

Mokina T. V.

## PECULIARITIES OF TAX LEGAL RELATIONS AS AN INDEPENDENT KIND OF PUBLIC LEGAL RELATIONS<sup>1</sup>

*Mokina Tat'yana  
Vladimirovna,  
c.j.s. (PhD in law), Associate  
professor of administrative and  
financial law department at the  
juridical faculty of the State Ed-  
ucational Institution of Higher  
Professional Education «Kuban  
State University»,  
tmokina@yandex.ru*

Based on the enumeration of the features of tax legal relations the author supports the point of view that tax legal relations constitute a separate kind of public legal relations, rather than a subkind of financial legal relations. The author especially emphasizes the stable and lasting nature of tax legal relations.

**Keywords:** tax legal relations, public legal relations, peculiarities of tax legal relations, taxation.

Currently, in most states with market economy the main kind of state revenue is taxes and fees collected in the budgets of all levels in the process of tax legal relations. Russian legislation contains a specific reference to the targeted purpose of taxes – provision of activity of the state and local self-government bodies: in accordance with part 1 article 8 of the Tax Code of the Russian Federation [2] (hereinafter – TC RF), tax is understood as a compulsory and individually non-refundable payment which is collected from organizations and physical persons by means of the alienation of monetary resources which belong to them on the basis of the right of ownership, economic jurisdiction or operational management for the purpose of financing the activities of the state and (or) municipalities. The mentioned duality of the wording (and/or) disposition of article 8 TC RF is associated with a three-tier system of taxation in the Russian Federation: structuring of taxes into federal, regional and local.

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This definition allows us to formulate the first feature of tax legal relations as an independent type of public relations: they represent the public interest of the state. It is well known that taxation is one of the most important functions of the state, a prerequisite of its sovereignty. At that, in the current conditions in the process of tax legal relations accumulates about 90% of the funds serving as financial support of the state's functioning; other - non-tax sources of forming public (state and municipal) finance are minor. Existence of a state without tax system, without fixed mechanism of "deductions" to the state budget, is impossible - that is why the theoretical relevance of the issues related to the study of features of tax legal relations is supported by its practical significance.

Second, expressing the public interests of the state, tax relations are formed and developed in the field of tax activities of the state. Exactly these features of tax legal relations, in our opinion, allow us to characterize them as public-law relations with all the features inherent to public ones. Exactly tax legal relations are structural for the public sector, because exactly taxes are a major source of forming the state central fund of monetary funds; they are associated with banking relations (banks as participants in the tax legal relations may serve as taxpayers, tax agents, tax collectors, tax administrators).

Being regulated in detail in the legislation of the Russian Federation, the issue about the features of tax legal relations as an independent type of public relations in the scientific literature remains controversial - in part because there is no consensus about the concept of tax legal relation. It should be noted that there was no close attention on the issue of tax legal relations in the pre-revolutionary legal literature in the field of finance and financial law. It would be unfair to say that the problem of tax legal relations was completely deprived of attention in the Soviet financial and legal science - often the topic under consideration was being developed simultaneously with the study of common problems of financial relations, but detailed special studies of public relations emerging in the field of taxation, even as a sub-type of financial legal relation, were not carried out. At the modern stage of the development of science, a contribution to the development of the issues of financial and legal regulation of tax legal relations has been introduced in the writings of A. V. Bryzgalin [9], S. G. Pepelyaev [13], M. I. Piskotin, E. A. Rovinskii, N. I. Himicheva [16], M. V. Karaseva [11; 12].

These characteristics allow us to call the third feature of tax legal relations as an independent type of public legal relations - the state is their mandatory participant: independently - as the "author" of tax policy or through authorized bodies. Because of that tax legal relations are based on the authoritative subordination of

one party to the other. The tax authorities, acting on behalf of the state, have powers of authority that are based on the law. Taxpayer is required to comply with the requirements of the legislation on taxes and fees, and tax authorities control exercising of this responsibility. Taxpayers are required to comply with the demands of the tax authorities, which are based on the law. In accordance with article 21 TC RF, taxpayers have a right not to comply with unlawful acts and requirements of tax authorities and their officials, which are at variance with TC RF or other federal laws. Therefore, the essence of interrelations between the participants of tax relations is not subordination of the taxpayers to the tax authorities, but subordination of both parties to the law. Tax authorities shall monitor the implementation of tax legislation requirements by the taxpayers and have the right to act in authoritatively-binding way. Taxpayers have the right to challenge the legality of actions of the tax authority in judicial or administrative procedure. At that, it should be borne in mind that the powers of the tax authorities at the same time include their duties, because often it is about legal duties as a special feature of the powers of executive authorities and subjects of public legal relations. This combination of rights and duties once again underlines the authoritative, public nature of these relations and peculiarities of the content of tax legal relations.

The above-mentioned characteristics allow us to call the following peculiarity of tax legal relations as an independent type of public legal relations – availability of force of state coercion (fourthly). Taking into account the definition of legal relation in general, we cannot say that the availability of force of state coercion is a feature of only tax legal relations. This is a common characteristic feature of all public relations regulated by the norms of law, and so much the more by the norms of administrative law. However, “ignoring” of this feature within the study of the designated issue would be methodologically wrong.

Fifth, tax legal relations constitute a separate type of public legal relations, rather than a sub-type of financial legal relations. This statement has been formulated by us not only on the basis of the author’s own scientific discretion, but also taking into account the views of scientists dealing with the issues of tax law. However, there is no convergence of views on the issue in science. So, M. V. Karaseva uses the term of “tax obligation” as a separate type of financial and legal relations [12, 76]. The author does not offer definition of the concept of “tax obligation” and outlines only individual characteristics of such obligation (property nature, certainty of the parties of obligation, purposiveness, and availability of sanctions for violations). She localizes tax obligation as a “new financial and legal category that serves as a kind of binding relation”. Widespread opinion is expressed by N. I. Himicheva,

who characterizes tax legal relations as regulated by tax law norms public financial relations arising in respect of establishment and collection of taxes from organizations and physical persons [16, 111]. O. V. Staroverova adheres to similar positions, according to whom the presence of such specific elements as subjects and objects differs tax relations from financial and administrative ones [15]. A. V. Bryzgalin connects the essence of tax legal relation with the introduction, establishment and collection of taxes and fees, pointing out that “tax legal relations can be determined as public relations regulated by the norms of the tax law and arising in connection with the establishment, introducing and collection of taxes and fees” [9, 336]. This is also confirmed by S. G. Pepelyaev, who emphasizes relations to levy taxes as the core of tax legal relations [13, 223]. Broader approach is suggested by G. V. Petrova, according to who tax legal relations are of complex nature and derived from financial, constitutional, property, administrative, managerial, arbitration procedural, administrative procedural, information and civil procedural relations [14, 14].

Sixth, by their legal nature, essence and value tax legal relations are socially meaningful public relations of compound nature. In the scientific literature except the term of “compound ones” to tax legal relations apply the definition “complex ones”, this, in our view, also accurately reflects their essence. Social significance of tax legal relations as an independent type of public legal relations is manifested in the mechanism of tax allocation for socially important needs – for example, the allocation of incoming payments in the RF Pension Fund or a fund of obligatory medical insurance. Furthermore, in our opinion, the social essence of tax legal relations is also manifested in the legally enshrined mechanism of benefits for taxpayers. In accordance with part 1 article 56 TC RF, tax and fee exemptions shall be understood as privileges over other taxpayers and payers of fees, which are provided for by tax and fee legislation and are granted to particular categories of taxpayers and payers of fees, including the right not to pay a tax or fee or to pay a lesser amount thereof. Analysis of the TC RF allows us to call the following types of tax benefits: firstly, deferral or instalment plan for the payment of tax, which shall represent an alteration of the time limit for the payment of tax, subject to the existence of the grounds which are envisaged by this article, for a period not exceeding one year, with the amount of the indebtedness to be paid as a lump sum or by phased payments respectively (part 1 article 64 TC RF). The social nature of such benefits is manifested, in particular, in the grounds of provision of deferment or payment by installments – under paragraph 4 part 2 article 64 TC RF – if the financial position of a physical person makes it impossible to pay tax in a lump sum. Secondly, investment tax credit – an alteration of the time limit for the payment

of tax whereby, subject to the existence of the grounds envisaged in TC RF, an organization is granted the possibility of reducing its tax payments over a specified period and within specified limits and subsequent paying the amount of credit and interest charges on an instalment basis (part 1 article 66 TC RF). Thirdly, benefits regarding specific taxes: VAT (value added tax) – the list of grounds on which the release from taxpayer obligations is possible (article 145 TC RF); enshrining of the list of operations that are not subject to taxation (tax exempt) (article 149 TC RF) and goods, the importation of which into the territory of the Russian Federation is not subject to taxation (article 150 TC RF); establishment of tax deductions (article 171 TC RF). With regard to excise taxes – establishment of the list of transactions that are not subject to taxation (tax-exempt) (article 183 TC RF) and tax deductions (article 200 TC RF). With regard to PIT (individual income tax) has been established the most extensive, according to the author, range of tax benefits, and namely socially significant tax benefits. They include: establishment of the list of non-taxable (tax-exempt) income (article 217 TC RF); establishment of the list of tax deductions: standard ones – with, in our view, bright social orientation (article 218 TC RF), social ones (article 219 TC RF), property ones (article 220 TC RF) and professional ones (article 221 TC RF). TC RF also establishes benefits on profit tax of organizations in the form of a list of incomes not taken into account in determining tax base (article 251 TC RF), benefits on fees for the use of wildlife objects and for the use of aquatic biological resources in the form of establishing the rate of 0 rubles in cases provided by law.

The following types of “socially significant” incomes of individuals are not subject to taxation (tax-exempt): public relief, except for benefit for temporary incapacity for work (including benefits for caring for a sick child), as well as other payments and compensations. In this case, benefits, which are not subject to taxation, include unemployment benefits, maternity benefits, state-provided pensions and occupational pensions, and all kinds of compensations (within the limits set in accordance with the legislation of the Russian Federation) and about 70 types of payments. A wide range of benefit recipients is established in TC RF in the event of legal relations on payment state duty: for certain categories of physical persons and organizations (article 333.35 TC RF); in case of recourse to courts of general jurisdiction, as well as justices of peace (article 333.36 TC RF); in case of recourse to arbitration courts (article 333.37 TC RF); in case of application for the performance of notarial acts (article 333.38 TC RF); when state registration of acts of civil status (article 333.39 TC RF). Also have been established benefits for tax on the assets of organizations (article 381 TC RF) and land tax (article 395 TC RF).



Seventh, tax legal relations as an independent type of public relations are characterized by stable, lasting nature. Indeed, it is difficult to find in the legal field of the RF such long public relationships. Comparing tax legal relations with constitutional and legal relations, we can conclude that the relations connected with the mechanism of formation of state and local self-government bodies occur, in accordance with the norms of the Federal Law No. 51-FL from May 18, 2005 "On Elections of Deputies of the State Duma of the Federal Assembly of the Russian Federation" [8], Federal Law No. 19-FL from January 10, 2003 "On the Election of the President of the Russian Federation" [6], Federal Law No. 138-FL from November 26, 1996 "On Ensuring the Constitutional Rights of Citizens of the Russian Federation to Elect and be Elected to Bodies of Local Self-government" [5], Federal Law No. 131-FL from October 06, 2003 "On the General Principles of Organization of Local Self-government in the Russian Federation" [7], once in four or six years. Whereas payment of tax is possible monthly – for example, on transactions dealing with excisable goods (article 192 TC RF), for gambling business (article 368 TC RF).

Eighth, tax relations as an independent type of public relations arise on the basis of the norm of tax law, but, at that, they have common economic basis with civil legal relations (for the most part – with private-law ones) that is associated with their property, monetary nature and distribution of benefits; while the grounds of emergence of tax obligation are associated with the result of evaluation of taxpayer's activity from the point of view of civil law [11, 28].

Tax legal relations arise, change and stop only on the basis of the norms of legislation on taxes and fees, exist only in legal form, only on the basis of the legislation norms. The sources of regulation of tax legal relations in the totality are as follows: the Constitution of the Russian Federation; norms of international treaties of the Russian Federation; subordinate normative legal acts of bodies of general and special competence; special tax legislation consisting of federal and regional legislation on taxes and fees, as well as normative legal acts on taxes and fees adopted by representative bodies of local self-government; general tax legislation; decisions of the Constitutional Court of the Russian Federation. This is one of the essential differences of tax relations from private-law ones: for example, civil law relations can easily occur if there are reasons not directly provided by the civil legislation, but which do not contradict it. In addition, historically, civil legal relations formed by fact and only then were recognized by the state. In this regard, in the special literature were developed two approaches to the study of the concept and determination of the interrelation of tax legal relation with the other: the first one distinguishes tax legal relations from related legal relations: budgetary, administrative, customs, etc.,

and on the base of the provisions of article 2 TC RF, is of descriptive nature. The second approach is based on “contrast method of research”: tax legal relations are compared to and distinguished from constitutional-legal (including election ones) and municipal-legal relations.

Ninth, tax legal relations as an independent type of public legal relations are of authoritative nature. This quality is manifested not only in compulsory execution of authoritative orders in the form of the provided for by article 57 of the Constitution of the Russian Federation obligation to pay legally established taxes and fees [1]. In addition, it is the state determines what public relations of public-law nature fall within the scope of regulation of tax policy: article 2 TC RF provides for the following groups of tax legal relations: 1) relations with respect to the establishment, introduction and collection of taxes and fees in the Russian Federation; 2) relations which arise in the process of exercising tax control; 3) relations which arise in the process of appealing against acts of tax authorities and the actions (inaction) of their officials; 4) relations which arise in the process of bringing to responsibility for the commission of a tax offence. TC RF establishes a special indication that tax legal relations do not include relations associated with the establishment, introduction and collection of customs payments, relations which arise in the process of exercising control over the payment of customs payments, appealing against the acts of customs authorities and the actions (inaction) of their officials and bringing guilty persons to responsibility – regulation of these legal relations is carried out by the norms of the Customs Code of the Russian Federation from April 25, 2003 [3], which operates in part that does not contradict to the provisions of the Customs Code of the Customs Union annexed to the Treaty adopted by the Decision of Interstate council EurAsEC at the level of the Heads of States No. 17 from November 27, 2009 [4].

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