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LEGAL NATURE OF TAX CONTROL IN THE SYSTEM OF STATE CONTROL AND OVERSIGHT

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By distinguishing between the supervisory and control activities of public authorities and analyzing norms of the Tax Code of the RF, which confer powers to tax authorities, here are alleged really implemented during tax audits state oversight functions, and not control ones.

The author notes that in respect of tax audits, both cameral and field ones, there is no the main feature, inherent to control activity – impact on the internal processes of an audited entity, adoption measures to increase its efficiency.

Keywords: tax control, control and oversight activities, state supervision, legal nature of control and oversight activities.

Through control and supervisory activity State guarantees the observance of legislatively established requirements designed to ensure on the one hand the rights and legitimate interests of citizens and organizations, and on the other hand the public interest of the very state.

Modern Russian legislation does not clearly distinguish the concepts of state control and supervision. In some normative legal acts these notions are even used as synonyms. For example, Federal law “On Protection of Rights of Legal Persons and Individual Entrepreneurs in Carrying out of State Control (Supervision) and Municipal Control” [2] in the very name allows the use of the notions “State control” and “Supervision” as interchangeable, identical ones. The Law also contains

a common definition for these two different, in our opinion, types of activity of public authorities, through which the State exercises its control and supervisory function.

However, Russian legislation contains definitions of such control and supervisory activities of the State as federal state forest monitoring, federal state fire supervision service, state harbor control, tax control, etc.

Analysis of these definitions gives reason to believe that the Russian legislation does not contain any separation of aims, objectives and basic principles of exercising state control and supervision. However, it should be noted that some normative-legal acts imply differences in functions of executive authorities of control and supervision [3]. The lack of a systemic, legislatively enshrined approach for differentiation the control and supervision activity of the State leads to problems in defining the terms of reference in part of exercising control or oversight, application of forms, methods and means of response not relevant to the aims and objectives of a specific kind of exercised activity, which finally poses a threat of violation of rights and lawful interests of controlled and supervised entities. Therefore, the issue of improving definitive norms in the sphere of State control and supervision activity does not lose its relevance.

Of particular importance is the implementation of the control and supervision activity of public authorities in the field of taxation. After all, proper execution of the legislation on taxes and fees by taxpayers, payers of fees and tax agents eventually affects the amount of tax revenue used in further to perform the totality of all state functions.

Science of administrative law contains reasonable generalized approaches to delimitation of state control and supervision. However, the issues of identification of the legal nature of control and supervision activities in a particular field still remain insufficiently studied.

The main purpose of this study is to identify the legal nature of tax control in control and supervision activity of the State on the basis of signs of state control and supervision developed by legal doctrine.

A. A. Tsvil-Buklanova defines administrative supervision as a systematic observation of the strict and steady observance of laws and subordinate act that is implemented by special bodies of management on jurisdictional issues in respect to non-subordinate to them bodies [4, 80].

Other authors note that supervision is a state check of compliance with law by a supervised object, with the subsequent initiation of the procedure of bringing it to legal responsibility for infringement of legislation implemented by an authorized

public authority in respect of public authorities, local self-government, undefined range of legal and natural persons, irrespective of their form of ownership and departmental subordination, not subordinated to the authorized body [5, 127].

Thus, supervision activity of public authorities is characterized by the use of the method of observation, the implementation of this activity with respect to an unsubordinated entity, the application of measures of legal responsibility as a result of revealed violations, the facts of commission of which are revealed during checks and recorded in the acts of executive authorities. At this, the method of observation does not involve the introduction of inspection body into the internal organization of the activities of an audited entity, identification the causes of violations, formulation of approaches to improve the functioning of the audited entity.

Analysis of state control definitions contained in the legal literature allows us to emphasize the signs of state control that distinguish it from supervision activity of public authorities.

Control activities are designed not only for revealing violations as causes of adverse consequences, but also for identification trends that explain their occurrence and suggestion measures to prevent them. For example, implementation of state financial control involves not only getting all sorts of information on budget execution, but also giving performance assessment of bodies executing budgets, tracking legitimate, targeted, effective use of budget funds. To achieve such result, control authorities are not deprived of the right to distribute their impact on internal organizational processes of a controlled entity.

State control is exercised by public authorities in respect of subjects under direct subordination. In addition, it is mistakenly to believe that state control is exercised only by executive authorities. This feature is characteristic just for supervision. When, state control can be also exercised by the legislative (representative) body, for example, in case of realization of state financial control.

Also in our opinion, wrongly the claim that audit is an exceptional form of state control or an exceptional form of supervision. The mere fact that a public authority applies such form of activity as checking, does not define the essence of activity itself. For the purpose of determination the legal nature of this activity, the goal of check acquires paramount importance.

Legislation of the Russian Federation on taxes and fees defines the concept of tax control as the activity of authorized bodies to monitor compliance with the legislation on taxes and fees by persons who are obliged to calculate and pay taxes and fees. To determine the legal nature of the activities of authorized bodies in the field of taxation, which has traditionally been called "tax control", we need a more

detailed study of the established forms of their implementation, identification of their goals, relations between control bodies and controlled entities, documentation of results.

The Tax Code of the Russian Federation [1] defines the basic forms of tax control: tax audits, receiving explanations from taxpayers, tax agents and payers of fees, validation of accounting and reporting data, inspection of premises and territories used for deriving of income (profit).

As an aim of tax audits the Tax Code of the Russian Federation establishes monitoring over compliance with the legislation on taxes and fees by a fee payer, tax payer or tax agent. According to the author, such a wording is not correct, as it means that the aim of implementation one of the form of tax control is a control, in other words a process for the sake of process.

Tax authorities perform two kinds of tax audits – cameral and field. After analysis of the legal norms governing the procedure of these checks, we come to conclusion that the terms of reference of tax authorities during field audits are much wider than powers during conducting cameral audits. The list of powers of tax authorities is extended by the right to conduct an inventory of taxpayer's property, as well as to inspect production, storage, trade and other premises and territories used by the taxpayer for obtaining income or maintaining objects of taxation, in special cases, to seize documents.

The competent authorities during a tax audit, however, can only apply measures of tax responsibility for partial or late compliance with the obligation to pay taxes or fees, the amount of which is determined on the base of the actual productivity of a verifiable entity. In respect of tax audits, both cameral and field, there is no the main sign inherent to control activity – influencing the internal processes of an audited entity, adoption of measures to improve the efficiency of its activities. In other words, tax authorities as a result of a tax audit are not entitled to oblige audited entities to introduce changes in production and technological process of the tax payer or its management structure, etc. for increasing tax revenues.

Other forms of tax control – receiving explanations from taxpayers, tax agents and payers of fees, validation of accounting and reporting data, inspection of premises and territories used for deriving of income (profit), are applied, as a rule, during tax audits and, as separate components of the verification activity, cannot exceed it neither by aim nor by result.

From the study can be concluded. Contrary to the traditional judgment that takes place in the theory of tax law, that tax control is a state control activity, its signs indicate inherent legal nature of supervision.

In this connection, we propose changes in the Tax Code concerning renaming tax control in tax supervision, defining it as the activity of authorized bodies to monitor compliance with the legislation on taxes and fees by persons who are obliged to calculate and pay taxes and fees, and within their competence to apply stipulated by law measures of administrative responsibility in case of detection of offences.

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