

# CERTAIN ASPECTS OF TAX ACCOUNTING IN RECOGNISING THE VOIDANCE OF A CONTRACT: GROUNDS FOR JURISDICTIONAL CONFLICTS

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**Abstract.** This article examines the *subject of tax accounting* within the context of contract invalidation, with a particular focus on the jurisdictional conflicts that arise between tax authorities and private entities. The study employs a legal analysis of court rulings and legislative provisions to investigate the public-law nature of these disputes. The *purpose of the study* is to clarify the role of tax authorities in challenging contracts that may be concluded without the intention of their execution, have no actual content or are aimed at obtaining illegal tax benefits, and to highlight the jurisdictional issues related to such cases. The *methodology* comprises a comprehensive examination of legal precedents and court rulings, thereby facilitating a thorough evaluation of the manner in which tax authorities' actions in these disputes are connected to public-law principles. The article presents a critique of the judicial misclassification of such disputes as private law matters. It asserts that these disputes should be understood within the framework of public law, given the involvement of state interests. The *conclusion* emphasises the necessity for a more sophisticated methodology to be employed in determining the appropriate jurisdiction in these cases. It advocates for the implementation of a legal framework that is sensitive to the public-law aspects of tax accounting disputes. The study concludes that this approach would ensure more effective protection of public interests and enhance the administration of justice in tax-related legal disputes.

**Keywords:** tax accounting, public law dispute, controlling authority, voidable contract, administrative jurisdiction.

**JEL Classification:** K10, K34, K40

## Introduction

The intricacies of tax accounting extend beyond the mere documentation and recording of transactions. Instead, it encompasses a detailed examination of contracts and transactions, which establish specific legal rights and obligations. In the context of tax law, a significant area of concern is the validity of contracts, particularly when they are challenged by the relevant authorities on various grounds, such as a lack of intent to perform, an absence of factual content, or the pursuit of illegal tax benefits. Such disputes are not merely private matters between the parties involved; they frequently have significant implications under public law, particularly when tax authorities intervene to safeguard the interests of the state.

The nature of these disputes demonstrates the convergence of private contractual relationships and public-law oversight. Tax authorities, in their capacity as regulators, may seek to invalidate contracts that contravene state and societal interests. This public-law dimension is of critical importance, as it highlights the role of the state in ensuring that tax obligations are met, preventing the receipt of unlawful benefits, and upholding the integrity of the tax system. It is of the utmost importance to gain a comprehensive understanding of the legal framework and jurisdictional criteria pertaining to such disputes. This is essential for the effective balancing of the protection of public interests and the respect of private contractual rights.

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## 1. Research Methodology

### 1.1. Scientific, Theoretical, and Legislative Foundations of Tax Dispute Jurisdiction and Contract Invalidity

The study of tax dispute jurisdiction and the grounds for contract invalidity in tax accounting is a complex and multifaceted topic that has attracted considerable attention in the field of legal scholarship. This field of study has been the subject of considerable investigation by scholars specialising in the intersection of tax law, administrative law and public interest, particularly within the context of Ukraine. The field of study has been significantly influenced by the contributions of Ukrainian legal scholars, including I. Barabash, O. Varguliak, V. Petrushevych, A. Puchtetska, O. Voityuk, V. Havryliuk, I. Zakharova, M. Kovalenko, and O. Sydorenko. These scholars have conducted extensive research on the intricacies of tax control, the public-law aspects of tax disputes, and the circumstances under which contracts may be deemed invalid. Furthermore, scholars from other countries, such as K. Vogel, R. Avi-Yonah and J. Freedman, have offered valuable insights into comparative perspectives on tax law and administrative procedures. These insights have contributed to a deeper understanding of these issues in a global context.

The legislative landscape pertaining to the jurisdiction of tax disputes and the invalidity of contracts is firmly rooted in a multitude of legal norms and regulations. However, the application of these laws in practice often demonstrates deficiencies in the enforcement mechanisms, particularly with regard to the differentiation between public and private legal relations in tax disputes. The need for precise legal definitions and clear criteria for jurisdiction is evident, as is the need for further research to address the evolving complexities of fiscal control and contract validity in the context of public interest. This area of research remains crucial to ensure that the legal system effectively protects the interests of the state while balancing the rights of private entities.

### 1.2. Methodological Approach to the Study of Tax Dispute Jurisdiction and Invalidity of Contracts

This article employs a multifaceted methodological approach, drawing upon a range of scientific methods, to provide a comprehensive analysis of the jurisdictional issues and the grounds for contract invalidity in tax disputes. The dialectical method is employed to explore the theoretical and normative foundations of public-law relations in tax disputes, with a particular focus on the legal responsibilities and powers of controlling authorities. The comparative

legal method is used to examine how different legal systems address the invalidity of contracts and the jurisdictional boundaries of tax disputes, thereby providing a broader context for the Ukrainian experience.

In addition, the documentary analysis method plays an important role in verifying the legal reasoning of the tax authorities and courts, especially in cases of invalidation of contracts for purposes contrary to the state and public interest. The method of analysis is used to summarise the results obtained and formulate conclusions on the appropriate jurisdiction to resolve such disputes and the legal criteria for invalidating contracts. The integration of these methodologies provides a thorough study of the issues under consideration and contributes to a deeper understanding of the legal and practical problems in this area.

## 2. Research Results

Tax accounting involves not only recording and documenting individual transactions of the taxpayer, but also analysing documents that give rise to certain rights and obligations. One of the controversial reasons for conducting accounting procedures is to recognise the invalidity of a contract for the provision of certain types of services by the taxpayer and to apply the reasons for the invalidity of the transaction to the parties involved. The tax authorities usually justify their position on the following grounds:

- a) The contract was concluded without the intention to perform it;
- b) the documents created on its basis have no actual content (no business transactions took place to fulfil the terms of the agreement);
- c) the contract was entered into with the aim of obtaining an illegal tax benefit;
- d) the sole purpose of such documents is to understate tax liabilities.

In order to understand both the problematic reasons for the emergence of such relations and the circumstances of the dispute, it is first necessary to understand the nature of the relations that characterise this phenomenon. Such a dispute is characterised by a public law orientation, although at first sight it concerns the determination of the interests of the individuals who have entered into the contract. Public-law relations embody power and subordination, which distinguishes them from private-law relations, which are characterised by the presence of property or non-property personal interests of the participants. It should be noted that in such cases the tax authorities do not initiate proceedings in their own interest, but as an exercise of the powers of the controlling authority. The filing of a lawsuit in such cases should be seen as the protection of the public interest in the field of taxation by a subject directly

vested with the relevant powers. In particular, this type of dispute reflects the exercise of the tax authority's competence in tax control, which makes it public law in nature. "The subject of proof in cases with such a subject matter of the lawsuit is to verify the controlling authority's arguments that the transaction was carried out with a purpose that is knowingly contrary to the interests of the state and society" (The Order of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024). The resolution of such a dispute does not involve determining whether or not civil rights have been violated. In fulfilling its duty to monitor compliance with tax legislation, the control authority protects the public interest, not its own.

It is necessary to agree with the separate opinion of the judges of the Grand Chamber of the Supreme Court in case No. 580/4531/23, which evaluates the correlation between public and private legal relations. The content of public legal relations includes the existence of relations of power and subordination, which distinguishes them from private legal relations, where the regulation is based on the legal equality of the parties, free will and independence of property. Private legal relations are characterised by the existence of a property or non-property personal interest of the participant. If one of the parties to the disputed legal relations does not exercise administrative authority over the other party to the dispute, such a dispute does not have the characteristics of an administrative case as defined by the Code of Administrative Procedure of Ukraine (CAP) (The Order of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024).

The controlling authority exercises tax control. In exercising its functions, it may file a claim with a court to invalidate a contract (The Civil Code of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2003, Articles 203, 215, 228). "If the requirement for the compliance of the transaction with the interests of the state and society, its moral principles, is not met, such a transaction may be declared invalid. If a transaction declared invalid by a court was carried out with a purpose knowingly contrary to the interests of the state and society, and if both parties acted with intent – if the transaction was executed by both parties – everything received by them under the agreement shall be collected to the state revenue by court order, and if the transaction was executed by one party, everything received by the other party shall be collected to the state revenue and everything due – from it to the first party to compensate for what was received" (Separate opinion of the judges of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024).

In this context, the public nature of the proceedings is enhanced by the special status of the subject,

who is vested with the authority to assess the grounds and nature of the implementation of its powers. Such a dispute characterises the tax authorities' realisation of their competence in tax control, thereby rendering it a matter of public law. The subject of proof in this situation is not concerned with investigating the conditions and nature of the contract; rather, it is focused on verifying the controlling authority's arguments that the transaction was carried out with the intention of causing detriment to the interests of the state and society. The issue at hand is not the presence or absence of violated civil rights; rather, it is the protection of public interests.

The controlling authorities are entitled to file lawsuits against enterprises, institutions, organisations, and individuals with the objective of declaring disputed transactions invalid and implementing measures related to such invalidity. This may include the collection of funds received under void contracts into the state revenue. In acting not in their own interests but in fulfilment of a tax control function, such an authority is required to prove in court the circumstances it refers to as evidence of the transaction's non-compliance with state interests. Such a dispute does not constitute a violation of the controlling authority's rights. It thus follows that there are no grounds for insisting that the controlling authority prove a violation of its own interests.

The involvement of the controlling authority in private legal matters is not driven by the pursuit of its own interests, but rather by the fulfilment of an authoritative directive function. Furthermore, it is important to note that such intervention is not directly related to any adverse consequences for the parties to the contract. This entails initiating legal proceedings to render a contract that contravenes the interests of the state and society invalid. Consequently, the process of adopting an objective and impartial court order is initiated. Therefore, it is not possible to equate the rights of the supervisory authority (The Tax Code of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2011, Article 20), methods of tax control (Tax Code of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2011, Article 62) with the consequences.

The issue of establishing criteria for differentiating subject-matter jurisdiction is contingent upon a precise delineation of the subject composition of legal relations, the subject matter of the dispute, and the nature of the disputed material legal relations. The criteria for economic jurisdiction are defined by economic legislation (The Commercial Code of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 1992, Articles 1, 2, 20) and court orders (The Order of the Grand Chamber of the Supreme Court in case No. 911/1834/18, 2019). In general, a dispute is regarded as falling within the purview

of private law and thus within the jurisdiction of the commercial court if it meets the following conditions. Firstly, it is necessary for a business entity to be involved in the dispute. Secondly, the relations between the parties must be subject to the provisions of civil and commercial legislation. Thirdly, there is no legislative norm that explicitly provides for the resolution of such a dispute by a court of another jurisdiction. In these cases, the public authority disputes a transaction entered into by private law entities (The Civil Code of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2003), whose relations are based on legal equality (The Order of the Grand Chamber of the Supreme Court in case No. 826/10249/18, 2020). The primary claim is aimed at the termination of contractual legal relations between private law subjects, which cannot be decisive for the referral of the dispute to the jurisdiction of the administrative courts.

The Grand Chamber of the Supreme Court, substantiating the grounds for consideration of such disputes in the commercial jurisdiction regime, emphasises that such a dispute "... does not fall under the rules of administrative litigation since the disputed contract was concluded between equal participants in economic legal relations and is not administrative-legal in nature, and the primary claims are aimed at terminating the obligations under the contract of private law subjects (defendants), which corresponds to the jurisdiction of commercial courts." (The Order of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024, para. 39) It is difficult to agree with such a conclusion. It is true that this is a contract between two equal parties, but the court order does not examine the conditions for concluding such a contract and its content, but rather the public law consequences of concluding such a contract. The conditions of such a contract establish relations between the contracting party and the state with regard to the fulfilment of the tax obligation resulting from the conclusion of this contract. Thus, this situation directly concerns the infringement of the state's interests as a recipient of funds intended to be paid into a centralised public fund, which is hindered by the conclusion of this contract.

The criteria for administrative jurisdiction stem from the public law nature of the dispute and its focus on protecting the rights and interests of individuals and legal entities in public law relations from violations by public authorities (The Code of Administrative Procedure of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2005). It is clear that a public law dispute, having a special subject composition, does not require the participation of an entity with authority to qualify it as a public law dispute. The determination of subject matter jurisdiction involves clarifying the essence of the right

or interest sought to be protected, the claims asserted, and the nature of the disputed legal relationship in their entirety. The Grand Chamber of the Supreme Court emphasised that a dispute is considered public law if: a) one of the parties performs public administrative functions, i.e., is authorised to control the behaviour of another entity; b) the latter is obliged to comply with the requirements and instructions of such an authority; c) one person may instruct or prohibit another party to legal relations to behave in a certain way or give permission to carry out activities provided for by law (The Code of Administrative Procedure of Ukraine. Official Bulletin of the Verkhovna Rada of Ukraine (BVR), 2005; The Order of the Grand Chamber of the Supreme Court in case No. 914/206/17 dated May 23, 2018; The Order of the Grand Chamber of the Supreme Court in case No. 823/2042/16, 2018; The Order of the Grand Chamber of the Supreme Court in case No. 137/1842/16a, 2019).

It is necessary to start from the premise that cases of administrative jurisdiction include public law disputes which are characterised not only by a particular subject matter but also by the performance or non-performance by a subject with authoritative powers of authoritative management functions. These functions must be carried out by the public authority in the context of the legal relationships in which the dispute has arisen. Moreover, they must be directed to the person who has either applied to the court or to whom the subject with authoritative powers has submitted a claim. "In the concept of 'authoritative management functions', the feature 'authoritative' lies in the subject's ability to apply the granted authority to influence the development of legal relations, while 'management functions' refer to the main directions of activity of the authority, its official or service person, or another authorized subject aimed at managing the activity of the subordinate subject" (Separate opinion of the judges of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024).

When clarifying the circumstances of such disputes, the courts of first and second instance usually conclude that a dispute over the invalidation of an agreement entered into in this way and the application of the consequences of its invalidity is subject to commercial proceedings and does not fall within the jurisdiction of an administrative court (The Order of the Grand Chamber of the Supreme Court in case No. 580/4531/23, 2024). The aforementioned conclusions are based on the premise that the claims and the disputed legal relations do not indicate a violation of public-law relations. This signifies that the jurisdictional issues are connected with a public authority that does not influence the parties' behaviour as the realisation of its power, which is characteristic of an authoritative management function. This

is contrary to the status of such an authority and the objectives of the contractual obligations being reviewed by the court.

It is imperative to concur with the conclusions that, for the efficacious resolution of such disputes, it is prudent to utilise the criterion for determining jurisdiction, which is predicated on the circumstances under which the controlling authority exercises its powers (The Order of the Grand Chamber of the Supreme Court in case No. 914/206/17 dated May 23, 2018). In order to clarify the essence of the disputed relations, it is also essential to consider the "voluntary" character of the agreement and not its "compulsory" nature. This is directly related to the essence of the legal nature of the disputed relations.

In this context, it is worth noting that some lawyers advocate referring these disputes to administrative jurisdiction. They point to the public law aspect, where the state's interest in ensuring compliance with tax legislation and the role of the controlling authority in ensuring public fiscal interests are paramount. Therefore, the dispute should be resolved in an administrative court, with an emphasis on the power functions of the controlling authority and the public law consequences of the transaction.

Ultimately, the determination of jurisdiction in such disputes should be based on a comprehensive analysis of the legal nature of the relevant relationship, the roles of the parties and the objectives pursued by the controlling authority. This approach ensures that the jurisdictional boundaries are properly defined, which facilitates the resolution of disputes in a manner consistent with the principles of fairness and the proper administration of justice.

## Conclusions

In the context of tax accounting, the determination of jurisdiction in disputes pertaining to the invalidity of contracts is of paramount importance for the

effective safeguarding of public interests. Such disputes frequently emerge from the actions of controlling authorities who seek to invalidate contracts they deem to have been executed with intentions contrary to the interests of the state and of society. The aforementioned authorities put forth the argument that the contracts in question were either not intended to be performed, lacked the requisite substantive business operations, or were created with the specific purpose of securing illegal tax benefits.

The public-law nature of these disputes, which pertains to the authoritative functions of tax authorities in safeguarding public fiscal interests, distinguishes them from private-law disputes. Although the contested contracts may initially appear to be concerned with private legal relations, the involvement of tax authorities reflects a broader mandate to enforce compliance with tax laws and protect state revenues. Consequently, the focus of these disputes shifts from the private interests of the contracting parties to the public-law implications of their actions.

The difficulty in determining the appropriate jurisdiction for such disputes lies in distinguishing between the private-law elements of the contract and the public-law responsibilities of the tax authorities. While some posit that these disputes should be resolved within the domain of commercial litigation, others argue for the involvement of administrative courts, given the public-law implications involved.

In essence, the jurisdictional determination should be informed by a comprehensive examination of the legal character of the contested relations, the roles of the parties involved, and the objectives of the controlling authority. In this way, the legal system can guarantee that disputes are resolved in a manner that upholds the principles of justice, is consistent with the proper administration of the law, and effectively protects public interests.

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