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## Practical aspects of deferred payment of state duty in courts of the Republic of Kazakhstan

The paper reveals the features of introducing a new institute of deferral of payment of the state duty on civil cases in the courts of the Republic of Kazakhstan. These novelties are primarily aimed at ensuring access to justice for citizens and legal entities that find themselves in financial constraints. Granting a deferral allows even in case of temporary financial difficulties to realize the constitutional right to judicial protection, guaranteeing the opportunity to appeal to the court. This institution has been studied in the context of analyzing the judicial practice of considering the applications received for resolution, with the presentation of individual examples, including disputes arising from matrimonial and family relations. The normative basis of the study is the Constitution of the Republic of Kazakhstan, the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Payments to the Budget”, the Civil Procedural Code of the Republic of Kazakhstan and other laws. The authors have analyzed statistical data on the results of consideration of applications for deferral of state duty with the study of data available on the websites of judicial authorities and the algorithm developed by the Supreme Court of the Republic of Kazakhstan when considering applications for deferral of state duty in the courts. The study of this institute has shown the need to develop a uniform judicial practice in the consideration of relevant petitions, which will lead to the correct application of the norms of tax legislation on the issues of granting deferral of payment of state duty in the courts of the Republic of Kazakhstan. The obtained results led to a rethinking of the process of improving the national legislation.

*Keywords:* state duty, deferment of payment of state duty, disputes arising out of matrimonial and family relations, civil proceedings.

### Introduction

The institution of state duty deferral plays an important role in ensuring access to justice for citizens and legal entities in financial constraints. Granting a deferral allows for the realization of the constitutional right of everyone to judicial protection, guaranteeing the possibility to apply to the court even in temporary financial difficulties [1; 6].

The Constitutional Court in its normative resolution No. 3 of 22.02.2023 clarifies that the gap that has arisen after the exclusion from the legislation of the Republic of Kazakhstan (hereinafter — Kazakhstan) of the instruments that provide access to justice for citizens who find themselves in a difficult financial situation (reduction of the amount, exemption, deferment, installment of payment of state duty and others), prevents the full realization of the constitutional right of everyone to judicial protection of their rights and freedoms [2]. Therefore, the national legislation has introduced from January 1, 2024 the institute of state duty deferral in the courts, which establishes strictly defined cases of its application at the appropriate application of the plaintiff.

According to part 1 of Article 106 of the Civil Procedural Code of the Republic of Kazakhstan (hereinafter — CPC) [3; 68], subparagraph 2) of paragraph 8 of Article 131 of the Administrative Procedural and Process-Related Code of the Republic of Kazakhstan (hereinafter — APPRC) [4] with amendments and additions introduced by the Law of the Republic of Kazakhstan dated December 12, 2023 “On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Taxation” [5], exemption of the plaintiff from payment of the state duty from the claim filed in court or granting a deferral of payment of the state duty shall be carried out on the grounds provided for by the Code of the Republic of Kazakhstan “On Taxes and Other Obligatory Payments to the Budget” (hereinafter — the Tax Code) [6].

At first glance, the introduced procedure of deferral of payment of state duty does not seem to be complicated. Nevertheless, in judicial practice there are cases of incorrect application and interpretation of these

norms of legislation. For example, part 3 of Article 106 of the CPC states that “the court on claims for protection of consumer rights, filed by a citizen, shall defer payment of the state duty until the adoption of the relevant decision, subject to a ruling”. In this connection, attention shall be drawn to the absence in Chapter 79 of the Tax Code of the norm on consumer protection claims.

We would like to note that the procedural legislation needs to be finalized in order to harmonize the civil procedural legislation with the tax legislation of Kazakhstan, since they do not fully reflect the procedure for granting deferral of state duty. Moreover, the normative resolution of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 № 9 “On the application by the courts of the Republic of Kazakhstan of the legislation on court costs in civil cases” [7] contains no additions to the legislation on application of the institute of deferral.

The procedure of requesting the applicant to provide documents confirming the difficult financial situation with the legislative reflection will lead to the correct application of the norms of legislation on granting deferral of payment of state duty when considering the relevant petitions.

#### *Methods and materials*

General and special methods of cognition were used as the main methods of research: dialectical, historical, analysis and synthesis, comparative-legal, logical-legal, structural-functional, systemic, scientific interpretation and method of complex approach, method of empirical research, formal-descriptive, linguistic, systemic, concrete-sociological. The formal-legal method was used to analyse the legal nature of by-laws. The structural-functional method was used to identify structuring problems in the preparation of draft by-laws. With the help of comparative-legal and systemic methods the comparison of rules of preparation of by-laws contained in various legal acts of different legal nature was carried out.

#### *Results*

The Tax Code has been supplemented by Article 51–2, which defines the procedure and conditions for granting a deferral of payment of state duty in courts. Based on the said norms of the Tax Code, a deferral is granted for a period not exceeding one year from the date of the court's ruling if one of the following grounds is present:

- 1) infliction of damage as a result of a natural disaster, technological catastrophe;
- 2) untimely payment of wages to an individual;
- 3) registration as an unemployed individual;
- 4) the presence of a serious illness of a physical person and being under medical treatment for more than three months;
- 5) non-payment of money to the legal entity for delivered goods, performed works, rendered services;
- 6) seasonal nature of production and (or) realization of goods, works or services by a legal entity;
- 7) provision of targeted social assistance) [5].

Subparagraph 2) of part one of Article 149 of CPC starting from January 1, 2024 states that the lawsuit shall be accompanied by:

“2) a document confirming the payment of the state duty, or a request for deferment of payment of the state duty on the grounds provided for by the Tax Code” [3; 90].

In this regard, the Supreme Court of the Republic of Kazakhstan (hereinafter — the SC) for the courts of Kazakhstan developed the Algorithm for consideration of applications for deferral of state duty (hereinafter — the Algorithm).

Within the framework of the Algorithm, the courts upon receipt of a claim should check the presence of submitted petitions (contained both in the claim itself and in the attached documents), as well as documents confirming the property and financial situation of the plaintiff, which does not allow to pay the state duty when filing a claim and give reason to believe that the possibility of its payment will arise during the period for which the deferral is granted [7].

The deferral does not apply to large businesses (average annual number of employees over 250 people or total value of assets for the year over 325,000 monthly calculation index (hereinafter — MCI), respectively, documents on the status of a business entity, number of staff or value of assets must be submitted).

The evidence of the difficult financial situation of the legal entity may include information on cash flow from banks (statement for the last 6 months), information on the availability of movable and immovable property (confirmed by certificates of registered rights issued by the registration authority), data on wage arrears to employees, taxes and other mandatory payments to the budget.

Evidence of future receipts may be contracts with third parties (not related to the subject of the dispute) for the supply of goods, work and services with acts of completed work, or acts of reconciliation, letters of guarantee, including from banks, invoices for payment, where the period of delivery or fulfillment of obligations arises during the period of deferral.

Evidence of seasonal nature of production and (or) sale of goods, works or services by a legal entity may be information that the main activity and sales volume of the legal entity is related to natural, climatic conditions.

A separate fact of non-payment of money to the legal entity for delivered goods, performed works, rendered services is not a sufficient reason for postponement, such a fact should be considered in the context of the financial situation of the plaintiff as a whole.

In the absence of an appropriate motion for deferral of payment of state duty and documents confirming the payment of state duty, the claim shall be left without consideration and returned to the plaintiff in accordance with Articles 106, 279, 280 of the Civil Procedural Code [3; 140].

In the presence of a petition for deferral of payment of state duty, the court within the prescribed time limits accepts the claim and initiates proceedings in the case. In case of refusal to satisfy the application for deferral of payment of state duty, the court makes a ruling to leave the claim without consideration with the possibility of its appeal in the appellate court panel [8].

If the request for deferral is granted, a corresponding copy of the court ruling shall be sent by the court to the tax authority at the place of consideration of the case.

Upon expiration of the deferral period, the state duty shall be collected by the tax authority (by methods and measures provided for by the Tax Code).

In case of increase of claim requirements to the relevant statement of the plaintiff shall be attached a document on payment of state duty in the increased part or a petition for deferral of payment of state duty, which is subject to consideration by the court taking into account the above requirements of the Tax Code. When considering these applications, the legislation of Kazakhstan establishes the priority of the national currency when expressing and fulfilling monetary obligations in the territory of the country, therefore the amount of the state duty is indicated in "tenge".

If a decision is made to satisfy the claim (before the deferral period), the relevant state duty is to be collected from the defendant to the state income (copies of the court decision are simultaneously sent to the parties and the tax authority).

If a decision is made to dismiss a claim (before the deferral period has expired), the relevant state duty must be recovered from the claimant. In this case, the deadline for payment of state duty comes according to the definition of deferral (the court decision is sent to the tax authority).

When the parties conclude an amicable agreement or an agreement on dispute (conflict) resolution by way of mediation, an agreement on dispute resolution by way of participatory procedure, which is approved by the court, the state duty, the term of payment of which was postponed, is not subject to payment and is considered to be extinguished.

In the course of analyzing the application by the courts of the norms of tax and civil procedural legislation on deferral of payment of state duty for 6 months of 2024 from the official statistical data of the work of the courts on the number and results of consideration of plaintiffs' petitions for deferral of state duty, the courts of Kazakhstan received 65 petitions for deferral of state duty, 24 of which were satisfied, 30 petitions were denied (Fig.).

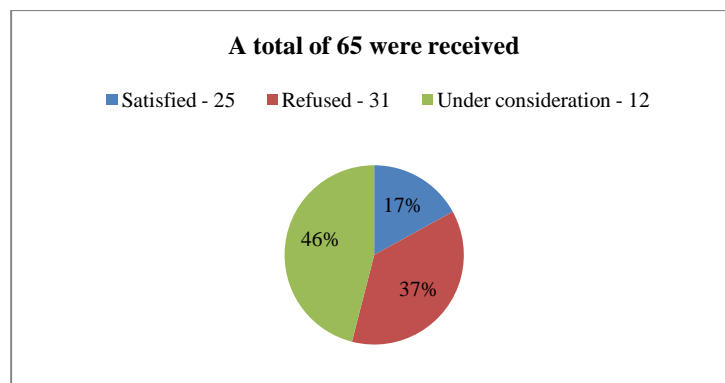


Figure. Statistics for 6 months in 2024

*Discussion*

Practice shows that, in general, the provisions of tax legislation on granting a deferral are correctly applied by the courts when claims are accepted for proceedings. The plaintiffs attach to the petitions documents confirming the difficult financial situation of the claimant: bank statements and certificates of registration as unemployed.

Pursuant to Article 72 of the Civil Procedural Code, each party must prove the circumstances to which it refers as the basis of its claims and objections, unless otherwise provided by law, the plaintiff has the burden of proving the circumstances that allow the court to exempt the applicant from paying state duty on cases considered in the courts [3; 51].

This provision correlates with the principle of legal proceedings based on the adversarial nature of the parties (Article 15 of the Civil Procedural Code) [3; 25].

In some cases, judicial acts do not contain the reasons for the decision on postponement or refusal to postpone, which makes it difficult to understand the position of the court and the possibility of appeal. There are facts of absence of written motions of the parties when granting the plaintiffs a postponement, which is a violation of procedural norms. The declared petitions were satisfied by the court, they were granted a deferral of payment of the state duty until the judgment, which is reflected in the court's ruling.

For example, in the specialized inter-district juvenile court of Almaty (hereinafter — juvenile court) citizen O. filed a petition for deferment of payment of state duty when considering a claim against the former spouse O. on the recognition of jointly acquired debt obligations, determining the share of the defendant in the jointly acquired debt obligations in the amount of  $\frac{1}{2}$ , and the recovery of monetary compensation for the value of  $\frac{1}{2}$  of the part of the jointly acquired debt obligations in the amount of 14,388,070 KZT.

To accept this claim in the proceedings of the juvenile court requires the payment of state duty in the amount of 1 % of the amount of the property claim, which is 143,880 KZT, as well as for two non-property claims of 0.5 MCIs, which is 3,692 KZT. In total, the total amount of state duty payable was 147,572 KZT.

The claimant, pointing to the difficult financial situation, the lack of ability to pay the state duty in the specified amount, referring to Article 106 of the Civil Procedural Code, Article 51–2 of the Tax Code, asked to grant a deferment for 1 year. In confirmation of the status of the unemployed plaintiff presented a certificate of registration, issued on the basis of Article 14 of the Law of RK “On Employment”, as unemployed in Almaty since 16.02.2024.

By the definition from February 26, 2024 the court, guided by Articles 133–1, 268–269 of Civil Procedural Code, the court considered it expedient to defer payment of the state duty on this claim until the decision. A copy of the ruling was sent to the Tax Authority. Given that the court decision of May 21, 2024 the claim was partially satisfied, the court decided to recover from the plaintiff to the state income state duty in the amount of 143,881 KZT, from the defendant 3692 KZT.

On a similar basis, based on the attached to the petition certificate of registration as unemployed since May 23, 2024, the definition of the Atyrau City Court of June 24, 2024 granted deferment of payment of state duty on the civil case on the claim for recovery of funds, a share of accrued interest on the deposit, pension savings, the division of property in kind. Deferment on payment of the state duty on this claim is granted until the decision is made.

In the motivation part of the definitions, the courts do not always reflect a full analysis of the documents submitted by the party. Thus, the definition of the specialized inter-district economic court of Kostanay region on April 15, 2024 at the request of F LLP granted deferment of payment of state duty 383,276 KZT when filing a lawsuit against A LLP to recover the amount of debt and penalty. The applicant in support of the motion attached statements from the bank accounts of Bereke Bank JSC and Halyk Bank of Kazakhstan JSC on the absence of funds, motivated by the defendant's failure to pay the money for the delivered goods.

Determination of the court should contain the reasons for the decision, the fact of non-payment is not a sufficient reason for deferral, such fact should be considered in the context of the financial situation of the plaintiff as a whole.

A similar example in which there are no reasons for the decision in the definition of the specialized inter-district economic court of Turkestan region on April 24, 2024. The court at the request of the plaintiff Avan LLP provided a deferral of payment of state duty for a period of 3 months on the claim against Nur LLP on compulsion to sign the act of work performed from June 19, 2023 in the amount of 7,500,000 KZT; recovery of the amount of debt in the amount of 7,500,000 KZT; penalty in the amount of 750,000 KZT.

In the petition filed by the director of the LLP, except for references to the norms of the law regulating the issues of deferral, no grounds for the application of these norms are given. The statements in the claim, also with reference to the norms of the law, that the plaintiff had tax arrears and worsened financial situation are not substantiated by anything, only attached a copy of the bank account statement. There is no certificate of debt to the budget. Proceedings on the case were terminated due to the approval of the amicable agreement of the parties.

In some cases the courts granted deferral of state duty without sufficient grounds and it is not always indicated for what period of time the deferral of state duty is granted.

For example, the definition of the specialized inter-district economic court of Almaty region from July 20, 2024 satisfied the request for deferral of payment of state duty in the amount of 9 633 819 KZT to the German company Smart, which filed a claim against E LLP and MLG LLP on the recovery of debt and invalidation of the contract. In the petition the plaintiff, indicating that the financial situation does not allow to pay the state duty, attached the bank statement of the Savings Bank of Germany with the transfer.

According to the content of the text of this statement “the displayed account balance does not always correspond to the real credit balance. This printed document is not legally valid”. The plaintiff's representative, pointing out that German tax law does not provide for the division of legal entities into small, medium or large business entities, considered that a foreign company cannot be a large business entity.

In this case, the court granted the plaintiff a deferment of payment of the state duty. According to the materials it is clear that the plaintiff is a non-resident, does not have on the territory of the Republic of Kazakhstan as a permanent establishment and any other structural units. Accordingly, there were no guarantees of payment of the state duty in the prescribed manner [9].

### Conclusions

Requesting the applicant to provide documents confirming the difficult financial situation, with their reflection in the judicial act will lead to the correct application of the law on granting deferral of payment of state duty when considering the relevant applications.

The correct application in civil proceedings of the legislation on state duty is aimed at ensuring accessibility to legal proceedings, ensuring the property interests of the budget, excluding the facts of abuse of procedural rights of certain unscrupulous participants of substantive legal relations.

Local courts do not always correctly apply in their work Algorithm in consideration of applications for deferral of state duty in courts with specific step-by-step recommendations for the correct and uniform application of legislation for guidance.

In order to develop a uniform practice of application of the norms of legislation on granting a deferral of state duty when considering relevant applications, we believe it is necessary to reflect the Algorithm developed by the Supreme Court when considering applications for deferral of state duty in courts in the norm of Article 106 of the Civil Procedural Code with explanations in the normative decision of the Supreme Court of the Republic of Kazakhstan dated December 25, 2006 № 9 “On the application by the courts of the Republic of Kazakhstan legislation on court costs in civil cases”.

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## Қазақстан Республикасының соттарында мемлекеттік баж төлеуді кейінге қалдырудың практикалық мәселелері

Мақалада Қазақстан Республикасының соттарында азаматтық істер бойынша мемлекеттік баж төлеуді кейінге қалдыру жөніндегі жаңа институтты енгізудің ерекшеліктері ашылған. Аталған жаңалықтар, ең алдымен, қиын қаржылық жағдайға душар болған азаматтар мен заңды тұлғалар үшін әділ сотқа қолжетімділікті қамтамасыз етуге бағытталған. Кейінге қалдыруды ұсыну уақытша қаржылық қиындықтар кезінде де сотқа жүгіну мүмкіндігіне кепілдік бере отырып, сот қорғауына конституциялық құқықты жүзеге асыруға мүмкіндік береді. Бұл институт қарастыруға келіп түскен өтініштерді қараудың соттық тәжірибесін жеке мысалдар келтіре отырып, оның ішінде неке-отбасы қатынастарынан туындайтын даулар бойынша талдау арқылы зерделеді. Зерттеудің нормативтік негізін Қазақстан Республикасының Конституциясы, Қазақстан Республикасының «Салық және бюджетке төленетін басқа да міндетті төлемдер туралы» Кодексі, Қазақстан Республикасының Азаматтық процесілік кодексі және өзге де заңдар құрайды. Авторлар сот билігі органдарының сайттарындағы деректерді және соттарда мемлекеттік бажды төлеуді кейінге қалдыру туралы өтініштерді қарау кезінде Қазақстан Республикасының Жоғарғы соты әзірлеген алгоритмді зерделей отырып, мемлекеттік бажды төлеуді кейінге қалдыру туралы өтініштерді қарау нәтижелері бойынша статистикалық деректерге талдау жасады. Осы институтты зерделеу Қазақстан Республикасының соттарында мемлекеттік баж төлеуді кейінге қалдыру мәселелері бойынша салық заңнамасының нормаларын дұрыс қолдануға әкелетін тиісті өтініштерді қарау кезінде бірыңғай сот практикасын әзірлеу қажеттігін көрсетті. Алынған нәтижелер ұлттық заңнаманы жетілдіру үрдісін қайта қарауға әкелді.

*Кілт сөздер:* мемлекеттік баж, мемлекеттік бажды төлеу бойынша кейінге қалдыру, даулар, неке-отбасылық қатынастардан туындайтын даулар, азаматтық сот ісін жүргізу.

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## Практические аспекты отсрочки уплаты государственной пошлины в судах Республики Казахстан

В статье раскрыты особенности введения нового института отсрочки по уплате государственной пошлины по гражданским делам в судах Республики Казахстан. Указанные новеллы, прежде всего, направлены на обеспечение доступа к правосудию для граждан и юридических лиц, оказавшихся в затруднительном финансовом положении. Предоставление отсрочки позволяет даже при временных финансовых трудностях реализовать конституционное право на судебную защиту, гарантируя возможность обращения в суд. Данный институт был изучен в контексте анализа судебной практики рассмотрения поступивших на разрешение ходатайств, с приведением отдельных примеров, в том числе по спорам, вытекающим из брачно-семейных отношений. Нормативную основу исследования составили Конституция Республики Казахстан, Кодекс Республики Казахстан «О налогах и других обязательных платежах в бюджет», Гражданский процессуальный кодекс Республики Казахстан и иные законы. Авторами приведен анализ статистических данных по результатам рассмотрения ходатайств об отсрочке уплаты государственной пошлины с изучением данных, находящихся на сайтах органов судебной власти, и разработанного Верховным Судом Республики Казахстан алгоритма при рассмотрении ходатайств об отсрочке по уплате государственной пошлины в судах. Изучение данного института показало необходимость выработки единообразной судебной практики при рассмотрении соответствующих ходатайств, которая приведет к правильному применению норм налогового законодательства по вопросам предоставления отсрочки по уплате государственной пошлины в судах Республики Казахстан. Полученные результаты привели к переосмыслению процесса совершенствования национального законодательства.

*Ключевые слова:* государственная пошлина, отсрочка по уплате государственной пошлины, споры, вытекающие из брачно-семейных отношений, гражданское судопроизводство.

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