

CLAIMS OF THE TAX AUTHORITY AGAINST BUSINESSES FOR INVALIDATION OF TRANSACTIONS TO EXCLUDE VAT AND CIT OFFSETS

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The paper analyzes the claims of the tax authorities of the Republic of Kazakhstan against businesses concerning the invalidation of transactions for the purpose of excluding VAT and CIT offsets. It outlines the legal framework used by the tax authorities to justify their claims, including civil and tax legislation, and explores the most common procedural and evidentiary issues. Particular attention is paid to the role of the Electronic Invoice Information System (ESF IS), which allows tax authorities to monitor and challenge business transactions remotely. The author highlights both the risks posed by such claims to the investment climate and the frequent legal shortcomings in the tax authorities' arguments. The article also provides practical recommendations and defense strategies for businesses to resist unfounded tax claims, including the collection of documentary evidence, witness testimonies, and a clear legal position. The importance of distinguishing tax law violations from civil law obligations is emphasized. The conclusions contribute to improving legal awareness among businesses and strengthening the protection of taxpayer rights.

Keywords: Tax disputes, transaction invalidation, VAT, CIT, tax control, judicial practice.

Introduction

For last several years, lawsuits of tax authorities against business entities have become popular in the Republic of Kazakhstan in order to eliminate underestimation of tax payments to the state. Service transactions are declared invalid, and all taxes, taken into account, are restored in the tax accounting of this legal entity.

The problem of tax fairness and support for small and medium-sized businesses is clearly expressed in our President's Message to the people of Kazakhstan: "It is necessary to create favorable conditions for increasing business activity by attracting private investment in the economy. This requires, first of all, a stable tax policy that encourages high-quality development and responsible business behavior.

The new Tax Code is designed to reboot the existing system. The Code should be aimed at building a fundamentally new tax system based on trust in taxpayers. It is extremely important to simplify the Code and make its provisions understandable to all economically active citizens in order to exclude the possibility of different interpretations of the norms. It is necessary to optimize tax regimes without worsening the existing favorable conditions for entrepreneurs.... It is also necessary to refuse from the punitive approach in tax administration "[1].

The research of Kazakhstani authors in the field of tax disputes and invalidation of transactions focuses on the analysis of national legislation and judicial practice. Sharipov D. examines the main legal mechanisms for resolving tax disputes, paying attention to the functions of tax authorities and their powers in challenging transactions [2]. Seitkasymov G., Baymukhambetov S. provides an overview of the taxation system in Kazakhstan, revealing the role of tax control and litigation in tax disputes [3]. Sapargaliev G. studies in detail the legal foundations of the economy and tax regulation in Kazakhstan, including issues of fiscal security [4].

Official explanations of the State Revenue Committee of the Ministry of Finance of the Republic of Kazakhstan (kgd.gov.kz) contain relevant comments

Materials and methods

The methodological basis of the prepared article is based on the principles of materialistic dialectics. The author used methods of historical, logical, systemic and comparative legal analysis.

In particular, theoretical research, statistical data, judicial practice were analyzed on the subject of the study, and legislation affecting the field of taxation was monitored.

The research employed a systemic approach to envision the personal data protection ecosystem as a cohesive network of interconnected components. These components encompass individual data subjects, data controllers and processors, database proprietors, regulatory agencies, state oversight bodies, legal enforcement mechanisms, and avenues for redress. Viewing these elements as part of one integrated framework enables the identification of vulnerabilities at specific nodes and supports the development of targeted recommendations to enhance data security and institutional accountability.

In addition, the study utilized an empirical methodology, incorporating statistical analysis and an examination of enforcement practices to underpin findings with quantitative evidence. Information on data breach incidents, administrative and criminal cases, and penalties for data protection law violations in Kazakhstan was gathered and assessed. A sample of court decisions was also reviewed to evaluate how legal standards are interpreted and applied in practice. This empirical component serves to illustrate the tangible effects of legal frameworks and assesses their capacity to deter wrongdoing and deliver justice to affected individuals.

Combined, these methodological tools deliver a comprehensive, multi-dimensional analysis of the legal, institutional, and social aspects of personal data protection in Kazakhstan. They further facilitate the creation of evidence-based policy recommendations aimed at refining the national regulatory landscape and ensuring alignment with international standards. Ultimately, integrating both normative and empirical research enhances the study's relevance and utility within academic and policy-making domains.

Results and discussion

In its statements of claim, the tax authority relies on the following provisions (arguments of the Tax Authority):

On the basis of Article 8 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter – CPC), everyone has the right, in accordance with the procedure established by CPC, to apply to the court for protection of violated or disputed rights, freedoms or legitimate interests.

Article 18 of the Tax Code of the RK establishes that tax authorities perform the following tasks: ensuring compliance with tax legislation, ensuring the completeness and consistency of tax receipts and payments to the budget, as well as ensuring, within their competence, the economic security of the RK and performing other tasks stipulated by the legislation. According to paragraph 11.1 of Article 6 of the Law of the Republic of Kazakhstan “On National Security”, one of the types of threats to national security is damage to the economic security of the state, including uncontrolled export of capital and goods outside the country, as well as the growth of the shadow economy.

At the same time, the growth of the shadow economy is facilitated by tax evasion to the budget, which is often achieved by overstating the expenditure side, by reflecting documents in accounting and tax records, including invoices from persons who actually did not perform work, provide services, or ship goods. Such actions, as a rule, violate the principle of good faith of the taxpayer and have signs of an invalid transaction.

According to paragraph 2 of Article 8 of the Tax Code, it is not allowed for a taxpayer (tax agent) to benefit from his illegal actions in order to obtain tax benefits (tax savings) and reduce tax payments.

According to Article 147 of the Civil Code, transactions are recognized as actions of citizens and legal entities aimed at establishing, changing or terminating civil rights and obligations.

In accordance with Article 158 of the Civil Code, a transaction is invalid, the content of which does not comply with the requirements of the law, as well as committed for a purpose deliberately contrary to the principles of law and order or morality. If one of the parties to the transaction committed it with

the intention of evading obligations or liability to a third party or the State, and the other party to the transaction knew or should have known about this intention, the interested person (the State) has the right to demand that the transaction be declared invalid.

The tax authority selects transactions concluded “to create the appearance of financial and business operations and optimize the tax burden” and tries to invalidate them.

The requirement to declare the transaction invalid on the basis of paragraph 3 of Article 157 of the Civil Code may be submitted by interested persons, an appropriate state body or a prosecutor. Based on article 19 of the Tax Code, state revenue authorities have the right to file lawsuits in courts, including for invalidation of transactions, and state revenue authorities are charged with a number of tasks related to tax revenues to the budget and the economic security of the country. So the tax authority is quite suitable for the role of the plaintiff in these transactions. According to paragraph 1.1 of Article 400 of the Tax Code, the recipient of goods has the right to reduce the total amount, including the amount to be paid, by the amount that his supplier has contributed to the budget (offset).

A prerequisite for the buyer’s VAT offset is the payment of this amount to the budget by the supplier, that is, the actual receipt of tax to the budget. This excludes the legality of attributing the amounts of fictitious transactions to the VAT offset. A taxpayer has the right to deduct expenses actually incurred if there are documents confirming such expenses related to his activities aimed at generating income (paragraph 3 of Article 242 of the Tax Code). Consequently, the taxpayer is obliged to confirm the purchase for the stated amount from the counterparty designated by him in the tax statements. Documentary evidence of the fact of transactions is a primary accounting document that meets the requirements of reliability, on which tax accounting is based (subparagraph 1 of Article 1 of the Law on Accounting, paragraph 3 of Article 190 of the Tax Code).

In order to offset the amount of VAT and deduct the amount according to the CPN, supporting documents and the actual transfer of goods, works, and services are required.

In turn, the Electronic Invoice Information System (hereinafter referred to as the IS ESF), through which invoices are processed, registered, transmitted and stored, allows the state revenue authorities to analyze the financial and economic activities of taxpayers remotely. During the analysis of taxpayers’ activities under the ESF IP, mutual settlements between business entities (legal entities or sole proprietors) with risks of their fictitiousness are identified.

The presence of formally executed primary accounting and other documents does not indicate the actual commission of a financial and economic transaction.

The actual availability of the goods (object, work, services) also cannot indicate the validity of the tax accounting information, since such goods (object, work, service) can be purchased from another person as part of another transaction or in another way. Paragraph 20 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated July 7, 2016 No. 6 “On certain issues of the invalidity of transactions and the application by the courts of the consequences of their invalidity” is stipulated that the absence of the will of the parties to the transaction for the occurrence of certain legal consequences, which may be confirmed by the presence or absence of certain actions (inaction) the parties and other evidence in the case shall entail the invalidity of the transactions.

At the same time, in accordance with paragraph 6 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated June 29, 2017 No. 4 “On judicial practice of applying tax legislation”, the commission by a private business entity of actions to issue an invoice without actually performing work, rendering services, or shipping goods for the purpose of obtaining property benefits, causing major damage to a citizen, organization, or state entails criminal liability under Article 216 of the Criminal Code of the Republic of Kazakhstan. The same actions, in the absence of signs of a criminal offense, entail administrative liability under Article 280 of the Administrative Code of the Republic of Kazakhstan. Also, the state revenue authorities, regardless of the occurrence of criminal or administrative liability, have the right to protection in a civil procedure by declaring transactions invalid.

In the case of the provision of services, the tax agency checks the documents from the service provider for the availability of equipment and employees with appropriate qualifications for the provision of such services, rental agreements, etc. If the service provider does not have the material and technical resources and assets to carry them out according to the documents.

This is seen as the fictitiousness of performing services. In lawsuits of this kind, as a rule, there is always a description of the tax evasion scheme with an indication of damage to the state in material terms. Special attention is also paid to the documents and powers of the parties who signed the contracts, even if both sides of the transaction are recognized, the tax authority is able to invalidate such transactions on formal grounds (absence of an authorized person's signature, power of attorney, etc.).

In accordance with paragraph 17 of Article 616 of the Tax Code, tax authorities are exempt from paying state duties in courts. As a result, guided by Articles 147, 158, 160 of the Civil Code, which presents a wide variety of grounds for declaring a transaction invalid (void, illegal, imaginary, feigned, committed under the influence of deception, delusion, committed contrary to the purpose of the activity, etc.) articles 148, 150, 157, 158 CPC RK, by subparagraph 10) of paragraph 1 of Article 19 of the Tax Code, the Tax Authority requests the Court to invalidate transactions confirmed by contracts or a list of ESF the tax period of verification, but not more than 4 years, totaling hundreds of millions of tenge, invalid, confirming this with declarations on IIT (individual income tax), VAT, CIT, taxes on transport funds, property, land tax, data from the ESF module.

With regard to such lawsuits in favor of entrepreneurs, I would like to state the following (let's look at the arguments of the defendants from the business):

Often, the subjects of claims of tax authorities are subsidiaries of world leaders in the production of industrial equipment, in the field of production of goods by foreign investors. On the territory of the Republic of Kazakhstan, they carry out activities the results of which are used in various sectors of the economy (metallurgy, food industry, healthcare, oil and gas production, industrial equipment, etc.). The products produced by the defendants are sold both on the territory of the Republic of Kazakhstan and exported directly abroad. Such lost cases, when transactions are formally declared invalid over a 4-year period, are serious tax risks for investors that cannot be predicted or prevented, which worsen the investment climate in our country.

The plaintiff (Tax authority) in the statement of claim, as a rule, does not specify or indicates all the points of the law at once, according to which he requires recognition of the transaction between the Defendants, invalid contracts are not specified, and the contract that the Plaintiff disputes simply lists the ESF for the transaction. However, paragraph 4 of the Regulatory Resolution of the Supreme Court of the RK dated July 7, 2016 No. 6 "On certain issues of invalidity of transactions and the application by courts of the consequences of their invalidity" states: "In accordance with Article 163 of the CPC, at the stage of preparing a case for trial, the court must clarify the circumstances relevant to the proper resolution of the case, determine which legal relationship the dispute arose from and which legal norms are applicable in resolving the case." Also, according to paragraph 1 of Article 157 of the Civil Code, a transaction is invalid on the grounds established by this Code or other legislative acts, by virtue of its recognition as such by a court (disputed transaction) or on grounds directly provided for by legislative acts, regardless of such recognition (void transaction).

However, the Plaintiff, ignoring these legal requirements, did not indicate in the Statement of Claim on the basis of which specific legislative norm the Plaintiff demands to invalidate the transaction, from which legal relationship the dispute arose, which legislative norms the Plaintiff asks to apply in resolving the case.

I had a case in 2023, when the Plaintiff referred to the norms of Articles 147, 158, 160 of the Civil Code as the basis for invalidating transactions. However, each of the above-mentioned norms of the legislation of the Republic of Kazakhstan contains independent and mutually exclusive grounds for invalidating transactions in relation to other norms. A transaction cannot be made simultaneously with the intention of evading an obligation to a third party (paragraph 4 of Article 158 of the Civil Code), and for appearance, without the intention to cause legal consequences (an imaginary transaction under paragraph 1 of Article 160 of the Civil Code).

In addition, the Plaintiff is obliged to prove the existence of those circumstances that are the basis for invalidating transactions (the existence of grounds for applying one or another provision of the Civil Code). As a rule, the statement of claim does not contain evidence of the validity of the application of the norms of the Civil Code on the recognition of transactions as invalid. Art. 158 of the Civil Code, according to which a transaction, the content of which does not comply with the requirements of the

law, as well as a transaction made for a purpose knowingly contrary to the principles of law and order, is contested and may be declared invalid by a court (illegal transaction).

At the same time, the Plaintiff usually does not prove that the Contract concluded between the Defendants does not comply with the requirements of the law, and was also committed with a purpose that is obviously contrary to the foundations of law and order. It has also not been proven how the conclusion of the Contract allowed any of the Defendants to evade their obligations or responsibilities to a third party or the State. The plaintiff does not specify which contract he is asking to invalidate, instead he gave a list of ESFS for the transaction. At the same time, Paragraph 8 of the Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan “On certain issues of the application of tax legislation by Courts” No. 9 dated 12/22/2022 indicates that “in the case of filing a claim for invalidation of invoices, it must be borne in mind that invoices cannot be recognized as transactions made in writing. The invoice may be one of the proofs of the transaction.” After our response to the claim, the tax authority corrected the claim and indicated the contract.

Often, claims for invalidation of transactions are made in the absence of sufficient legal grounds for this (a baseless claim is filed).

Non-payment of transport tax by the Defendant and failure to provide declaration of payment of land and transport tax (form 700.00) is not a reason for invalidating the transaction. In accordance with the Civil Code, services are the performance by the contractor of certain actions or the performance of certain activities provided for in the contract for a fee. According to paragraph 4 of Article 1 of the Civil Code, civil legislation does not apply to tax relations, except in cases provided for by legislative acts. In this regard, courts should distinguish tax relations from property relations regulated by civil legislation.

And, accordingly, the failure of a party to fulfill a tax obligation, the consequences of which are regulated by tax legislation, cannot be used as a basis for invalidating the transaction, which is regulated by civil law. 158, 159 and 160 of the Civil Code of the Republic of Kazakhstan provide grounds for invalidating transactions, however, the list of grounds does not include such grounds as non-payment of taxes, therefore, non-payment of taxes cannot be grounds for invalidating the contract.

Formal procedural grounds. Our arguments regarding the Plaintiff’s formal attitude towards fulfilling his duties in the process of invalidating the transaction between the Defendants, violation of the pre-trial procedure, and errors in the claim were not taken into account by the court. The court also did not pay attention to the formal errors in the text of the statement of claim (the wrong legal entity is indicated, the figures for taxable turnover are incorrectly indicated). Therefore, one cannot hope to postpone the court session or leave the claim without consideration on formal grounds, one must always prepare for the trial on the merits of the case, a response to the claim must be submitted at the very first meeting. It is better to submit all petitions in a timely manner and in writing with justification.

Practical Defense Strategies. Businesses can strengthen their legal position by providing:

Careful examination of the case and determination of the range of evidence;

Identification of the circle of witnesses;

Full clarity before the trial. Conversation with the client, employer (pros and cons of the position);

Providing a review and most of the evidence for the preparation of the case, a brief and clear statement of the merits of the case;

Identify the reason why this situation or dispute arose, who is the culprit of this dispute. identify legal remedies and actions that could provide a way out of the situation or dispute;

It is important for a lawyer to develop the ability, preferably quickly, to collect the necessary information, understand the essence of the problem, its causes, give his solution and recommendations, correctly applying the norms and principles of law;

Ethics of a lawyer in court;

Building a convincing speech (I am confident myself, therefore I have convinced the client, I have convinced the judge), present my arguments clearly, consistently, argumentatively.

Procedural Considerations. The obligation to prove and collect evidence lies with the parties, and the principle of adversarial proceedings applies in our civil proceedings. Therefore, without relying on the absence or inconsistency of evidence from the opposite side, we must collect all possible evidence of the validity of our transaction. From practice, I can recommend the following:

- (a) Documentary evidence of the availability of facilities for the provision of services (transport, equipment, etc. By which you provided the services), in the case of the purchase of these services from the contractor of contracts and all documentation with your service provider;
- (b) Video materials of the service delivery process;
- (c) Witnesses, eyewitnesses of the provision of services;
- (d) Requests to the Bank;
- (e) Documents of third parties indirectly confirming the fact of performing services (traffic patterns, weighing, packaging turnover, etc.);
- (f) documents of state organs;
- (g) Customer reviews.

It should be noted that foreign authors in their recent monographs provide similar advice and also consider the advantages of arbitration in international tax disputes [7,8].

Conclusion

Tax authorities in Kazakhstan increasingly challenge business transactions under the guise of combating tax evasion. However, businesses have strong legal defenses when cases lack specificity, fail to meet evidentiary standards, or blur distinctions between tax violations and civil obligations. A well-prepared defense, backed by concrete evidence, can significantly improve the chances of a favorable court ruling.

“The campaign against Fictitious Transactions has been going on for a long time now. However, the drive to identify and punish bad faith taxpayers results in good faith taxpayers becoming the least protected participants involved in such “arms races”, and ultimately their Deductions and Offsets amounts are unreasonably excluded. The fight against bad faith taxpayers leads to overreach in law enforcement practice, in which the problems of the tax administration in combating dishonest “schemers” and “cashiers” are “hung” on good faith taxpayers, entailing unjustified costs for bona fide participants, a decrease in business activities and the deterioration in the investment attractiveness of Kazakhstan” [9].

The tax authorities in Kazakhstan have increasingly used restructuring of business transactions as a tactic under the banner of combating tax evasion. Yet, judicial practice demonstrates that taxpayers possess robust legal defenses when such claims lack precision, fail to meet evidentiary standards, or improperly conflate tax obligations with civil liabilities. In these circumstances, courts typically side with the taxpayer – especially when the state cannot convincingly demonstrate fraudulent intent or artificial transaction structures.

A strong legal defense backed by comprehensive, credible documentation can significantly increase the likelihood of a favorable outcome. Supreme Court rulings have repeatedly underscored that expense disallowance based on fictitious or invalidated transactions must be supported by a court-declared invalidity first KP Law. Inconsistencies in tax inspectors’ decisions have been challenged successfully when adequate proof of sham arrangements is lacking.

Nevertheless, inconsistency in judicial interpretation remains a challenge. Divergent decisions at appellate and cassation levels – sometimes pending on whether a case attracts attention from higher judiciary figures – undermine predictability in tax enforcement KP Law. To remedy this, the Supreme Court should issue binding clarifications defining the threshold of evidence required to invalidate expenses and substantially support civil versus criminal distinctions.

To improve the business climate and foster tax compliance, the regulatory framework should clearly delineate between tax fraud and civil disputes. Procedural safeguards – such as detailed audit notifications, treatment of electronic evidence, and robust dispute-resolution channels – should be embedded in law [10]. Transparent, consistent enforcement grounded in empirical criteria like transaction validity, counterparty integrity, and independent audit findings will bolster confidence among taxpayers and foreign investors alike.

Сафронова О.Н., PhD, қауымдастырылған профессор, «Тұран» университеті, (Алматы қ., Қазақстан Республикасы): Салық органының ҚҚС пен ККПбойынша өтемдерді алып тастау мақсатында бизнеске мәмілелерді жарамсыз деп тану туралы талаптары.

Мақалада Қазақстан Республикасының салық органдары тарапынан бизнестің мәмілелерін жарамсыз деп тану арқылы ҚҚС пен ККП бойынша шегерімдерді алып тастауға бағытталған талаптары қарастырылады. Салық органдарының мұндай талаптарды негіздеудегі құқықтық дәлелдері мен қолданылатын азаматтық және салық заңнамасының нормалары талданады. Электрондық шот-фактуралар жүйесінің (ЭСФ Жүйесі) салықтық бақылау құралындағы рөліне ерекше назар аударылып, оның көмегімен бизнес операцияларын қашықтықтан талдау мүмкіндігі сипатталады. Автор мұндай талаптардың инвестициялық ахуалға теріс әсерін атап көрсетіп, салық органдарының дәлелдемелеріндегі жиі кездесетін құқықтық кемшіліктерге тоқталады. Мақалада кәсіпкерлердің мүдделерін қорғау үшін ұсынылатын нақты қадамдар берілген: құжаттық дәлелдемелер жинау, куәгерлермен жұмыс, құқықтық ұстанымды қалыптастыру. Салық және азаматтық қатынастарды ажырату қажеттілігі де атап өтілген. Қорытындыда кәсіпкерлердің құқықтық сауаттылығын арттыру мен олардың құқықтарын қорғауды күшейту жолдары ұсынылады аударылады.

Түйінді сөздер: Салық даулары, мәміле күші жойылуы, ҚҚС, ККП, салықтық бақылау, сот тәжірибесі.

Сафронова О.Н., PhD, ассоциированный профессор, Университет «Туран» (г. Алматы, Республика Казахстан): Требования налогового органа к бизнесу о признании сделок недействительными с целью исключения зачетов по НДС и КПП.

В статье рассматриваются требования налоговых органов Республики Казахстан к субъектам бизнеса о признании сделок недействительными с целью исключения зачетов по НДС и КПП. Анализируется нормативно-правовая база, на которую ссылаются органы при предъявлении таких исков, включая нормы гражданского и налогового законодательства. Особое внимание уделяется роли Информационной системы электронных счетов-фактур (ИС ЭСФ), обеспечивающей удалённый контроль и выявление фиктивных операций. Автор поднимает проблему негативного влияния подобных исков на инвестиционный климат и указывает на частые процессуальные и доказательственные ошибки со стороны налоговых органов. Приводятся конкретные рекомендации по защите интересов бизнеса: сбор документов, показания свидетелей, формирование правовой позиции. Отдельно подчеркивается необходимость различать налоговые нарушения и гражданско-правовые обязательства. Сделаны выводы, способствующие повышению правовой грамотности налогоплательщиков и укреплению защиты их интересов в суде.

Ключевые слова: налоговые споры, недействительность сделок, НДС, КПП, налоговый контроль, судебная практика.

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