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## **LEGAL REGULATION OF NON-JUDICIAL METHODS OF CONSIDERATION AND RESOLUTION OF TAX DISPUTES: TAX OMBUDSMAN, TAX ARBITRATION AND MEDIATION IN TAX DISPUTES**

### **Abstract**

Probably, as in any state, in the sphere of legal regulation of relations between business and the state, the public interests of the state are always above the private interests of business. Any democratic and legal state, including Kazakhstan, is based on the principles of equality of all before the law and the court, as well as the rule of law. The tax legislation of Kazakhstan does not provide for a legal mechanism for the consideration of tax disputes arising between a taxpayer and an authorized state body by any non-judicial organizations. All tax disputes are subject to consideration on complaints of the taxpayer to the higher authorized tax authority and only after receiving the decision of the higher state body, this dispute can be referred to the court. This paper deals with problematic issues of tax law related to the attribution of all tax disputes to

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consideration exclusively by the higher authorized tax authority and later by the court, which always guard the interests of the state, which in practice causes distrust of businessmen and investors to the state. In this regard, this paper examines out-of-court methods of resolving tax disputes, international experience in resolving tax disputes by out-of-court organizations.

**Key words:** taxes, tax dispute, arbitration, tax ombudsman, taxpayer, mediation, tax authority, tax appeal commission.

**JEL Classification:** K34

## 1. Introduction

Since the collapse of the Soviet Union and until now, having reached almost 30 years of independence, the Republic of Kazakhstan has sought to attract investors and create favorable conditions for entrepreneurs. For these purposes, the Business Code of the Republic of Kazakhstan has been adopted for a long time, regulating legal relations between the state and entrepreneurs, issues of legal regulation of investments.

During the entire period of independence in the Republic of Kazakhstan, 4 tax codes were adopted and changed.

None of the tax codes regulated the issues of out-of-court methods of resolving tax disputes between a taxpayer, a tax agent and the state. At the same time, Kazakhstan adopted special laws on mediation, arbitration and even established the post of Ombudsman for the protection of the rights of entrepreneurs.

However, based on the state policy on the priority of public interests of the state over private interests of business, tax disputes in the Republic of Kazakhstan are considered and resolved exclusively by the court.

Therefore, in this paper, the emphasis is placed on the consideration of institutions of out-of-court settlement of tax disputes that meet the interests of legality.

## 2. Discussion and results

Issues of out-of-court settlement of tax disputes are still relevant for the law enforcement activities of the Republic of Kazakhstan. Many foreign and local legal scholars of the Republic of Kazakhstan have been analyzing the positive and negative aspects of the

possibility of transferring tax dispute resolution issues to non-judicial organizations for a long time.

The reasons for the use of out-of-court dispute resolution tools in the resolution of administrative disputes are recognized as:

- improvement of the procedural status of a citizen in relations with administrative bodies.
- economic feasibility.
- improving the capacity of state institutions to manage conflicts;
- dissatisfaction with the results of consideration of administrative disputes in court - judicial remedies often do not meet the expected results;
- contractualization of decision-making procedures by state bodies.

The above reasons deserve our attention to discuss the need to introduce and develop out-of-court procedures for resolving tax disputes [Extrajudicial settlement of legal disputes arising from administrative and other public law relations in the Republic of Kazakhstan: Status and Prospects of Development].

For taxpayers, the settlement of a tax dispute in a pre-trial procedure is primarily a quick and free way to eliminate violations of their rights without bringing the case to trial, and for tax authorities, optimization of control and supervisory work. Therefore, the out-of-court procedure for consideration and resolution of tax disputes will always meet the goals of improving the investment climate, strengthening tax law and order on the basis of impartiality and equality of participants in tax disputes [Pretrial settlement of tax disputes].

### **3. Pretrial procedure for consideration and resolution of tax disputes by tax authorities in the Republic of Kazakhstan**

The complaint of the taxpayer (tax agent) on the notification of the results of the audit is submitted to the authorized body within thirty working days from the day following the date of delivery of the notification to the taxpayer (tax agent) [Code of the Republic of Kazakhstan "On taxes and other mandatory payments to the budget", article 178].

The taxpayer and the tax agent have the right to appeal the actions (inaction) of tax officials to a higher tax authority or to a court [Code of the Republic of Kazakhstan "On taxes and other mandatory payments to the budget", article 187].

The Tax Code provides for the consideration and resolution of a tax dispute by a higher authorized tax authority and a court, whose bodies are maintained at the expense of the state budget. With such a dependence of the higher authorized tax authority and the court on the state budget, an objective and independent consideration of a tax dispute between a taxpayer and an official of the tax authority is not possible. When analyzing statistical data on the consideration of complaints of taxpayers against the actions of tax authorities to a higher tax authority for 2014-2020, it follows that only 8 percent of complaints were partially satisfied by a higher tax authority. When analyzing statistical data on the consideration of taxpayer complaints by the courts, for the same period 2014-2020, only 11 percent of complaints were satisfied by the courts. Such data statistics indicate the protection of the public interests of the State by State bodies and courts. Of course, this caused discontent among entrepreneurs and investors, who filed a large number of complaints against the President, the Government and the Parliament.

As a result, after the adoption of the new Tax Code of December 25, 2017, which entered into force on January 01, 2018, it provided for an out-of-court body for the consideration and resolution of tax disputes called the "Appeals Commission".

But this non-judicial body, the "Appeals Commission", is not authorized to consider all tax disputes, but only on complaints of the taxpayer on notification of the results of a tax audit, on notifications of elimination of violations.

The composition and regulations of the appeal commission are determined by the authorized body. At the end of consideration of the complaint, the authorized body makes a reasoned decision, taking into account the decision of the appeal commission [Code of the Republic of Kazakhstan "On taxes and other mandatory payments to the budget", article 182].

It follows from the above article of the Tax Code that the Appeals commission is an autonomous body under a higher tax authority and, accordingly, is not independent.

At the same time, the decision of the appeal commission is advisory in nature.

The legal status of the Appeals Commission is regulated by the Regulation on the Appeals Commission [Regulation on the Appeals Commission for consideration of complaints on notification of audit results and (or) notification of elimination of violations].

The composition of the appeal commission is also approved by the Ministry of Finance of the Republic of Kazakhstan [Order of the Minister of Finance of the Republic of Kazakhstan "On approval of the composition of the Appeal Commission for consideration of complaints on notification of audit results and (or) notification of elimination of violations»].

At the same time as the judicial practice the creation of such an appeals Committee also did not meet expectations of taxpayers and a large part of tax disputes with taxpayers allowed in court and it is connected with the requirements of the Tax code, because that court of law to establish the actual provision of services, execution of works contractor prior to the taxpayer at the appeal by a taxpayer of the notification on elimination of violations of tax laws issued following the results of in-house control.

Taking into account that the Parliament has adopted the Tax Code in such an edition that most of the legal facts and actions are established by the court, the further development of the out-of-court procedure for considering and resolving disputes is difficult.

#### **4. Consideration of tax disputes by tax arbitration**

In the Republic of Kazakhstan, Arbitration does not belong to the judicial system of the state.

Arbitrations in the Republic of Kazakhstan may be established in the form of permanent arbitration or arbitration for the resolution of a specific dispute. Permanent arbitrations may be formed by individuals and (or) legal entities in accordance with the legislation of the Republic of Kazakhstan. Arbitration in the Republic of Kazakhstan can be formed by the state bodies, state enterprises and natural monopolies and subjects with dominant position on the market of goods and services, legal entities, fifty and more percent of voting shares (participation shares in Charter capital) of which directly or indirectly belong to the state, their subsidiary and dependent organizations, as well as second-tier banks,

organizations conducting separate types of banking operations [Law of the Republic of Kazakhstan "On Arbitration", article 4].

In the Republic of Kazakhstan, arbitration is not allowed to resolve cases on disputes affecting the public interests of the State.

The arbitral award is annulled by the court if it is determined that the arbitral award contradicts the public policy of the Republic of Kazakhstan [Law of the Republic of Kazakhstan "On Arbitration", article 52].

Tax arbitration is a dispute with authorities representing the interests of the state. The specificity of such cases is the need to use all legal tools to achieve a positive result: judicial practice, tax legislation, letters and explanations of the competent authorities, internal documents of the organization.

In many countries of the world, arbitration courts belong to the judicial system.

But at the same time, in such countries there are also arbitration organizations that consider and resolve private disputes between individuals and legal entities based on commercial interests [Tax arbitration].

Such arbitration organizations fully operate on the basis of the model provisions of the International Commercial Arbitration Act (UNCITRAL) of 1985.

According to article 1031 of the German Code of Civil Procedure, disputes in arbitration are considered in Germany if there is a corresponding written arbitration agreement between the parties, which can be included in the main contract or concluded separately by exchanging appropriate letters, telefaxes, telegrams or using other types of telecommunications containing the fixed text of the agreement [German judicial and arbitration system].

It is interesting to note that according to German law, the required form of the arbitration agreement is met, and the agreement concluded if it is contained in a document which was transmitted by one party to the other of the dispute, or in a document that was transferred to any third party to both parties, provided, however, that this agreement did not lead to objections, which shall be declared by the respective party or parties within a reasonable time. This provision was included in article 1031 of the German Code of Civil Procedure, on the one hand, in order to expand the possibilities of arbitration

proceedings, while reducing the workload of state courts, and on the other hand, to prevent the frequent practice when the disputing party to whom the arbitration agreement was sent refuses to respond in any way to it, and leaves it without attention. It seems that this provision of article 1031 of the German Code of Civil Procedure would be very useful in the legislation of any country, especially in the CIS countries, where the legal culture leaves much to be desired [Zahvataev 2012: 65-66].

Of course, the basis for submitting a dispute to arbitration should be an arbitration agreement.

Decree of the President of the Republic of Kazakhstan from May 19, 2015 in the country established the Astana International Financial Center established in the capital and which was created by the Investment Court and International Arbitration Centre. This International Arbitration Center is an independent and cost-effective alternative to litigation, providing services of arbitration, mediation and other methods of alternative dispute resolution. In its activities, this arbitration does not comply with the local national legislation of the Republic of Kazakhstan and is guided by its arbitration rules, as well as the rules of arbitration and mediation, which are publicly available on the Internet resource of the International Arbitration Center [International Arbitration Center].

However, the International Arbitration Center is not authorized to consider a dispute arising out of and affecting the interests of the State. Such disputes are authorized to be considered and resolved only by State Courts established and maintained at the expense of the State budget. Therefore, the jurisdiction of this international arbitration center does not apply to tax disputes, one of the parties to which is the state.

So, in the Republic of Kazakhstan, first of all, it is prohibited for arbitrations to consider disputes affecting the public interests of the state as a condition of the legality of the arbitral award. Otherwise, such an award may be set aside by the court.

But of course, if there were no such restriction in the arbitration law itself, it seems that the tax authority would never sign an arbitration agreement with the taxpayer on consent to submit the dispute to arbitration, since this is contrary to the public interests of the state.

Therefore, the German experience is that an arbitration agreement should also be recognized as concluded if the tax authority has not received any objection to the

arbitration agreement sent by the taxpayer, to which the tax authority refuses to respond in any way or leaves it without attention.

### **5. Consideration of tax disputes by tax mediation**

Mediation is an opportunity, a unique opportunity to stop the cycle of conflict. Before mediation, the parties were free to talk and negotiate, but these negotiations turned into emotional, unproductive disputes. In case of unsuccessful mediation, a stranger will make all the decisions instead of the disputing parties. The mediation process involves a qualified, trained mediator who helps the parties in private during general meetings to find out the problematic issues, needs and interests of each other.

In the Republic of Kazakhstan, mediation as an out-of-court alternative method of dispute settlement has recently appeared.

Issues of the procedure for conducting mediation in the Republic of Kazakhstan are regulated by the Law of the Republic of Kazakhstan "On Mediation".

The scope of application of mediation are the disputes (conflicts) arising from civil, labour, family and other legal relations with participation physical and (or) legal entities, and also considered during criminal proceedings in cases of indictable offenses, crimes of medium gravity and serious crimes in cases stipulated by the second part of article 68 of the Criminal code of the Republic of Kazakhstan, unless otherwise provided by the laws of the Republic of Kazakhstan and the relations arising out of enforcement proceedings. The mediation procedure does not apply to disputes (conflicts) arising from civil, labor, family and other legal relations involving individuals and (or) legal entities, when one of the parties is a state body [Law of the Republic of Kazakhstan "On mediation", article 1].

As follows from the Law on Mediation, this out-of-court alternative dispute resolution procedure is not applicable to tax disputes, since such a dispute arises with a state body as a party to the conflict.

But at the same time, in recent years, participants in disputed legal relations have become increasingly interested in independently resolving emerging contradictions using alternative methods of dispute resolution. Alternative methods of resolving legal conflicts are understood as a set of certain techniques and methods of out-of-court settlement of



disputes, as a result of their application, the parties conclude a mutually acceptable agreement [Voskobitova, Luk'janova, Mihajlova 2006: 360].

In the framework of the extrajudicial remedy have the place of state remedies in court, such as filing administrative complaints, complaints to the Prosecutor's office, appeal to the Commissioner for human rights in the Republic of Kazakhstan. In addition, a special place is occupied by alternative methods of dispute resolution, which in the legal literature include negotiations, mediation, arbitration, mini-court, independent expert examination to establish the actual circumstances of the case, the ombudsman, the private judicial system [Voskobitova, Luk'janova, Mihajlova 2006: 360-361].

It seems that one of the possible ways to improve the system of consideration of administrative and other public law disputes is the introduction of mediation technology and procedures in the activities of authorized bodies and officials. At the same time, administrative disputes that do not require the interpretation of legal norms, the application of sanctions for abuse of authority, as well as disputes about individual administrative acts can be settled more successfully through mediation. It should be noted that the issue of the possibility of conducting conciliation procedures and concluding a settlement agreement on disputes arising from administrative and public relations is currently debatable. For example, in Russian procedural science there are two opposite positions. Supporters of one position reject the possibility of using conciliatory procedures in administrative cases. Proponents of the use of conciliation procedures are based on the positive experience of Germany and the Netherlands. In order to understand the points of contact between mediation and successful resolution of administrative disputes, we will turn to foreign practice [Extrajudicial settlement of legal disputes arising from administrative and other public law relations in the Republic of Kazakhstan: Status and Prospects of Development].

In Russia, Federal Law No. 193-FZ of July 27, 2010 "On Alternative Dispute Settlement Procedure with the participation of a Mediator (Mediation procedure)" does not prohibit mediation in public law disputes. At the same time, in accordance with part 3 of Article 1 of the said Law, mediation may be used to settle such disputes only in cases specified in federal laws. Although the legislation of the Russian Federation does not yet provide for alternative forms of dispute resolution in tax and administrative cases, there

are currently constructive discussions about the possibility of using mediation in the field of administrative law, in particular in the resolution of tax disputes [Kalashnikova 2009: 46-55.7; Kalashnikova 2011: 304].

For example, based on the experience of the Netherlands and Germany, mediation is widely used in these countries in the consideration and resolution of administrative disputes.

In Germany, out-of-court mediation can be carried out both from the stage of consideration of a complaint against an administrative act, and at the stage of revision of an administrative act.

In the Netherlands, as in Germany, mediation can be applied in any phase of the conflict, including when there were no requirements yet, but only the verification procedure by the administrative authorities has just begun [Mediation in administrative disputes].

The experience of the above-mentioned European countries shows the possibility of conducting an out-of-court procedure for resolving administrative disputes, including tax disputes between a taxpayer and a tax authority.

Therefore, the fear of the Republic of Kazakhstan about the impossibility of conducting an out-of-court alternative settlement procedure of the tax authority seems unjustified, and therefore changes are required in the current version of the law on mediation, if the state is interested in further development of the institution of mediation in the Republic of Kazakhstan.

## **6. Consideration of tax disputes by tax ombudsman**

The Ombudsman (from the Old Norse "umboð" – "authority", "commission") is a civil or in some states an official who is entrusted with the functions of monitoring the observance of justice and the interests of certain citizens in the activities of executive authorities and officials. Official job titles vary from country to country. The position of Parliamentary Ombudsman was first established by the Riksdag of Sweden in 1809, according to the constitution adopted that year [Ombudsmen].

In accordance with article 26-1 of the law of the Republic of Kazakhstan "On National chamber of entrepreneurs of Kazakhstan", the legal status of the Commissioner for the

protection of the rights of entrepreneurs of Kazakhstan is determined by the Business code. Its activities are provided by the National Chamber [History of Institute].

The Business Code of the Republic of Kazakhstan defines the legal status of only the business Ombudsman, who is the Commissioner for the rights of entrepreneurs.

Article 85 of the Business Code defines the competence and powers of the Commissioner for the Rights of Entrepreneurs [Business code of the Republic of Kazakhstan, article 85].

Among the powers of the Commissioner for human entrepreneurs are informing the President of the Republic of Kazakhstan and the Government of the Republic of Kazakhstan of violations of the legislation of the Republic of Kazakhstan regulating the activities of business entities by state bodies and their officials, as well as control in the field of support and protection of private business entities [Business code of the Republic of Kazakhstan, article 85].

The institution of the business Ombudsman is quite developed in many modern countries, as it promotes the protection and restoration of violated rights of entrepreneurs.

There are other ombudsmen in the Republic of Kazakhstan. Among them are the Commissioner for Human Rights; the Commissioner for Children's Rights; the Commissioner for resolving disputes arising from bank loan agreements (the banking Ombudsman); the Commissioner for reviewing and resolving Insurance disputes (the Insurance Ombudsman). But these institutions for the protection of the rights and legitimate interests of certain groups of people, respectively, have their own goals and purposes of activity. Therefore, it seems wrong to assign them the competence to consider and resolve tax disputes. While in the investment and entrepreneurial environment, tax disputes arising between business entities and investors on the one hand and tax authorities on the other hand are very large and their number is growing. And government bodies on taxes and the courts, which are maintained at the expense of state budget funds are not interested in an objective and legal examination of tax disputes, which is clearly a cause for growing mistrust of entrepreneurs and investors to our state and if this state of Affairs does not change, the Republic of Kazakhstan bears the risk not only to loss of confidence of local and foreign entrepreneurs, but investment foreign countries.

If we turn to the international experience of the authorized ombudsman for tax disputes, we can cite some European countries, USA, Canada and some post-Soviet Union countries as an example.

The foreign experience of the development of the business ombudsman institution in Canada and Georgia, where this business ombudsman performs the function of the tax ombudsman, is interesting. The powers of the Business Ombudsman of Georgia include the protection of the "protection of the rights and legitimate interests of taxpayers", the supervision of the interaction of state bodies and businesses against abuses of state authorities, the consideration of complaints from businesses regarding illegal actions of state bodies, participation in the work of the Tax Dispute Council, etc.» [Palagina 2013: 107; Yakimova 2020: 251].

In Canada, the Governor-General appoints a special adviser to the Minister for Public Revenue [The Public Service Employment Act].

This adviser performs the function of the tax ombudsman, who is authorized to consider complaints of taxpayers about illegal actions of the tax authorities in an out-of-court manner.

For example, in Ukraine, the Council of the Business Ombudsman was established, which is an independent advisory body of the Government of Ukraine, created directly to promote transparency of the activities of state authorities and local self-government, as well as business entities that are in the sphere of their management, to prevent corruption or other violations of the rights and legitimate interests of business. In tax disputes, the Council of the Business Ombudsman has the right to:

- consider complaints received from business entities about decisions, actions or omissions of tax authorities and their officials;
- participate in the consideration of taxpayer complaints by the tax authorities.

In 2016, changes were made to the Procedure for registration and submission of Complaints by taxpayers and their consideration by regulatory authorities, approved by Order of the Ministry of Finance of Ukraine No. 916 of 21.10.2015, registered with the Ministry of Justice of Ukraine on December 23, 2015 under No. 1617/28062. According to this procedure, a mechanism was introduced for the tax authorities to consider taxpayer

complaints in an open or closed meeting with the involvement of an authorized representative of the Business Ombudsman Council [Participation of the Business Ombudsman in tax disputes].

In many European countries, in the United States, there have long been specially authorized bodies and mechanisms for resolving conflicts between taxpayers and tax authorities out of court. For example, German law establishes a mandatory procedure for pre-trial settlement of a tax dispute, and compliance with this procedure is a prerequisite for accepting a case for consideration in court. At the same time, special tax courts (essentially administrative courts) have been established in Germany, which are responsible for all disputes arising in the field of taxation. In contrast to the tax legislation of Russia, in which the entire burden of resolving contradictions between tax authorities and taxpayers falls on the courts, the German legislation is aimed at the peaceful resolution of tax conflicts, the case comes to court only as a last resort. In France, despite the complexity of tax legislation (the French Tax Code includes more than 4,000 articles, together with additions and explanations contains more than one and a half thousand pages), there are many ways for tax authorities to recover tax payments (for example, working together with the police), as well as a large number of opportunities for taxpayers to challenge the acts of tax authorities. In the United States of America, there is an interesting experience with the implementation of the "Tax Amnesty" program». The essence of the campaign, which lasts 2.5 months, is that the state tax offices allow taxpayers who at one time included an incomplete amount of taxes in the report or declaration or did not consider it necessary to fill them out at all, to provide such documents and pay the taxes due after the deadline for their payment. At the same time, there are no penalties for late payment of tax, no interest on the tax amount, and no questions are asked to the guilty person about the reasons for the delay. Those who take advantage of the mercy of the state authorities, it is enough to fill out a simple form and attach a check or a payment guarantee for the required amount, send it to the tax office. When one of these campaigns spent \$ 10 million from the budget on advertising in the press, mail, mail processing and placement of sent checks, the real amount of taxes received was \$ 125 million. If someone still decides to continue to deceive the state, the monthly penalty charge after the completion of the "Tax Amnesty" will be at least 5 % and a maximum of 25 % of the debt amount, while the violator will still be found sooner or

later. The tax authorities are actively engaged in educational and explanatory work. The benefits of paying taxes on time are explained to residents of the states in an advertising campaign by mail and on television. The statement of the head of the Ministry of Taxes and Finance, Michael Arbek, said: "We are trying to convince the violator to pay the treasury. Moreover, the confiscation of property or appeal to the court - not our favorite means", allows us to conclude that it is the tax authorities that are the main, active work with taxpayers to collect the missing amounts of taxes, achieve in most cases the transfer of tax payments to the budget, without using judicial procedures [Pre-trial settlement as the main element of the mechanism for resolving tax disputes].

Despite the existence of more ombudsman institutions in various countries, there are only a few examples of institutions with a clear mandate to protect the rights and interests of business from State institutions. In some countries, the Ombudsman institutions have a mandate to deal with complaints from both individuals and businesses. The legal, administrative provisions, and the status of the business ombudsman institution are based on specific models specific to a particular country, which is evidence of the lack of a universal model of such institutions. While the Office of the US National Ombudsman or the European Ombudsman works to protect the interests of businesses in conflict situations with almost any government organization, the mandate of the ombudsman institution in the UK or France is quite limited by the government organizations to which it is attached as an ombudsman. A typical example of this is the UK Tax Authorities (Tax and Customs) or the French Ministry of Economy and Finance. The Business Ombudsman in Georgia also mainly deals with issues in the field of taxation, despite the fact that this body is not accountable to the Tax Service, but reports to the Parliament [Joint project of the European Union and the Council of Europe «Protection of the rights of entrepreneurs in the Russian Federation from corrupt practices»].

Of course, it is also necessary to take into account the international experience of the neighboring countries, among which Georgia is particularly distinguished in this direction. After the adoption of the Tax Code in Georgia in 2011, the Parliament of Georgia in this Code provided for the post of Business Ombudsman, the creation of which clearly indicates the fundamental reform of the tax legislation, which was initiated since 2004. The tax reform in Georgia was purposefully aimed at developing and improving the business

climate in order to attract potential investors, a reform that consists not only in reducing and simplifying tax rates, reducing the tax burden for paying taxes, introducing electronic tax returns and payments, but also in maintaining the position of "Business Ombudsman", which, according to its purpose, mostly performs the functions of the position of "Tax Ombudsman".

Both terms are widely used. This is more widely discussed on the website of this Ombudsman. Thus, according to article 42 of the Tax Code of Georgia, the Ombudsman is obliged to exercise supervision and control over the protection of the rights and legitimate interests of taxpayers in Georgia, detect violations of the law, and take timely measures to restore the violated rights of taxpayers". The resolution of the Government of Georgia, adopted in February 2011, adopted on the basis of and pursuant to the adopted new Tax Code of Georgia, specifies the functional duties of the Ombudsman. Therefore, the establishment of the Tax Ombudsman institution by the Government of Georgia clearly demonstrates the Government's ambitions for the development of entrepreneurship in Georgia, as well as that such a legal instrument in the current realities of relations between the state and business is necessary to create the most favorable conditions in the world for foreign investors and entrepreneurship.

In the Republic of Kazakhstan, the position of the Commissioner for the protection of the rights of entrepreneurs, exists recently, is at the stage of development, but this institution does not have the right to consider and resolve tax disputes.

However, it is also relevant to introduce the institution of a tax ombudsman (commissioner for taxpayers' rights), whose tasks and goals will be aimed not only at protecting the rights and legitimate interests of entrepreneurs in the field of tax law, but also all taxpayers.

The Tax Ombudsman should be appointed and dismissed by the Head of State and be independent of any State bodies.

The legal status of the tax Ombudsman (Commissioner for Taxpayers' Rights) must be determined by law, including the Tax Code.

At the same time, in order to relieve the courts of tax disputes, it seems appropriate to provide for the binding force of the decision of the tax Ombudsman, which is adopted by him on the results of consideration and resolution of a tax dispute.

Of course, it is impossible to deprive or otherwise restrict the participants in a tax dispute of the right to judicial protection, so it is proposed to provide for the right to appeal the decision of the tax ombudsman directly to the Supreme Court, which will help reduce the instances of passing administrative procedures and reduce the time for resolving tax disputes.

## **7. Conclusion**

Of course, there can be a lot of discussion about the permissibility or, conversely, the inadmissibility of introducing out-of-court methods for considering and resolving tax disputes, in which the state body (tax authority) is always a participant.

The legal position of opponents of non-judicial methods of resolving tax disputes will always be based on the argument about possible violation of public state interests, and the supporters of non-judicial methods of resolving tax disputes will always be based on the argument about transparency of consideration of tax disputes, impartiality, equality of rights of participants in tax disputes and most importantly, of course, increasing trust on the part of entrepreneurs and investors, which is key and dominant for the development of both the rule of law and economic growth.

In general, the analysis of all the above-mentioned three institutions of out-of-court settlement of tax disputes shows their relevance to the present time in the law enforcement activities of a developing state, and in some cases, developed states.

Seems to be the most effective and efficient non-judicial method of resolving a tax dispute, tax arbitration, as its effectiveness is tested by some European States and of course the more powerful will be the Institute of tax Ombudsman in ensuring its activities a special body with his staff.

As a summary, it can be concluded that from a practical point of view, there is a need at the legislative level to provide for the removal of all legal restrictions on the consideration and resolution of tax disputes by arbitration, to provide for the possibility of mediation in tax disputes and, of course, to establish in the Republic of Kazakhstan the office of the tax Ombudsman headed by the Commissioner for the protection of taxpayers ' rights, whose decisions will be binding.



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