
- Avoid double taxation.
- Thoughtful tax exemptions.

In addition, full equality must be achieved between all taxpayers before the tax law, by not discriminating any sect in tax treatment from others unless for objective reasons .

#### **Third: Improving Tax Legislation**

Good, harmonious and coherent tax legislation must avoid loopholes that leave room for evasion, and therefore the provisions of drafting the texts of tax legislation must be made so that the taxpayer misses the opportunity to benefit from some of the gaps that may be included in the tax legislation, and he must close the outlets for evasion.

#### **Fourth: Improving the relationship between management and taxpayer.**

Tax reforms always seek to reduce the tension between the taxpayer and the tax administration, in order to create a response and reconciliation that would reduce cases of evasion, and to gain the trust of the taxpayer, which is the fruit of a good relationship with the administration, so the relationship must be based on the principle of human relations away from hostility and sensitivities directed towards imparting a spirit of cooperation and solidarity between the taxpayer and the tax administration. <sup>02</sup>

1. **Spreading tax awareness.** The taxpayer is considered the direct party in the evasion process, so his tax awareness must be developed and he must be convinced of the tax duty, so that

<sup>1</sup> - D/ Khaled Khatib, Ahmad Zuhair Shamieh, Public Finance, Second Edition, Dar Al-Zahran for Publishing and Distribution, Jordan, 1997, p 210.

<sup>2</sup> -Malika's pension: Mechanisms to combat tax evasion Master's Thesis, CBrilliant Dr. Tahar Moulay - Saida - Faculty of Law and Political Science, Department of Law Algeria 2016 p 48

his behavior becomes more rational, and in order to spread tax awareness, the following measures must be taken: -

- Conducting awareness campaigns for all taxpayers at different levels so that taxpayers are aware of their tax duties, and for this purpose the tax administration uses various methods such as the written and audio press, as well as organizing forums and open public doors about the tax system and its developments.
- Sensitizing the taxpayer to the importance of paying the tax as it represents a contribution to the state's finances, which is allocated to carry out public services by adopting a rational agreement policy in order to gain the respect and confidence of the taxpayer.
- Introducing the tax and its objectives through its dissemination in educational programs in order to establish a culture of Citizen.

## 2. Forming and informing the taxpayer

. The training and information of the taxpayer aims to transform that taxpayer from an opponent of tax payment to a committed taxpayer, by getting closer to him, by following a rational training and media policy, by educating the taxpayer and informing him of the various developments and amendments taking place in the tax system. Offices must also be established at the level of the tax administration departments entrusted with the task of explaining the procedures related to the obligations of taxpayers, and these offices must be managed by qualified employees in the job entrusted to them, and they seek to improve the relationship with taxpayers through good reception and response to various questions of taxpayers.

3. **Improving human relationships.** Human relations are one of the most important means that have a significant impact on the psychology of the taxpayer, so that it works to improve the behavior of employees in the tax administration towards taxpayers, and reduce the tensions that may be caused by the tax.

### The Conclusion:


The federal legislator should develop solid texts on tax to avoid gaps as well as intensify human and material capabilities to address this crime.

- 1- As for the tax legislation, the right to access the books and documents of the financier and other governmental and other documents that help to identify the reality of the financier's activity must be expanded.
- 2- - Simplifying work and procedures in accounting, linking and collection, and strictness in punishing evaders financially and criminally, granting personal financial rewards to the whistleblower for cases of evasion that prove their validity.
- 3- As for the tax administration, the efficiency of the tax administration must be raised, by completing the numerical and technical quorum of its members and simplifying the procedures of linkage, appeal and litigation, which by its nature leads to confidence between the administration and financiers. -Developing performance through training policies and the system of incentives and entertainment for the hardworking only.
- 4- That the state agencies, especially the media and the ministries of education, participate in their role in combating tax evasion, by informing citizens of the annual tax proceeds, their spending, and the benefits and services that accrue to citizens from this public spending, there is no doubt that the feeling of the financier of the rational actions of the government and the services he receives is one of the basic elements to spread tax awareness among citizens.

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