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**STATE REGISTRATION AND ACCOUNT OF TAXPAYERS
AS A FORM OF PRIOR TAX CONTROL**

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Discusses the importance and content of the state registration and account of taxpayers as a form of prior tax control. Substantiates the necessity of introducing legislative amendments that strengthen administrative control to improve the quality of account of taxpayers, as well as non-inclusion in the State Register of unfair taxpayers and short-lived companies.

Key words: tax control, types of tax control, taxpayers, state registration and account of taxpayers, the signs unreliability of a company, unjustified tax benefit, short-lived companies.

“All searches made by officials, revealed to them only that they probably do not know, what is Chichikov, and what, however, Chichikov certainly must be something”

N. V. Gogol

Over the years, the scientists argue about the forms of tax control. On the basis of article 82 of the Tax Code of the Russian Federation, many authors distinguish such forms of tax control as:

- 1) tax checks;
- 2) getting explanations of taxpayers, tax agents, and payers of fees;
- 3) verification of data of Accounting and Reporting;
- 4) inspection of premises and areas used for deriving income (profit) [7.318, 9.212].

I cannot agree with it for the following reasons: First, this list includes additional elements, mixing forms of tax control with the activities that take place in the course of its implementation, and secondly, the list unreasonably ignores such an important form of tax control as registration and account of taxpayers.

Article 83 of the Tax Code of the RF defines the account of taxpayers only as an objective of the tax control [1], some authors refer the account of taxpayers to the directions of the tax control, mixing it with the control of the use of tax benefits and verification the correctness of use of cash register equipment [12.35]. We believe that this approach violates the logical structure of chapter 14 of the Tax Code of the RF “Tax Control” and detracts the significance of registration and account of taxpayers as a form of prior tax control. Accounting and registration of taxpayers are considered as an independent form of tax control also by V. G. Panskov, M. N. Kobzar’-Frolova, V. A. Tymoshenko, L. V. Spirina and etc. [8, 294; 6, 18; 11].

Let’s consider the content and meaning of the registration and account of taxpayers for further tax control.

Should be counted both taxpayers-organizations and individuals (in this category are separately accounted individual entrepreneurs). State registration of legal entities and entrepreneurs precedes putting on record and implemented by tax authorities in accordance with the Federal Law № 129-FL of August 08, 2001 “On State Registration of Legal Entities and Individual Entrepreneurs” (the Law No. 129-FL).

Information on taxpayers is included in USRT (Unified State Register of Taxpayers; EGRN in Russian) and AIS “Tax” (unified automated information processing system). USRT, in turn, includes data from:

- USRLE (Unified State Register of Legal Entities; EGRYuL in Russian),
- USRIA (Unified State Register of Individual Entrepreneurs; EGRIP in Russian),
- as well as data about natural persons who are not entrepreneurs.

It should be noted that the information from the USRLE is publicly available and posted on the web-site of the Russian Federal Tax Service www.nalog.ru.

The procedure for putting on record and deregistration of taxpayers is governed by article 83, 84 of the Tax Code of the RF. Legislator lists in article 83 of

the Tax Code of the RF four grounds of putting on record: 1) the location of an organization, 2) the location of its separate units, 3) the place of residence of a natural person, 4) the location of their immovable property and vehicles, leaving the list open by the phrase “on the other grounds specified in this Code”. At this, the procedure of state registration and putting on record of organizations and individual entrepreneurs assumes certain obligations of these entities, as well as a system of responsibility. When implementing of entrepreneurial activity without state registration or in violation of its rules can be applied responsibility under article 14.1 of the CAO RF, article 116 of the Tax Code of the RF, article 171 of the Criminal Code of the RF.

Putting on record at the location of immovable property and vehicles is exercised on the basis of information received from the registration authorities in accordance with article 85 of the Tax Code of the RF. These organs are:

- bodies responsible for cadastral registration, state cadastre of immovable property and State registration of right to real estate and transactions with it,
- bodies responsible for the registration of vehicles
- justice authorities issuing licenses for notarial activities,
- Child Protection Services,
- bodies (institutions) authorized to perform notarial acts, and notaries engaged in private practice,
- bodies responsible for registration (account) of individuals at place of residence (place of stay), civil registration of individuals, etc.

For wrongful failure to submit data to tax authorities for these bodies is provided for tax responsibility under article 129.1 of the Tax Code of the RF.

Any defects, errors relating to the registration and account of taxpayers may lead to violations by controlled subjects of the tax legislation, to the implementation of schemes for tax evasion and thus significant loss of the state budget. These defects, for example, include the appearance in the state register of problematic taxpayers – “short-lived companies”. The signs of such firms, according to the FTS, have about 2.2 million of registered taxpayers.

Recently, one of the pressing issues of tax control has become the detection of the taxpayers receiving an unjustified tax benefit using “short-lived companies”. But despite the variety of forms of struggle against this phenomenon, their number is not decreasing. Hardly a great difference in this fight will be made by the introduction in 2012 of criminal responsibility for the illegal formation of a legal entity; given that the main category of such firms is registered on asocial individuals or by lost passports (but remember Gogol with his “Dead Souls”). It is of interest

the position of S. S. Dukanov on the current issue. He casts doubt on the fact of state registration of a legal entity as the only proof of his legal status and suggests introducing a kind of filter for registration and account of taxpayers by using the term “company of minimum requirements” [5.18]. The mechanism of action is simple – if a legal entity does not meet the basic set of requirements, it is recognized as a nominal (fictitious) company and can be eliminated. The minimum requirements include: 1) existence of real management bodies with minimal employment and real wage; 2) existence of a real address, to which the company can communicate; 3) timely reporting to the tax and other state bodies. The author believes that information on compliance with these requirements should be included in the Unified State Register of Legal Entities and be publicly available. In addition, in case of recording in the State Register information that a company is a nominal one, the counterparties of such a company cannot refer to a bona fide ignorance when entering into transactions with it.

At present time, on the Russian Federal Tax Service website www.nalog.ru you can get to know the name of a juridical person, address, PSRN (Primary State Registration Number; OGRN in Russian), ITN (Individual Taxpayer Number; INN in Russian), TRRC (Tax Registration Reason Code; KPP in Russian) and the date of its registration. The need of companies to get this information about counter parties came in 2006, after the Higher Arbitration Court ruled that tax benefits can be considered unreasonable if a tax authority prove that the taxpayer acted without due diligence and caution, and he had to be aware of violations committed by the counterparty, in particular, by the virtue of relations of interdependence or affiliation of the taxpayer with the counterparty [3].

It should be noted that in the early 90's, when the “short-lived companies” only began to appear, their goal was basically non-payment of taxes by the firm itself. Gradually, the mechanism of their use in tax evasion scheme took on a catastrophic nature, and long overdue, this scheme allows an unscrupulous taxpayer to inflate costs for tax on profit and VAT deductions through artificial introducing in a chain of economic relations a counterparty – “short-lived company”.

In scientific literature, many authors explore the problems of tax control, associated with “short-lived companies”. But their views are often diametrically opposed. Some care about bona fide taxpayers affected by the excessive claims of the tax authorities. Others complain about the insufficient powers of the tax service.

Having chosen for analysis one hundred decisions of the Federal Arbitration Court of the West Siberian District for the period April - July 2012, the subject of which was unjustified tax benefit, we have found that in almost all cases, the Court

examines the evidence of the tax authorities of the unreality of transactions and lack of taxpayers due diligence in selecting counter parties. Typically, these counter parties have the signs of a “short-lived company”. At the same, there is no consensus among judges in identical situations. An example is the decisions of the Federal Arbitration Court of the West Siberian District from May 11, 2012 on the case No. A46-10559/2011 and from June 04, 2012 on the case No. A46-10750/2011. In addition, sometimes the courts to satisfy claims of taxpayers justify their decision as follows: “accusing a taxpayer of not showing due diligence and caution when entering into transactions with counter parties, the tax authority does not consider the fact that it is exactly the tax authority registered these counter parties and gave them the official documents on the basis of which organizations had the right to carry on entrepreneurial activities” [16].

How to ensure in such cases, the balancing of private and public interests, as well as the fundamental principles of tax law – the principle of justice and legality? We believe that a taxpayer should not bear the burden of responsibility for unscrupulous actions of his counter parties, but only in cases where the taxpayer could not know about the unreliability of his partner.

Above we have represented the position of S. S. Dukanov on the need for a protective mechanism at the registration of legal entities. In our opinion, this mechanism must begin to act earlier, before there will appear information about violations of the “minimum requirements”.

Signs of unreliability of a company, detected at the registration stage, have been set out in the instructions of the tax service, which was announced on the website of the newspaper “Account. Taxes. Law” from February 21, 2007 as “109 Signs of Unreliability of a Company in the Eyes of a Tax Inspector” [14]. All signs in this document are divided into three groups, the first of them includes twenty-eight signs, detected at the stage of registration. These ones, for example, include:

- registration address is the address of the “mass” registration (that is, there are registered more than 10 firms). Besides there is a statement of the owner of the premises that the premises has not been provided to anyone and will not be available,

- company registration address does not exist,

- an invalid identity document of the applicant, founder or leader is specified in the application for registration,

- an individual is the founder of 10 or more companies (“mass” founder),

- application for state registration is certified by a notary whose signature has been previously tampered with,

- regarding the founder (head) of a company became aware of the facts under which the performance of his/her functions is difficult or impossible (advanced age, student, serviceman, convicted and is serving a sentence, is on long-term treatment, homeless, refugee, forced migrant, incapable), etc.

Thus, the tax authorities form the dossier of a taxpayer, with taking into account all these signs. Taking into consideration focus of the policy, pursued by the tax authorities, on the publicity of information about companies, as said in an interview A. A. Malyshev the Director General of the Information Agency "Valaam" that publishes "Messenger of the State Registration", the conclusion about the need to make available for a wide range of people the information on the unreliability of companies is getting quite apparent [10, 42].

We believe that the introduction of a simple mechanism would reduce the number of tax disputes concerning unjustified tax benefit received by using "short-lived companies". Thus, if the tax authorities have made in the AIS "Tax" some notes (peculiar markers) indicating the unreliability of a company, these markers should be reflected on the website of the FTS in the information of the USRLE. At the time of appeal of a taxpayer for information about his counter party, he can conclude - is there a risk of future claims of tax authorities, or not.

August 17, 2012 the Ministry of Economy posted on the website the project of federal law developed by the Federal Financial Monitoring Service with the amendment of the Codes of the Russian Federation and more than a dozen of laws, primarily aimed at countering the laundering of criminally acquired funds and the most popular shadow schemes of taxation optimization and capital export [13]. "Kommersant" newspaper assesses the project, believing that the fiercest proposal of the Federal Financial Monitoring Service is a parallel change of the law On Bankruptcy and the law On Registration of Legal Entities [15]. In particular, it is proposed to merge the institutes of bankruptcy and liquidation of legal entities. Also, here are slated the measures to strengthen control at registration, proposed to expand the list of reasons for refusal of state registration through adding to paragraph 1 of article 23 of Law 129-FL seven subparagraphs. The following terms are listed among the new reasons:

- if within the period established for state registration, but prior to making an entry in the State Register or taking a decision to refuse state registration, to the registration authority is submitted a judicial act or an act of a bailiff-executor that prohibits the registering body to perform certain registration actions;

- if an individual - the founder (participant) of a legal entity that is a commercial organization, or an individual registered as an individual entrepreneur

on the basis of a court verdict is denied the right to do business for a certain period, and such period has not expired;

If there is an entered into force court decision on recognition of an individual entrepreneur who is a manager of a legal entity insolvent (bankrupt) or on the enforceable termination of his activities as an individual entrepreneur and from the date of these court decisions has not expired a year, or there is an entered into legal force court verdict that has sentenced to this individual entrepreneur deprivation of the right to do business for a certain period, and such period has not expired, or there is an entered into force decision on a case on an administrative offence, in accordance with which the person is brought to administrative responsibility in the form disqualification, and the period for which it is installed has not expired.

But, given that the term for state registration is 5 working days, what is the probability of obtaining the necessary information in such a short time? And how well-functioning should be the information exchange between tax authorities and other bodies and institutions?

It is obvious that the introduction of these reasons for refusal will let tax authorities to use a peculiar filter for the registration of subjects, thereby improving the quality of registration. Currently, article 23 of Law 129-FL lets refuse registration mainly on formal grounds (in the case of failure to submit documents necessary for state registration or submission of documents to an improper registering authority) [2].

In our opinion, in addition to the use of such a filter for registration, it is necessary to extend terms of registration up to 10 working days. In addition, for persons who are “mass” founders and leaders, we must introduce a special procedure for registration, for example, the additional condition: the provision of documents to the registration authority personally and with justification of the need for such registration.

Since January 01, 2011 the required for state registration documents can be sent electronically. This allows carrying out the procedure of state registration without personal submission of documents by an applicant to the registration authority. But due to the fact that the Law 129-FL stipulates notarial procedure of verification of the applicant signature in the application for state registration, the procedure of such registration compulsorily includes a notary. Later, in field and cameral tax inspections, sometimes it turns out that the notary has not verified this application, the notary’s seal has been forged or the notary has been deprived of the right to engage in the notarial activity. To prevent such situations at the

stage of registration, it is necessary to legislatively regulate the information exchange of notaries with tax authorities. If to the electronic database of the tax authorities is sent information from the notary who signed a specific application, at the time of filing this application the tax authority will be able to oppose further offenses, denying registration of a business entity. This has been facilitated by the introduction in the year 2012, in accordance with the Federal Law No. 210-FL of July 27, 2010 "On the Organization of Provision of State and Municipal Services", of the interagency electronic interaction system (SMEV in Russian).

Consider another situation faced by inspectors of the Federal Tax Service in the process of tax audits. Sometimes it turns out that the documents on behalf of a counter party have been signed by an unauthorized person, and the leader or founder has died. We believe that in this situation will help information exchange with the authorities recording the acts of civil status. Comparison of databases will allow timely identification of such companies and taking the necessary steps to amend the state register.

We have touched on only one problem related, in fact, with poor quality of registration and account of taxpayers. There are many of such problems, they include also disadvantages of information exchange of the tax authorities with other registration bodies, and the unreliability of databases leading to the fact that some individuals are imposed the payment of taxes on property or vehicles that do not actually belong them, and many others.

Summing up, we note again that the registration and account of taxpayers are independent form of preliminary tax control that should be reflected in article 83 of the Tax Code of the RF. In order to improve the quality of registration and account of taxpayers we need to change the procedure of registration from the declarative to licensing one, also extend the terms for the state registration up to 10 working days, enlarge the list of reasons for refusal of registration and make publicly available the tax authorities information about unreliable companies. To do this, it is needed to make amendments to the Tax Code of the Russian Federation, the Federal Law No. 129-FL of August 08, 2001 "On State Registration of Legal Entities and Individual Entrepreneurs", as well as in the regulation of organization of the tax authorities' work on posting in the Internet on the web-site of the Russian Federal Tax Service information on legal entities in respect of which have been submitted documents for the state registration of amendments made to the constituent documents of a legal entity, and making amendments to the information on a legal entity contained in the unified state register of legal entities [4].

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