

On certain issues of applying tax legislation by courts

Unofficial translation

Regulatory Resolution of the Supreme Court of the Republic of Kazakhstan dated December 22, 2022 № 9.

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Footnote. Changes have been made throughout the text in Kazakh, the text in Russian does not change in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 28.11.2024 № 4 (shall be enforced on the date of the first official publication).

Having studied the practice of applying the legislation on taxes and other mandatory payments to the budget by courts, and for the purpose of its uniform application, the plenary session of the Supreme Court of the Republic of Kazakhstan resolves to make the following clarifications:

1. According to paragraph 1 of Article 2 of the Code of the Republic of Kazakhstan "On taxes and other obligatory payments to the budget (Tax Code)", the tax legislation is based on the Constitution of the Republic of Kazakhstan (hereinafter referred to as the Constitution), consists of the Tax Code, as well as regulatory legal acts, the adoption of which is provided for by the Tax Code.

When applying the norms of the tax legislation of the Republic of Kazakhstan, the courts must proceed from the values established in paragraph 1 of Article 1 of the Constitution, which, in accordance with paragraph 2 of Article 12 of the Constitution, determine the content and application of laws and other regulatory legal acts, including the Tax Code and the regulatory legal acts provided for by it.

Such regulatory legal acts include regulatory legal resolutions of the Government of the Republic of Kazakhstan, regulatory legal orders of the head of the authorized body in the system of tax authorities, regulatory legal orders of the head of the Ministry of Foreign Affairs of the Republic of Kazakhstan, regulatory legal resolutions of local representative bodies of oblasts, cities of republican status and the capital on establishing the rates of individual taxes and other mandatory payments to the budget.

Under Article 10 of the Tax Code, regulatory legal acts governing taxation issues shall be subject to mandatory official publication.

It follows from Article 35-1 of the Law of the Republic of Kazakhstan dated April 6, 2016 № 480-V "On Legal Acts" (hereinafter referred to as the Law on Legal Acts) that a necessary condition for the enforcement of the above-mentioned regulatory legal orders of the head of the authorized body, the Ministry of Foreign Affairs of the Republic of Kazakhstan and

regulatory legal resolutions of local representative bodies containing legal norms, including those concerning the rights and obligations of citizens, shall be their state registration with the justice authorities.

When considering tax disputes, the courts shall not be entitled to apply regulatory legal acts that do not comply with these conditions.

Courts shall bear in mind that regulatory legal acts adopted on tax administration matters and enacted by the time a tax authority performs an action (inaction) or issues a resolution, shall be applied when such action (inaction) is performed or a resolution is issued. Regulatory legal acts that were in effect at the time of the emergence, fulfillment or termination of the taxpayer's tax obligation or the tax agent's obligation shall be applied to tax relations associated with the emergence, fulfillment or termination of the taxpayer's tax obligation or the tax agent's obligation, unless newly enacted regulatory legal acts or their norms are retroactive in accordance with the legislative act on their enactment. In all cases, in accordance with paragraph 5 of Article 3 of the Tax Code, provisions of the laws of the Republic of Kazakhstan, establishing new types of taxes and (or) payments to the budget, increasing rates, establishing new obligations, as well as worsening the situation of the taxpayer (tax agent), shall not be retroactive.

Under Article 19, subparagraph 4) of paragraph 2 of the Tax Code, tax authorities are obliged, within their jurisdiction, to provide clarifications and comments on the occurrence, fulfillment and termination of a tax obligation. Such explanations and comments, as well as methodological recommendations, including those of the authorized body, do not relate to normative legal acts. They are subject to assessment by a court with consideration to their compliance with the tax legislation provisions.

Tax authorities shall carry out tax administration, which includes a system (set) of measures and methods implemented by them for the collection of taxes and payments to the budget, including tax control, application of methods of ensuring the fulfillment of an overdue tax obligation and measures of compulsory collection of tax debts, as well as provision of public services and other forms of tax administration established by the Tax Code.

Tax policy (a set of measures to establish new and abolish existing taxes and payments to the budget, change rates, objects of taxation and objects related to taxation, tax base for taxes and payments to the budget) shall be carried out by the authorized body in the field of tax policy.

2. When applying the tax legislation provisions for taxation purposes, it is necessary to proceed from the priority of its provisions established by paragraph 3 of Article 2 of the Tax Code.

If an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in the Tax Code, the rules of the said treaty shall apply (paragraph 5 of Article 2 of the Tax Code). In accordance with paragraph 3 of article 4 of the Constitution,

the procedure and conditions for the operation in the territory of Kazakhstan of international treaties to which Kazakhstan is a party shall be determined by the legislation of the Republic.

In accordance with the regulatory resolution of the Constitutional Council of the Republic of Kazakhstan dated November 5, 2009 No 6 “On the official interpretation of the norms of Article 4 of the Constitution of the Republic of Kazakhstan in relation to the procedure of execution of resolutions of international organizations and their bodies”, regulatory resolutions and other regulatory legal acts of international organizations, interstate associations to which Kazakhstan is a party, specifically the Eurasian Economic Union (EAEU) and their bodies, shall be equated to international treaties and also have priority in their application over the statutory provisions of the Republic of Kazakhstan, including tax legislation.

If an international ratified treaty grants the right of taxation to the government of the Republic of Kazakhstan, but this right is not implemented in the national legislation (presence of a benefit), then the national legislation shall apply.

When applying the provisions of international treaties, it should be taken into account that the treaty extends its effect to a special range of subjects. As a rule, in conventions on double taxation avoidance such subjects include residents of the contracting states.

When interpreting conventions on double taxation avoidance, the general rules of interpretation provided by international treaties and legislation of the Republic of Kazakhstan shall apply, if such rules of interpretation are consistent with the provisions of the Vienna Convention on the Law of Treaties, to which the Republic of Kazakhstan acceded on the basis of the Resolution of the Supreme Council of the Republic of Kazakhstan dated March 31, 1993 № 2059-XII.

3. According to paragraph 4 of Article 1 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the CC), civil legislation does not apply to tax relations, except in cases provided for by legislative acts. In this regard, courts shall distinguish tax relations from property relations regulated by civil legislation.

Under paragraph 4 of Article 1 of the Tax Code, the concepts of civil and other branches of legislation of the Republic of Kazakhstan, used in the Tax Code, shall be applied in the meaning in which they are used in these branches of legislation of the Republic of Kazakhstan, unless otherwise provided by the Tax Code. When determining the meaning of the same concepts in different branches of legislation of the Republic of Kazakhstan, the concepts used in the Tax Code shall be applied in the meaning in which they are used in the relevant branch of legislation of the Republic of Kazakhstan, which is indicated by the reference rules of the Tax Code.

The concepts of the legislation of the Republic of Kazakhstan on accounting and financial reporting, including the concepts of “organizations”, “income”, “expenses”, “assets”, “liabilities”, which are used in the Tax Code and which are indicated by the reference rules of the Tax Code for taxation and tax accounting purposes, shall be applied to tax relations in the

meaning in which they are used in the legislation of the Republic of Kazakhstan on accounting and financial reporting.

In accordance with subparagraph 1) of paragraph 1 of Article 116 of the Tax Code, a penalty is one of the ways to ensure the fulfillment of a tax obligation not fulfilled in due time. Therefore, it shall not be allowed to reduce the amount of penalty charged on the amount of taxes and other obligatory payments to the budget not paid on time on the basis of Article 297 of the Civil Code, as well as to exempt from payment of penalties on grounds not provided for by paragraph 3 of Article 117, paragraph 7 of Article 158 of the Tax Code.

4. The Tax Code provisions contain, among other things, the following grounds for excluding expenses from deductions when calculating corporate income tax (hereinafter -CIT) and excluding from offsetting the amount of value added tax (hereinafter- VAT) on purchased goods, works, services, for the following violations identified by tax authorities:

on the basis of an invoice, the action (actions) on the issuance of which is recognized by effective court ruling, committed by a private business entity without actual performance of work, rendering of services, shipment of goods;

on transactions invalidated on the basis of effective court ruling.

Each of these grounds shall have its own independent subject of proof and range of evidence.

5. Commission by a private enterprise of actions to issue an invoice without actually performing work, rendering services, or shipping goods for the purpose of obtaining property benefit, which caused major damage to a citizen, organization or state, shall entail criminal liability under Article 216 of the Penal Code of the Republic of Kazakhstan (hereinafter referred to as the PC).

Issuance by a taxpayer of a fictitious invoice, namely, issued by a taxpayer who is not registered for VAT, also by a person who did not actually perform work, render services, ship goods, and which includes the amount of VAT, in the absence of signs of a criminal offense, shall entail administrative liability under Article 280 of the Code of Administrative Infractions of the Republic of Kazakhstan (hereinafter - CAI).

By virtue of the note to Article 280 of the Code of Administrative Infractions, a fictitious invoice shall mean an invoice issued by a person who has not actually performed work, rendered services or shipped goods and which includes the amount of VAT.

A final and binding verdict, a court ruling on termination of a criminal case, a ruling of a criminal prosecution body on termination of a pre-trial investigation on non-rehabilitating grounds, a ruling on an administrative offence case, by which the actions of a person on issuing an invoice are recognized as committed without the actual performance of work, provision of services, shipment of goods, i.e. issuance of a fictitious invoice, shall be the ground for excluding expenses from deductions of expenses in the calculation of CIT and exclusion from offsetting the amount of VAT on purchased goods, work, services.

It is not necessary for tax authorities to file claims challenging transactions confirmed by fictitious invoices.

The relevant CIT and VAT amounts shall be charged by the tax authority on the basis of effective acts which establish the performance of actions on issuing a fictitious invoice.

6. In accordance with subparagraph 10) of paragraph 1 of Article 19 of the Tax Code, tax authorities shall have the right to bring claims to the courts to invalidate transactions, liquidate a legal entity on the grounds provided for in subparagraphs 1), 2), 3) and 4) of paragraph 2 of Article 49 of the Civil Code, as well as other claims within the jurisdiction and tasks established by the legislation of the Republic of Kazakhstan.

In support of the stated claim, the tax authority shall be obliged to cite evidence indicating the actual failure to fulfill obligations by the parties to the transaction and the absence of an objective possibility of their fulfillment.

Collection of evidence shall be carried out by the tax authority in accordance with its jurisdiction, within the framework of tax administration, including by means of tax control (in the form of a tax audit and other forms of state control), preceding the filing of a lawsuit in court to recognize a transaction as invalid.

The basis for satisfaction of a claim for invalidation of a transaction shall be establishment by the court of the following circumstances:

1) the main purpose of the contested transaction is non-payment or incomplete payment of taxes;

2) the obligation under the transaction has not been fulfilled by the counterparty itself or by the person to whom the obligation to fulfill the transaction has been transferred by contract or law.

7. In accordance with the principles of adversarial and equal rights of the parties, counterparties shall have the right to prove the validity of the transaction on their part in the event of filing a complaint with the court against the actions (inaction) of tax officials in sending a notice to eliminate violations provided for by subparagraphs 2) and 3) of paragraph 3 of Article 96 of the Tax Code, identified by the tax authorities through in-house audit, the taxpayer has the right to prove the actual receipt of goods, works, services from a legal entity and (or) individual entrepreneur, the registration (re-registration) of which is recognized as invalid by an enforced court ruling.

It follows from the provisions of paragraph 1 of Article 8 of the Tax Code that the good faith of a taxpayer's (tax agent's) actions (omissions) to fulfill its tax obligations is presumed.

When considering claims for the invalidation of transactions, courts shall take into account the right exercised by the taxpayer to obtain information on counterparties' due diligence.

8. In the event of filing a claim for invalidation of invoices, it shall be borne in mind that invoices cannot be recognized as transactions made in writing. An invoice may be one of the proofs of the transaction.

In this regard, the acceptance of such a claim must be rejected in accordance with subparagraph 1) of part one of Article 151 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter -the CPC), and if the claim is accepted for court proceedings, the proceedings on the case shall be terminated under subparagraph 1) of Article 277 of the CPC.

In practice, situations arise when only invoices are available and they are taken into account by a taxpayer in fulfilling its tax obligations. In such cases, the subject of challenge must be a transaction the execution of which is confirmed only by an invoice. If the tax authority correctly indicates the subject of the claim and there is sufficient evidence that the transaction is invalid, it may be recognized by the court as such with all the ensuing consequences.

9. Proceedings on the case on recognizing a transaction as invalid, when the liquidation procedure has been completed with respect to one of the defendants (regardless of the grounds for liquidation), may not be terminated.

The claim shall be subject to consideration on the merits, since there is a second defendant in the case, that is an active legal entity or individual entrepreneur and that has determined its tax obligations with consideration to the terms and conditions of the disputed transaction. The claim against such a defendant shall be resolved on the merits, regardless of the liquidation of his counterparty.

10. The tax authority shall have the right to file claims in court for liquidation of a legal entity on the grounds of invalidation of the registration of a legal entity due to the breaches of law committed during its creation, which are irrecoverable (subparagraph 2) of paragraph 2 of Article 49 of the Civil Code).

In view of the above, a claim for liquidation of a legal entity, and not for invalidation of the registration, must be filed with the court.

The applicable legislation does not contain an exhaustive list of grounds for invalidating the registration of a legal entity. When reviewing a case, the courts must establish the fact of gross violation of legality in the creation of a legal entity and its irremediable nature, based on the factual circumstances relevant to the case.

Upholding of such claims by the court shall entail legal consequences both for the legal entity in respect of which the court decision on liquidation has been made and for its counterparties. Therefore, courts must distinguish between violations committed during creation of a legal entity and violations committed by it in the course of its activities.

It is necessary to proceed from the provisions of Article 1 of the Law of the Republic of Kazakhstan dated April 17, 1995 № 2198 “On state registration of legal entities and accounting registration of branches and representative offices” (hereinafter - the Law on State Registration of Legal Entities) to the effect that state registration of legal entities includes verification of the compliance of documents submitted for state registration with the legislation of the Republic of Kazakhstan.

In this case, violations of the law have to be irremediable. For example, such violations include failure to receive, in case of mandatory receipt, of an entry visa as business immigrants by foreigners who have created a legal entity, as well as participating in the authorized capital of commercial organizations by joining the members of legal entities; indicating in the charter of a non-profit organization as its main goal the generation of income or in the charter of a limited liability partnership the initial size of the authorized capital less than the amount established by paragraph 2 of Article 23 of the Law of the Republic of Kazakhstan dated April 22, 1998 № 220-I "On Limited and Additional Liability Partnerships"

Absence of a formed authorized capital, absence of the authorized body's permission to hire foreign labor in connection with the appointment of a foreign individual as the head of the legal entity that is being established, failure to submit tax reports cannot be attributed to violations of the legislation specified in subparagraph 2) of paragraph 2 of Article 49 of the Civil Code. These and similar breaches are violations committed by a legal entity in the course of its activities.

11. Legal entities whose liquidation (invalidation of re-registration) is claimed shall be involved by the court in the case as defendants.

The registering authority and the founders (participants) of the legal entity shall be mandatorily involved in the case as co-defendants.

In the event of challenging only the re-registration of a legal entity, the previous participant(s) shall also be involved in the case. Invalidation of the re-registration and restoration of the previous registration data of a legal entity shall impose obligations on the previous participant(s) related to its activities, including tax obligations.

Resolving of the tax control issue in the event of satisfaction of a claim for liquidation (invalidation of registration (re-registration) of a legal entity shall be within the jurisdiction of the tax authority, and only by taking measures provided for by the tax legislation may the rights and legitimate interests of counterparties be affected, who are entitled to protect their rights and legitimate interests in the framework of challenging decisions, actions (inaction) of tax authorities.

12. Registration (re-registration) of a legal entity with the indication of the head and (or) founder (participant) - an individual who was not involved in its creation (re-registration) shall constitute the ground for liquidation (invalidation of re-registration) of the legal entity.

Under paragraph 4 of Article 26 of the Constitution, Article 10 of the CC, Article 2 of the Entrepreneur Code of the Republic of Kazakhstan (hereinafter - the Entrepreneur Code), in order to pursue private entrepreneurship by establishing a legal entity based on decision taken by the founder (participant), the will of this person is required, duly expressed and formalized

Absence of the will of the person indicated in the constituent documents of a legal entity for its creation and pursuit of entrepreneurial activities, as well as failure to carry out

entrepreneurial activities, shall be the ground for liquidation (invalidation of registration, re-registration) of the legal entity.

In fact, a legal entity was created illegally, often by forging documents, using lost documents, misleading the person in whose name the registration (re-registration) was made and or otherwise confirmed by the explanations of such person to the tax authority or the court.

Consequently, such state registration (re-registration) was made with significant violations of the legislation of the Republic of Kazakhstan, which are irreparable.

13. It shall be explained to the courts that, under subparagraph 3) of paragraph 2 of Article 49 of the Civil Code, the courts may decide to liquidate a legal entity in the event of the absence of the legal entity at its location or at its actual address, also the absence of founders (participants) and officers, without whom the legal entity cannot function for one year.

Absence of all of the above signs shall be the ground for dismissing the claimant's claim, given other ways of response by the tax authorities.

In accordance with paragraphs 4, 5 of Article 70 of the Tax Code, in the event of establishing as a result of a tax survey conducted on the grounds referred to in subparagraph 3) of paragraph 2 of Article 70 of the Tax Code, the actual absence of the taxpayer at the location indicated in the registration data, the tax authority shall send to such a taxpayer a notice of confirmation of the location (absence) of the taxpayer.

If the taxpayer fails to comply with the requirement, the tax authority shall suspend debit transactions on bank accounts or make VAT deregistration in the absence of bank accounts.

When filing a claim for liquidation (invalidation of re-registration) of a legal entity on the grounds of absence of a legal entity at the place of registration the following circumstances shall be clarified by the court: establishment of the actual location of the legal entity, as well as existence of a decision by the tax authority to recognize the notification of confirmation of the location (absence) of the taxpayer as unexecuted and the fact of its sending to the taxpayer

A claim for liquidation (invalidation of re-registration) of a legal entity shall be satisfied also in the presence of circumstances evidencing the willful provision during registration (re-registration) of false information on the legal entity's address, excluding the possibility of contact with the legal entity, as well as the implementation of tax control.

The following circumstances may indicate that the information on the legal entity's location is false:

- the address indicated in the documents does not actually exist;
- a fictitious lease agreement has been submitted;
- other circumstances.

The absence of a legal entity at the place of its registration (re-registration) is evidenced by the fact that the permanent body of the legal entity is not located at the specified address,

the results of tax surveys are negative, postal correspondence is returned with a note of impossibility of its delivery due to the absence of the addressee.

14. The absence of a final judgment in a criminal case in the sphere of economic activity may not be an unconditional ground for a denied claim for liquidation (invalidation of re-registration) of a legal entity.

When considering a case, courts shall proceed from the actual circumstances of the case and depending on the established make a decision, not linking their conclusions only with the presence or absence of the final resolution on the criminal case.

15. On cases of challenging the re-registration of a legal entity in connection with a change in the membership list, courts shall be guided by the provisions of Article 14 of the Law on State Registration of Legal Entities.

This provision stipulates that for the state re-registration of business partnerships on the basis of a change in the membership list, a document confirming the alienation (assignment) of the right of the retiring member of the business partnership to a share in the property (authorized capital) of the partnership or part thereof in accordance with the legislative acts of the Republic of Kazakhstan and the constituent documents shall be submitted.

When a party to such a contract is an individual, the contract shall be notarized.

When considering the cases, courts need to find out whether such transactions have been challenged in court, whether these transactions are contestable or void by virtue of a direct indication of the law.

The state re-registration of a legal entity is an administrative act of the registering authority, whereupon the claim to invalidate such re-registration is subject to consideration in administrative proceedings.

16. Subparagraphs 4), 5) of paragraph 4 and subparagraphs 2), 3) of paragraph 6 of Article 85 of the Tax Code establish that in case of invalidation of registration of an individual entrepreneur, also when the re-registration of a legal entity is recognized as invalid by enforced court ruling, the deregistration of these persons from VAT shall be made from the date of such registration or from the date of re-registration.

These provisions relate to tax administration, which is carried out in accordance with the provisions of the law enacted by the time of the decision or action (inaction) by the tax authority.

It follows from paragraph 1 of Article 400 of the Tax Code that for the acquisition of the right of the recipient of goods, works, and services to offset VAT amounts, the supplier has to be a VAT payer.

In this case, exclusion from the amount of VAT to be offset shall be made in the tax period in the declaration for which VAT is recognized as VAT attributable to offset.

CIT on such mutual settlements may be charged based on the documentary tax audits results, if the taxpayer has not previously excluded such expenses independently based on the in-house audit findings. In this case, the tax audit report shall be drawn up with a detailed

description of the tax violation with reference to the relevant provision of tax and other legislation. As grounds for charging CIT amounts, in addition to an enforced court ruling on the liquidation (invalidation of re-registration) of the taxpayer's counterparty, other circumstances indicating the invalidity of financial and economic transactions between these persons may be indicated.

17. Under paragraph 1 of Article 48 of the Tax Code, the statute of limitation for tax liabilities and claims shall be the period of time during which:

the tax authority has the right to calculate, charge or revise the calculated, charged amount of taxes and payments to the budget;

the taxpayer (tax agent) is obliged to submit tax reporting, has the right to make amendments and additions to tax reporting, to withdraw tax reporting;

the taxpayer (tax agent) has the right to claim credit and (or) refund of taxes and payments to the budget, penalties.

Under Article 48 of the Tax Code, the statute of limitation for tax liabilities and claims is three years. The following taxpayers, for whom the limitation period is five years, are subject to exception:

pursuing activities in accordance with a subsoil use contract;

large businesses entities, classified as such entities under the Entrepreneur Code;

residents of the Republic of Kazakhstan who meet the conditions of Chapter 30 of the Tax Code.

In accordance with paragraphs 1 and 2 of Article 11 of the Law on Legal Acts, all regulatory legal acts have direct effect, unless otherwise specified in the regulatory legal acts themselves or in the acts enacting them.

No additional instructions are required for the application of enacted regulatory legal acts.

Taxpayers and tax authorities, entering into tax legal relations, shall comply with the legislation of the Republic of Kazakhstan; expired and terminated legal provisions shall not be applied to the actions of persons committed after their abolition.

Courts shall bear in mind that as from January 1, 2020, participants in tax legal relations when taking actions in the current tax period in respect of previous tax periods are not entitled to apply the invalidated provision of the Tax Code on the five-year limitation period, since such period under the current provision of the Tax Code is three years, unless otherwise provided for by the Tax Code.

Tax authorities have no right to file claims against a taxpayer and (or) a tax agent outside the limitation period. At the same time, the Tax Code does not limit the calculation of penalties by the limitation period.

18. With regard to the tax authority's right to charge or revise the calculated, assessed amount of taxes and other obligatory payments to the budget, the limitation period shall be calculated as of the date of issuance of notices provided for in subparagraphs 1), 2) and 3) of paragraph 2 of Article 114 of the Tax Code.

Paragraph 9 of Article 48 of the Tax Code establishes the cases when the limitation period is extended. Paragraph 10 of the said article provides for cases when the limitation period is suspended.

The total statute of limitation period, subject to suspension during a tax audit on transfer pricing issues may not exceed seven years.

When suspending an audit on these issues, the tax authority must comply with the requirements of Article 8 of the Law of the Republic of Kazakhstan dated July 5, 2008 № 67-IV “On Transfer Pricing”. The statute of limitations may be suspended upon sending of a request, which must comply with the following requirements:

- addressed to a competent body (organization) of the state;
- personalized, made in respect of the taxpayer under audit;
- made on the issues included in the subject of the audit.

Courts shall bear in mind that if a request does not meet the above requirements, such a request shall not be considered as sent.

By virtue of paragraph 10 of Article 48 of the Tax Code, the statute of limitations does not include the period of time from the date of completion of a tax audit conducted as part of a pre-trial investigation until the completion of criminal proceedings.

The right of tax authorities to review the calculated, charged amount of taxes and other obligatory payments to the budget within the limitation period shall mean that they have the right to conduct unscheduled tax audits stipulated by paragraph 3 of Article 145 of the Tax Code for the previously audited period, provided that the specified period is observed.

Article 56 of the Tax Code defines an exhaustive list of grounds for the termination of a tax liability.

On tax claims for payment of taxes and other payments to the budget, calculated, charged by state revenue authorities and presented to taxpayers for payment within the limitation period, the expiration of the limitation period shall not terminate the tax liability that has arisen and shall not exempt the taxpayer from fulfilling it.

19. According to subparagraph 3) of paragraph 1 of Article 48 of the Tax Code, the statute of limitations on tax liabilities and claims is the period of time during which the taxpayer (tax agent) has the right to claim credit and (or) refund of taxes and payments to the budget, penalties.

It is necessary to separate the right of a tax authority to charge or revise the calculated, assessed amount of taxes and other mandatory payments to the budget and the right of a taxpayer to claim credit and (or) refund of taxes and payments to the budget, penalties. Thus, when realizing the taxpayer's right to refund taxes from the budget, the tax authority shall not charge or revise the calculated amount of taxes, but confirm or refuse to confirm the refund of taxes from the budget.

In this regard, in respect to the right of taxpayers to claim credit and (or) refund of taxes and payments to the budget, penalties, when calculating the limitation period, the date of

receipt (registration) by the tax authority of a tax application provided for in subparagraph 1) of paragraph 4 of Article 101 of the Tax Code or a claim for refund of excess VAT amount under subparagraph 2) of paragraph 1 of Article 431 of the Tax Code must be taken into account, and not the date of issuance of the decision on tax audit results, including a notification on the tax audit results.

20. In accordance with paragraph 2 of Article 179 of the Civil Code, the statute of limitations shall be applied by the court only upon the application of a party to the dispute made before the court issues a decision.

Courts shall bear in mind that this rule of law does not apply to tax disputes by virtue of paragraph 4 of Article 1 of the Civil Code. The court is obliged to verify compliance with the limitation period established by the tax legislation, regardless of the presence of the parties' application to this effect.

21. The collection objects, rates of state duty in courts and the procedure for its payment are established by Articles 609, 610, 623 of the Tax Code.

Rates of state duty shall be determined in the amount that is a multiple of the monthly calculation indicator established by the law on the republican budget and in effect on the date of payment of state duty, or as a percentage of the amount of the claim, unless otherwise established by Article 610 of the Tax Code.

The state duty on cases of appealing actions (inaction) of tax authorities by individuals and legal entities and challenging notifications on inspection reports by individual entrepreneurs, peasant or farming units, legal entities shall be charged in the amount established by subparagraphs 2), 3), 4) of paragraph 1 of Article 610 of the Tax Code.

Article 616 of the Tax Code establishes an exhaustive list of grounds for exemption from payment of state duty in courts.

If the state duty was paid by the claimant to an incorrect budget classification code or not in full amount, then in accordance with part four of Article 138 of the Administrative Procedural and Process- Related Code of the Republic of Kazakhstan (hereinafter - APPC), the judge shall point out these deficiencies to the claimant and set the deadline for their correction.

The cases and procedure for the refund of paid amounts of state duty are regulated by Article 108 of the Tax Code.

Paragraph 4 of the said provision contains an exhaustive list of documents to be submitted to the tax authority, required for refund of the state duty amount from a state institution that is a party to the case (tax application and an effective court resolution). The court does not issue a writ of execution for the recovery of state duty from a state institution.

22. In-house audit is a form of state control exercised by the tax authorities without the procedure of appointment and conduct of an inspection.

The purpose of in-house audit is to afford the right to the taxpayer to independently rectify the identified violations by means of registration with the tax authorities and (or)

submission of tax returns in accordance with Article 96 of the Tax Code and (or) payment of taxes and payments to the budget.

Violations may be detected by the tax authorities on the basis of examination and analysis of tax reporting provided by the taxpayer (tax agent), data from authorized state bodies, as well as other documents and information on the taxpayer's activities.

It follows from paragraph 2 of Article 96 of the Tax Code that the execution of the notification on rectifying violations identified by the tax authorities in the in-house audit (hereinafter - notification on the in-house audit results) shall be recognized:

in case of agreement with the violations specified in the notification - elimination of the identified violations by the taxpayer (tax agent) by the methods specified in subparagraph 1) of paragraph 2 of Article 96 of the Tax Code;

in case of disagreement with the violations specified in the notification – presenting of an explanation by the taxpayer (tax agent) on the identified violations to the tax authority that sent the notification, except for violations specified in paragraph 3 of Article 96 of the Tax Code.

In any case, a taxpayer has the right to take one of the following actions: eliminate the violations, present an explanation or lodge a complaint.

Submission by a taxpayer within the time limit established by the Tax Code of an explanation of the identified violations not specified in paragraph 3 of Article 96 of the Tax Code and meeting the requirements of subparagraph 2) of paragraph 2 of Article 96 of the Tax Code, shall be recognized as the execution of the notice on the elimination of violations identified by the tax authorities in the in-house audit, and shall not require verification of their substantive validity.

23. By virtue of Article 135(2) of the APPC (claim of recognition), a claimant may also seek to declare unlawful an encumbering administrative act that no longer has legal force, therefore claims to challenge the executed in-house control notification are subject to review by the court.

A claim to challenge a notification based on the in-house control results is subject to administrative proceedings.

When considering claims challenging notifications on eliminating violations under subparagraphs 2) and 3) of paragraph 3 of Article 96 of the Tax Code, identified by the tax authorities in the in-house audit, the court must evaluate and examine the evidence provided by the taxpayer to confirm the actual receipt of goods, works, services from a legal entity and (or) individual entrepreneur, registration (re-registration) of which is invalidated by an effective court ruling in accordance with paragraph 5 of Article 96 of the Tax Code.

In all other cases, it is sufficient for the court to establish whether the tax authority had legal grounds for issuing the notification without verifying the substantive validity of its

claims. Otherwise, the results of future tax audits, including an unscheduled thematic audit on the issue of non-execution of the notification based on the in-house control results will be predetermined.

The tax authority shall have the right to issue a decision on recognizing a notification as unexecuted, including in cases when:

the explanation is not subject to submission by the taxpayer (paragraph 3 of Article 96 of the Tax Code) and violations have not been eliminated;

the deadline has been missed established by the Tax Code for submitting an explanation or for filing a complaint against the notification on the in-house audit results, and violations were not rectified;

an effective court ruling denied the taxpayer's claim to invalidate the notice issued in accordance with paragraph 3 of Article 96 of the Tax Code, and the violations were not rectified.

A complaint (claim) against a decision to recognize a notice as unexecuted may be filed by a taxpayer within ten working days from the date of its delivery (receipt) to a higher tax authority and (or) an authorized body or court.

The taxpayer shall have the right to choose the body to which an appeal (claim) may be filed.

24. By virtue of subparagraph 11) of paragraph 2 of Article 19 of the Tax Code, in order to fulfill the task of ensuring completeness and timeliness of receipt of taxes and other mandatory payments to the budget, tax authorities shall be obliged to apply methods of ensuring the fulfillment of tax obligations and collect tax arrears in a compulsory manner in accordance with the Tax Code. Methods of ensuring the fulfillment of an overdue tax liability and measures of compulsory collection of tax arrears are provided for by Chapters 13 and 14 of the Tax Code, respectively.

With respect to an individual who is not an individual entrepreneur, persons engaged in private practice, the only method of ensuring fulfillment of an unfulfilled tax obligation may be applied, such as charging of a penalty on the unpaid amount of taxes and other mandatory payments to the budget. Measures of compulsory collection of tax debts shall not be applied to him.

These provisions shall also apply to the tax arrears of an individual who is an individual entrepreneur, a person engaged in private practice, formed in connection with the receipt of income unrelated to the implementation of these activities.

At the same time, it should be borne in mind that, by virtue of paragraph 3 of Article 117 of the Tax Code, no penalty shall be charged on the amount of arrears in property tax, land tax and vehicle tax for individuals resulting from the revision by the tax authorities of the calculated amounts of taxes after the due date for taxes for the relevant tax period.

25. In accordance with Articles 116 and 120 of the Tax Code, restriction on disposal of the property of a taxpayer (tax agent) is one of the methods of ensuring the fulfillment of a tax obligation that has not been fulfilled on time.

When acquiring property subject to restrictions on disposal at an auction held in accordance with the procedure established by law, the buyer, who has fully fulfilled the obligation on paying for the purchased property, but is unable to register the ownership right due to the presence of an encumbrance based on the tax authority's decision, shall have the right to file a claim in court for excluding the property acquired at the auction from the inventory.

Protection of the rights of a person who has acquired property at an auction cannot be implemented by challenging the inaction of the registration authority that refused to register the buyer's rights and imposing on it the obligation to make the corresponding state registration. In this case, there are no legal grounds for recognizing the inaction of the registration authority as unlawful, since the encumbrance was registered by it in pursuance of the tax authority's decision.

Courts shall keep in mind that tax legislation does not contain provisions prohibiting the application of restrictions on the disposal of pledged property.

The presence of a decision of the tax authority is not an obstacle to the sale of this property at auctions.

According to Article 124 of the Tax Code, the procedure for the sale of property pledged by the taxpayer and (or) a third party, as well as the property of the taxpayer (tax agent) restricted in disposal shall be established by the authorized body.

26. Measures of compulsory collection of tax arrears shall be applied to a taxpayer that is a legal entity, a structural subdivision of a legal entity, a non-resident operating in the Republic of Kazakhstan through a permanent establishment, an individual entrepreneur, and individuals engaged in private practice, in the manner prescribed by paragraph 3 of Article 121 of the Tax Code. Each subsequent measure shall be applied if, through the previous measure the tax arrears have not been repaid. In this regard, the tax authority shall have the right to proceed to the sale of the taxpayer's property restricted in disposal only after taking appropriate measures to collect the tax arrears from the money.

27. The Tax Code fully provides for the possibility of extrajudicial collection of tax arrears from taxpayers. Therefore, claims of tax authorities for the collection of arrears in taxes and other mandatory payments to the budget and penalties from these persons are not subject to consideration and resolution in civil proceedings order.

However, in the absence or insufficiency of assets in the territory of the Republic of Kazakhstan to pay off the tax debt of a non-resident, which arose as a result of activities in the Republic of Kazakhstan through a permanent establishment, the tax authorities shall have the right to apply to the court with a claim for recovery of the said debt from the non-resident. In this case, it is necessary to proceed from paragraph 1 of Article 4 of the Agreement on the

procedure for resolving disputes related to the implementation of economic activities (Kyiv, March 20, 1992), and part three of Article 30 of the CPC.

28. At all stages of the claimants' appeal against the actions and acts of tax authorities, the court shall consider the possibilities of reconciliation of the parties and resolution of the dispute by the tax authority independently (for example, making changes in information systems in the presence of technical errors, indicating the status "completed" for in-house audit notifications, etc.) in cases when administrative discretion exists.

29. Under paragraph 1 of Article 178 of the Tax Code, the consideration of a taxpayer's (tax agent's) complaint against a notification of the audit results and adoption of a decision on it in an extrajudicial manner shall be referred to the authorized body's jurisdiction. In this case, a copy of the complaint must be sent by the taxpayer (tax agent) to the tax authorities that conducted the tax audit and considered the taxpayer's (tax agent's) objections to the preliminary tax audit report.

Under paragraph 2 of Article 182 of the Tax Code, following the review of a taxpayer's (tax agent's) complaint against a notification of audit results, the authorized body shall make a decision to leave the contested notification unchanged and to dismiss the complaint or to cancel the contested notification in whole or in part.

In the event of cancellation of the contested notification in part following the review of the complaint, the tax authority that conducted the tax audit shall issue a new notification (notification on the results of the review of the taxpayer's (tax agent's) complaint against the notification of audit results) and send it to the taxpayer (tax agent).

In accordance with Part six of Article 98 of the APPC, filing of a complaint to the detriment of the applicant shall not be authorized. Since a thematic audit in accordance with Article 186 of the Tax Code is appointed during the review of a complaint from a taxpayer (tax agent), the authorized body cannot, basing on the audit results, make a decision to charge additional amounts of taxes, other mandatory payments to the budget, penalties not charged in the contested notice.

The decision of a higher authority (authorized body), pursuant to consideration of a complaint about the notification of tax audit results, cannot be the subject of a judicial challenge, since it does not entail legal consequences. If the notification of the tax audit results remains unchanged, the specified notification may be challenged in court, and if it is canceled in part- notification of the results of consideration of the complaint against the notification of the audit results.

30. According to Article 148 of the Tax Code, the writ shall constitute the ground for conducting a tax audit.

As an act on the appointment of an audit, the writ may be the subject of a judicial challenge, since it is issued within the exercise of authority by the tax body and entails legal consequences for the taxpayer (tax agent).

At the same time, the taxpayer does not have the right to submit corrective tax reports in relation to the period under review during the period of appeal of the order.

Unscheduled inspections may not be appointed and conducted in the absence of the grounds listed in paragraph 3 of Article 145 of the Tax Code and paragraph 3 of Article 144 of the Entrepreneur Code. Such inspections are subject to invalidation, and the acts on their appointment - declared unlawful and cancelled on the basis of paragraph 1 and subparagraph 1) of paragraph 2 of Article 156 of the Entrepreneur Code, as having been issued in the absence of grounds for conducting an inspection.

31. Issuing from the provisions of Article 159 of the Tax Code that a decision based on the tax audit results is a notification issued by the tax authority on the tax audit results, in the event of disagreement of the taxpayer (tax agent) with the charged amounts of taxes and other mandatory payments to the budget, obligations to calculate, withhold, transfer mandatory pension contributions, mandatory professional pension contributions, calculation and payment of social contributions and (or) contributions to mandatory social health insurance and penalties, reduction of losses, failure to confirm the return of excess VAT and (or) corporate (individual) income tax withheld at the source of payment from the non-residents' income, only the notification is subject to judicial review. The court shall verify the legality of the accrual of the disputed amounts, taking into account the conclusions set out in the tax audit report.

A tax audit report may be challenged if the taxpayer does not agree with its conclusions that did not entail the above-mentioned consequences, but affect his rights and obligations, including in future tax periods. The appeal of the audit report shall be executed in the manner prescribed by the legislation of the Republic of Kazakhstan for appealing the actions of tax officials.

The execution of a notification of the tax audit results shall not deprive the taxpayer of the right to appeal the executed notification in the manner and within the timeframes stipulated by the Tax Code.

The content of the tax audit report must comply with the requirements of paragraph 1 of Article 158 of the Tax Code. The conclusions of the tax authority on the violation of tax and other legislation of the Republic of Kazakhstan committed by the taxpayer (tax agent) must be presented with reference to the provisions of the legislation, substantiating the arguments and disclosing the circumstances indicating the violations.

According to Part Three of Article 129 of the APPC, when examining a claim to appeal the tax audit results, the tax authority may refer only to the conclusions and substantiations indicating the taxpayer's violation of tax and other legislation, which is reflected in the tax audit report.

The accrual of tax amounts or adjustment of income, expenses and offsets by the tax authority are possible, in accordance with the requirements of the Tax Code, upon confirmation of the relevant facts.

32. According to the principle of certainty of taxation established by Article 6 of the Tax Code, taxes and payments to the budget of the Republic of Kazakhstan must be certain.

Certainty of taxation shall mean establishment in the tax legislation of the Republic of Kazakhstan of all the grounds and procedure for the emergence, fulfillment and termination of the tax liability of the taxpayer, the duty of the tax agent to calculate, withhold and transfer taxes.

33. The period for filing a claim in court shall be calculated: in the case of challenging the notification of the tax audit results directly in court - from the date of its delivery in the manner established by paragraphs 1, 2, 3 of Article 115 of the Tax Code, and in the case of a preliminary appeal to an authorized body - from the date when the taxpayer or tax agent became aware of this body's decision to leave his complaint without satisfaction in full or in part, or from the date of expiry of the period established by the Tax Code for consideration of the complaint, if a decision on such complaint was not made. If, based on the results of consideration of the complaint of the taxpayer or tax agent, a new notification is issued, the period for challenging it in court shall be calculated from the date of delivery of the new notification in the established manner.

When challenging actions (inaction) of tax authority officials, the specified period shall be calculated from the day when the taxpayer or tax agent became aware of the violation of his rights and interests protected by law or of the dismissal of his complaint by a higher tax authority in whole or in part.

34. Under Article 4 of the Tax Code, the principles of taxation include the principles of mandatory, certain, fair taxation, good faith of the taxpayer, unity of the tax system and transparency of the tax legislation of the Republic of Kazakhstan.

Under paragraphs 1 and 2 of Article 8 of the Tax Code, it is assumed that a taxpayer (tax agent) performs actions (inaction) to fulfill his tax obligation in good faith.

The taxpayer (tax agent) is not allowed to benefit from his unlawful actions in order to obtain tax benefits (tax savings) and reduce tax payments.

The duty to prove the circumstances that constituted the ground for adoption by the tax authority of the contested act rests with the tax authority.

In accordance with Article 128 of the APPC, the procedure for legal regulation of evidence, factual data inadmissible as evidence, the subject of proof and sources of evidence, as well as collection, research, assessment and use of evidence (proof) and other provisions on evidence and proof are determined by the Civil Procedure Code, with the exception of the features established by the APPC.

Under Article 128 of the APPC, the tax authority is obliged to submit to the court the evidence of illegality of the taxpayer's tax benefit.

35. When a taxpayer challenges a notification of the tax audit results or an audit report on the ground of violations by the tax authority of the procedures and timeframes for conducting tax audits established by paragraph 2 of Chapter 18 of the Tax Code, the court shall proceed

from assessment of the nature of the violations committed and their impact on the legality and validity of the audit results. In particular, the results of an audit conducted without an order for it, which, according to Article 148 of the Tax Code, is the ground for conducting a tax audit, or on the basis of an order that is subsequently recognized as illegal, are subject to recognition as illegal.

Similar consequences shall ensue if, in violation of paragraph 1 of Article 146 of the Entrepreneur Code, an order to conduct a tax audit, with the exception of a counter-audit, was not registered with the authorized legal statistics and special accounting body.

36. Paragraph 3 of Article 145 of the Tax Code provides for cases of conducting unscheduled tax audits, including on the grounds stipulated by the Criminal Procedure Code of the Republic of Kazakhstan. The tax authority shall appoint and conduct such audits in compliance with all the procedures stipulated by the tax legislation.

Termination of a criminal case shall not be the ground for terminating such a tax audit. The audit that has been initiated is subject to completion with the preparation of a tax audit report in accordance with Article 158 of the Tax Code and the adoption, if there are grounds, of measures stipulated by the tax legislation.

37. To declare invalid:

1) the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 29, 2017 № 4 "On the judicial practice of applying tax legislation";

2) the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated March 4, 2020 № 4 "On Amendments to the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated June 29, 2017 № 4 "On the judicial practice of applying tax legislation".

38. In accordance with Article 4 of the Constitution, this regulatory resolution is included in the current law, shall be generally binding and come into effect from the day of its first official publication.

**Chairman of the Supreme Court
of the Republic of Kazakhstan A. Mergaliyev**

**Judge of the Supreme Court
of the Republic of Kazakhstan,
secretary of the plenary session G. Almagambetova**