

## Correlation of tax and administrative liability

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**Abstract.** In this article the author defines the problem aspects of bringing to responsibility in the investigated field, as well as suggests certain legislative innovations to solve these problems on the basis of analysis of the modern state of the institution for legal responsibility in the sphere of taxes and levies. The tax system and the corresponding sphere of new type legal control has been forming for 20 years in Russia, but a special attention is recently paid to the problem of tax liability effectiveness.

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### Introduction

The chosen theme for the scientific research is extremely acute since the tax system is the main state regulation tool for economic relationship. The issues of taxation affect every individual person and legal body, having incomes and property. However, the tax collection is not yet implemented to the full extent. Legal statistics data and past arbitration court rulings represent this fact.

The specialists are worried about the fact that the state annually loses more than 30% of payments due in the result of mass tax evasion. The budget loses great money; this fact has an adverse effect on the opportunities of solving social and economic tasks, set forth by the President of the RF V.V. Putin. Lost finance are the lost profits, this is big finance means which could be invested with the aim to level living standards of different layers of Russian society, to solve tasks, which were set forth in the prior national projects, to solve the problem of slum dwelling. A lot of scientists note that there has appeared a situation when the criminal economic behaviour of the subjects of taxation becomes a conventional condition of their activity. Among the subjects of economic activity there has been formed a group of legal bodies and individual persons whose initial aim is not to pay taxes, i.e. criminal economic behaviour [1]. There appears the so-called "economics of tax avoiding" [2]. This provides the necessity of fighting these violations of law. Being a part of shadow economy, tax offences have turned into a serious threat for economic security of Russia.

In some expert researchers' opinion the reason for this is not only the unwillingness of the Russian citizens and organisations to pay taxes, but also the inefficient arrangement of tax reforms.

The experience of a lot of foreign states having developed tax systems shows, that a lot of

mistakes could be avoided by means of defining mechanisms of state and society defence from security incidents in taxation sphere [3].

In this regard the development of adequate measures of legal liability for tax offences fighting is of great importance.

One should clearly define that basis, i.e. tax offences, on which the taxation crimes are formed and developed. Some specialists state that "sometimes it is quite difficult to define that line which separates tax offences from crimes, as well as from good behaviour in taxation sphere" [4].

### Methods

While investigating economic and judicial regularities there were used brand new scientific achievements in the field of logical basis of the general law theory, data of the theory of comparative financial and taxation law. The brand new scientific developments in the field of financial law method were taken into account.

### Body

Tax offences (this should be clearly understood) are of special character which predetermines the necessity of the fullest reimbursement of losses to the state (municipal entities).

That's why it is the restorative justice character of tax liability is objectivized while establishing the "tax offence - tax liability" connection. The restorative justice character of the liability is more typical for financial but not for administrative liability, and to the branch purpose of financial but not administrative law. The problem of formation and implementation of mechanism of effective response to criminal offence of the taxation

law should be solved within the framework of financial law.

The analysis of the foreign legal system also speaks for this [5]. There are facts that have been formed during the 20-years history of the Russian financial legislation. That's why in this investigation we paid all our attention to the legal model of tax liability, contradictions of its use, problems of theoretical and practical issues.

The disputing component of the investigated problem predetermines the study of tax liability on different levels of theoretical analysis.

The first level is connected with the study of tax liability as legal relationship. It is a social relationship between the state in the name of its special bodies and the offender of the tax and levies law; this relationship is restricted by the norms of financial (tax) law. The offender is liable to suffer the corresponding adverse consequences for the offence. Tax liability is a special type of the official enforcement which consists of the tax law subject's suffering of adverse consequences, corresponding sanctions of the violated norms, implemented in the form of the protective legal relation.

The analysis showed the complicated complex nature of the tax legal relation which includes the influence of the international law norms as well as constitution-legal, administrative-legal and information-legal origin. Here the economic (property) element is dominant, there are connected with implementation of functions which are immanent to finance.

The economic aspect of tax relation reveals in the differentiation of taxation objects (realization of goods, works and services, in methods of defining the price of the goods, works or services for the purpose of taxation, defining incomes from the sources in the Russian Federation and overseas; dividends and percent). Performance of obligation for paying taxes and levies in some cases (as in accordance with Article 46 of the Tax Code of the Russian Federation) is connected with the determining of funds on the deposits of tax payers; in other cases it is connected with the asset valuation of a tax payer (tax agent) - Article 47 of the Tax Code of the RF. Such a versatility of tax relation contributes not only to the difficulties of formation of the optimal organisational form of tax offence fighting, but also to the difficulties of developing of adequate measures of legal liability.

Legal model of tax liability has to take into account the versatile system links conditioned by the complicated structure of the tax relation [6].

Thus, the complex of organisations and bodies, which provide the flow of tax relation, condition not only the institutional nature of tax

liability but also the question of mutual liability of taxpayer and state.

The second. The legal model of tax liability has to take into account the specific nature of tax offences. Today we have a lot of works devoted to this problem [7]. The emphasizing of financial and tax liability must reflect the peculiarities of legal nature of financial and tax offence. The central problem in the aspect of the investigated topic is the problem of correlation of tax and administrative offence.

In the literature one can find positions with equal tax and administrative offences, accept their differences and consider tax offences as a type of financial offences. A legislator represented the concept of administrative and tax offences in Article 106 of the Tax Code of the RF [8] and in 2.1. of the Administrative offence Code of the Russian Federation [9]. This article pays attention to the specific nature of every marker of a tax offence. The general marker of a tax offence is the same as for any offences - it is an act. However, the specific nature of the tax offence is revealed in the tax unlawfulness which is a type of financial unlawfulness. According to the Tax Code of the RF such act (action, lack of action) which violate the norms of the Tax Code of the RF, is considered as unlawful. The administrative unlawfulness matches the other criteria.

A legislator does not give a clear definition of the social maleficence of tax offence. However, according to the item 3 of Article 108 of the Tax Code of the RF, the tax liability of individual persons becomes in case when their acts does not contain elements essential to the offence.

Imperfection of the tax legislation (lack of necessary norms of law on the one hand and simultaneous regulation of similar social relations in different legislative acts) leads to the significant difficulties in law enforcement and to the existence of different official positions of not only the Supreme Courts of the Russian Federation, but also of the Federal Tax Service [10].

Tax offence is always the guilty offence.

The approach to the definition of the guilt of a legal body, stated in the administrative law, is very close to that which one can find in the civil law: some specialists note that " the Administrative offence Code actually accept the behavioural concept of the definition of guilt of legal bodies" [11]. The model of the legal body guilt must correspond to two comprehensive markers [12]. Firstly, an act injurious to the public for which there exists a liability in accordance with the Tax Code of the RF is made by the official person or representative of an organisation. Secondly, an official person or a representative is guilty of commission of tax offence.

Thus, tax and administrative offences differ from each other for this criterion.

The subjects of tax offence are the participants of tax legal relations but not administrative one. Moreover, the marker of punishability for tax offence builds the basis of tax liability by means of establishing legal liability for commissioning of unlawful act in the Tax Code of the RF, which is stated in Article 106 of the Tax Code of the RF.

As we can see, tax offence in its legal nature differs from administrative offence. This, this predetermines the possibility of formation of a specific institution of tax liability which reflects the specific nature of the tax offence.

Legal liability is an element of taxpayer's legal status, as well as necessary means for providing a corresponding behaviour of taxpayer. Establishing of the unity of rights, obligations and liability of a taxpayer is an essential condition for formation of the model of mutual responsibility between the state and taxpayers.

In the conditions of incompleteness of the theory of administrative liability, greater indifference of administrative relations to the economic ad property element of social relation, domination of punitory element in the methods of its implementation, implementation of legal construction of tax liability in the doctrine as well as in the legislation becomes quite reasonable. It means that for the purpose of theoretic analysis one should differ tax liability in a narrow or its own sense, i.e. liability, stated by the tax law in a wide sense.

Tax liability in a wide sense is a complex, intersectoral institution which combines legal norms connected with the tax liability itself for tax offences, with administrative liability for administrative offences in the sphere of taxes and levies as well as criminal liability for tax crimes.

## Report

Complex study of tax liability has the great research potential. The legal fact of tax liability existence is shown in the position of legislator which is stated in the Tax Code of the RF. The legislator set the guidelines for development of legal liability in the tax sphere, in particular in criminal and administrative spheres, is means of separating them on the basis of subjective set of elements of the offence.

However logical contradictions between the legal methods of solving these problems o the level of tax and administrative legislation were not fought. To our mind this can be explained by gnoseological reasons, traditional prevailing of administrative law over financial one including the methodology and

legal techniques. However the changes in economic-legal model of the Russian society while transferring to the market, creates the necessity for developing of a new correlation. First of all it refers to the strict differentiation and subordination of the tax, administrative and criminal liability. The comparative analysis of norms of tax and administrative law shows that the objective issues of administrative offences correspond or sometimes are equal to the objective issues of tax offences. The legislator suggests such approach in accordance with which the administrative liability for the violation of tax and levies legislation can be incurred only to official persons of the organisation that commissioned tax offence. The scientists dealing with administrative and financial law are not satisfied with such a parallelism.

## Conclusion

The process of formation, distribution and use of financial resources is under the strict financial control. It is known that the modern Russian financial legislation in the sphere of financial control needs the systematization and codification of a bulk of legal norms which sometimes contradict each other or leave gaps in the law. The Russian economics suffers great losses because of the low level of financial, budgetary and tax discipline. The real thread for its economic safety is improper and ineffective use of state funds and material resources, jugglery with impoundment, theft, corruption, capital export and legalization (laundering) of incomes, acquired by illegal means [13].

The creation of the effective system of state financial control will allow minimizing negative moments connected with the functioning of the shadow economy, improper use of budgetary funds, decrease of taxation, capital export and growth of economic crimes. It should be reflected in the law of the state financial control.

We suppose that the proper way out can be found from the legal viewpoint.

To our mind, the articles of the Administrative offence Code of the Russian Federation which are similar to those of the Tax Code, should be excluded for the purpose of tax regulation development. This solution is acceptable because the Tax code of the RF is the reflection of the Russian constitutional but not administrative economy. But the excluding of criminal liability in this case is not necessary since it is incurred for the crimes with increased social danger as against tax offence.

The concept of increased danger of tax offenders is being accepted and embodied abroad. Tax discipline is established with the help of different

legal means: including the definition of frame conditions of tax consultation, optimisation of tax administration, differentiation of reasons for bringing to responsibility, certain decisions for criminal tax offences. In this regard the Russian legal system needs clearer definition of the subject of tax offence, "avoidance" of tax responsibility, necessity of paying taxes from all types of incomes. The legislative definition of the size of damage for the purpose of criminal prosecution should be clarified.

The Tax Code of the RF predetermines the definition of legal essence of law violations by the bank as taxpayer, taxpayer and tax agent. However Chapter 18 of the Tax Code of the RF is devoted to the analysis of violations of law and responsibility for them, the subject of them can be only a bank as an agent of state, which mediates tax payments to the budget.

Article 132 of the Tax Code of the RF predetermines the tax liability of a bank for violation by the bank of the order of opening of an account for taxpayer. The liability for violation similar to the above mentioned in content and method, is predetermined in Article 15.7 of the Administrative offence Code of the RF. The subject of administrative offence is an official person of not only the bank but also of any other credit institution. The forms of liability also correspond: for the one case it is a levy, for the other it is a fine, only the methods of fine calculation are different; in one case (Tax Code of the RF) it is a fixed sum of fines, in other case the legislator forms a range of incurring administrative fines.

Due to the lack of differentiation of the range of fulfilment of obligations by the bank in the range from "non-fulfilment" to "proper" fulfilment, the courts use wider explanation for this norm, including the situation of "improper fulfilment" of obligations by the bank. In this regard the legal borders of the bank responsibility should be legally fixed.

Tax and administrative responsibility of the bank for non-fulfilment of the decision of the taxation body about the temporary suspension of account transactions differs in the ways of violation and the subject (offender). Tax offence, made by the bank, is followed by the exaction of penalty. Judicially-technical imperfection of the reading of Article 135 of the Tax Code of the RF has led to the ambiguity of the legal precedents, including the contradiction between the position of the Constitutional Court of the RF and past arbitration court rulings.

In our opinion this is the argument not only for the developing of a single doctrine of tax norms explanation, but also the elimination of technical

mistake of the legislator when Item 1 and Item 2 of Article 135 differ only by stated sanctions.

We suppose that the order of exaction of penalty from the banks is disputable. In the text of part 1 of Article 136 the legislator does not mention any punitive sanctions stated in Item 1 and 2 of Article 136 of the Tax Code of the RF, this leads to the inconsistency of this provision.

In our opinion this gap must be eliminated with regard to the opinion of the Constitutional Court of the RF about the fact that fines, mentioned in Article 133 and 135 of the Tax Code of the RF shall be incurred in the order stated in the Article 60 of the Tax Code of the RF and cannot be used by courts or other bodies and official persons.

The citizens of the Russian Federation, foreign citizens and stateless citizens can be brought to administrative responsibility. Foreign and stateless citizens are brought to administrative responsibility, including for tax offences, on a regular basis. Tax and administrative legislation in force do not contain any forbiddance for the dismissal of cases by means of the procedure of insignificance (Article 2.9 of the Administrative offence Code of the RF) offence made by the official persons of enterprise (establishments, organisations). Taking into account the insignificance of administrative offence the court can free the offender of administrative liability and restrict itself with verbal warning. Tax legislation has no list of insignificant offences [14].

The analysis of the Russian legal regulation shows that the principle of justice and keeping the balance of interests are not fully implemented. Too wide judgement in the process of bringing to responsibility in the case of lack of criteria of differentiation of offences stated by the law creates favourable conditions for corruption and avoidance of taxation [15].

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