

The concept of tax responsibility in the Russian legislation

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Abstract. Relevance of research of the tax responsibility concept is that in the context of a large-scale economic reform carried out in the Russian Federation, problems connected with formation and implementation of highly effective public financial policy in the taxation sphere, particularly in bringing taxable persons to legal responsibility for tax offenses gain special relevance. The authors come to a conclusion that tax responsibility is an independent type of legal responsibility since tax responsibility inherits elements of legal responsibility; bringing to tax responsibility is held according to a certain procedure, it means that tax responsibility has the special procedural form.

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Introduction

The modern economic situation in Russia is characterized by decrease in revenues of budgets of all levels of the budgetary system in the Russian Federation that, in turn, leads to formation and, respectively, performance of deficit-ridden budget. Among the reasons influencing this fact is growing scale of offenses made in the field of taxes and fees.

Due to constantly increasing social importance of a tax law when problems of legal regulation of relationship of taxpayers and taxing authorities cover more and more citizens of Russia, one of the most important tasks is creation of such system of the tax legislation where the taxpayer would be unable to evade payment of fiscal charges. It demands rationalization of each type of tax and creation of effective legal support. The problems connected with tax responsibility were describes in works both domestic, and foreign scientists such, as E.I. Altman [1], R.A. Brealey and S.C. Myers [2], R. Dixon [3], J.C. Fleming [4], B. Fuchs [5], Ch. Kindleberger [6], A.H. Millichamp [7], B. Rees [8]. However many controversial issues in the field remain open.

Material and research methodology

The methodological basis of this research is a set of methods of scientific knowledge with a leading dialectic method. General scientific (dialectics, the analysis and synthesis, abstraction and specification) and specific scientific methods of research (legalistic, comparative and legal, technical and legal, legal modelling) in a context of system and structurally functional approaches are used in the article. During scientific search the special attention was paid to comparative, system methods of research, and also methods of legal, state, economic modelling.

Results and discussion

About legal nature of tax responsibility

Article 106 of the Tax Code of the Russian Federation contains the definition of the term "tax offence": "a tax offense admits act (action or inaction) performed culpably (a violation of the law about taxes and fees) by the taxpayer, the tax agent and other persons for which the present Code established responsibility" [9].

The person committed a tax offense has to be made responsible by the legislation .

The question of a type of responsibility for a tax offense is debatable: whether it is possible to allocate tax responsibility as an independent type or it is a part of legal responsibility?

From the point of view of M. Y. Tikhomirov, "legal responsibility is the state coercion to execution of requirements of the legislation, the legal relationship, where each party is obliged to be accountable for the acts to other party, the state and society" [10, p. 503]. In other words legal responsibility at the same time acts both as coercion, and as a legal relationship.

O. S. Ioffe had the following opinion: legal responsibility should be understood "first of all, as the sanction for an offense, as the consequence provided by the law on a case of its non-compliance" [11, p.95].

Formation of tax (financial) responsibility as independent type of legal responsibility in Russia started only during the Post-Soviet period in connection with active formation of the financial and tax legislation [12, p. 49]. Now the question status of tax (financial) responsibility still exists. Part of experts claim that "financial responsibility has administrative essence" [13, p. 86]. Other scientists consider that it is necessary "to recognize that tax

responsibility is something independent and its identification with administrative responsibility can generate certain difficulties in law-enforcement practice" [14].

From our point of view, tax responsibility is an independent type of legal responsibility. First, tax responsibility inherits elements of legal responsibility. Secondly, bringing to tax responsibility is held according to a certain procedure, therefore tax responsibility has the special procedural form.

Guilt as indispensable condition of tax responsibility

One of the main elements of legal responsibility is fault existence. Therefore, bringing the person to tax responsibility, it is necessary to prove its guilt. It is important to note that a number of scientists-civilians believe that need of responsibility without guilt in the tax relations is obvious. V. Solovyov notes that the norms which are not providing guilt in tax legal relationship are not casual misunderstanding, but manifestation of a tendency and given "situation became the result of evolution of the public relations, a consequence of a collision of general legal principles: principle of responsibility for guilt and full recovery of losses" [15, p. 97].

Article 110 of the Tax Code of the Russian Federation provides two forms of guilt at commission of a tax offense: intentionally or by reckless. The guilt by reckless is of special interest. The tax legislation gives the following definition: "the tax offense admits committed by reckless if the person did not realize illegal nature of the actions (inaction) or mean character of the consequences which have arisen owing to these actions (inaction) though had to and could realize it" [9].

Therefore, according to the Tax Code of the Russian Federation the person committed a tax offense, did not realize illegality of the actions. This fact contradicts the essence of guilt which expresses the mental relation of the person to socially dangerous action (inaction) and socially dangerous consequences. In the theory of penal and administrative law and in lawsuits about criminal and administrative offenses it is used to claim that, committing a crime by reckless, the offender realizes socially dangerous nature of the actions (illegality), but to a lesser extent, than at intention. In turn the theory and practice of a tax law proceeds from the thesis that the offender cannot realize illegalities of the actions that is impossible because "the mental relation can be expressed only within consciousness of the person, and out of consciousness of the person there is no mental relation, therefore, there is no guilt

of the subject also" [16, p. 40]. From all aforesaid it is possible to draw a conclusion on discrepancy of the tax legislation that aggravates its understanding for the ordinary taxpayer.

Besides, public authorities also have difficulties in understanding of the tax legislation. Experts with corresponding knowledge in the area of taxation are being more frequently recruited in court practice [16]. Need for such experts is confirmed by the fact that the Government Executive Order d.d 10.02.2014 No. 162-r approved the Plan of measures on improvement of tax administration for 2014. Thus development of the Federal Law regulating tax consultation and responsibility of tax consultants is referred to number of control indicators. As practice shows, the law enforcement official sometimes is not able to define whether the person realized illegality of the acts, consequently to prove guilt of the person who has made a tax offense that can entail unreasonable bringing the person to tax responsibility, violation of its constitutional laws and freedoms or to application of more rigid sanctions, than would have to be applied.

From all aforesaid it is possible to draw a conclusion that the forms of guilt provided by the tax legislation differ from what are provided for the general legal responsibility. Thus features do not reveal an essence, under what circumstances responsibility is borne, and, on the contrary, dissolve boundaries of bearing responsibility that confirms the thesis about imperfection of the Tax Code of the Russian Federation.

The circumstances excluding tax responsibility

The tax code of the Russian Federation provides the circumstances excluding bringing the person to responsibility. They are:

- 1) absence of a tax offense;
- 2) absence of the person's guilt in commission of a tax offense;
- 3) commission of the act containing elements of a tax offense by the natural person who has not reached sixteen-year age by the time of commission of act;
- 4) the expiration of limitation periods of accountability for commission of a tax offense [9].

The analysis of this article showed that the conditions, listed in article 109 of the Tax Code of the Russian Federation, exclude responsibility, but not bringing to responsibility. In the first three cases legal relationship of responsibility does not arise in principle, so they exclude responsibility, instead of bringing to it.

In the absence of a tax offense it is impossible to speak about the fact of its commission and absence of guilt or not achievement by the person

of age of 16 years indicate deficiency of one of elements of an offense and testify the absence of the whole set of elements of an offense.

Therefore, it is expedient to edit both the title of this article, and the circumstances specified in it.

The circumstances mitigating tax responsibility

Measure of responsibility for commission of a tax offense is the tax sanction which is established and applied in the form of monetary collecting (penalties). Thus the size of the sanction has to correspond requirements of justice and harmony, differentiation of responsibility following from the Constitution of the Russian Federation and article 3 of the Tax Code of the Russian Federation depending on gravity of an offence, size and nature of a caused damage.

The conditions mitigating responsibility for commission of an offense are established by court or the authorized body considering case, and are considered at application of financial sanctions (clause 4, article 112 of the Tax Code of the Russian Federation).

Therefore, in the presence of at least one circumstance mitigating responsibility, taxing authority or the court considering case, have the right to reduce the size of a penalty provided by the article 119 of the Tax Code of the Russian Federation not less than twice. The list of these circumstances is open. Among the main circumstances which are given by taxpayers for mitigation of their responsibility and which are taken into account by taxing and judicial authorities are the following:

1. **Independent detection and elimination of violations of the tax legislation.** In clause 17 of the information letter from Supreme Arbitration Court of the Russian Federation d.d 17.03.2003 No. 71 independent detection and elimination of violations of the tax legislation by the taxpayer admits as a mitigating circumstance at determination of the size of penalties for commission of a tax offense.

2. **If at the time of submission of the tax declaration the sum of a tax was paid completely.** The resolution of Presidium of the Supreme Court of the Republic of Mordovia d.d 30.05.2013 No. 44-g-13 established that payment in full of the sum of a subject to tax discharge by the taxpayer for date of adjudication is a mitigating circumstance.

3. **The offense is committed for the first time and by reckless.** The resolution of Federal Anti-Monopoly Service of the Northwest federal district d.d 22.06.2009 No. A05-13750/2008 was taken into account that the businessman committed

violation for the first time and by reckless, and, having estimated the evidence produced by the businessman, recognized commission of a tax offense for the first time as circumstance mitigating responsibility and reduced the penalty size.

4. **Presence of dependents** is recognized as mitigating circumstance in the resolution of Federal Anti-Monopoly Service of the Northwest federal district d.d 22.06.2009 No. A05-13750/2008.

5. **Disproportion of size of a penalty to a committed tax offense.**

Conclusion

Summarizing the foregoing, the authors can draw a conclusion. The perspective of legal responsibility for violation of the taxes and fees legislation is actively discussed in legal community, in bodies of legislative and executive power of the Russian Federation. However legal regulation of the tax relations remains inconsistent and spacing that can be explained by insufficient theoretical readiness of appropriate questions.

Tax responsibility is an independent type of legal responsibility since tax responsibility inherits elements of legal responsibility; bringing to tax responsibility is held according to a certain procedure, it means that tax responsibility has the special procedural form.

The forms of guilt provided by the tax legislation differ from what are provided for general legal responsibility.

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