



LT in Focus

Tax Disputes and Litigation Review: Issue

Nº2/2019

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We keep our
finger on the
pulse of your
business

Dear friends

We are happy to offer this latest overview of court practices around Kazakhstan court tax disputes. In it we have considered the most interesting and significant cases that may have the potential to impact any aspect of your business.

Should you be interested, we would be happy to have a more detailed discussion on any of the cases considered in this **LT in Focus**, or any question you may have on the latest tax court practices, including investment disputes.

Regards,

Dispute Resolution Group

Tax Disputes



Tax audit appeals 1/3



Dzhambul Oblast Court Resolution dated 5 July 2019 on a claim from Asia Kulyrys Corporation LLP

Recognition of notification of tax audit results as illegal and its cancellation

Asia Kulyrys Corporation LLP (the "**Taxpayer**") took Dzhambul Oblast State Revenue Department (the "**Department**") to court to appeal the actions of its officials who had independently recognised the Taxpayer's transactions as invalid and indicated this in tax audit act №28, which served as the basis for the additional accrual of taxes. In addition, the Taxpayer also believes that procedural rights were violated, namely, the inspection was extended without registering the additional instruction with the statistics authorities.

The Taxpayer believes that the officials incorrectly recognised the transactions as invalid and record that in an audit act, as the counterparties' registration had not been recognised as invalid, and none of them had been recognised as unreliable taxpayers; and that all transactions had been duly executed.

The Taxpayer, in support of its arguments on the illegality of the notification, believes there are no grounds for the notification, since to accrue the additional amounts in it there needs to be a valid ruling in place recognising the transaction as invalid.

The Taxpayer believes that the Department, doubting the legality of the transaction, assumed the authority of the court, and recognised the transaction as invalid, disallowing deductions in CIT and VAT returns with respect to settlements with counterparties.

The Taxpayer also notes that accounting documents had been duly executed and all taxes paid for all transactions concluded. To support this, the Taxpayer provided contracts, invoices, acts of acceptance and other documents requested.

In this regard, the Taxpayer believes that Department officials assumed the powers of the court, as only a court can recognise transactions as invalid, and gave an unlawful legal assessment of Taxpayer transactions, recommending they be nullified.

Furthermore, the Taxpayer does not agree with the notification, since additional instructions were not registered with the statistics authorities.

Department representatives, in turn, believe that the conclusion on the invalidity of the Taxpayer's transactions in the audit report is legal, and the Taxpayer's arguments are unfounded. The Department believes that the documents provided are not sufficient to confirm that the services were provided by contractors.

Case history

Period	Instance
May 2019	Court of first instance
July 2019	Court of appeal



Tax audit appeals 1/3



Position of the court of first instance:

The court, recognised a gross violation, concluded that the notification of audit results is invalid because:

- The conclusion of Department officials on the invalidity of transactions is premature and illegal, since the Department had not taken sufficient steps to prove the invalidity of transactions with counterparties;
- Current legislation does not allow tax officials to recognise transactions invalid independently, out of court, which is why the Department officials' actions are illegal;
- The court does not rule out that the Department may have doubted the authenticity of the transactions. In that case it should have requested the counterparties involved provide primary accounting documentation, and if they failed to do so, taken measures, both administrative and procedural.
- The results of an audit conducted without instruction or without registering the same with the state revenue authorities are recognised as unlawful. The same is true if in violation of paragraph 1 of article 146 of the Entrepreneurial Code, an instruction for a tax audit, with the exception of a counter audit, has not been registered with the statistics authorities.
- An additional instruction for the Department to extend audit deadlines was not registered as required.
- The violation of the audit period stipulated in article 148 of the Entrepreneurial Code is recognised as a gross violation of the Entrepreneurial Code.



Tax audit appeals 1/3



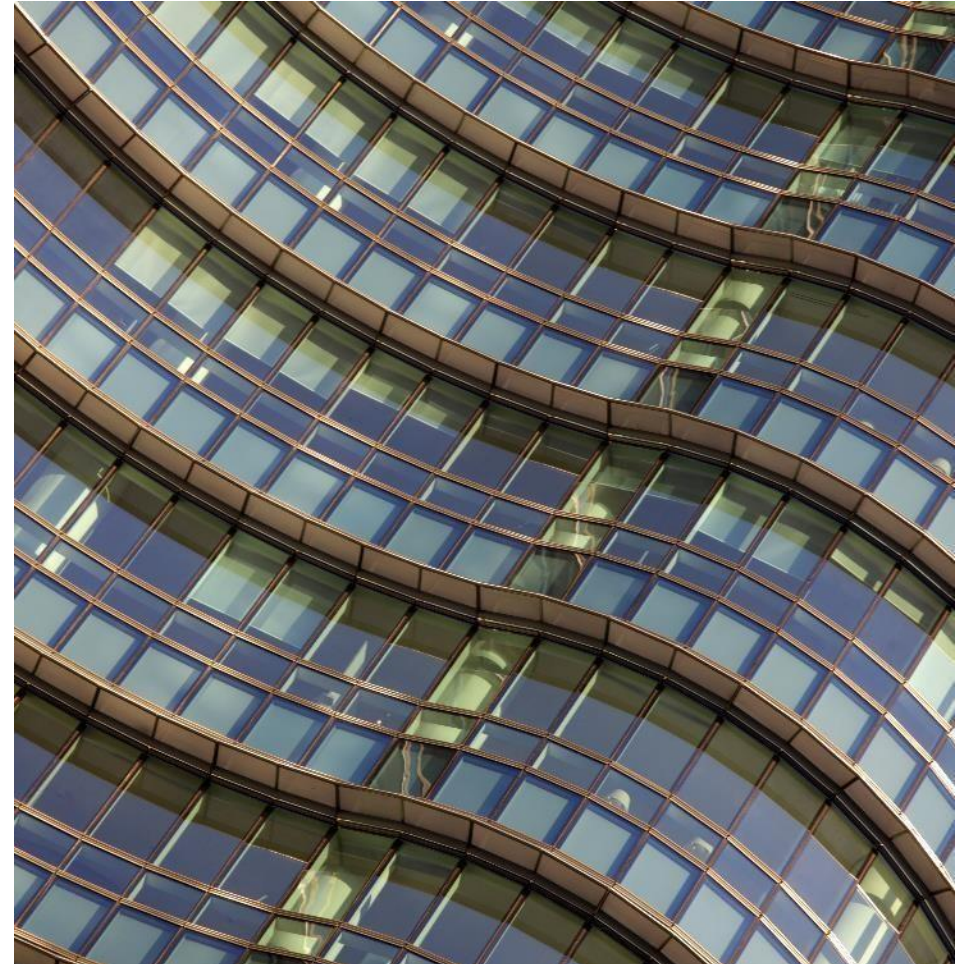
The position of the court of appeal:

The court of appeal ruled that the court of first instance's ruling be overturned and that a new decision be issued not upholding the appeal for the following reason:

- The tax authorities sent its request for an audit extension to the authorised body for registration in good time, which is confirmed by a screen shot from the Integrated Tax Information System of Kazakhstan ("INIS") programme, which confirms the receipt of additional instructions to the Committee on the Legal Statistics and Special Accounts (the "Committee"). Thus, the Department did not violate any requirements.
- Registration is the responsibility of the authorised body, which is the above Committee. The tax authorities cannot be responsible for their actions. At the same time, the Committee representative confirmed in the court of first instance that they had received a request to extend the audit deadline from the tax authority. At the same time, he showed that the registration of the additional instruction is of an accounting nature and taken into account with the main audit instruction, which had been duly registered.
- Evidence examined at the court session found that, despite the existence of contracting and transportation service contracts, the existence of invoices, acts of completion, the contractors failed to confirm they had the required material and human resources to provide the services.
- In these circumstances, the court ruling should be overturned, and a new ruling issued to reject the application, and uphold the appeals of the Department and prosecutor.



[More Details](#)



Tax audit appeals 2/3



North Kazakhstan Oblast Court Resolution dated 22 November 2018 on a claim from Molproduct LLP

Recognition of the notification of tax audit results as illegal and its cancellation

Molproduct LLP (the "**Taxpayer**") went to court to have notification No. 2 dated 11 July 2018 of the North Kazakhstan Region State Revenue Department (the "**Department**") regarding an additional accrual of VAT on the Taxpayer of KZT 42 000 000 and late payment interest of KZT 9 557 760.9 and notification No. 3 regarding the accrual of VAT of KZT 105 975 838 and late payment interest of KZT 24 595 060 recognised as illegal and cancelled.

To increase sales and promote products in 2013-2014, the Taxpayer and its wholesale buyers entered into additional agreements so that when customers meet sales plans, the Taxpayer adjusts / reduces the price and cost of previously shipped goods. The Taxpayer provides a discount and for this reason it issues additional invoices to its customers, reduces taxable turnover and VAT.

The Taxpayer believes the notification is unlawful, since it met the conditions of paragraph 3 of article 239 of the Tax Code (version of the Tax Code valid in 2013-2014) because:

- The Taxpayer executed additional agreements that directly stipulate discount terms and amounts, the conditions for providing discounts have arisen, customers met sales plans, reports were signed, and the circumstances were not disputed by any party;
- Additional invoices were issued in accordance with article 265 of the Tax Code.

The Department, in turn, believes that the invoices were invalid because:

- serial numbers were indicated not only in digits, but also in PTR letters;
- additional invoices were issued five working days after the completion of sales turnover.

Case history

Period	Instance	Decision
September 2018	Court of first instance	Taxpayer's claims are upheld in full
November 2018	Court of appeal	The court of first instance ruling is upheld



Tax audit appeals 2/3



Position of the court of first instance:

The court considered the notification as illegal because:

- Based on the requirements of point 3 of article 239 of the version of the Tax Code valid in 2013-2014, taxable turnover is adjusted if the following conditions are met simultaneously: 1) documents are available that are the basis for the adjustments; 2) an additional invoice exists that contains negative (positive) taxable turnover and value added tax.
- It was established that during the tax audit, the Taxpayer provided all supporting documentation recognised as grounds for adjusting taxable turnover and additional invoices had been issued no later than five working days after the turnover completion date.
- Including letters in a serial number is a minor violation and does not affect the validity of turnover adjustments, which is why all arguments in this section of the appeal should be rejected.

Position of the court of appeal:

The court of appeal upheld the decision of the court of first instance.



 [More Details](#)

Tax audit appeals 3/3



Karaganda Oblast Court Resolution dated 17 May 2019 on a claim from Teplotransit Karaganda LLP

Recognition of the notification of tax audit results as illegal and its cancellation

Teplotransit Karaganda LLP (the “**Taxpayer**”) took the Karaganda Region State Revenue Department (the “**Department**”) to court to have notification No. 703 dated 7 November 2017 recognised as illegal and cancelled in part because the Department had accrued corporate income tax (“**CIT**”) of KZT 92 620 147.

According to a financial assistance agreement dated 3 October 2008, gratuitous financial aid of KZT 53 000 000 were transferred to the Taxpayer. In addition, a further KZT 80 000 000 was transferred on the basis of financial assistance agreement No. 14-yur dated 6 October 2008, which was initially due to be repaid, but, under Addendum No. 1 dated 21 November 2008, the amount was reclassified as gratuitous and not due to be repaid. The total amount received as financial aid free of charge is KZT 133,000,000. The Taxpayer wrote off the funds received in 2016 due to the liquidation of the enterprise that provided them.

The Department indicated in its audit report that the money received should be treated as the Taxpayer’s income from writing off liabilities due to the expiry of the statute of limitation for 2013 CIT, which led to an additional CIT accrual in 2013.

In turn, the Taxpayer treats the funds received as property received free of charge for 2008 CIT purposes and, as such, the additional accruals are outside of the original statute of limitation.

In 2013, under an asset trust agreement, the Taxpayer, as the trustee, committed to execute the tax obligation of the trust founder. The taxpayer filed an integrated CIT return for 2014-2015. for all types of activities,

including trust management activities performed in the trust manager’s interests, as a result of which the Taxpayer recorded a tax loss.

The Department indicated in its audit report that the Taxpayer had completed the CIT report incorrectly, since the CIT on taxable income should have been charged on the Taxpayer’s main activities, which led to an additional CIT accrual on the Taxpayer for 2014-2015.

The taxpayer believes that it recorded trustee income / expenses under the trust agreement in a CIT return correctly in accordance with articles 85 and 100 of the Tax Code (as amended in 2013), respectively.

Case history

Period	Instance	Decision
November 2018	Court of first instance	In favour of the Taxpayer, notification recognised as illegal and cancelled partially
May 2019	Court of appeal	Court of first instance ruling is cancelled, the Department’s appeal is upheld, and a new resolution is passed.





Position of the court of first instance:

The court believes the Taxpayer's appeal should be upheld in part because:

- From 1 January 2009, an amount equal to KZT 133 000 000 had been recorded as a payable and written off only in 2016 due to the liquidation of the enterprise providing it. Accordingly, the Taxpayer's arguments about the requirement to apply the statute of limitation are irrelevant.
- In view of the above, the court finds that there are no grounds to uphold this part of the claim.
- Point 1 of article 58 of the Tax Code states that a Taxpayer engaged in activities for which the Tax Code stipulates different taxation conditions is required to record tax objects and/or objects related to taxation separately in order to calculate tax liabilities for those activities correctly.
- The Taxpayer uses property obtained under a trustee management agreement in the form of engineering (heat) networks in its main activity (heat supply), which eliminates the need to calculate tax liabilities by activity type.
- If a manager has been entrusted to execute tax obligations, then it records trust management income and expenses and files a return in form 100.00 including income and deductions received (incurred) during trust management.
- Thus, given the above, the court concludes that the Taxpayer's demand to cancel tax audit results with respect to the additional accrual CIT of KZT 76 903 973, the separate tax accounting of income and deductions received (incurred) during trustee management is reasonable and should be upheld.

The position of the court of appeal:

- In accordance with the Tax Code, the trustee is required to keep separate tax records of objects of taxation and/or objects related to taxation for trust management activities performed in the interests of the trust management founder.
- During a tax audit, it was established that the Taxpayer maintains separate accounting for main activities and trust management. However, the Taxpayer completed CIT returns for 2014 and 2015 incorrectly, summarising line-by-line the totals for main activities and trust management.
- The Taxpayer's actions contradict point 22 of the Rules for preparing tax reporting and lead to the misstatement of final operating results.

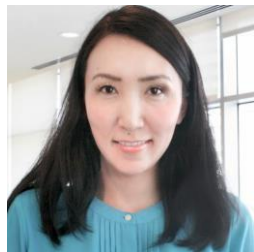
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