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Graduation Qualification Thesis Work:

Tax Contract: The Problems of Correlation of the Public and Private law.

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Content:

Introduction

Contracts in the tax law represent special problematic, to which the science of the tax law today pays minimum attention. There is at least one argument because of which in the sphere of the tax law to this question it is not given relevant attention: it is connected by the fact that the tax law by its nature and character related to public law; the relations, which it regulates, undoubtedly should be considered as the relations of superiority and subordination. But contracts or agreements are typical for private law where contractual freedom and relative dispositive of autonomy of contractual sides dominates, and so in this sense these institutes of private law are not related to tax law or any other sphere of public law[1].

Nevertheless, contracts in the sphere of public law are possessed to be as a historical fact. In the literature there are statements, that the conditionality of the application of a term "agreement" in the field of financial relations does not prevent the use of this private method of legal regulation for representation of some privileges to the economic subjects (if in sphere of the tax law, for example, by means of the tax contract). However, the problems mainly consist from the point of view of legal consequences of such contracts[2].

In connection to Kyrgyzstan, the tax law is the most dynamically developing and changing part of the legislation of the Kyrgyz Republic that specifies a number of important questions in a process of realization and application of it rules and institutes. The attempts at finding the most optimal method of legal regulation by the certain specific relations in the field of tax law and the perfection of the current legislation promoted and contributed to the appearance of new institutes. In particular the discussion will deal about granting to taxpayers the right to pay taxes on the basis of the tax contract according to the Tax code of the Kyrgyz Republic dated from October 17, 2008.

The legislator specified the application of the tax contract by the fact that this mechanism should make possible principally in different manner form the mutual relations of businessmen and tax bodies, eliminate opposition, and also provide cooperation between them. It was supposed, that tax bodies under the tax contract not only supervise the performance of the tax laws, but also is rendered assistance to businessmen in execution of their tax obligations. In this sense, the tax contract should reflect the interests of the subjects of enterprise and stimulate

[1] B. Babchak, *K problematike Dogovorov (soglasheniy) v Nalogovom Prave*, in DOGOVOR V PUBLICHNOM PRAVE (E.V.Griscenko, E.G. Babeluk eds., 2009).
[2] S.P. Morozov, *Dogovor Zaima: Poniatie i Osobennosti* (Jan.11, 2009), available at http://www.zakon.kz/magazine/archive/2004_01_11.asp.

the development of business and their output from "shady" sector, promote attraction of direct investments into the economy of republic[3].

The interest for study the essence of this institute is caused by the following circumstances:

1. The concept of the tax contract is absolutely new in the domestic legal doctrine and practice. There is no theoretical determination of the legal nature and essence of the given contract. Undoubtedly, this tool is of special interest, as the contract itself traditionally considered as the institute of the civil law. Furthermore, in a modern economic practice tax relations, as a rule, are constructed not on the contractual bases, but on compulsion of the taxpayer to pay certain taxes to the state. In this case the taxpayer is in submission that mainly characterizes the tax law, i.e. public law, while in the case of applying the tax contract - whether the equality of rights between the body of public authority and taxpayer is assumed? It means that if before the use of the tax contract all relations in the sphere of the tax law were on the vertical line (subordination), then with the application of a contract, such relations should be change as it establishes the regime based on agreement (horizontal relations), inherent to private law.

For today there is no theoretical basis to the given questions, since the tax contract in this form is existed only in the tax legislation of the Kyrgyz Republic. The cases on the use of the tax contract in other countries are not yet known[4]. Such application of a private method in a legal regulation of the tax relations generates a whole series of the questions, mainly basic of which: whether the tax contract is –the private law institute in the sphere of public law or nevertheless – it is a specific institute of the tax law?

2. At the present time there was no yet formed an extensive practice on the application of a contract in the tax relations. And this is probably not only circumstance, leading to uncertainties in relevance to the legal regulation of tax relations on the basis of a contract. The discussion in particular deal about the fact that in the legislation itself there are no clearly established boundaries of regulation by the given contract, that is entirely understandable, the tax contract should exist only within the framework of the tax law or nevertheless it is possible to be guided by the general provisions for the contracts provided by the Civil code of the Kyrgyz Republic.

There is an opinion that on resolution of this question depends the possibility of recognition of the tax contract as invalid or not concluded according to the rules of the Civil

[3]Substantiation to the project of the Tax code of the Kyrgyz Republic dated from October 17th, 2008.
[4]For the purpose of the thesis paper the research was carried out under the legislations of the countries of the former SSSR, the Europe and America.

code, and also application to it the methods of guarantee of execution of obligations and inclusion in it of the arbitration clause[5].

In this connection it is also important to note that the Tax code of the Kyrgyz Republic does not provide with the rules on change and termination of the tax contract; it determines only some rules on conclusion of the tax contract and conditions of the payment of taxes on the basis of the given special regime, in addition there is no any other regulation of law. Consequently how should be guided a taxpayer for protection of his rights and interests, in the case of essential infringement by bodies of the tax service of conditions of the contract?

Actually it is not argued that a contract itself can be considered as the best form of realization of interests and possibilities by means of individual regulation of public relations, as for an advantage under the theory the tax contract can be an optimal method of organization the relations of tax bodies and taxpayers on the basis of their mutual obligations; however, at the same time, another option is not excluded, that the tax contract can be used only as tool, which works in interests of the state and the parameters of application of which not always equitable to the interests of businessmen (tax payers).

In this thesis paper, an author has intended to find solutions to the presented questions and problems from the point of view not only the theory, but also from the legal practice.

The basic sources of the thesis research are the current legislation, the fundamental theoretical works in considered area, results of practical studies, articles and reviews of domestic lawyers and the scientists on issues similar with a problem in question.

For the purposes of the thesis paper, to the State tax service under the Government of the Kyrgyz Republic has been directed a demand with the request to deliver the data about a quantity of concluded tax contracts to make the analysis of its legal regulation. Also by the necessity, we have taken an interview from the officials, who directly work under the tax contract and have the official information.

Consequently for study and analysis of the institute in question the several methods were used: (1) the deduction, (2) the comparative study, (3) the method of historical study, (4) the systematic study, (3) the method of analysis, (4) an interview and (5) survey.

In relevance to the structure, the thesis paper consists three basic chapters:

1. The correlation of the public and the private law.
2. The interaction of the tax and the civil law.
3. The analysis of a content of the tax contract under the Tax code of Kyrgyz Republic.

[5]N.B. Alenkina, *Nalogovyi Contract: Problemy Sootnoshenia Chastnopravovyh i Publichnyh Nachal*, doklad na konferensciu «*Sovershenstvovanie Zakonodatel'stva KR v Ramkah Realizascii Strategii Razvitia Strany na 2009-2010»*, March 29, 2010, KRSU, not published yet.

An author and advisor have decided to examine the nature and essence of the tax contract under the scheme “from general to specific”. At the fist stage, under the consideration is the general correlation of the public and private law. So such approach was used because by determination and specifying the general problems of correlation of the public (tax) and private law (civil), we have indented to formulate the whole representation of a problem and come to the examination of the specific case of this relationship based on the tax contract.

The chapter I «The correlation of the public and private law» consists the following parts:

1. The concept and historical roots of the division of the public and private law.
2. The criteria for division of the law into public and private.
3. The interaction of the public and private law.

It was supposed, that such approach as initial differentiation of the public law from private will represent the whole essence and deepness of the existed problems of correlation of these laws. Especially, as there is no a common opinion about a theoretical construction of the concept on existence at each field of law (tax and civil law) of its own “independent” methods of legal regulation, it is important to examine the features of the civil and tax law through the theory of the public and private law. By means of this theory on division of law it is supposed to determinate, first of all, the elements inherent to public and private law and than to reveal their interaction properties.

In the second chapter «The interaction of the tax and civil law» the author examines the relationship of the public and private law basics through the interaction of the tax and civil law. In this chapter the most important is the analysis of the relationship of the tax and civil legislation and their interaction, mutual influence and penetration of the elements of these areas of law.

In the final chapter III of the thesis paper «The analysis of a content of the tax contract under the Tax code of Kyrgyz Republic», the author analyzes the problems of legal regulation of the tax contract and considers the possibility of application the civil legislation to the given institute. As a result for the solution of the revealed problems of legal regulation of the tax contract, the question on the legal nature of the tax contract should be examined.

Consequently a study and analysis of the thesis paper was conducted in the following sequence: (1) there were determined the problems arising in legal practice of application of the tax contract, (2) the legislative gaps, which formed a basis for the previous problems were revealed, (3) subsequently by use of the above mentioned methods of study, the works of scientists and practitioners on related issues are analyzed, (4) the concrete results, theoretical conclusions and practical recommendations are received.

The scientific novelty, theoretical and practical significance of this thesis paper is caused by the statement of a problem itself and the methods of its solution. The given work represents the first studies regarding the legal regulation of the tax contract. The specificity of the research study consists in the detailed analysis of the nature of the tax contract and revealing of the problems of its legal regulation. These actual problems of the tax legislation and legal practice are analyzed in the relationship with the civil legislation. In the process of the development of study and disclosure of a topic of the thesis paper, it will be reflected that a division of public and private law has not only scientific, but also practical value in the differentiation of the essence of legal relationships.

Taking into account the novelty of problem, the author and advisor aspired for the consideration and analysis of all aspects of the problem and statement the most significant basics for its revealing.

Chapter I.
The Correlation of the Public and the Private Law.

How to differentiate the features of the public and private law? - was the main question of law disputed by the best Roman and European jurists, but remained unresolved and in XX century.

The existence of the problems of relationship of the public and private law are examined in different aspects, that, first of all, demonstrates the special necessity of the division of law into the public and private, and that is very important, this division of law preserves its both theoretical and practical value and interest at the present time.

1. The Concept and Historical Roots of the Public and Private law.

The terms «public» and «private» law are known since ancient times[6]. This division of law becomes the strong destination of juridical thought[7]. The sources for understanding the law and its relationship with the society, state and person is possible to find in the works of Ancient Greek philosophers. About the law and its division into the public and private even discussed such philosopher of antiquity as Aristotle. According to Aristotle, public law - protects from that harms a society, and private law – protects the individual persons[8].

The idea of the division of law into the public and private also belongs to Ulpian (II v. A.D.). His widely known statement is about that "the study of law is composed into two positions - public and private. Public law, which is related to the position of Roman state, private (which) related to the benefit of the individual persons (publicum of jus of est of quod ad of statum of rei of romanae of spectat, privatum of quod ad of singulorum of utilitatem); the benefits exists in both public and private relations[9]." (D.1., I. 1.2.).

In other words, according to Ulpian, relations in the spheres of the private and public law are differs from each other by their nature and essence and their features cannot render influence on their legal regulation.

The essence of the public law was normatively demonstrated as standards that protect the interests of the state and are determined its legal status and the status of its bodies; also that defines the political system and competency of officials. In a number of cases the public

[6] I.A. Pokrovskiy, OSNOVNYE PROBLEMY GRAJDANSKOGO PRAVA (1917).
[7] B.B. Cherepahin, *Pervonachal'nye Sposoby Priobreteniya Sobstvennosti po Deistvuushemu Pravu*, T. II. Edit.4 Uchenye Zapiski Gosudarstvennogo Saratovskogo Universiteta imeni N.G. Chernyshevskogo, 3-31 (1924).
[8] M. Bartoshek, RIMSKOE PRAVO: PONIATIYA, TERMINY, OPREDELENIYA (1989).
[9] L.L. Kofanov, DIGESTY USTINIANA: T. I. (2002).

law is also understood by jurists generally as the norms having binding force and not able to be changed by the way of the agreements of individual persons[10].

In relevance to how the private law was accepted in ancient times, it would be interesting to note that not all people were the subjects of this sphere of law. As it is known from the history, Rome was the state of slaveholding. And slaves were in ownership of the slaveholders, so they absolutely had no any rights. The rights were given only to free people that originally were Roman citizens. Everyone not entered into the Roman community were considered basically as deprived of civil rights, had no protection and could be destroyed or turned into slavery. Only later the circle of subjects of the private Roman law has extended[11].

Again in connection to Ulpian statements, there is an opinion that he mainly discussed not about the separation of law itself, but about the study of law. The Russian civil law scholar S.V. Pahman stated that the well-known Roman differentiation «of public» and «private» is about the different points of the science[12]. And also the professor and academician G.V. Malscev focuses attention to the fact that the Ulpian's division of study of law frequently confused by the division of law itself[13].

Consequently, these two positions about the study of law interpreted in the sense of the classification of Roman law into the norms of the public law (jus of publicum) and the private law (jus of privatum)[14]. The second concept of *jus of privatum* was indentified with *jus of civile* translated as the civil law, designated as law of (Roman) citizens or private individuals[15].

However for today not already all scientists support the given point of view, assuming that the content of the concept «private law» is not limited by the civil law. At the same time, many scientists assume that exactly the civil law fully and precisely contains all elements of the private law[16].

The majority of specialists consider obvious that precisely on the point of view of Ulpian is based the theory in correspondence to which the norms of law are separated mainly by criterion of interest (public and private). But whether the law itself should be divided into the

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[10] U.A.Tihomirov, PUBLICHNOE PRAVO (1995).
[11] O.S Ioffe, V.A Musin, OSNOVY RIMSKOGO GRAJDANSKOGO PRAVA (1974). I.B. Novisckiy, RIMSKOE PRAVO (1994).
[12] S.V. Pahman, O SOVREMENNOM DVIJENII V NAUKE PRAVA (1882).
[13] G.V. Malscev, *Sootnoshenie Chastnogo i Publichnogo Prava: Problemy teorii*, in GRAJDANSKOE I TORGOVOE PRAVO ZARUBEJNYH STRAN 734 (В.В. Безбаха, В.К. Пучинского eds., 2004).
[14] V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 39 (V.A. Belov, 2008).
[15] M. Bartoshek, RIMSKOE PRAVO: PONIATIYA, TERMINY, OPREDELENIYA (1989). E.V. Vaskovskiy, UCHEBNIK GRAJDANSKOGO PRAVA (2003). S.A. Muromscev GRAJDANSKOE PRAVO DREVNEGO RIMA (2003).
[16] N.P. Aslanian, OSNOVNYE NACHALA ROSSIYSKOGO CHASTNOGO PRAVA (2001). K.D Kavelin, PRAVA I OBIAZANOSTI PO IMUSHESTVAM I OBIAZATELSTVAM (1879).

public and private, and what can be the basis for such division – these all questions are not only left by Ulpian without answers, but even left without statements.

And for nowadays the old question on division of law on the private and public acquires again a great interest.

Under the S.F. Kechekyan remark, variable and unstable is not the criterion for differentiation of public and private law, but their practical application. From his point of view, the circle of relations to which private or public law applied constantly changed; the areas, which recently were regulated by private law, nowadays regulated by public law, or vice versa. As an example, historically known the cases on constructing especially the public law relations on coordination principles (legally equal) as those as that arise between suffered and criminal, tax body and taxpayer, or subordinate relations (legally ruling) in such spheres as family, education, and upbringing[17]. Consequently, from the times of Ancient Rome the limits of the application of public and private law substantially changed.

The content of the concepts of private and public law are defined by set of the norms regulating the specific juridical relationships[18]. Such relative division of legal regulation is determined by the conditions of its historical development.

From the epoch of Ancient Rome the private law included the norms regulating the status of persons and family relations, property, hereditary and obligatory relations[19]. In the Middle Ages with the isolation of merchants into the separate class and the expansion of international trade was formed the special subsystem of private law that called as trading customs. Significantly still the fact that with the formation of the free labor market functioning on the basis of the interaction of supply and demand, the attitudes of worker and employer have turned to the ordinary transaction, and private nature of such relations did not change even the active interference of the state in regulation of working conditions. On boundary of the XIX—XX centuries by doctrine and legislation to the sphere of private law were related the personal non-property rights and nonmaterial goods belonging to the person from the generation or by virtue of the law, inalienable and not transferred by another different way[20].

Even the strict restrictions existed in law the sphere of private law have never disappeared completely. Probably in any known civilization it was impossible absolutely exclude barter and commodity facilities. In fact the private law from the old times is the sphere of free

[17] S.F. Kechekian, K VOPROSU O RAZLICHII CHASTNOGO I PUBLICHNOGO PRAVA (1927).
[18] P.S. Romashkin, M.S., Strogovich, V.A., Tumanov, TEORIYA GOSUDARSTVO I PRAVA: OSNOVY MARKSITSKO-LENINSKOGO UCHENIYA O GOSUDARSTVE I PRAVE (1962).
[19] VSEOBSHAYA ISTORIYA GOSUDARSTVO: DREVNIY MIR. SREDNIE VEKA. eds. 2 т. T.1 (2002).
[20] R. David, K. Joffre-Spinozi, OSNOVNYE PRAVOVYE SISTEMY SOVREMENNOSTI (1999).

development inevitably demanded freedom of the property, freedom of contracts, and freedom of wills and so on[21].

And for today it is known that such fields as the administrative, criminal, financial, procedural, land law and a number of other laws are related to the public law. And private law includes not only the civil law; in the juridical science in this connection stated about the whole system of the private law. In the opinion of the prominent Russian lawyer E.A. Suhanov, this system, alongside with large parts of the civil law (the general part, property, contracts, obligations law, exclusive rights — the «intellectual» and «industrial» property, the law of succession) included also the family law, trade (commercial) law, and international private law[22]. From the point of view of T.V.Kashanina, the structure of private law includes seven subdivisions: the civil law, the law of succession, the family law, the copyright law, the invention (patent) law, the labor law, and the enterprise law with its basic - the corporate law[23].

Consequently should be noted that the changeability of the content of relations make impossible to connect the specific method of legal regulation with certain relations. Nevertheless, such variability of relations does not terminate the traditional juridical constructions and approaches, but those relations only by necessity adapted to them. So the concepts of public and private law were formed by long-standing history of the development of law. The significant specific legal features inherent to public and private law, first of all, reflect the nature of the adjustable relations, and they are important for the correct understanding and application of the law (legislation) and for directions of its further development and perfection. The concepts of the public and private law have not only deep historical roots, but also legal traditions continuing from the law of the Roman state where by the most ancient philosophers and jurists successfully generated the given concepts and were developed many institutes necessary for their maintenance.

2. The Criteria for Division of the Law into Public and Private.

Even since very old times it is known that the private law is opposite to public law, till present times there is no unanimity in resolution of the basic question: what are the main criteria for differentiation of these spheres of law?

If to take into consideration the separate theories, for example, the differentiation of law on the basis of the above mentioned criterion of interest (as supporters of this theory are

[21]E.A. Suhanov, SISTEMA CHASTNOGO PRAVA (1994).
[22] ld. at 26-30.
[23]T.B. Kashanina, *Korporativnoe Pravo*, Pravo Hoziyanstvennyh Tovarishestv i Obshestv (1999).

known G. Arens, A.Gjunter, Dernburg, P.I.Merkel, F.K.Savini and others[24]) than is important to note that the given division on the basis of the criterion of interest was highly disputed by many scientists and was known as an object of approved criticism. The theory of interest - divides the norms of law with regard to who's (what) interests are protected. If the norm protects the interests of individual persons - it is accepted as a norm of private law; if the interest is public - the norm is related to public law[25]. The basic argument of the position against this theory was the fact that it impossible to contrast the private and public interests. Since from one side, the public (general) interest is set of private interests. In this sense it is possible to note that the law itself is implemented for the protection of the interests of the individual persons, i.e. private interests. From the other side, legal protection is given only to those interests of the individual persons, which have more or less general meaning and value or because they are general to the whole group of the persons. In this sense, on the contrary, it is possible to say that any right protects the general interests. It is obvious that it cannot be said that the public law concerns always more general, private less general interests[26]. Therefore the comprehension of this criterion constantly make difficult to illustrate the frame of the private and public law.

If to consider the theory that based on the positions of the subjects of law, some contradictions in this connection can also be examined[27]. For example, in case of purchase of an apartment by the citizen at the enterprise being in charge of municipal bodies, so the enterprise acting as an organization does not possess any privileges in comparison with the citizen. The state is a participant of civil relations and is equal in rights; therefore the relations on sale are based on equality and freedom of will of the sides.

Thus dissatisfactions by the given theories caused a lot of attempts to correct and give another more specific formulation.

Above noted two theories took a place in the represented classification of Savini and Shtal (it connects the theory of interest, which related to the protection of a purpose of the law, and the theory, based on a difference in the position of a subject as independent individual or as the member of society). As a whole, Savini and Shtal distinguished legal relations by their purposes. In public law in relevance to Savini, state (whole) is the purpose, and individual person

[24] V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 51 (V.A. Belov, 2008).
[25]N.M. Korkunov, LEKSII PO OBSHEI TEORII PRAVA: OBEKTIVNAYA I SUBEKTIVNAYA STORONA PRAVA (1914), available at http//:www.allpravo.ru.
[26]S.A. Muromscev, *Opredelenie i Osnovnoe Razdelenie Prava*, in IZBRANNYE TRUDY PO RIMSKOMU I GRAJDANSKOMU PRAVU 685 (2004).
[27]V.A. Belov, GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI (2008).

possesses secondary position; on the contrary, in the private law individual person is the purpose of protection. The same almost stated by Shtal[28].

The German scientists as R.Iering and A.Ton, and Russian - J.S. Gambarov, S.A. Muromscev and N.L. Dyuvernua differentiate public law from private by criterion of the initiative and the order of protection of interests by the law[29]. First of all, important to note, that this theory concentrated precisely on a question «how is protected the infringed subjective right», instead of on a question «how it is regulated ». Muromtsev S.A. approves, that the civil rights are protected not otherwise as on the appeal o individual persons - subjects. This means that the excitation, continuation, and completion of protection depend completely on the discretion of subject. The recognized authorities operate equally as that requires injured person. On the contrary, in the public law all the motion proceeds from the will of the bodies of public authority[30].

However, from the point of view of M.M. Agarkov, supporters of the theory of the initiative and the order of protection of interest interpret not about the division of the norms of law, rather about subjective rights. From the second side, supporters of the given theory mixed a reason with a consequence. It turns that existence of the subjective right makes sense only in the context of possible infringement. Hence, if infringement did not take place, then subjective right has not justified. It means that it is impossible to make the division of the law on public and private exclusively on criteria of the positions of the subjects and consequences of the infringed subjective rights[31].

B.B. Cherepahin approves that the resolution of a question on criterion for differentiation the private and public law is achieved «in two different planes… - in a plane of the subjective right and juridical relationship… (and) in a plane of the objective right». The criterion of differentiations is placed within the norms of the objective law when these rules are defined the nature and character of social relations subjected to regulation – «relations of the legally equal subjects or legally dominating». Consequently the public law should be characterized as the sphere that regulates the relations based on «authority – subordination», and the private law as based on «relations of the legal equality of subjects». In B.B.Cherepahin opinion, all previous that were an interest, the purposes and order of their determination, a

[28]G. F. Shershenevich, OBSHAYA TEORIYA PRAVA (1995).
[29]V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 47 (V.A. Belov, 2008).
[30]S.A. Muromscev, *Opredelenie i Osnovnoe Razdelenie Prava*, in IZBRANNYE TRUDY PO RIMSKOMU I GRAJDANSKOMU PRAVU 696 (2004).
[31]G. F. Shershenevich, OBSHAYA TEORIYA PRAVA (1995).

position of subjects in the actual relations, a subject and content of these relations are revealed the legal criterion of differentiation[32].

The examined theories of interest and based on the order of protection of interest by the law, in essence by its content are more than just theories, the given theories are the basis for two scientific directions - material and formal (which unite several theories). The distinguishing features of each direction, as it was already noted, defined by B.B.Cherepahin. The material criterion of differentiation of law is based in accordance to B.B. Cherepahin on determination of the criterion from the content of the relations that are in legal regulation. And as a basis for the formal criterion (it still called juridical) placed the method, the approach of regulation or construction of various legal relations[33].

The same was stated by Shershenevich, in relevance to him, all approaches placed as a basis for theories of differentiation of the public and private law should be analyzed under the content of the adjustable relations (which is material factor) and under the order of their protection (formal moment)[34].

It is assumed, that B.B.Cherepahin mainly resolved of a question on criteria for differentiation of law in a plane of subjective and in a plane of objective right that precisely meant material and formal (legal) directions.

Consequently despite the fact that there is no unanimity in the determination of the criteria for division of the law in the variety of different theories, in connection to different approaches achieved by the scientists, attempts at finding the most suitable criterion make possible to combine these theories into two basic directions - formal and material.

In addition, the legal dualism has significant special features at the stage of formation of the law and in the structure of the legislation. In a process of creation of law the material criterion determining the interest appears as the factor defining the purposes of the law, spheres for realization and methods of legal regulation. At the same time the form of its realization constantly erodes the precise borders of the private and public law[35].

Therefore in order to attempt to conduct certain «line» between the public law and the private law, undoubtedly it is necessary to determine the criteria for differentiation of these two basic types of legal regulation, consequently for the stated reasons, to consideration of a question about the division of law should be presented brief analysis of the related theories(content of which is described in different literature), together with an establishment of the most correct

[32]B.B.Cherepahin, *K Voprosu o Chastnom I Publichnom Prave*, Trudy Po Grajdanskomu Pravu 110 (2001).
[33]B.B.Cherepahin, *K Voprosu o Chastnom I Publichnom Prave*, Trudy Po Grajdanskomu Pravu 110 (2001).
[34]G. F. Shershenevich, OBSHAYA TEORIYA PRAVA (1995).
[35]K.M. Mashtakov, *Teoreticheskie Voprosy Razgranicheniya Publichnogo i Chastnogo prava* , Teoriya i Istoriya Prava i Gosudarstva 26 (2001).

criterion and details of the main characteristics of the specific features of the private and public law.

The first theory is based on separation of the subjective rights into the socially binding (public) and the personally-free (private) (it is among the material theories). This theory is designed by L.I. Petrazhitskiy, and from his point of view, the subjective rights are divided depending on the purposes to which these rights serve. However, it is interesting that Petrazhitskiy itself considered the given theory as not independent, in his point of view it is represented the paraphrasing (only in other words) of the theory of the method of legal regulation[36].

In this connection the next theory is based on the method of legal regulation of public relations (the theory of centralization and decentralization). By the supporters of this theory should be considered R. Shtammlera, already noted L.I. Petrazhitskiy, I.A. Pokrovskiy, A.A. Rojdestvenskiy[37]; from Soviet scientists S.V. Aleksandrovskiy, and M.M.Agarkov[38]; and also such modern scientists as M.I. Braginskiy and E.A.Suhanov. This theory qualifies the norms of law on the basis of a special mode and approach by means of a method by which it is possible to influence and regulate certain public relations. It means that centralized regulation – possesses to be as the submission of the uniforms of the state wills that is not dependent on the aspiration of wills of private individuals, which gives the norms of public law. On the contrary, the decentralized regulation is carried out by participants of the legal relations that give the norms of private law[39]. In the opinion of the professor I.A. Pokrovskiy, the public law – is an area of authority and subordination, the private law – an area of freedom and private initiative. It means that the private law is carried out dominantly by the will of its participants where any intervention of the state is excluded.

In relevance to previous theory of L. I. Petrazhitskiy (differentiation of the subjective rights), it is assumed that the scholar connected two different features. In relevance with his thought in the public law the social-binding rights do not depend on the aspiration of will of private individuals; on the contrary these rights are established in relevance to the uniform state will. But in case of the private law, the individual persons achieve their subjective rights at their own discretion.

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[36]V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 51 (V.A. Belov, 2008).

[37] A.A.Rojdestvenskiy. TEORIYA SUBEKTIVNH PUBLICHNYH PRAV: KRITIKO-SISTEMATICHESKOE ISSLEDOVANIE. I. OSNOVNYE VOPROSY TEORII SUBEKTIVNYH PUBLICHNYH PRAV (1913).

[38]M.M. Agarkov, *Predmet iSistema Sovetskogo Grajdanskogo Prava*, T. 2. Izbrannye Trudy po Grajdanskomu Pravu, 314 – 316 (2002).

[39]I.A. Pokrovskiy. OSNOVNYE PROBLEMY GRAJDANSKOGO PRAVA (1995).

Also from the point of view of K.M. Mashtakov, the publicity of a method of the legal regulation of public relations is characterized by imperativeness. It means that one of the subjects of social relations is designated with a special authority (competency) that provides construction of the relations under the scheme of «authority - subordination». And the private method is characterized as dispositive regulation provided all subjects with the autonomy of will and the legal initiative and consequently ensures the legally equal relations[40].

It follows that the main practical value in differentiation of the public and private law have formal (legal) elements, and first of all it is a method of the legal regulation extended by law to the concrete social sphere. From all elements of a method of regulation the strongest is based on the relationship of the legal statuses of subjects, on which concentrated the special features of influences of public and private law on social relations.

The next theory is based on the separation of subjective rights by criterion of a level of the freedom that possessed their owners in determination the purposes for their actions (the theory of freedom of goal settings). The representatives of the given theory are M.M. Agarkov, V.N. Durdenevskiy, and P.E. Mihaylov. The basis for this theory is that, the private law is «egocentric» – that means, the subjective rights are realized for the purposes determined by its possessor. And in case if subjective right is achieved only for reaching the purposes strictly defined by the law, it is related to public law (soscioscentrick)[41]. In the particular relations the purposes are strictly stated that means it can not be determined by the participants themselves.

It should be noticed that the theory on the separation of subjective rights with regard to the purposes of its realization, it is closely connected with the methods of its legal regulation. In case of the centralized regulation, the purposes are defined by the uniform state will - which gives the rules of public law. But in the case of the decentralized regulation, on the contrary, the purposes are defined by participants of the social relations.

There is also another theory that based on the object of regulation. The supporters of this theory are R. Zom, Z. Shlossman, A.M. Gulyayev, K.D. Kavelin[42], N.M. Korkunov[43], K.P. Pobedonostsev, V.A. Tarkhov. The basis for this theory was the fact that the rules of law are divided into the public and the private in relevance to the object of the social relations regulated by them, it means that if the rule of law regulates property relations this law related to private law, but if a rule regulates non-property relations this law characterizes as public. For today it is obvious that this theory is not already accurately applicable, since individual persons (citizen)

[40]K.M. Mashtakov, *Teoreticheskie Voprosy Razgranicheniya Publichnogo i Chastnogo prava* , Teoriya i Istoriya Prava i Gosudarstva 26 (2001).
[41]V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 53 (V.A. Belov, 2008).
[42]K.D. Kavelin, IZBRANNYE PROIZVEDENIYA (2003).
[43]N.M. Korkunov, LEKSIA PO OBSHEI TEORII PRAVA (1898).

can enter into both property and non-property relations exclusive by their own free will and interests.

Theory based on the object of the regulation connected with another theory based on the participants. This combination specifies that the object of regulation of the private law become not any property relations but only those of private individuals. The norms that regulate all other relations related to the public law[44].

There is also the theory based on the position of subjects in the relations, regulated by the law (the supporters of the given theory are O. Girke, G. Elinnek, K. Kozak, F. Regelsberger, L. Ennektserus, A.F. Kokoshkin, I.V. Mihajlovskiy, I.A. Pokrovskiy[45], F.V. Tarnovskiy, E.N. Trubetskoy and others). This theory created under the fact that individuals have a number of the private and subjective rights, which arise because of «legally equal relations». It means that these rights arise in relations of the subjects not subordinated to each other, who have the capability to freely interact with each other. The discussion deals about the identical capacity of the subjects[46].

To the sphere of public law the supporters of this theory relate the subjective rights that arise because of relations between the individual persons being in attitudes of authority and submission (in relation to each other). In the first turn, in such relations the participation of a state itself represents the public authority.

In the essence the theory of the position of subject and the theory of the method of legal regulation make the basis for differentiation of law from two sides, or as B.B. Cherepakhin noted from two different planes. And the theories based on criteria of the differentiation of public and private law that formed by the elements, which invariably related to the content of the concepts of this division of law.

The most important elements of legal relations in the sphere of private law and principal beginnings are the juridical equality, the inviolability of private property, the freedom of agreement, the independence of the judicial protection of the rights and interests. In this sense the citizens (individual persons) can acquire and use property; to carry out the work and to render services; to create and to use works of literature, science and invention; to inherit property; to enter marriage and to educate their children, and to act in another manner by their own free will and in their interest, independently determining the conditions for realization of

[44]V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 53 (V.A. Belov, 2008)
[45]I. A. Pokrovskiy. OSNOVNYE PROBLEMY GRAJDANSKOGO PRAVA (1995).
[46] V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 53 (V.A. Belov, 2008)

such actions[47]. Thus, rights are acquired individual nature, and related directly and exclusively to the individual persons.

On the contrary, the public relations are impossible to create on the basis of the free will of the sides. Such relations arise in the fields of state administration, protection of social order, public safety and so on. This field mainly excludes both the initiative of the entrance into the relation and possibility of free determination of its content. First of all, such legal relationships assume one-sided imperious action in relevance to other participants in the relation. The most important formal element of public legal relationship is that there at least from one side participate the subject carried the public functions, so it can be the state itself, or other municipal body, official, and also a specific subject, delivered by special public functions in relevance to certain circumstances. Event notaries act as the agents of public authority, who achieve some functions on behalf of the state, including notaries, who carry out private practice[48].

The criteria that placed in the theories of division law in public and private are not just simple classification of subdivision; they play an important role in determination of the nature of the legal institute and the consequence of its regulation. Given criteria will be assumed as the basis for understanding the essence of the tax contract.

Consequently, in examination were the most prevailing and precise theories related to the division of law into the public and private. As a result of study and to the systematization of the theories on differentiation of law was proposed their typology depending on what criterion is assumed as the basis for the division of law, and was taken into account material and formal directions of these theories. As a whole for determining the criterion of the differentiation of law most significant role is given to the elements, which invariably form the concepts on the public and public law.

3. The Interaction of the Public Law and the Private law.

The analysis of the nature of the public and private law shows that these areas of law continue to exist as two independent fields of legal regulation and as two different types of the area of social relations[49]. However, the discussion is not deal about the fact that the elements that constitute the areas of private and public law are capable to interact; particularly it means that these elements penetrate in legal relation of each other (as an example can be agreements in the fields of the public law - administrative agreement, etc.). Probably for this reason it is completely

[47] KOMENTARIY K GRAJDANSKOMU KODEKSU ROSSIYSKOY FEDERASCII, Chast pervaya 51 (O.N.Sadikova eds., 1998).
[48] U.A. Tihomirov, PUBLICHNOE PRAVO (1995).
[49] E.A.Suhanov, GRAJDANSKOE PRAVO: Tom 1 (2000).

difficult to conduct the clear and strict frames between the public and private law; however, from other side, as it was demonstrated above the frames of these legal spheres determined by the concepts that is created in ancient times and continuing to exist till nowadays.

With an advisor we share the point of view, that all questions of the constitutional and political system, organization of an activity in the scope of the state bodies, management of armed forces, judicial systems and all fields of legal procedure, all criminal, tax and financial laws must be withdrawn from the private nature of relations. But in no way it does not mean that in such field there is no any incursion of the private law[50].

As an example, there is a demonstration of the tax relations on the basis of the tax contract and their legal regulation. Hence, the payment of taxes is imperative responsibility of citizens. The responsibility, conditions and order for payment of taxes established by the law – and only exclusively by the law. Consequently, the relations on the payment of taxes have the imperative nature: responsibility on the payment of taxes appears directly «according to the law» and does not depend on a desire and will of a taxpayer to pay taxes or not. In this case a taxpayer (citizens and organizations) in no way cannot influence the conditions of the payment of taxes established by the Tax contract as a taxpayer has not any right in this connection (a taxpayer just agree with the conditions of the tax contract, and on the contrary this contract draws additional legal responsibility). And last point, the taxpayers of their own free will and in their interest (private-law element) can use the tax contract, but again only under the framework established by law.

In relevance to contract as for an institute of the civil law, it would be seem that it is inappropriate with respect to the essence of public law. However, the application of a contract in the tax relations one additional time confirms that the traditional agreement, which is a manifestation of the private law regulation adapting for regulation of the public- law relations.

Undoubtedly, an agreement as the institute for the private law regulation has its specific nature inherent in private law; nevertheless, it should not be interpreted that in the field of the public law there are no any mechanisms of the contractual regulation.

It is known that the basic theoretical beginnings about the agreement are developed in the field of civil law; however, for today the concept of administrative agreement takes it root in the public law sphere. Labor contract is the main institute of labor law. In such fields of the public law, as constitutional and financial law the new mechanisms of contractual regulation are already appeared. And also, in international law the agreement is widely used and become the main instrument for the regulation of international relations. Even in criminal and criminal

[50] V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 62 (V.A. Belov, 2008)

procedure law agreement adapts in the form of the agreement on the reconciliation that reached between the persons, who committed crime and who suffered[51]. There are also some scientists asserting the existence of contractual relationship in the sphere of executive power of the state, which is beginning widely use in organization of the control[52].

However, there is no unity in understanding of the nature and essence of agreements in the public law. For example, an administrative agreement is considered as the legal form of the control of executive power that created exclusively under the conditions of the law and existed by value of the normative act. Nevertheless, the conditions of administrative agreement specifically differ from the legal norms: first, agreement expresses especially the will of its sides, and legal acts - the will of the published body; for the second point, agreement is designed for the regulation directly of the behavior only of its sides, as at the same time normative act provides with identical norms for regulation of specific relations. Consequently it is possible to conclude that an administrative agreement is used for the direct realization of executive power, and therefore regulated by the standards and norms of the administrative law; however it is also based on the principals of the agreement. It is necessary to note that in Germany the sphere of the application of administrative agreement it is already differentiated from the legal act of control. It means that, an agreement begins to take its roots in the relations of the public law in spite of the circumstance that the division of law based mainly on the nature and methods of legal regulation.

As it was already noted, this combination of the imperious action of public subjects on private individuals by the use of contractual mechanisms already exists in practice of many countries. In turn, this circumstance leads to such reasoning, that the state administration used to be not only as one-sided imperious activity, but as the cooperation of a state with the citizen[53]. Such interaction is obtained, for example, in the case of concluding the tax contract by the state body (the body of tax service) with the taxpayer. N. V. Dedikova in her dissertation work about the institutional basis for overcoming the asymmetry of tax agreement gives determination to the tax agreement (symmetrical), which in the essence possessed to be as a method of organizing the attitudes of state and taxpayers on the basis of the equivalence of their mutual obligations[54].

This extended use of an agreement in the spheres of public law makes it as a universal method of regulation of the all types of social relations. In the Russian juridical literature has already been examined the need of developing the complex theory of agreement,

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[51] M.F. Kazanscev, DOGOVORNOE REGULIROVANIE: SCIVILISTICHESKAYA KONSCEPSCIA (2005).
[52]N.Kolokolscev, *Administrativnyi Dogovor kak pravovaya Forma Upravleniya* , 9 Pravo i Politika (2007).
[53]D.S. Andreev, *Administrativnye Dogovor i Pravovoy Akt Gosudarstvennogo Upravleniya*, Dogovor v Publichnom Prave 148 (2009).
[54]N.B.Dedikova, *Instituscionalnoe Osnovanie Preodoleniya Assimetrii Nalogovogo Dogovora*:Avtoref. Dis.kan-ta nauk (Sankt Peterburg, 2009).

which will have a universal nature[55]. However, as this theory is not yet developed, but because of the existence of the fact that an agreement is used as the institute of legal regulation of certain relations in the field of public law, it is possible to describe it by the simultaneous presence of both the private law and public law elements.

If take into consideration the tax contract in its form described in the Tax code of Kyrgyz Republic, tax contract cannot be concluded by compulsion, since its part that is called a contract provides with the equality of the will of sides for its conclusion and determining some conditions of its content. And, at the same time, the tax law provides for the procedure, the object of regulation and functions that the tax body realizes in the limits of its competency.

In addition, is important to note that it is not difficult to imagine that the private law can exist without the elements of the public law. But in modern legislation it is much more difficult to construct certain relations in the sphere of the public law without the elements of the private law. This interaction of the elements, first of all, specified by the fact that the relations existed in the public law sphere, are established in the interests of all and each individual. In this sense the public interest is a set of individual interests. And an agreement as the mechanism of the private law regulation is the best form to express the essence and nature of the interests of individual persons.

In juridical literature there are statements that the contractual regulation of relations in the sphere of public law can have reflexive action and involuntarily affect the sphere of private law[56].

Consequently, agreement can be used in all spheres of social relations; it can be civil and criminal, administrative and other fields of law. As an example, the use of an agreement in administrative law explained by the fact that it is a flexible form by which can be realized the control, and the primary meaning is given to factor that it provides by individual regulation of the specific social relations within the framework of law in a form of indication the limits of possible and proper behavior[57].

In relevance to interaction of the private and public law there are also other factors that lead us to discussion. That for today appeared such fields of law that in the different proportions present simultaneously both the elements of private and public law. Such fields are maritime law, banking law, economic law, ownership law and some others[58]. In each case of application of such laws it is possible to determine which of the elements related to the public

[55]A.D.Koresckiy, TEORETIKA-PRAVOVYE OSNOVY UCHENIYA O DOGOVORE (2001).
[56]V.A. Belov, *Osnovnoe Razdelenie Prava*, in GRAJDANSKOE PRAVO: AKTUALNYE PROBLEMY TEORII I PRAKTIKI 62 (V.A. Belov, 2008)
[57]N.Kolokolscev, *Administrativnyi Dogovor kak pravovaya Forma Upravleniya* , 9 Pravo i Politika (2007).
[58]T.B. Kashanina, *Korporativnoe Pravo*, Pravo Hoziyanstvennyh Tovarishestv i Obshestv (1999).

law and the private law, and even by determining which of them basic, maximally strict classification cannot be reached any way.

As noted G.F. Shershenevich, in spite of the entire division of the law, from the scientific side the question on where there is a frame differentiating the features of the private law from those of public law - is remains till nowadays and not completely explained[59]; moreover, from my point of view, it become more complex and specific, as the relations dynamically change and need another more flexible methods of it regulations that make new questions in a process of it realization. Consequently, this question became the object of the study of many generations of jurists, which proposed the variety of approaches within the framework of the general theory of the division of law. And these views and approaches were not stable as changed during the entire history of legal science[60].

In some known stages of the historical development the indicated division «shadowed», or was directly denied. Not so long ago in the Soviet society the division of law into the public and private was generally denied[61]. According to this point of view, the law is subdivided into the fields (criminal, civil, administrative, labor, family law and so on). Each of these branches has their special «subject», which is characterized by juridical uniqueness. The fundamental standards and norms of each branch are consolidated, as a rule, in the special legislative document - code. In this sense it seems that for resolution of legal issues and questions nothing is necessary. Consequently, according to this point of view, law as a whole is created by a state and in this respect it has public nature, the «statehood» remains also for all other subdivisions (branches) of the legal system. In this case the concept of «public» even is not represented to consider it in narrow value, relatively only to that part of the law concerning the direct activity of the state.

In addition, the evaluation of the tasks of the state power was considered as the criterion for constructing the whole system of Soviet law[62]. For example, political-organizational law was considerate as a basic branch and subdivided into constitutional, judicial, administrative, control and auditing, criminal, civil, and military and international law. Economic law included the commodity-industry, land-forest, and transport, house-building, financial, concessional and labor law[63].

In the conclusion of this issue on interaction of the private and the public law, important to note, that there are some scientists that objected strict differentiation of the public

[59]G.F.Shershenevich, UCHENIK RUSSKOGO GRAJDANSKOGO PRAVA (1995).
[60]G.F.Shershenevich, OBSHAYA TEORIYA PRAVA: T.2. (1995).
[61] N.P. Aslanian, OSNOVNYE NACHALA ROSSIYSKOGO CHASTNOGO PRAVA (2001).
[62]I.A. Isaev, ISTORIA GOSUDARSTVA I PRAVA ROSSII (1993).
[63]A.A. Plotnieks, STANOVLENIE I RAZVITIE MARKSISTKO-LENINSKIY OBSHEI TEORII PRAVO V SSSR (1978).

and the private law by making accent on their interpenetrating properties[64]. For example, Austin was generally against this division. Dyuringeym did not separate criterion in a difference of the sanctions, Elinek - in the methods of operation of legal person, Petrajisckiy in the functions indicated in the forms of law and the systems of their legal motivation, Kavelin - in the composition of normative legal acts.

In addition it is essential to say that the growth of activity of states in the sphere of guarantee and protection of rights and legitimate interests of citizens (individual persons), and also attempts at finding the most suitable method of its regulation, cause tendency toward the more close connection and the interpenetration of elements of the public and private law. So questions of the relationship of public and private law are often encountered in practice; however, are not always solved in the theory. In this connection, any special case requires completely special approach, since, in our life the interaction of the public and private law become more complex and specific.

Consequently, by bringing general conclusion should be noted that the division of law into private and public predetermines different methods of legal regulation. The actuality of the division of law was preserved and is manifested in different approaches to the legal regulation of the institutes of law depending on subjects, purposes and legal relationships. Mutual influence, interaction and penetration of elements of the public and private law unavoidably cause serious problems with the application of legal norms and in determination of the legal regulation of the institutes of law. As a result, the correlation of public and private law, which is necessary to define as the correlation of different methods of legal regulation, specifies the clear determination of the frames of the relationship of the tax and civil law, including in the sphere of so called as interpenetration of their elements.

[64]G.F.Shershenevich, OBSHAYA TEORIYA PRAVA: T.2. (1995).

Chapter II.
The Interaction of the Tax law and the Civil law.

Notwithstanding, what actual status has the tax law – whether it accepted as independent field of the law, or is understood only as a part of the financial law, in any case the norms of the tax law undoubtedly are considered as a component of the public law. It follows that the tax law is legal discipline which almost completely regulates the relations representing dominating interest of the state or self-government bodies. For this reason for the norms of the tax law in case of application these rules is typical imperative regulation. Imperativeness of the norms of the tax law consists in factor that is not possible to conduct any deviations from the law and obligations[65]. That means, these norms are characterized by the strict regulation of the rights and duties of tax subjects and unequivocal restriction of their behavior during realization of such relations in the sphere of the tax law.

And despite the factors that these elements inherent in public law are essentially opposite for the contracts, where contractual freedom and relative dispositive of autonomy of the contractual sides dominates, agreements beginning more dynamically take its root in the sphere of the tax law. These are mainly the contracts concluded by the bodies of the public management with other subjects of public management, or when more complex problematic exist, mainly from the point of view of legal consequences of such contracts, with natural or legal persons[66].

By analyzing the parity of the tax law and the civil law, it is necessary to consider their interaction on an example of the current legislation. As it has already noted, in the Tax code of the Kyrgyz Republic there are no any provisions on change and the termination of the tax contract[67]. The point 5 of the article 1 of the Civil code of the Kyrgyz Republic[68] provides an option of application of the civil legislation to the relations of property character based on administrative or other imperious submission of one party to another in case direct stipulation by the legislation. In the article 4 of the Tax code the rule on principles of integrity and a coordination of the system of legislation and law, is established that institutes, terms and definitions of the civil legislation of the Kyrgyz Republic used in the code, are applied in that extend in what they are used in these branches of the legislation if other is not established by the Tax code.

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[65] V. Knapp, TEORIYA PRAVA (1995).

[66] B. Babchak, *K problematike Dogovorov (soglasheniy) v Nalogovom Prave*, in DOGOVOR V PUBLICHNOM PRAVE (E.V.Griscenko, E.G. Babeluk eds., 2009).

[67] The Tax code of the Kyrgyz Republic dated from 17 of October 2008,#230, last amended in 29 of January 2010 #22.

[68] The Civil code of the Kyrgyz republic dated from 8 of May 1996, # 15, last amended in 18 of January 2000, # 24.

However, in relevance to J.L.Tihomirov's opinion, the concepts borrowed from other branches of the legislation in the tax law have other maintenances, and new concepts which on the value compete to the certain concepts of other branches of the legislation, by ignoring conditions of interaction of the normative legal acts, and also ignoring the requirements of an interaction of norms of the tax laws with other legislations. Moreover, it is shown that in the form of attempts of elimination by the tax laws of gaps in legal regulation of the questions concerning the competence of other branches of the legislation, take place a new form of the resolution of arising problems within the frames of the specific sphere[69].

In this case, J.L. Tihomirov pointed, that such kind of lawmaking has generated a number of sharp contradictions, inside of branches observed « vacuums », when there is no regulation of separate institutes, and on the contrary, when the specific relations have detailed regulation.

The general review of the different works concerning legal character and regulation of the contracts in the sphere of the tax law is showed that views and opinions in relevance to the legal regulation of these contracts have different approaches.

In this connection, E.Scygankov, analyzing the nature of the contract of the tax credit, approves, that in the tax law can be such relations, similar with civility designs. In opinion of supporters of the given point of view, the presence of a contractual element in relations of the taxlaw, supposes certain private law regulation[70].

According to E.N.Nagornaya, the civil law principle of freedom of the contract cannot be broken by the tax bodies, and incursions of the civil legislation into the sphere of administrative and other imperious relations can not be limited by its the current legislation. S.A.Gerasimenko also considers that the tax law is called to regulate specific tax relations where the most part of such relations are based on the principles of civil law[71].

B. Babchak in his article divides the contracts (agreements) in the tax law into two basic groups, and one of which composed from the contracts concluded between tax bodies and taxpayers[72]. As an example he describes the contract, concerning determination of the size of the tax which from his point of view, is one of the significant institutes of the tax law of Slovak Republic, and is regulated exclusively by the norms of the tax law. In the special literature such contracts are usually designated as «public law agreements», according to which are regulated

[69]U.A.Tihomirov, *Obshaya Konscepsiya Razvitiya Rossiyskogo Zakonodatelstva*, 1 Jurnal Rossiyskogo Prava журнал российского права (1999).
[70]E.M. Scygankov, *Problemy Primeneniya i Sistemnogo Razvitiya Nalogovogo Zakonodatel'stva v Asperkte Sootnosheniya Publichnogo i Chastnogo Prava*, Economicheskaya Gazeta 55-61 (2005).
[71]E.N. Nagornaya, NALOGOVYE SPORY: SOOTNODHENIYA GRAJDANSKOGO I NALOGOVOGO ZAKONADATELSTVA (2002).
[72] B. Babchak, *K problematike Dogovorov (soglasheniy) v Nalogovom Prave*, in DOGOVOR V PUBLICHNOM PRAVE (E.V.Griscenko, E.G. Babeluk eds., 2009).

the rights and protected interests or responsibility in the sphere of public control, and if more precisely in the field of tax control. Under the Babchak statements, such contracts it not typical form of the decision of a question on a tax duty, as this contract concluded only when the taxpayer does not carry out necessary evidences at determination of the size of the tax. Consequently, to conclude this contract is an exclusive measure of the bodies of tax service, the law gives them a choice to use the given institute or not. Moreover, it can be reached only in case of existence of above mentioned circumstances. In relevance to it the tax bodies coordinate the size of the tax with the tax payer by the conclusion of the contract.

O.V. Soldatenko with full confidence approves, that public law agreements in the financial law act as additional means of the law, and, hence, according to the given point of view, he represents that it is impossible to apply of the norms of civil law to relations in the sphere of the financial law[73].

And also important to note that there are some works that deny the whole existence of agreements not only in the sphere of tax law, but the whole existence of financial agreements in the sphere of public law. In particular S.P. Morozov stated that originally it is an error to recognize existences of financial agreements, as a result of the fact that the financial laws as administrative are related to public law where agreements contradict the nature of such relations[74].

According to A. Kurbatov interaction of the civil law and the tax law is carried out in following forms[75]:

1. the determination of the bases of the appearance of tax obligations in dependence on the results of evaluating the activity of taxpayer from the point of view of civil law;
2. the determination of the order of taxation (including the possibility on an application of a number of privileges under the taxes) through the estimation of the type of legal relationships.

In this interrelation of two different branches of branches of the legislation it is necessary to consider that in a number of cases traditional categories of the civil law, fairly often being placed in the tax norms, so they get another meaning that distinct from initial; moreover reinforced by specific interpretation of tax bodies. Their relative independence limited by the sphere of regulation of imperious relations under the taxation[76].

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[73]O.V. Soldatenko, *O Nekotoryh Publichnyh Dogovorah v Finansovom Prave*, in DOGOVOR V PUBLICHNOM PRAVE (E.V.Griscenko, E.G. Babeluk eds., 2009).
[74] S.P. Morozov, *Dogovor Zaima: Poniatie i Osobennosti* (Jan.11, 2009), available at http://www.zakon.kz/magazine/archive/2004_01_11.asp.
[75]A. Kurbatov, *Osnovnye FormyVzamodeistviya Nalogovogo i Grajdanskogo Zakonodatelstva*, 6 Hozaystvo I Pravo Хозяйство и право, 57-62 (1996).
[76]A.F. Bakulin, *Ispolzovanie Norm Grajdanskogo Prava pri Razreshenii Nalogovyh Sporov*, Arbitrajnaya Praktika 594-596 (2004).

There is the opinion that the interrelation of the civil and the tax law is specified on the sufficiently extended position, in accordance to which the tax relations have the great similarity to the civil law relations on the strength of the fact that both of them have direct property nature, and also they are developed in the economic sphere of public life[77].

Tax law, just as civil law, regulates in the essence the property relations; however, achieve this process by completely different methods, based on the imperious subordination of one side of another. Hence it follows that the relationship of tax and civil law is an example of the relationship of different methods of the legal regulation of the property relations[78].

However, there is also the opinion that, in spite of formal similarities, the tax relations by its legal nature are distant from the civil law relations, and therefore there are other basics according to which civil relations are built, and they cannot be used as the regulator of the tax relations. In this connection precisely should be noted that the method of legal regulation serves as the basic criterion of the differentiation of the tax and the civil law. And the differences in the method of regulation of the social relations of the civil and the tax law are caused, first of all by the varied directionality of the purposes of such relations. Therefore for the correct application of the norms of the legislation in each specific case, it is necessary to explain - what relations are existed by the sides: the relations of civil nature or relations existed in the tax law[79].

At the end of the discussion of the issue on the interaction of the tax law and the civil law, I share the point of view of O.V. Soldatenko that the public agreements have the positive aspects in the financial law (as a whole in the field of the public law):

1. the decentralization and the democratization of state administration in the regulation of social relations is reached by means of the agreements;
2. is ensured dispositive of contractual regulation (freedom of choice of the entrance into the contract relationship).

On the basis of pointed above, it is possible to come to the conclusion that the elements, inherent in the private law (civil liberty) are “the component” of any more developed legal system. In this connection, the bodies of public authority on their selection can accomplish the public tasks by using a set of instruments entrusted by private law.

If we examine the relationship of the tax and civil law under the tax contract, concluded between the bodies of tax service and the tax payers, so it is evidentially demonstrated that this relationship is reflected in the fact that this contract is characterized as agreement, according to which are regulated the rights, the protected interests and the responsibility on the payment of

[77]R.Z.Livshisc, TEORIYA PRAVA (1994).
[78] E.M. Scygankov, *Problemy Primeneniya i Sistemnogo Razvitiya Nalogovogo Zakonodatel’stva v Asperkte Sootnosheniya Publichnogo i Chastnogo Prava,* Economicheskaya Gazeta 55-61 (2005).
[79]A.B.Bryzgalin, V.A. Babanin, I.R. Shtromvasser, *Aktualnye Voprosy Nalogovogo, Grajdanskogo, i Korporativnogo Prava,* Nalogi I Finansovoe Pravo (2004).

taxes. However, the tax part of the contract is reflected in the factor that the contract pursues purposes and interests in the sphere of the realization of the tax law. Moreover, it is possible conclude only if the law allows it. Even in combination of the word «it is possible to conclude» there is an element of the private law «to conclude» but adapted in the public law sphere.

Consequently the problems of the correlation and interaction of the elements of the tax and the civil law begins to more actual in the field of the tax law. Since, as it was already noted, there is no unanimous opinion about the legal regulation of the institutes, which reflect the elements of public and private law, but regulates the specific relations related to the tax law. There is also another problem appeared in the fact that the institutes, borrowed from other branches of legislation, begin to have new concepts, adapted in specific sphere of legal regulation. Hence it follows that for the resolution the problems of the legal regulation of the tax contract it is, in the first place, necessary to determine the essence and nature of the tax contract.

Chapter III.

The analysis of a content of the tax contract under the Tax code of Kyrgyz Republic.

Consequently, below presented an analysis on the essence and nature of the tax contract with regard to provisions presented in the Tax code of the Kyrgyz Republic.

The Tax code of Kyrgyz Republic dated from October 17, 2008 granted to taxpayers the right to pay taxes on the basis of the tax contract since 2009, the conditions of payment of which were determined by the provisions of the chapter 56 of the Tax code, and the order of application is established by the government of Kyrgyz Republic.

I. The content the of tax contract. In our opinion, according to Tax code, the essential conditions of the tax contract are: 1) object; 2) sides; and 3) the period of action.

1. The Object of the tax contract. Article 366 of the chapter 56 (Taxes on the Basis of the Tax Contract) of the Tax code determines the object of the tax contract. According to this article the object of this contract is the agreed tax obligation of a taxpayer in the size of the fixed sums of: (1) the tax for profit, (2) the NDS to the assessed deliveries, (2) the tax from sales. Consequently, the object of the tax contract is the obligation of a taxpayer on the fixed payment of the taxes pointed out above. All the remaining taxes paid by a taxpayer in the general order.

We consider that with regard to the mentioned definition, the tax contract is one-sidedly forcing - on the taxpayer the responsibility to pay taxes, as at the same time, tax body does not have counter obligation.

Mainly article 366 of the Tax code regulates the obligation of a taxpayer on the payment of the determined by contract taxes in the form of fixed pay. According to article 371 of the Tax code a taxpayer is obligated to present united tax declaration, including on the activity, on which the taxation is achieved on the basis of the contract.

The tax code also provides for conditions regarding the determination of the sum and the performance of the tax obligation.

The sum of the tax obligation on the contract applied in the size, which exceeds the greatest sum of tax obligations in 3 previous years, not less than by 25 percent. With the determination of tax obligation is considered the data, established in the course of the control carried out by inspections.

According to official information the sum of the tax obligations of taxpayers on the basis of tax contract for 01.01.2010 year before the entrance to the contract totally in the republic

composed 33904,6 thousand soms, and on the basis of the tax contract composes 53749 thousand of soms. As is it evidentially demonstrated, the sum of the tax obligation under the contract increased for two times. The information on the sum of the tax obligations around the Bishkek city shows that the to the contract basis passed only 31 economic subjects, and their sum of tax obligations before the entrance to the contract composed 5763, 5 thousand soms, and under the contract 10047, 3 thousand soms[80].

The performance of tax obligation under the contract achieved monthly to 15 day of each month in the sizes determined by conditions of the contract.

2. **Sides of the tax contract.** Article 366 emphasizes that the tax obligation must be agreed. This assumes the participation of the sides in the determination of tax obligation.

The Tax code contains a number of limitations concerning the sides of the tax contract: both from the side of taxpayer and from the side of public authority can appear only special subject. It means that not every taxpayer has right, and not each organ of the public authority designated to conclude the tax contract.

As the body public authorities designated the bodies of the tax service, therefore, it is considered as a competent in dealing the issues under the tax contract. The bodies of the tax service - are the collective concept, which includes both the central apparatus of the state, which is the tax service under the Government of the Kyrgyz Republic, and the subordinate subdivisions of all levels, which have the status of legal person. Let us to note that the body of the tax service does not exceed the scope of its competency in correspondence with article 2 of the Constitution of the Kyrgyz Republic, which, first of all means that it must act only within the limits of its competency established by law.

From the side of a taxpayer can be only organization and individuals, who achieve economic activity, in favor of exception of subjects, who pay tax on the basis of required patent. The noted requirement is not only, the Tax code also establishes the list of economic subjects, who do not have the right to conclude the tax contract:

1. subjects, who render credit, financial, insurance services;
2. investment and pension funds;
3. professional participants in the market for securities;
4. the taxpayers of tax for subsoil use;
5. the taxpayers of excise tax;
6. subjects, who achieve economic activity less than 3 years.

[80] Annual report of the state tax service under the government of the Kyrgyz Republic on a quantity of economic subjects, who passed to the contract basis and the sum of their tax obligations for 01.01.2010 year.

The enumeration of economic activity indicated tight control from the side of the state over the subjects of the tax contract. In our view the legislator completely limits the number of subjects, who have the right to pay taxes on the basis of the tax contract, because of the control, since during the period of the action of tax contract there is no visiting tax checkings with the only exception of counter checking. In this case the remaining forms of tax control are achieved in accordance with the Tax code.

Despite of the fact that the taxpayers voluntarily express their initiative to enter the tax relations on the basis of tax contract, not every taxpayer has a right to conclude this contract under the criteria indicated. According to the official data totally in the republics only 1344 taxpayers (economic subjects) passed to the contract basis for 01.01.2010 year[81].

3. **Period of action for the tax contract.** The tax contract is concluded for one year and can be yearly prolonged. Thus, tax period for the performance of the tax obligations on the basis of a contract to be the period of the time from the day of the beginning of the action of contract to the end of the year.

II. Order of conclusion, change and termination of the tax contract.

1. Order of conclusion. The taxpayer intended to use the regime of the payment of taxes on the basis of contract has right to give the appropriate notification in writing to the tax bodies at the place of its tax registration, not later than the 1 day of month, which precedes the month of the entrance into the tax contract (art.369 of Tax code).

In this case tax o bodies during 15 days from the day of the supply of statement can deliver a decision about the possibility of application by the taxpayer of regime on the basis of contract or the justified failure in its application. And only in the case of making a decision about the possibility of application by the taxpayer of regime on the basis of tax contract the tax body concludes contract with the taxpayer.

This order strictly limits the freedom of taxpayer to conclude the tax contract. There is an assumption that the body of tax service in each case separately examines a question on whether a taxpayer should to enter the contract relationship or no. Resolution of this question completely depends on the discretion of the body of tax service.

2. Order of change. The Tax code doe not provide with provisions concerning the change of the conditions of the tax contract. However, in practice this procedure already applied.. According to the information, which we obtained in the course of the interview of the executive director of the chamber of the tax consultants of Kim T.M., the tax regime on the basis of the tax contract is already applied by the boarding houses of Issyk-Kul' during 3 years. In 2008, when

[81]Annual report of the state tax service under the government of the Kyrgyz Republic on a quantity of economic subjects, who passed to the contract basis and the sum of their tax obligations for 01.01.2010 year.

there was reduction in the indices in connection with the unsuccessful season, many of these boarding houses did not renew the tax contract for a new period, since tax code establishes sufficiently strict terms for the contract.

In particular, the sum of tax obligation under the contract for the specific year (for example, 2010) must applied as that exceeding from this sum, but not less than by 25 percent, in other words the sum of tax obligation yearly increases. The head of the department on the control of the collection of taxes and insurance of payments of the State Tax Service under the government of the Kyrgyz Republic A. Karagulova states that corrections on a decrease of the rates to 10 percent were already introduced into Jogorku Kenesh, and also with respect to a change of some other conditions, however, as it was explained, this question is found even on the examination.

Hence it follows that the sides of the contract cannot change its essential conditions independently. A change in the conditions of the tax contract of those provided by tax code is accomplished only by way of legislation initiative. Thus, the organ of tax service, on the initiative taxpayer or if necessary independently, can introduce the appropriate proposals or corrections concerning the conditions of tax contract directly into the legislative body.

3. Order of termination. Article 369 of the Tax code establishes that the authorized tax body has right to refuse or to interrupt the period of the action of regime on the basis of contract in the cases of:

1. the contradictions to condition, established by chapter of 56 tax codes,
2. the contradictions to condition, provided in the contract,
3. in the presence of the facts leading to the deviation from the taxation.

In this sense it follows that the body of the tax service is designated by imperious authorities with respect to the taxpayers.

The termination of the contract is possible in the connection to expiration of the time of its action and not prolongation by its sides to the new period. At the same time, the termination of the tax contract is possible by the dissolution of the contract on the initiative of taxpayer; however, only in the case of its reorganization.

The order of the termination of tax contract is determined by the body of tax service. As there is no the strict order of the termination of the tax contract established by law, in this is appeared many questions, for example, weather it is possible to terminate the tax contract on the initiative of taxpayer, in the case of essential disturbance by the organs of the tax service of contract conditions.

Many questions, connected with the order of the termination of an agreement are resolved by the civil legislation. In this case, a question about the application of this approach as

is correctly noted in the literature will depend on resolution of a question about legal nature of the tax contract.

The analysis of the content of tax contract makes it possible to formulate the intermediate conclusions: (1) sides - the organ of tax service and taxpayer are not equal (the body of tax service has more specified rights, but taxpayer - responsibilities); (2) all norms has imperative nature. Hence it follows that legislator imperatively prescribes the specific version of the behavior of taxpayers, he requires from them the precise observance of the orders of legislation. And in the case of the infringement of requirements the body of tax service can apply the measure of the intensive control.

In this connection Braginsky M.I. and Vitryanskiy explained that the compulsory rules maximally limit the significance of contractual model. By agreeing to this point of view N.B. Alenkina indicated that the absence of the possibility to include in the tax contract additional, besides of the established by chapter 56 Tax codes conditions, excludes the application of principle of the freedom of agreement to such relations.

All essential conditions of tax contract are specified by law, and rest are determined in the one-sided order by the organ of tax service, which excludes the possibility to express to taxpayers its will in the establishment of the specific conditions of the payment of taxes, therefore it is excluded the possibility of the free determination of a content of the tax contract.

III. Form of tax contract. The form of the tax contract is affirmed by the order of State Committee on taxes and other collections[82] that called as a contract on the payment of the taxes in the form of fixed pay".

We should actually examine, weather the tax contract does contain all above-mentioned essential conditions? This moment is important for the agreements in general, in that connection, if the tax contract does not contain all noted essential conditions, then in the case of the application of a civil law there is a possibility to recognize a contract according to the rules of the Civil code as invalid or not concluded.

On the essential conditions of the tax contract:

(1) according to the form of the tax contract its object is the fixed pay of taxes according to the comprised calculation. Calculation of the fixed pay of taxes is the integral part of the tax contract.

(2) in this form it is also clear states the side of the contract: as the Administration of State Committee for taxes and other collections by the appropriate region, and from other side, a taxpayer noted as economic subject.

[82]The Order of the state committee of the Kyrgyz Republic on taxes and other collections,dated December 1, 2008 of №123 "about the assertion of positions, and the forms of tax accounts"

(3) period is indicated by the date of the performance of tax obligation.

Consequently, all essential conditions for the tax contract are provided by the form itself.

According to the analysis of the content of the form of the tax contract, its conditions are not determined by sides; these are established by the law or are determined by the body of the tax service on the basis of the represented data about the financial activity of the taxpayer and other standards for the contract. In relevance to the tax obligation it is determined by the body of the tax service by the comprised calculation of the fixed pay. From this follows the fact that the taxpayer by no means participates in the determination of the conditions of the tax contract, he is only joined to the standard form. In this connection does arise the question, is it possible to consider the tax contract as a contract of adherence according to the civil code?

As it was already noted the conditions of the tax contract are determined by one of the sides (by the body of tax service) in the standard forms. To other side, in the case of the tax contract a taxpayer only joined to the proposed agreement.

In the case of positive of answer to this question, according to article 387 of the Civil code, the taxpayer has a number of reasons with respect to termination or modification the conditions of the tax contract:

(1) if the tax contract being acknowledged as a contract of adherence, deprives the side the rights usually allowed according to the agreements of this form;

(2) if it excludes or limits the responsibility of other side for a violation of obligations;

(3) if it contains for the joined side some bad conditions, which on the basis of reasonable understanding the joined side would never accept it in the presence in it of the possibility to participate in the determination of agreement conditions.

Tax code in this connection does not establish any bases for the change and termination of the tax contract.

The form of tax contract contains conditions (in particular point 3) about the order of resolution of the disputes with regard to tax contract. According to this point, with the appearance of disputed questions, and force major circumstances, the sides solve them in accordance with the standards of the chapter V (tax offense and responsibility for its accomplishment) of the Tax code the Kyrgyz Republic. In this case, completely is excluded the possibility regulating the dispute between the sides, for example via negotiations, what is mainly characterized he civil law. Consequently, even the tax contract does not contain norms about the responsibility of the bodies of tax service for their violation of the contract conditions, or rights to the judicial protection, all questions, which are concerned the disputes under the contract must be solved according to tax code. Hence it follows that taxpayer can terminate the tax contract, by the appeal of actions or resolutions of the bodies of the tax service.

The analysis of a content of the tax contract let us conclude that the resolution of tax body about the conclusion of a contract and the determination of its conditions composes the basis for the tax contract, rather than achievement by the sides of an agreement. I completely share the point of view of N.B. Alenkina that the tax contract does not have its independent value. She also refers to E.Starostskiy, in the sense that tax contract comes out not as the completely independent form, but as the form, connected with the administrative act.

V.K. Babchak such forms of agreements in the tax law with regard to its nature related to the public law agreements, he also notes that the public law agreements, or administrative agreements, are the application of law in the sphere of public law. From individual or administrative acts they are differed in terms of the fact that the discussion deals with the double-sided legal acts, by which are created, changed or terminated the rights, the legally protected interests or responsibilities in the sphere of public control.

The contract first of all is an agreement of the sides, and it is directed on an establishment, change or the termination of the rights and duties. Taking into account that in the tax contract agreed only the tax obligation of taxpayer in the payment of taxes, but rights and obligations- are not the result of the negotiated agreement, but the order of law (requirement), we are inclined that this contract, in the first place, pursues public purposes, or has public nature. Regulation with the aid of the compulsory rules, which cannot be changed by participants in the legal relationships specifically characterized the public law.

In spite of the fact that tax relations design by a contract, the sides of the tax contract remain in relations of superiority and subordination, because: (1) all decisions under the contract are made and accepted individually by body of tax service; (2) tax payers under the contract do not have opportunity to express the will indetermination of conditions of the tax contract; (3) body of the tax services has the right to cancel and terminate the given contract at its discretion. The Sides in the relations of the agreement, as a rule, are equal, and in case of the tax contract, on the contrary, tax payers depend on aspiration of body of tax service and will of the state – that gives norm of public law.

Sides in the relations are by agreement, as a rule, equal, and in the case of tax contract, on the contrary, taxpayers depend on the aspiration of the organ of tax service and will obey united state will - which gives the rules of public law. In this connection B.I. Braginskiy emphasizes, that presence between the parties the relations of superiority of one of the sides and subordination excludes basically an opportunity of application not only civil the legislation, but also the design of the agreement.

In nature tax contract differs from the civil law contract, first of all: (1) in terms of the voluntariness of the entrance into the legal relations (in the tax law voluntariness not absolute as

in the civil relationships, but limited); (2) there are differences in the juridical independence of the sides; (2) difference predominantly in realization of it purposes (tax agreements they are realize the public interests, civil - private).

The tax contract combines all most essential elements of public law:

(1) as a participant of the relations – an a subject, allocated by imperious authorities in relation to other participants acts;

(2) freedom of will is mainly realized within the framework of the law;

(3) tax contract first of all is directed on protection of public interests of a society and the state.

Based on this, we nevertheless are inclined to the conclusion about public nature of this institute, to which must be applied the provisions of the tax legislation. As consequence, we count to impossible to use the rules of the civil law on the conclusion, the change, the termination of agreements.

Conclusion

The analysis of the domestic literature, practice on the application of a tax contract and the analysis of a content of the tax contract makes possible to state a final conclusion.

The studies of the thesis work showed that the relationship of the tax and the civil legislation unavoidably draws to the appearance of the problems on legal regulation of institutes, which are existed and appeared in the sphere of the tax law, in which are simultaneously inherent the elements of both private and public law. In particular, as an example of the relationship of the private law and the public law we examined the tax contract.

It is impossible to characterize the tax contract as the institute of private law, as we do not match the basic principles inherent inn private law in the tax contract, particular there is no the juridical equality of the sides and independence in realize particular interests. Consequently, we incline to the conclusion that the tax contract preserves basic elements of the public law.

On the basis of the presented analysis and also from the fact that the relations, which appear in the process of the tax activity of states are related to public law tax law, we consider that the tax contract is, in the first place, directed toward the realization of public interest, since the realization of execution of obligation on the payment of taxes is one of the primary tasks of state.

We came to the conclusion that by its nature the tax contract is the institute of public law, for the substantiation of our position, we are based on the following conclusions:

1. Tax contract has special legal nature: it legal regime is determined by the rules of public law, mainly by the Tax code.
2. It possesses the quality of legal act.

In addition to this, the tax contract, transfers the legislative establishments, provided by the Tax code that, first of all, means that the relations are strictly established by the framework of the law. In this connection the taxpayer does not possess the freedom of the entrance into the contractual relations and in the determination of the content of contract. First of all it means that the required correspondence of its content with the established orders of law. The body of tax service is also called to act within the framework of competency established by law, and its purposes and tasks established by state.

As consequence to the drawn conclusion, we make some recommendations, so for the resolution of the problems, which are concerned the legal regulation of the tax contract, we propose to supplement the Tax code of the Kyrgyz Republic with the provisions, that would

exhaustively regulate the procedure of appearance, change and termination of legal relationships on the basis of the tax contract, or in a other legislative manner to regulate these relations.

This circumstance has both the great practical value for the system improvement of the legislation of the Kyrgyz republic in the part of the regulation of tax relations under the tax contract and essential theoretical value.

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Additional Information:

1. Annual report of the state tax service under the government of the Kyrgyz Republic on a quantity of economic subjects, who passed to the contract basis and the sum of their tax obligations for 01.01.2010 year.

2. KOMENTARIY K GRAJDANSKOMU KODEKSU ROSSIYSKOY FEDERASCII, Chast pervaya 51 (O.N.Sadikova eds., 1998).

3. Interviews:

    (1) A. Karagulova, the head of the Department on the Control of the Collection of Taxes and Insurance of Payments of the State Tax Service under the government of the Kyrgyz Republic
    (2) T.M. Kim, the Executive Director of the Chamber of the Tax Consultants.