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PUBLIC ADMINISTRATION IN TAX FIELD[1]

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Tax administration is considered both in a narrow and a broad sense. The author defines the aim and objectives of tax administration. Here is noted insufficient attention to the issues of preventive activity of tax authorities and prevention of threats to financial stability of the state. In the article argue the fact that administrative and tax jurisdiction cannot be part of tax control.

Keywords: tax administration, administration in tax field, administrative jurisdiction in the area of taxes and fees, administrative and tax jurisdiction.

In the modern conditions of development of the Russian statehood, in our opinion, the study of issues of public administration, in particular in the tax field (tax administration), determining its essence and content, as well as the correlation with administrative jurisdiction in the area of taxes and fees, is very important both for the theory and the practice that forms it.

Studying the issues of public administration in tax area (tax administration) is in the initial stage in the science of law, moreover, in the contemporary official documents there is no legal definition of such concept.

Public administration in tax area as an organizational and managerial system of realization tax legal relations includes a set of forms and methods, the use of which is intended to provide tax revenues to the budget of Russia.

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It is appropriate to note that the main motivation of paying taxes has always been not the consciousness of taxpayers, but coercion measures that can be applied to them in detecting evasion of taxes and fees or payment them not in full. In the course of time these measures were transformed in the relevant legal provisions governing the substantive and procedural matters of applying such coercive measures. Their list in the current Russian tax legislation is vast: it is the right of tax authorities to make direct debit amounts of taxes and penalties, charge overdue interests, suspend operations of accounts, etc.

However, judicial practice related to tax violations is ambiguous and sometimes contradictory. On the one hand, this is due to periodic changes in tax legislation, introduction of new tax payments, but on the other – this requires a careful analysis of both these changes and itself the institute of law that provides lawful conduct of all participants of tax legal relations.

The fact, that in recent years the issue of the existence of such a legal category as "tax process", as an independent type of activity, different from administrative process, has arisen in the financial and legal science, counts in favor of the relevance of this problem. Of course, this point of view is highly controversial, requiring serious theoretical study, and, therefore, further scientific debates. It is possible that it owes its existence the enshrining procedural legal norms in the Russian Tax Code.

This situation leads to duplication of norms, emergence of legal uncertainties and other negative consequences, hindering the implementation of the principles of bringing to legal responsibility developed by the long evolution of law development.

Duplicating a number of substantive and procedural norms of the Code on Administrative Offences and the Tax Code of the RF makes confusion in law enforcement, disorients citizens and legal persons who are taxpayers, and carries a lot of negative consequences.

In addition, the feature of taking decision and sentencing in a case of an offense in the area of taxes and fees is that several subjects of legal relations bear responsibility for a same administrative offence in the tax field: a legal entity (usually in accordance with the norms of the Tax Code of the RF), an official or just a natural person (in accordance with the provisions of the Code on Administrative Offences of the RF). And in the presence of signs of a crime in the offence – also physical person (in accordance with the Criminal Code of the RF).

The above said leads to the need for theoretical understanding of the formation of a new legal paradigm, search of methodological grounds, determining of cause-effect relations of occurring changes to streamline legal relations arising in

the areas of finance, taxes and fees, insurance, securities market, as well as of the unification of bringing to responsibility for these offenses. Taking into account that administrative law encompasses a vast range of public relations, this work requires effort on the part of scientists of many disciplines.

Meanwhile, in the theory of administrative law, there are issues, in respect of which the debates have being conducted for several decades. Among them is the issue of the so-called broad and narrow definitions of the category of "administrative process" and content of the concepts of "administrative procedures and proceedings". In support of the various concepts many works were published, a large number of arguments was given, and so on. However, if earlier these disputes were theoretical in nature and did not affect law enforcement activities, then in current conditions scientific discussion has become practical. The need to understand the causes of the dispute and to build on the basis of their analysis new logic structures, which meet the general trends of development of domestic jurisprudence, is one of the urgent tasks for the science of administrative law at the present stage.

To date, we can talk about two concepts in the approach to resolving this scientific problem: "jurisdictional" and "managerial".

The essence of "jurisdictional" concept (N. G. Salishcheva) of understanding the category of "administrative process" is that it is perceived as activities of executive bodies to resolve disputes arising from administrative-legal relations. In other words, the basis of an understanding of such activity is a conflict, which is to be resolved in a certain order. Including, with subsequent application of legal sanctions.

Referring to the arguments used to substantiate the "broad" understanding of administrative process, it should be noted that in 1949 S. S. Studenikin noted that "executive and administrative activity is carried out on the basis of certain procedural rules, the totality of which is an administrative process" [15, 44].

G. I. Petrov believed the following: "Administrative process in its broad sense – is a process of executive and administrative activities of public administration bodies. Administrative process in its narrow sense – is a process of public administration to consider individual cases within their field of competence" [12, 30].

A little later D. N. Bakhrakh expressed the following opinion: "The peculiarity of administrative process is that it regulates not only jurisdictional activity, i.e., activity to consider disputes and apply coercive measures, but also the activity of implementation the regulatory provisions, so to speak, the activity of positive nature" [5, 276]. A. P. Korenev did not distinguish between "narrow" and "broad" understanding of the considered category, believing the following: "The Soviet

administrative process is an activity consisting in the exercise of powers for the implementation of public administration functions and application the norms of substantive and administrative law, which flows in the manner and forms established by law" [10, 67-68].

In our view, the reasoning of the masters of administrative science was quite convincing. Because the essence of the administrative activities of state bodies of executive power and their officials lies exactly in the executive and administrative nature of their deeds within the competence prescribed by law. In some cases – in implementation of executive functions in all areas of public administration, in others – to resolve disputes arising from administrative-legal relations. In other words, the understanding of such activity is based on a legal conflict that must be resolved in a specific order.

Thus, seemed quite convincing the position that administrative process was a sub-legislative executive and administrative activities of public authorities and their officials, which were undertaken within their competence to implement the objectives and functions of executive power in all spheres of public administration, as well as in resolving legal disputes of conflicting nature, under the current administrative-procedural legislation.

It is integration into this concept of managerial, as well as, of course, jurisdictional element let talk about administrative process as about a comprehensive, inter-branch formation.

It seems we should agree with the A. V. Kirin that back in 1988, reconciling antagonists of various "procedural" camps, B. M. Lazarev said that "In fact, there is no a single process in the field of public administration, and there is a multiplicity of types of processes, each of which has its own role and relative independence. Moreover, executive and administrative activity, in contrast to justice, has a more complex structure and consists of various independent forms of rule-making, enforcement, jurisdictional and other activity, when justice consists only in the resolution of particular cases. Hence the diversity of managerial procedures in comparison with judicial ones.

In addition, the procedure of consideration of criminal and civil cases in courts is always strictly regulated by law. The procedure of activities of public administration bodies has no such detail and rigor. Administrative law also establishes a large number of procedures that are adapted to different types of managerial activity and even to solving some particular specific and concrete issues. Finally, managerial process is strongly influenced not only by the diversity of managerial activity, but also by the structure of the apparatus set up for its implementation, and this

apparatus, in turn, is characterized by a multiplicity of bodies' types and differences in their competence. The structure of the judiciary is significantly simpler. In addition, every court is "self-contained", because in addressing specific cases is independent and subordinates only to the law" [11, 11-12].

Unfortunately, in all the relevance of arguments of B. M. Lazarev, his very reasonable and relevant, even today, suggestion to colleagues-processualists not to "become obsessed" with the methodologically dead-end in their desire to unite all the extreme diversity of in most cases not similar to each other specific procedures and proceedings in the field of public administration into a single codified legislation branch and general branch of administrative and procedural law has turned out hardly heard by most of them [8, 35].

At the same time, indirect solidarity with the concept of multiplicity of independent administrative processes is expressed today by such prominent theorists of modern administrative law as B. V. Rossinskii and Yu. N. Starilov who in 2009 stated that a narrow or broad approach to the understanding of administrative process demonstrates the absence of its real legal content, indicates its "virtuality". In this regard, administrative proceedings, which are various in content and tasks, are impossible to be regulated in a single codified normative legal act [14, 662-667].

Also, one has to agree with A. V. Kirin that a more definite position that shows direct solidarity with the concept of multiple administrative processes of B. M. Lazarev (but also without any reference to it) is taken in the works of recent years by one of the classics of domestic administrative law D. N. Bakhrakh, rightly arguing that extremely diverse activities in the field of public administration cannot be within one process. So, to put an end of vain discussion of procedural antagonists the scientist proposes to combine all of the numerous administrative processes under a single neutral title "administrative and procedural activity" and specific procedural norms "attach" to certain basic for them institutes and sub-branches of substantive administrative law [8, 36].

On this issue, taking into account the realities of modern Russia, the author has his own fundamentally new and, in our opinion, the most optimal and correct position.

It should be noted that in the modern legal doctrine is firmly embedded in the turnover the term of "public administration", in our opinion, its content covers the managerial concept of administrative process. It seems that this methodological message contains the correct way to resolve a long-standing scientific debate about the essence and content of administrative process, as well as the ratio of its "jurisdictional" and "managerial" concepts.

It seems reasonable to abstract from minor aspects of this phenomenon, this, as we believe, will highlight its most characteristic features, trends, patterns, and will let to give reason for our position on the example of executive and administrative activity of tax administrations, namely public administration in tax area.

The reforms carried out in the Russian society in recent years led to the need to improve tax legislation, ensure its effective implementation, as well as the need to improve the mechanism is of public administration in tax area, the forms of implementation the state tax policy being based on the fact that the tax policy as a part of the financial policy of the state is a totality of managerial, regulatory, economic and political activities of the state in the tax area. In connection with this, legal content of the public administration in the investigated field takes on new meaning, is being filled with special content.

With the transition to the market economy, theory and practice of taxation has acquired the term of "tax administration". Interpretation of the term is many-sided while enough clear definition of the tasks of tax administration. If we turn to modern economic dictionary, administration is interpreted as "dominance in the management of formal, purely administrative, mandative forms and methods" [13, 16].

In our opinion, a more correct and having the right to live in the present conditions of development of our statehood is a definition given by the founder of the theory of administration A. Fayolle that was formulated back in 1916: "Administration means to foresee, organize, dispose, manage and control" [17].

Tax administration is a new concept in the methodology of taxation, which found widespread in legislative acts, scientific works and practice. To date there is no a clear legal definition of the term, scientists' points of view on this issue are different. However, this term quite thoroughly enters in the scientific circulation. For the first time introduced by the Federal Law No. 137-FL from July 27, 2006, adopted, as follows from its title, due to implementation measures to improve tax administration, it has made significant amendments to part one of the Tax Code of the Russian Federation. In its development has also been adopted the Federal Law No. 229-FL from 27.07.2010 [2] aimed at the settlement of arrears of taxes, fees, penalties and fines, and some other issues of tax administration. These laws are aimed at improving of tax control, streamlining of tax projects and flow of documents in the tax area, improvement of conditions for the performance by taxpayers their duties to pay taxes and fees.

So, M. N. Kobzar'-Frolova interprets tax administration as activities of tax authorities, aimed at the detection, suppression and prevention of violations of

legislation on taxes and fees. The author qualifies tax administration as activities of tax authorities and their officials, aimed at the timely and full payment by tax payers of taxes, fees and other mandatory payments to the State budget. Accordingly, prevention of violations of the legislation on taxes and fees happens within the framework of tax administration [6, 9].

We should agree with the opinion of A. S. Titov, who rightly points out that in the solution of the tasks assigned to tax administration, it is necessary to allocate its interdependent triad: the tax administration itself, the mechanism of its implementation, and tax policy. The correlation of these concepts is of important methodological significance for understanding the essence of implementation of tax administration.

In our opinion, tax administration assumes management of taxation on the base of the fact that management in the broadest sense means a targeted influence on a particular object or directing the activities of this object. At that, it should be borne in mind that managing entity can be both a person acting on behalf of the State (in the case of state management) and a person expressing private interests (in the case of non-state management).

In this connection, the author offers a definition of tax administration as a totality of norms (rules), methods, techniques and means, with help of which specially authorized state organs carry out managerial activities in the tax area, aimed at monitoring over compliance with the legislation on taxes and fees, accuracy of calculations, complete and timely payment of taxes and fees to the appropriate budget, and in the cases provided for by the legislation of the Russian Federation, over the correct calculation, complete and timely payment of other charges to the appropriate budget [16, 14].

Thus, we can assume that tax administration, in its narrow sense, is a totality of actions, and rather the activities of officials of state executive authorities in the field of tax legal relations. In its turn, the mechanism of tax administration is a totality of legal measures and organizational arrangements of tax control undertaken by state executive authorities aimed at achievement the goals and solution of tasks in the same field.

In its broad sense, tax administration assumes management of tax relations with help of conducting a particular state financial and economic policy, including responsibility for the assigned work, with the direct participation of special state agencies. The very mechanism of tax administration consists of a set of legislative, substatutory and instructive rules of conduct in the designated area of public administration assigned to each participant in these relations.

The purpose of tax administration is to achieve the greatest possible effect for the budget system in respect of tax revenue at the lowest possible cost, in the conditions of optimal combination of methods of tax regulation and tax control.

In this approach, the tax administration's tasks are:

- collection and processing of information;
- tax planning and predicting;
- tax regulation;
- tax control [4];
- prevention of tax offences.

The same tasks are included in the tax mechanism, by means of which exercise the impact of the subject of tax relations (public authorities and agencies of state administration) on the object (the tax system). In our view, it is appropriate to consider each of the tasks.

The collection and processing of information is a basic task of tax administration, without which is impossible to implement other tasks. Information required for tax administration includes various forms of accounting, tax and statistical reporting. According to the collected data, authorities analyze tax revenue in the context of taxes, budgets and taxpayers. Also, the analysis is conducted in terms of the efficiency of tax control, that is, the number and quality of cameral and field audits, the quality of implementation of other forms of tax control. Collection and analysis of information are necessary to assess the current situation and elaboration on its base the ways to improve the process of tax administration.

As subjects of tax administration may be taken public authorities and agencies of state administration, which can be classified as follows:

- tax authorities;
- bodies vested with powers of tax authorities (management bodies of state non-budgetary funds, financial authorities, customs bodies);
- law enforcement agencies (from the perspective of ensuring economic security).

In practice, the subjects of tax administration are called as tax administrators (administrations). The tax administrations are tax and other authorized bodies of executive authority entrusted with the functions of organization of tax administration in respect of taxpayers located within their territory in the context of tax revenues under their control.

However, the main task of tax administration is tax control. It should be noted that some experts in this field even equate these concepts. Tax control and evaluation of its performance (efficiency) has received considerable attention, both in

theory and in practice, since the implementation of tax control provides the source materials for the administrative and jurisdictional activities of tax authorities. In the course of tax control identify offences, collect and record evidence.

It should also be noted that under the action of the Concept of planning of field tax audits approved by the order of the Federal Tax Service No. MM-3-06/333@ from May 30, 2007, in terms of its availability to taxpayers who are able to self-assess their tax risks, there was a significant enhancement of pre-tax control, or so-called – preventive one. From the standpoint of the efficiency of implementation the tax administration aim, preventive measures are less costly, while maintaining a sufficient level of tax revenue in the budget system.

The analysis of statistics on the results of control activities carried out by the tax authorities in 2011, allows us to draw a conclusion on the overall increase in the rates of effectiveness of the tax administration in the Russian Federation. The developed concept with the criteria of self-assessment of the risks of taxpayers used by the tax authorities in the process of selecting sites for field tax audits has yielded positive results, which resulted in lower costs for the organization of control measures through strengthening of preliminary control that enhances consciousness of taxpayers.

However, the issues of preventive activity of tax authorities, prevention threats to financial stability of the state are not given due attention. This direction in the modern tax policy of Russia is not yet a priority, and the preventive activity of the tax authorities is not well developed, despite the fact that in paragraph 6.6. of the provision No. 506 from September 30, 2004 "On the Federal Tax Service of the Russian Federation" [3] this function is articulated among the main ones. The issues of suppression and prevention of the violations of the legislation on taxes and fees as the most important legal institute has not received any normative consolidation either in the Tax Code of the Russian Federation or in the Code on Administrative Offences of the Russian Federation.

As rightly noted by M. N Kobzar'-Frolova, the presence of a large number of committed tax torts, which are based in part on the norms of tax law and in part on the norms of administrative and criminal law, requires the development of measures of legal influence based on scientific research and legislative regulation. The lack of evidence-based methods for studying tax delinquency does not allow successful solving of such applied aspects as: improving the level and quality of work of tax authorities, prevention and neutralization of delinquency, increasing the volume of tax revenues to the state budget. The lack of knowledge of the causes, conditions and prerequisites of tax delinquency, lack of methodological

recommendations for the organization of the work of tax authorities aimed at improving tax administration and increasing the volume of collection of taxes and fees is obvious [9, 7].

The main burden of the implementation of tax administration is the duty of tax authorities. Besides, the functions of tax administration entrusted to state non-budgetary funds, financial authorities, customs bodies and law enforcement agencies.

Tax administration needs constant improvement in order to create an optimal balance between the rights and obligations of taxpayers and the state in the face of tax authorities, on the one hand, to save taxpayers from unnecessary administrative pressure, and on the other hand, to reserve for the tax authorities sufficient powers to monitor over the compliance with legislation.

Summarizing the above, we believe it is appropriate to note that tax administration has virtually all the specific features that define the organization of management of state administrations in the field of taxes and fees. Tax administration in the field of taxes and fees is an organizational and managerial system of exercising tax relations, and includes a totality of forms and methods, the use of which is intended to provide tax revenues to the budget of Russia, as well as prevention of tax delinquency.

Study of existing authors' positions, the current legislation on the issues of tax administration and practical experience of its implementation allows the author to formulate this concept.

Public administration in the field of taxes and fees is an integrated system of statutory measures and activities conducted by state executive authorities within their competence aimed at obtaining complete and accurate information about the current and potential volume of tax revenue, planning and predicting of tax revenue, tax regulation, tax control, as well as prevention of tax delinquency, and implemented for the improvement the mechanism of tax revenues to the budget system while optimizing costs.

Thus, the managerial concept of the administrative process for the implementation of executive and administrative activities of state administrations in the various fields of public administration, particularly in the area of taxes and fees, finds its expression in the context of the legal category of "public administration". Within the meaning – it is exactly the activities of state administrations, and the presentation of these activities as a kind of process is rather appropriate within administrative and jurisdictional activity to consider cases on administrative offenses that is regulated by administrative and procedural norms of legislation.

Also, in our opinion, clarification of the correlation of tax administration and administrative-tax jurisdiction (administrative jurisdiction in the tax area) of authorized state bodies is of great theoretical and practical importance. This concept was formed in the theory of administrative and jurisdictional process and entered into scientific circulation as a synonym for administrative jurisdiction in tax field [6]. Taking into account that administrative-tax jurisdiction is an integral (endowed with its own content) part of a single administrative process, it should be noted that these legal categories are absolutely not identical to each other concepts, as they are two different functions of public administration.

As we noted above, the essence of tax administration is a totality of norms (rules), methods, techniques and means, with help of which specially authorized state organs carry out managerial activities in the tax area, aimed at monitoring over compliance with the legislation on taxes and fees, accuracy of calculations, complete and timely payment of taxes and fees to the appropriate budget.

Thus, administrative-tax jurisdiction cannot be a part of tax control. Tax control is a part of the state control exercised by monitoring and oversight bodies of executive power, they certainly include tax authorities. Monitoring and oversight activity by itself cannot perform functions of imposing responsibility.

As rightly points out in his study A. P. Shergin, administrative jurisdiction goes beyond the scope of oversight activity and represents an independent form of administrative activity, which is carried out by monitoring and oversight bodies of executive power [18, 33].

Undoubtedly, the endowing of tax bodies with monitoring and jurisdictional powers in tax field contributes to the effective solution of the operational tasks of public administration. The author supports the position of A. V. Ivanov that the legislator should follow not the path of narrowing the scope of administrative jurisdiction and reducing the entities that exercise it, but the path of strengthening the guarantees of the rights of citizens and organizations involved in the field of administrative jurisdiction [7, 28].

This approach is reflected in the Tax Code of the Russian Federation (TC RF), which defines the relations regulated by legislation on taxes and fees. Article 2 of the TC RF splits the relations arising in the process of exercising of tax control and the relations on the appeal against tax authorities' acts, actions or omissions of their officials, and on bringing to responsibility for committing of tax offenses.

Article 82 of the TC RF establishes that tax control shall be exercised by officials of tax authorities within the limits of their authority by means of carrying out tax audits, obtaining explanations from taxpayers, tax agents and levy payers,

checking of accounting and reporting data, inspecting premises and areas used to derive income (profit) and by other means provided for by this Code.

Articles 87-89 and 100 of the Tax Code, defining the powers of tax bodies officials during tax audits do not include supervisory powers for resolving disputes arising during an audit and for bringing to responsibility for violations of tax legislation. These actions are performed in the process of independent activity –administrative jurisdiction of state bodies in the tax field.

Consequently, tax administration and administrative-tax jurisdiction of the authorized state authorities in the tax field are closely related, but are independent, sequential types of activities.

In contrast to tax administration, within which exercise tax control that is primary and mandatory for tax authorities, administrative-tax jurisdiction is of optional and secondary nature, since it will not always take place, but only in the possibility of occurrence of a legal dispute on results of tax control.

We think the cited judgments of the author may be grounds for the early resolution of the considered problem or reason for further scientific discussions.

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