

G.T. Nurbekova
Doctoral student Karaganda Buketov University
Karaganda, Kazakhstan

L.K. Tussupova
Associate Professor of the Higher School of law Astana International University
Astana, Republic of Kazakhstan

COMMERCIAL BANKS AND TAX COMPLIANCE

Abstract: The article considers the effect of tax legislation on the range of persons involved in legal relations in the field of taxes since the inception of the tax legislation of the Republic of Kazakhstan. Special attention is paid to commercial banks as participants in tax and other procedures for the collection and administration of taxes and payments to the budget, as a result of which the problems of identifying banks as participants in tax relations are identified. The author expresses and substantiates the point of view that banks are participants in tax legal relations, the legal capacity of which is not limited by the fulfillment of the duties of a taxpayer and tax agent.

Based on an analysis of the norms of legislative acts in the field of taxation for the circle of persons, the author comes to the conclusion that the circle of persons covered by tax legislation is expanding.

Key words: participants in tax relations, action of tax legislation, taxpayer, tax agent, tax authorities, commercial banks, tax and administrative procedures.

The issue of participants in tax legal relations has practical relevance and theoretical significance.

As Efimova T.A. notes, there are four types of legal relations with the participation of banks in the budgetary and tax sphere:

- 1) bank - state (public relations - tax, budgetary);
- 2) taxpayer – state (tax legal relations);
- 3) taxpayer (client) – bank (relationships of a civil law nature);
- 4) bank as a special participant in tax relations - the state (tax legal relations) [1, p. 50–51].

In this regard, the results of studying the tax legislation of the Republic of Kazakhstan from the point of view of determining the range of persons involved in tax legal relations may be of great interest.

The scientific literature suggests that the tax law of the Republic of Kazakhstan has gone through several stages in its development:

- 1991-1995 - formation of tax law in independent Kazakhstan;
- 1995-2002 - systematization of tax law of the Republic of Kazakhstan;
- 2002-2009 - codification of tax law of the Republic of Kazakhstan;
- 2009 - further improvement of the tax law of the Republic of Kazakhstan [2].

The beginning of each of these stages in the development of tax law was accompanied by the adoption of new legislative acts on taxation issues.

Taking as a basis the stages of formation of tax law proposed by E.V. Porokhov and A.T. Shaukenov, we propose to distinguish 5 stages in the formation and development of tax legislation of the Republic of Kazakhstan:

First stage. The stage of origin of tax legislation in independent Kazakhstan is marked by the adoption of the Law of the Republic of Kazakhstan dated December 25, 1991 “On the tax system in the Republic of Kazakhstan” and separate laws for each tax that form the tax system of the Republic of Kazakhstan.

In the mentioned legislative act, the circle of persons who are subject to the Law of the Republic of Kazakhstan dated December 25, 1991 “On the tax system in the Republic of Kazakhstan” was not defined. At the same time, the law contained norms that:

- outlined the circle of persons who are taxpayers;
- established the obligations of banks and other financial institutions and their officials;
- indicated the tax authorities as bodies exercising control over the payment of taxes.

Second stage. The stage of systematization of the tax legislation of the Republic of Kazakhstan is associated with the Decree of the President of the Republic of Kazakhstan, which has the force of the law “On taxes and other obligatory payments to the budget” dated April 24, 1995, put into effect on July 1, 1995 and valid until January 1, 2002.

The decree did not contain a rule defining the circle of persons who were subject to tax legislation.

Third stage. The stage of codification of tax legislation corresponded to the adoption of the first Tax Code - the Code of the Republic of Kazakhstan dated June 12, 2001 “On taxes and other obligatory payments to the budget”, which came into force on January 1, 2002 and was in force until January 1, 2009.

In the context of the issue under consideration, it is impossible not to mention that with the adoption of the Tax Code of the Republic of Kazakhstan, the terms “tax administration” and “tax procedures” were introduced into circulation.

According to Art. 3 of the Code of the Republic of Kazakhstan dated June 12, 2001 “On taxes and other obligatory payments to the budget”, tax legislation is effective throughout the territory of Republic of Kazakhstan and applies to individuals, legal entities and their structural subdivisions [3].

However, since 2001, the circle of persons covered by tax legislation has changed due to the inclusion of such entities as tax agents. These legislative changes are logical and are explained by the fact that the obligation for calculating, withholding and transferring taxes withheld at the source of payment was assigned to tax agents.

Fourth stage. The stage of improving tax legislation began with the adoption of the Code of the Republic of Kazakhstan dated December 10, 2008 No. 99IV ZPK “On taxes and other obligatory payments to the budget” (Tax Code), which came into force on January 1, 2009.

At this stage, the effect of tax legislation on the circle of persons was not subject to changes and the circle of participants remained the same composition.

Fifth stage. The current Code of the Republic of Kazakhstan dated December 25, 2017 No. 120-VI “On taxes and other obligatory payments to the budget” (Tax Code) was the starting point of a new stage in the development of tax legislation of the Republic of Kazakhstan.

In accordance with paragraph 1 of Art. 3 of the Tax Code of the Republic of Kazakhstan dated December 25, 2017, the tax legislation of the Republic of Kazakhstan is effective throughout the territory of the Republic of Kazakhstan and applies to all individuals, legal entities and their structural subdivisions that are defined by the Tax Code as payers of taxes and payments to the budget, as well as as participants in relevant tax and other procedures for the collection and administration of taxes and payments to the budget [4].

Analyzing this norm, we can come to the conclusion that in the Republic of Kazakhstan the number of participants in tax legal relations has been legislatively expanded. Previously, the circle of persons covered by tax legislation was limited only to taxpayers, tax agents and tax authorities.

Due to the increase in range of persons subject to tax legislation, let us name some of them:

a) Taxpayer is a person and (or) structural unit of a legal entity that is a payer of taxes and payments to the budget.

b) Tax agent - an individual entrepreneur, private notary, lawyer, legal entity, including a non-resident, operating in the Republic of Kazakhstan through a permanent establishment, branch, representative office, which, in accordance with the Tax Code, is responsible for the calculation, withholding and transfer of taxes, withheld at the source of payment.

c) State revenue authority - a state body that, within its competence, ensures the receipt of taxes and payments to the budget, customs regulation in the Republic of Kazakhstan, the powers to prevent, identify, suppress and disclose administrative offenses assigned by the legislation of the Republic of Kazakhstan to the jurisdiction of this body, and also performing other powers provided for by the legislation of the Republic of Kazakhstan;

d) Authorized body - a government body that provides leadership in the field of ensuring tax revenues and payments to the budget;

e) Authorized state bodies - state bodies of the Republic of Kazakhstan, with the exception of tax authorities and local executive bodies, authorized by the Government of the Republic of Kazakhstan to carry out calculation and (or) collection of payments to the budget, as well as interacting in accordance with the Tax Code with tax authorities within their limits competence established by the legislation of the Republic of Kazakhstan;

f) Authorized person - a person who is obliged to submit to the authorized body the information available to him on individuals in accordance with Article 26 of the Tax Code within his competence established by the legislation of the Republic of Kazakhstan;

The last point needs to be clarified, since 25 participants are designated as authorized persons who provide information to the tax authorities for tax administration. The following can be distinguished from them:

- National Bank of the Republic of Kazakhstan;
- the authorized body for regulation, control and supervision of the financial market and financial organizations, local executive bodies, organizations and authorized persons in interaction with tax authorities, which is the Agency of the Republic of Kazakhstan for Regulation and Development of the Financial Market.

- Registering bodies - state bodies and the State Corporation "Government for Citizens";
- Ministry of Foreign Affairs of the Republic of Kazakhstan;
- Local executive bodies;

g) Second-tier banks and organizations carrying out certain types of banking operations [4].

As we can see, since the formation of the tax legislation of the Republic of Kazakhstan, the range of participants has gradually expanded, which has been legislated. We observe a tendency to expand and clarify the status of participants of tax legal relations.

Let us dwell in more detail on the status of second-tier banks in tax legal relations.

In the research of most scientists, tax relations involving banks are considered unilaterally - from the perspective of their relationship with the tax authorities, due to which banks are assigned a triune status:

- as an independent taxpayer;
- as a tax agent in terms of calculating and withholding taxes from funds paid by taxpayer clients and transferring these taxes to the budget;
- as an intermediary between the state and other taxpayers, providing the tax authorities with the necessary information to verify the correctness of calculation and timely payment of taxes to the budget by taxpayers [5].

All these positions, one way or another, are reflected in the tax legislation of the Republic of Kazakhstan.

According to paragraph 1 of Article 1 of the Law of the Republic of Kazakhstan dated August 31, 1995 No. 2444 "On Banks and Banking Activity in the Republic of Kazakhstan", a bank is a legal entity that is a commercial organization, which, in accordance with the Law of the Republic of Kazakhstan "On Banks and Banking Activity in the Republic of Kazakhstan" is authorized to carry out banking activities [6].

The bank as a legal entity acts on the basis of a license issued by an authorized body.

The official status of a bank is determined by state registration (re-registration) of a legal entity as a bank in the State Corporation "Government for Citizens" (hereinafter referred to as the Corporation) and the presence of a license from the authorized body for regulation, control and supervision of the financial market and financial organizations (hereinafter referred to as the authorized body) for conducting banking operations.

Banks in tax legal relations, in our opinion, participate as an independent taxpayer, a participant in tax procedures for the collection of taxes and payments to the budget (tax agent), as well as a participant in procedures for the administration of taxes and payments to the budget.

Article 24 of the Tax Code establishes the obligations of second-tier banks and organizations carrying out certain types of banking operations as participants in tax legal relations. Thus, the obligations of second-tier banks are expressed in providing information about the availability of bank accounts and their numbers, about the balances of money in these accounts of the taxpayer, notifying the authorized body about the opening or changing of taxpayer accounts, providing information at the request of the authorized body, in withdrawing money to repay the tax debt, transfer of the amount of taxes, payments to the budget and social payments on the day they are initiated by the taxpayer, etc.

These are just some examples of the obligations of banks. Based on this, it is obvious that banks are considered as participants in two procedures:

- tax procedures;
- administrative procedures.

Since the Tax Code does not differentiate between the mentioned procedures, we have made an attempt to highlight the duties of second-tier banks, as participants in tax procedures and as participants in administration procedures.

The obligations of second-tier banks as participants in tax procedures, in our opinion, are expressed as follows:

1. in assisting taxpayers in fulfillment of their tax obligations;
2. in carrying out orders of tax authorities when carrying out tax administration in the following cases:
 - a) application of methods of ensuring the fulfillment of a tax obligations that was not fulfilled on time;
 - b) application of measures for forced collection of tax debts;

Thus, the bank, as a participant in tax procedures, acts as a tax agent, which is entrusted by law with the obligation to calculate, withhold and transfer taxes withheld at the source of payment and as an intermediary assisting third parties in fulfilling their tax obligations.

Tax administration is identical to the concept of management, as organizing the power and executive activities of the state, and is a broader concept in its content than tax control, and absorbs the latter, while recognizing it as the main component of tax administration.

In accordance with Article 68 of the Tax Code of the Republic of Kazakhstan, tax administration is a system (totality) of measures and methods carried out by tax authorities and other authorized government bodies for the collection of taxes and payments to the budget, including the implementation of tax control, the use of security methods fulfillment of unfulfilled tax obligations and measures for the forced collection of tax debts, as well as the provision of public services and other forms of tax administration established by the Code [4].

We believe that banks do not take part in all tax administration procedures, since in accordance with paragraph 4 of Art. 68 of the Tax Code of the Republic of Kazakhstan, administration procedures are carried out within the framework of other forms of state control:

- 1) registration of taxpayers with the tax authorities;
- 2) acceptance of tax forms;
- 3) desk control;
- 4) tax monitoring;
- 5) tax inspection;

However, it should be noted that banks may be requested parties in the in the process of tax authorities' audits and provide necessary information when required.

In order to ensure the effective implementation of tax administration in the Republic of Kazakhstan, the provisions of the Tax Code on tax control in all areas of economic activity are in force. The banking sector has certain specifics, which necessitates the use of special tools to implement the highest quality tax control, which determines one of the important aspects of interaction between banks and tax authorities.

Obligations of second-tier banks as participants in administration procedures are to provide information about the availability of bank accounts and their numbers, about the balances of money in these taxpayer accounts, notifying the authorized body about the opening or changing of taxpayer accounts, providing information at the request of the authorized body, allowing tax officials to check the availability of money and transactions performed on the bank accounts of the person being inspected, suspend all expenditure transactions on bank accounts, with the exception of correspondent accounts, etc.

References

1. Efimova T.A. Tax administration of the activities of commercial banks in the Russian Federation: dis. ...cand. econ. Sciences: 08.00.10 / T.A. Efimova; Moscow state University of Economics, Statistics and Informatics. – M., 2011. – 169 p.
2. Tax reforms and development of civil society in Kazakhstan. /Under the general editorship of Doctor of Legal Sciences E.V. Porokhov, Candidate of Legal Sciences A.T. Shaukenov) <https://online.zakon.kz/m/amp/download/34338983>
3. Code of the Republic of Kazakhstan dated June 12, 2001 N 209 “On taxes and other obligatory payments to the budget” (lost legal force)
4. Code of the Republic of Kazakhstan dated December 25, 2017 No. 120-vi “On taxes and other obligatory payments to the budget” (with amendments and additions as of September 12, 2023) – [Electronic resource]. – Access mode: <http://online.zakon.kz>
5. Budnikova O.N. The role and place of banks in the system of tax relations // Bulletin of Polotsk State University. Series D. Economic and legal sciences. – 2018. - No. 13. – p. 104-108
6. Law of the Republic of Kazakhstan dated August 31, 1995 No. 2444 On banks and banking activities in the Republic of Kazakhstan (with amendments and additions as of September 12, 2023) – [Electronic resource]. – Access mode: <http://online.zakon.kz>



Università
degli Studi
di Ferrara

ITax Papers on Taxation

Commercial Banks and Tax Compliance

Gulnara Nurbekova, PhD Candidate, University of Karaganda “Buketov”

Lyzat Tussupova, Associate Professor, Higher School of Law, Astana International University

Department of Law

Corso Ercole I D'Este, 37 - Ferrara - Italy

www.dirittotributario.eu

Working Paper: 10-23 ISSN: 2281-3179

Date: 13 December 2023 (All rights reserved by the Author)

DOI