

Case Study: Successfully Challenging a Tax Audit of a Foreign Solar Energy Investor

KP Disputes successfully represented a major foreign investor in a high-stakes tax dispute related to a large-scale solar energy project in Kazakhstan.

The Company, a foreign manufacturer of solar energy technologies (“**Company**”), carried out a major investment project in Kazakhstan to construct a solar power plant (“**Project**”). The project was implemented under an investment contract with the Investment Committee of the Ministry of Foreign Affairs of Kazakhstan. The total volume of investments contributed by the Company exceeded KZT 10 billion.

For the purpose of constructing the Project, the Company engaged a contractor, a Kazakhstan limited liability partnership (LLP) (“**Contractor**”).

Despite the execution of the investment contract and the commissioning of the Project, the Department of State Revenues (“**DSR**”) conducted an unscheduled thematic tax audit (“**Audit**”) regarding the calculation and payment of corporate income tax (“**CIT**”) and value-added tax (“**VAT**”) for the years 2020–2021. As a result of the Audit, the Company was assessed additional CIT, VAT, and corresponding penalties in a total amount exceeding KZT 110 million. The basis for the additional assessments was the Company’s settlements with the Contractor, which, in the DSR’s opinion, were not substantiated and were of a questionable nature.

The Company filed a pre-litigation complaint against: (1) the notice of audit results; and (2) the order for the appointment of the Audit, both issued by the DSR. The pre-litigation (administrative) appeal was unsuccessful. The Company then filed an administrative claim with the Astana Specialized Interdistrict Administrative Court under investment jurisdiction.

1. POSITIONS OF THE TAX AUTHORITY AND THE COMPANY

Below is a summary of the arguments raised by both the tax authority and the Company during the dispute.

Position of the Tax Authority:

The settlements between the Company and the Contractor are considered fictitious based on the following circumstances:

- (1) Insufficiency of the Contractor’s material and labor resources

Based on the tax reports (individual income tax and social tax declarations), it was established that the number of the Contractor’s employees and the volume of its fixed assets did not enable it to perform the works stipulated under the subcontract agreement. According to the tax authority, this indicates the impossibility of actual fulfillment of contractual obligations.

- (2) Similar deficiencies identified with the Contractor’s counterparties

According to the tax authority, the subcontracting organizations cooperating with the Contractor also lacked the necessary material and labor resources to fulfill their obligations, which, according to the authority, casts doubt on the entire chain of transactions.

- (3) Absence of the Contractor at the registered address

The Contractor has been absent from the address indicated in the registration records. According to the tax authority, eight tax inspections were conducted in respect of the Contractor, each confirming its absence at the registered address.

Position of the Company:

- (1) The audit was appointed without lawful grounds

The Audit was appointed in violation of Article 145.3 of the Tax Code and Article 144.5 of the Entrepreneur Code, without the grounds provided by law. The DSR was required to substantiate its conclusions regarding the existence of a “tax evasion scheme” through: court rulings declaring transactions between the Company and the Contractor invalid; court rulings annulling the legal registration of the Contractor; and court rulings issued in a criminal case confirming the existence of such a scheme.

The tax order did not contain a clear indication of the basis for the audit, which violates Article 79.2 of the Code of the Republic of Kazakhstan “Administrative procedural and process-related code of the Republic of Kazakhstan” (“**APPC**”). During the administrative hearing procedure, the tax authority failed to provide the Company with the subject of the audit, the audited period, and the violations subject to elimination by the Company.

The above is consistent with paragraph 30 of Normative Ruling No. 9 of the Supreme Court of Kazakhstan dated 22 December 2022, prohibiting the appointment of an unscheduled audit in the absence of valid grounds, and is confirmed by the Resolution of the Supreme Court of the Republic of Kazakhstan in case No. 6001-23-00-6ap/996 dated 21 September 2023.

- (2) Violation of methodological guidelines on conducting tax audits

The DSR failed to specify the identified violations of tax legislation in the notification, in violation of paragraph 28.1 of the Methodological Recommendations.

- (3) Violation of the principles of the Tax Code, Entrepreneur Code, and APPC

In violation of Article 14 of the Entrepreneur Code and Article 15 of the APPC, the tax authority disregarded the evidence submitted by the Company (contract, acceptance certificates, as-built documentation, and the commissioning certificate) and failed to conduct either counter-audits or documentary refutation of the Company's arguments.

Articles 2, 6, and 8 of the Tax Code provide that a taxpayer cannot be held liable for a tax obligation performed by a third party, which is confirmed by the Resolution of the Supreme Court of the Republic of Kazakhstan No. 6001-22-00-6ap/21 dated 8 April 2022.

- (4) The DSR exceeded its authority by determining the validity of transactions, as transactions may be declared invalid solely by a court.

The DSR's arguments regarding the invalidity of the transaction must be supported by a civil court decision.

This approach is confirmed by the Resolution of the Judicial Panel for Administrative Cases of the Supreme Court of the Republic of Kazakhstan No. 6001-22-00-6ap/278 dated 5 May 2022.

- (5) All works under the subcontract agreement were actually performed

The Company submitted a complete set of documents confirming the actual performance of the construction and installation works under the agreement with the Contractor, including: the contract and supplementary agreements, acceptance certificates, as-built documentation, and the commissioning certificate for the Facility.

2. OUTCOME OF THE COURT PROCEEDINGS

The courts of first and appellate instance ruled in favor of the Company: the order appointing the Audit and the notification of its results were declared unlawful and annulled, and the additional charges for VAT and CIT were canceled.

The DSR's cassation complaint was withdrawn one day before the scheduled hearing at the Supreme Court. As a result, the decisions of the first-instance and appellate court entered into legal force in May 2025.

The first-instance and appellate courts, aligning with the Company's position, noted that under Article 116.2 and Article 10 of the APPC, the application by the tax authority of tax control measures in the

form of an unscheduled audit was disproportionate, given the availability of other, less onerous procedures (such as desk audits).

Outcome: The courts ruled in favor of the investor, declaring the Audit unlawful and cancelling tax assessments exceeding KZT 110 million. The decision entered into force in May 2025.

This case reinforces the importance of due process in tax audit procedures and confirms that investment protection mechanisms remain enforceable through the courts.

KP Disputes partners Aibek Kambaliyev and Ravil Kassilgov, with support from paralegal Bekzada Issabekov, represented the interests of the investor in court. The KP Disputes' team continues to support clients in complex tax and customs matters across Kazakhstan.