



## The Definition And Special Features Of The Considering The Unlawful Acts Of The Tax Authorities Invalid

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### ABSTRACT

The article discusses the special features of considering the unlawful acts adopted by official of tax authorities invalid by courts and makes distinction between different ways (methods) of protection of the rights of the business entities against unlawful decisions of tax authorities.

### KEYWORDS

Unlawful act, tax disputes, tax authorities, non-normative act, competence, action (inaction), limitation period, civil legal methods

### INTRODUCTION

It is well known that the most important features of a democratic state are the rule of law, the exercise of each person's rights and freedoms with mutual respect for the rights and legitimate interests of others, the restoration of violated rights and interests.

In the market economy, it is important to ensure and protect the rights of business entities, especially their economic and property rights and in this regard, first of all, state authorities are required to create the necessary conditions for the rule of law in the exercise of rights and obligations of legal entities and individuals, not to hinder the

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exercise of their rights and legitimate interests, but to ensure the restoration of violated rights by administrative and civil legal means.

However, in some cases the violation of above-mentioned rights of business entities by state authorities necessitates serious measures in the organization of the activities of state authorities and their unlawful actions against the rights of private property owners, as well as taking urgent measures before the law and law enforcement practice. Assessing these violations as “emergencies” when they occur, it is required to strengthen the responsibility and accountability for these kind of acts and this should be the ultimate actions to take.

Decisions and other legal acts adopted by state authorities in exercising their powers must be in accordance with the requirements of the law, materially and procedurally justified, and not interfere with the legitimate rights and interests of other entities.

Violation of these principles ends up in the judicial review of the legality of acts and actions of state authorities in the field of governance of a particular sector and this means that all subjects are equally responsible for compliance with rule of law and order in accordance with the requirements of a democratic state.

It is known that the protection of the violated rights and legitimate interests of business entities as a result of acts that are adopted by state authorities and which are not in accordance with the law is carried out in two ways: judicial and administrative (Article 10 of the Civil Code).

The cases in which the violated rights arising from the adoption of non-compliant acts by

state authorities belong to the category of disputes connected with public legal relations and the law guarantees that they are resolved by administrative courts.

Civil law also provides for the consideration of disputes in this category that the restoration of violated rights can be carried out administratively, but provides protection only in cases permitted by law. Protection of civil rights by an administrative procedure shall be conducted only in cases provided for by the law. A decision adopted by an administrative procedure may be appealed in court (Paragraph 2 of Article 10 of the Civil Code).

Constitutional norms play an important role in the formation of the method of civil legal protection, based on the content of Article 44 of the Constitution of the Republic of Uzbekistan and in accordance with it, business entities may apply to the court to protect their rights if a contradictory administrative act is adopted or if their interests are harmed by the unlawful actions of state officials.

Furthermore, Article 11 of the Civil Code specifically defines the consideration of invalidity of acts of state authorities as a method of civil protection and the procedure for its implementation, the consequences of damages arising from its application are defined in Articles 12, 15 of the Civil Code. Although there is no direct norm for invalidation and disputes on invalidation of acts of tax authorities, this activities are provided for in accordance with the requirements of the above norms of the Civil Code.

In accordance with Article 50 of the Law of the Republic of Uzbekistan "On guarantees of freedom of entrepreneurial activity" entrepreneurs have the right to appeal against

unlawful decisions of state authorities and other bodies, unlawful actions (inaction) of their officials to a higher authority in a subordinate manner or to initiate a lawsuit directly in court.

When analyzing the cases based on statistics on the application of this method, which is widely used in socio-economic disputes between businesses and state bodies, businesses often complain about the decisions of state bodies, especially tax authorities or local authorities. The rising high number of disputes in this area means that we should improve the substantive and procedural legislation in the sphere.

According to statistics, in 2019, a total of 16,255 disputes were considered by administrative courts to invalidate the acts of state authorities arising from public legal relations, the most of which, 413, were filed in relation to land disputes of local governments. Secondly, 181 of them constitute disputes related to the invalidation of acts of the tax authorities and the recognition of such actions (inaction) of officials as unlawful[1].

The growing trend of complaints from state bodies, in particular business entities, against decisions (acts) of the tax authorities, as well as the actions of their officials, indicates the urgency of research on these issues.

It is known that the payment of taxes and other levies established by the tax legislation is a constitutional duty of every citizen (Article 51 of the Constitution), and controlling the failure to fulfill or improper fulfillment of this obligation is the responsibility of the state tax authorities. In exercising these powers, the tax authorities must ensure that their relations with taxpayers comply not only with the

requirements of the Tax Code, but also with other legislation, without prejudice to the rights and legitimate interests of each taxpayer.

However, the actions (inaction) of the state tax authorities and officials involved in this taxation relationship, which are inextricably linked with business entities, are not always legal and fair.

Therefore, the issue of unlawful actions (inaction) of the tax authorities in these relationships, the restoration of the violated rights of business entities on the basis of civil legal protection, compensation for damages, resolving the issue of civil liability is on the agenda.

In accordance with the requirements of Article 230 of the Tax Code, each entrepreneur whose rights are violated in tax relationships may file a complaint against non-normative acts of the tax authorities on the actions (inaction) of their officials, if such acts, actions (inaction), in his opinion, violate his rights.

The right of business entities to defend their rights and freedoms through the courts, the right to appeal against unlawful decisions of state bodies, citizens' self-government bodies, other organizations, unlawful actions (inaction) of their officials is guaranteed in Article 18 of the Law "On guarantees of freedom of entrepreneurial activity", and in accordance with the provisions of Article 12 of the Civil Code and Article 9 of the Law "On Protection of Private Property and Guarantees of the Rights of Owners", an act infringing property rights may be declared invalid by a court.

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It should be noted that according to the above-mentioned legislation with the procedure established in Article 12 of the Civil Code and in accordance with Article 11 of the Civil Code, business entities can apply to a court for considering invalid the non-normative acts of the tax authorities, which are made in accordance with the legislation in the sphere of taxation and concerning one or more physical persons or legal entities and abiding them to make some actions. But the current Tax Code rules do not allow taxpayers whose rights are violated due to the unlawful decisions of the tax authorities to apply to court with a claim to invalidate non-compliant acts.

In this case, it is worth noting that Article 230 of the Tax Code states that the right to file an administrative complaint against a non-normative act of the tax authority does not exclude the right to appeal to the court to invalidate such acts.

In our opinion, the existence of this right is not abstract or hidden from the tax legislation (used by other legislation), but is related to the tax relationship, so in the current Tax Code provision for the right to sue as one of the taxpayers' rights should be determined. Therefore, it is proposed to improve the right of taxpayers to apply to the court by declaring the acts of the tax authorities as invalid, finding such actions (inaction) of officials as unlawful, and to include them in Article 21 of the Tax Code.

Consideration of decisions of the tax authorities and other acts with legal consequences as invalid, unlike the acts of other state bodies, has its own special features, and these aspects must be taken into account when applying material and procedural norms to this category of disputes.

First of all, one of the important criteria for applying these methods of protection to the relationship between business entities and tax authorities is to study whether the act adopted by the tax authority that affects the rights and legitimate interests of the business entity was issued by the competent person of the tax authority.

This is because any act that deviates from the criterion of jurisdiction may be challenged, abolished, or invalidated by a court. Therefore, the tax authorities must ensure strict adherence to the criteria of "competence" based on the requirements of the law in the system of controlling bodies, as an agency that often collides with business entities, which has legal consequences.

If a dispute arises when a certain action of an official of the tax authority has caused a violation of rights, and this action (inaction) is not reflected in certain acts, such as a decision, order, the entrepreneur whose rights are violated will be able to exercise the right to apply to the court to declare the action (inaction) unlawful.

In addition, the person from the tax authority who adopted the act with legal effect must be an official of the tax authority, that is, must comply with the criteria of competence to issue this act.

These officials, i.e. managing officials, within their competence, are responsible for the implementation of decisions accepted and other legal consequences that are obligatory to state and economic administration bodies, local authorities, other organizations and their officials, as well as taxpayers, including legal entities and individuals.

One of the most important criteria for a decision or other act with legal consequences, taken by an authorized official of the tax authority of the state, is its compliance with the requirements of applicable law.

Any act by the tax authorities stipulating that the business entity has entered into a relationship on the basis of rights and legitimate interests shall not be considered an act with legal consequences. In particular, the acts arising from the controlling functions, i.e. tax control (inspection) (acts on temporary seizure of goods and acts, certificates, conclusions, protocols, etc.), verbal or written instructions, letters of officials issued by the tax authorities cannot be the subject of a dispute on the basis of the method.

On application of financial sanctions by tax authorities for non-fulfillment of tax obligations and violation of tax legislation in relation to business entities in tax legal relations; suspension of operations on bank accounts; when directing tax arrears on tax liabilities to the property of taxpayers, appropriate orders and decisions are taken by the tax authorities in the performance of their duties under the control powers of taxation and a number of others.

The fact that the acts of the tax authorities aimed at influencing the activities of certain business entities is invalid may be sufficient to justify the fact that the act is not in accordance with the law. In this case, this act may affect the activities of the business entity, but even if it does not cause legal consequences, even if the business entity itself has not appealed to the court, it can be declared invalid by the court through a lawsuit of the competent state authorities (justice offices, prosecutor's office).

The decision or other act of the tax authority with a legal effect or part thereof shall comply with the provisions of the current normative legal acts, shall not violate the established procedure for the adoption of such acts, shall not illegally abolish or restrict the rights of tax subjects, including business entities; not to change the grounds, conditions, sequence or procedure of tax relations established by law, not to allow prohibited actions, not to hinder taxpayers' entrepreneurial activity, unlawful interference and actions that infringe on the rights and legitimate interests of business entities.

Also, the decision of the tax authority, the act with legal consequences, should not violate the civil rights of taxpayers, in particular, business entities, that is, affect the exercise of their rights under civil law without obstacles and restrictions. In addition, these acts should not limit the legally protected interests of taxpayers, in particular, business entities, and assist in their implementation.

Timely (in due time) filing by a business entity to court about act by tax authority which does not comply with the law to consider it invalid is of particular importance in the protection of civil rights.

Terms (periods) are an important tool in stabilizing the relationship between the participants of civil law relations, the moderation of the interaction of its subjects, and most importantly, the timely protection of the rights and interests of the legal entity[2].

Terms are of special importance in resolving disputes on invalidation of acts of tax authorities that do not comply with the law, which arises from the public (administrative) law relations and finding the act of these tax authorities invalid represents one of the special

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features of the category of cases because of the different limitation period for them in the Civil Code and the Tax Code.

It is known that the provisions of paragraph 6 Article 2 of the Civil Code stipulate that civil law does not apply to property relations, including tax, financial and other administrative relations, based on the administrative subordination of one party to another, except as otherwise provided by law.

In civil law relations, the general limitation period is three years, and for certain types of claims, the law provides for special limitation period for certain types of claims, which are shorter or longer than the general limitation period (Article 151 of the Civil Code).

The limitation period is determined on the basis of a special law in tax legal relations, according to the provisions of Article 88 of the Tax Code the limitation period for tax liability is five years after the end of the tax period in which the tax liability was determined, the period for filing a tax liability is five years from the date of the event or action.

The special limitation period in the tax legislation is related to the accounting or refund of overpaid tax (Article 104), accounting or refund of over collected tax (Article 105), the period of liability for tax offenses (Article 217), as well as tax audit. In these relations, this five-year claim period is also introduced, and these special rules are the limitation period for the tax authorities, which is applied to ensure the tax liabilities of business entities.

Also, the tax legislation provides for the suspension, termination and reinstatement of the five-year limitation period on tax liability against these taxpayers in accordance with civil

legislation (paragraph 4, Article 88 of the Tax Code).

Although the method of protecting the rights and interests of business entities to declare as invalid the act of the tax authorities which does not comply with the law is purely a matter of civil law, the five-year period is checked for the tax liabilities of business entities according to the Tax Code .

According to Article 186 of the Code of Procedure of Administrative Cases, unless otherwise provided by this Code or other laws, the application (complaint) against the decision, action (inaction) of the administrative body, their officials can be sued within three months from the moment of notification of the interested person.

From the above, it can be concluded that another special feature of disputes over the invalidation of an act of the tax authorities is that the limitation period established by civil law does not apply to this category of disputes, except as otherwise provided by law.

An act declared invalid by a court shall be declared invalid from the date of the court's decision and an act declared invalid or a certain part of it shall not be executed and shall not have any legal consequences as it is invalid from the date of its adoption.

The court must recognize the act of the tax authority as invalid, and ensure its cancellation by the competent tax authority (official). In case of unlawful refusal of an authorized person of the tax authority to adopt a legal act or perform a certain action on this issue, the business entity may apply administratively, or in court to declare the action (inaction) of this official illegal, or according to Paragraph 3 of Article 8 of the Civil Code the court will be able

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to make a decision having the force of a legal fact in accordance with paragraph.

The fact that most of the disputes related to tax relations in the courts are related to the invalidation of the decision (or part of it) of the tax authority, which is a state body, means that the existing violations in this area mean that the tax authorities make errors in issuing the acts. The growing importance of civil legal instruments in the protection of entrepreneurs' rights and legitimate interests, the formation of new methods of civil legal protection means that legal literacy of business entities is also growing.

In conclusion, the invalidation of an act of the tax authorities, which violates the rights and legitimate interests of business entities that do not comply with the law, is distinguished by a number of special features. The decision (or any normative-legal act) of the official of the tax authority that contradicts or does not comply with the law and violates the rights and legitimate interests of the entrepreneur can be applied by entrepreneur (or other bodies which operate on behalf of them) to the court to make it invalid, and by this way the violated rights of business entities are restored, and then civil legal protection of their rights and legitimate interests is used to compensate for the damage and inflict moral damage.

## REFERENCES

1. Statistical reference of the decision of the Presidium on the results of the work of administrative courts in the administration of justice in 2019.
2. Ibratova F.B. Importance, essence and issues of periods in civil law. Abstract of the candidate of legal sciences.- T.: 2008, p.1