Universal Decimal
Classification 342.9 : 336.225

Gogolev A. M.

ADMINISTRATIVE-LEGAL REGULATION IN TAX FIELD: CONDITION AND ISSUES OF ENFORCEMENT

Gogolev Aleksei Mikhailovich,
c.j.s. (PhD in law), Head of the Perm branch of Federal State Budgetary Educational Institution of Higher Vocational Education "Financial University under the Government of the Russian Federation",
galexey1961@mail.ru

It is noted that there are no specific features that insulate tax offense from administrative one. Both of these offenses are of the same order and cognate by their legal nature.

It was determined that the purpose of tax administration is to achieve the greatest possible effect for the budget system in respect of tax revenues at the lowest possible cost.

As the cause of many conflicts and contradictions in proceedings on cases of administrative offences in the field of taxes and fees the author considers its implementation with the simultaneous application of the norms of both substantive and procedural law of tax and administrative legislation.

Here is stated that the duplication of a number of substantive and procedural norms of the Code on Administrative Offences of the RF and the Tax Code of the RF makes a mess of enforcement, misinforms citizens and legal persons who are taxpayers, as well as entails a lot of negative effects.

Keywords: administrative responsibility in tax sphere, tax responsibility, administrative offence, tax offence.

Attention to this issue is caused by its undoubted relevance, since it directly affects the rights and legitimate interests of taxpayers, society and the state. In this regard, it is extremely important for emerging legal framework and practice of its implementation to find the path of optimal legal mechanism for the implementation of measures of administrative responsibility in tax area that would provide a balance between private and public interests. In conditions when the constitutional provision on compensation to persons of those losses caused by unlawful actions of state bodies and their officials, in fact does not work, such situation allows the latter to abuse their authority, including in the administrative- procedural activity.

It is well known that the formation of the Russian State Treasury income is mainly implemented through taxation – more than 80% of the revenues of the budget system are tax payments. In all countries with market economies taxes are recognized as the main source of budget revenues. According to the Federal Tax Service of Russia the flow of funds in the consolidated budget of the Russian Federation just in 2011 amounted 9,720.0 billion rubles, this is 26.3% more than in 2010.

According to statistics of tax authorities, as a result of exercising by the tax authorities of their supervisory powers in carrying out cameral and field tax audits, violations of legislation on taxes and fees were identified in 96% of the audited organizations. Just in 2011, on the results of tax audits to the State budget the tax authorities charged additional taxes in the amount of more than 6,818,560 thousand rubles [7].

Violations of the legislation on taxes and fees represent not only a threat to the financial stability of the state, but also undermine the basis of fair competition, provoke social tensions and instability in society. According to analytical data of law enforcement bodies, up to 60% of taxpayers (individuals and organizations) evade payment of taxes, reduce taxable base, and hide sources of income. Funds concealed from taxation often go into the "shadow" turnover, increase the activity of criminal organizations, and influence on the development of corruption.

It is appropriate to note that the main motivation for paying taxes has always been not the consciousness of taxpayers, but coercive measures that can be applied to them in case of detecting evasion of taxes and fees or payment them not in full volume. Over time, these measures were designed in appropriate legal provisions regulating substantive and procedural issues of application of such coercive measures.

Their list in the current Russian tax legislation is vast: it is the right of tax authorities to make direct debiting of the amounts of taxes and penalties, accrue interest charges, suspend operations of accounts, etc. Except tax sanctions there are

provided for field and cameral tax audits, as well as procedural securing (reclamation of written explanations from taxpayers, seizure of current and report documentation).

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 the very institute of law, which ensures legitimate conduct of all participants of tax legal relations.

It should be noted that to date there is no unified conceptual apparatus of the studied sphere in the science of administrative and financial law. There are fundamentally different scientific positions on the definition of administrative jurisdiction and its correlation with administrative process. There are no independent monographic studies devoted to the sources of administrative or tax law, to the issues of improvement the mechanism of legal regulation in legal relations arising in tax field.

The fact that in recent years in the financial and legal science has been put the question of existence of such a legal category as "tax process", as an independent type of activity that is different from administrative process, argues for the relevance of this problem. Of course, this point of view seems highly controversial, requiring serious theoretical substantiation, and, accordingly, further scientific debate. It is quite possible that its occurrence is due to the enshrining in the Tax Code of the Russian Federation of procedural legal norms [6, 232-233].

This situation creates a duality not only in the practical enforcement, but "blurs" the legal doctrine, moving artificially seek grounds for separation from the administrative tax liability, even though they are, in fact, no.

This situation creates a duality not only in practical law-enforcement, but also "blurs" legal doctrine, making us to artificially seek for grounds for separation of tax responsibility from administrative one, even though they, in fact, do not exist. These research efforts would be useful to spend in a more positive and rational way, that is, to improve the system of administrative responsibility in the field of taxes and fees.

Application of unified approaches to the formulation of substantive and procedural-legal norms, according to A. A. Fatyanov, will not only streamline these relationship, but also will allow increased implementation in this field of public relations of the most significant general legal principle – the principle of the rule of law, one of the faces of which is the concentration of a totality of sanctions of a single legal nature in a large codified act, application of common

approaches to differentiation of penalties depending on the severity of an offense, formation of a general theory of such relations, general categorical apparatus, etc. [8, 124].

Summing up the above it should be noted that administrative-legal regulation in the tax field, in our view, is a multidimensional problem affecting:

- identification of the legal nature of legal relations in the studied sphere;
- issues of legal regulation of substantive norms, norms of competence, as well as procedural norms, which also consistent the mechanism of legal regulation in the field of taxes and fees
- imperfection of the tax legislation: the lack of necessary norms of law in some cases and simultaneous regulation of equal public relations in different legislative acts leads to significant difficulties in law-enforcement and existence of various official points of view contained in legal acts of supreme courts of the Russian Federation, the Federal Tax Service of the Russian Federation, and others.

The reforms carried out in the Russian society in recent years have led to the need to improve the tax legislation and to ensure its effective implementation, as well as to the need to improve the mechanism of tax administration, forms of implementation of the state tax policy. In this connection the legal content of the tax administration takes on new meaning, is being filled with special content and requires further study.

In modern conditions of the development of the Russian statehood, in our view, the study of the problems of administrative jurisdiction in the tax field is very important both for the theory and for the practice that forms it.

It is worth noting that administrative-tort relations and relations in the field of establishment and application of tax responsibility form in the system of executive branch, so they have a common administrative-legal foundation, on which the activity of all bodies of executive branch is based. Both these groups of legal relations, which we still consider as separate, are aimed at ensuring the enforcement of relevant state functions in the sphere of executive power.

In this regard, it seems appropriate to consider the correlation between the basic categories of "administrative offence" and "tax offence".

In accordance with article 2.1 of the Code on Administrative Offences of the RF (hereinafter CAO RF) [2] "administrative offence is recognized as a wrongful, guilty action (inaction) of a natural person or legal entity, which is administratively punishable under this Code or the laws on administrative offences of the subjects of the Russian Federation".

Analysis of this definition reveals the following signs of administrative offence:

1) wrongfulness (existence of a direct regulatory prohibition on commission of a specific action or refraining from a certain action);

2) guiltiness (system attribute for bringing to punitive responsibility that lies in the presence in the commission of a deed of intent or negligence; and these concepts have to be defined, and responsibility has to be differentiated, depending on the form of guilt (usually, responsibility for negligent deeds is lower than for intentional, and innocent infliction of harm to legally protected interests cannot be punished);

3) obligatory presence of a legal ban on the commission of deed in a relevant act of legislative level, at that, the legal ban should be accompanied by a specific, applicably to each deed, sanction.

In a more general form can be said that the main feature of an administrative offense lies in the existence of a logical pair of "wrongfulness - prohibition by a particular law". Under similar pattern the definition of the concept of crime was framed in article 14 CC RF [4]: "A socially dangerous act, culpably committed and prohibited by this Code under threat of punishment, shall be deemed to be a crime". In this case, the sign of direct legal prohibition is replaced by the sign of public danger, always characteristic for counting deeds as criminally-punishable. It follows from the foregoing that in both cases the legislator focuses on specialized law containing legal prohibitions and sanctions.

The reference in the definition of the concept of "administrative offense" to legislation of the subjects of the Russian Federation is due to the delimitation of competence between the Russian Federation and its subjects: in accordance with paragraph "j" part 1 article 72 of the Constitution of the Russian Federation [1], administrative and administrative-procedural legislation are under joint jurisdiction of the federal center and the subjects of the Russian Federation, this, in application to the regulating system of bringing to administrative responsibility, has resulted in the possibility of establishment by the laws on administrative offences of the subjects of the Russian Federation (let's pay attention to the fact that we are again talking about specific acts) of administrative responsibility for violation laws and other normative legal acts of the subjects of the Russian Federation, as well as normative legal acts of local self-government bodies (article 1.3.1 CAO RF).

It is also pertinent to note that the establishment of common principles of taxation and fees in the Russian Federation, in accordance with paragraph "i" part

1 article 72 of the Constitution of the Russian Federation, is also under joint jurisdiction of the Russian Federation and its constituent entities.

Turning to consideration of the concept of "tax offence", it should be noted that, in accordance with article 106 of the Tax Code of the RF [3], "Tax offence shall be understood to be a wrongfully committed unlawful (in violation of tax and fees legislation) deed (action or inaction) of a taxpayer, a tax agent or other persons, for which responsibility is established by this Code".

The analysis of this definition shows the following:

1) presence in it of a system-wide sign of illegality;

2) presence in it of a system-wide sign of guiltiness;

3) establishment of responsibility only by legislative norms.

This means that regarding all system-wide signs administrative offence and a tax offence coincide completely.

At such an approach we should also pay attention to some details. In determining wrongfulness, an emphasis on violation of the legislation on taxes and fees does not have general legal sense, since the wrongfulness, as has been shown above, occurs in case of breach of a direct legal ban established in law through formulating a punishable offence. The target of emphasis – violation of traffic regulations, sanitary-epidemiological rules or legislation on taxes and fees – does not matter. Despite the visibility of specificity of the offence, any person can also become its subject.

However, if CAO RF contains original rules regarding this matter (establishing the minimum age for the possibility of bringing a person to administrative responsibility, the concept of an official and conditions of bringing it to responsibility, guilt of a legal entity, etc.), then in establishment of responsibility for tax offenses the legislator sets just a minimum age for a person to bring it to this kind of responsibility, and completely identical to the age of occurrence of administrative responsibility (16 years).

Also, instead of the term of "legal person" in determining the subject of a tax offense the Tax Code of the RF uses the term of "organization", which is linguistically more general in relation to the category of "legal person", while as it is obvious, a participant of tax legal relations can be only an organization that has acquired the right to engage in civil and other legal relations on its behalf, that is, having the form of a legal entity and recognized as such by the state.

Thus, the use of undefined categories in law, especially when it comes to bringing to legal responsibility is a drawback of the corresponding system of legal regulation.

Based on the above, it is possible to come to the unequivocal conclusion that there are no specific signs that insulate tax offence from administrative offence. Both of these types of offences belong to one category and are related in their legal nature.

Further, on the basis of the analysis of the current state of legal regulation, the author supports the position that "the analysis of the innovations of CAO RF adopted for the period 2009-2011 has showed that they greatly enrich and complement namely procedural component of proceedings on administrative offences, in particularly in the field of taxes and fees. Unfortunately, as has been shown by the analysis of legislative documents adopted in the development of the Tax Code of the RF, the issues of the considered by us legal relations, which arise in connection with procedural actions in implementation of proceedings on cases of violations of the legislation on taxes and fees, were virtually left out of sight of the legislator" [5, 26-29].

It is also relevant to note that the dominant position of researchers in the field of taxation is the defining of tax administration as the process of management of tax relations. State managing, including tax one, is a part of the overall process of public administration, including of tax 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.

The main task of tax administration is tax control. It should be noted that some specialists 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 the tax control provides the source materials for the administrative and jurisdictional activity of tax authorities. Offences are revealed, and evidences are collected and recorded in the course of a tax audit.

As has been demonstrated by the analysis, the practice of activities of tax authorities on consideration of cases of offences related to taxes and fees does not meet present-day realities and is far from perfect, what is shown by the statistics of consideration this category of cases. The peculiarity of this activity is that the legal regulation of proceedings on cases of administrative offences in the field of taxes and fees is implemented by the norms of both substantive and procedural law of tax and administrative legislation, what causes a lot of conflicts and contradictions in their practical application.

In addition, the feature of taking decision on a case of an offense in the field 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 natural person (in accordance with the Criminal Code of the RF).

After introduction of CAO RF in 2002, already on the background of the working Tax Code of the RF that partially regulated the procedure of proceedings on cases arising out of tax legal relations, there appeared serious problems both in application of substantive and procedural norms of law. The problem of duplication of legal norms establishing the grounds and procedures of bringing to responsibility under the Tax Code of the RF and CAO RF, as well as the imperfection of the existing procedural order of proceedings on cases of administrative offences in the tax area are extremely urgent.

Up to this day normative-legal acts that regulate jurisdictional activity in the tax area are developed and adopted without a single conceptual approach and accounting of the codification principle of sectorial legislation. The juridical technique of tax laws is also slowly improved, what determines the growth of legal disputes caused by variant reading, erroneous interpretations of normative acts and so on.

Analysis of law-enforcement practice (2002-2012) of bringing to administrative responsibility for offenses in the field of finance, taxes and fees , as well as a comparative-legal analysis of the provisions of CAO RF and the Tax Code of the RF allows us to conclude that the legislation on administrative offences in part of regulation of relations in the field of finance, taxes and fees after the start of market transformations in the Russian Federation was being reorganized too slowly, as a result in legislative array appeared parallel systems of customs and tax responsibility, whose legal nature was single with legal nature of administrative responsibility; customs responsibility was covered by regulations of CAO RF, 2001; tax responsibility without sufficient doctrinal and action-oriented reasons persists in the Tax Code of the RF.

This situation leads to duplication of norms, legal uncertainties and other negative consequences that hinder the realization of the principles of bringing to legal responsibility that have been elaborated through a long evolution of the development of law.

Duplication of a number of substantive and procedural norms of CAO RF and the Tax Code of the RF makes a mess of law-enforcement, disorient citizens and legal persons that are tax payers and entails a lot of negative consequences.

Thus, there is an urgent need for a synthesis and analysis of the current state of legal regulation, law-enforcement practice of tax authorities that have powers in the studied by us area and in the development of proposals for its improvement in order to streamline the legal relations arising in the field of finance, taxes and fees, as well as to unify bringing to responsibility for these offenses.

References:

1. Constitution of the Russian Federation (adopted on National Voting, December 12, 1993) [Konstitutsiya Rossiiskoi Federatsii (prinyata na vsenarodnom golosovanii 12 dekabrya 1993 g.)]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Code on Administrative Offenses of the Russian Federation from December 30, 2001, No. 195-FL [Kodeks Rossiiskoi Federatsii ob administrativnykh pravonarusheniyakh ot 30 dekabrya 2001 № 195-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
3. Tax Code of the Russian Federation. Part 1 from July 31, 1998, No. 146-FL [Nalogovyi kodeks Rossiiskoi Federatsii. Chast' pervaya ot 31 iyulya 1998 g. № 146-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
4. Criminal Code of the Russian Federation from June 13, 1996, No. 63-FL [Ugolovnyi kodeks Rossiiskoi Federatsii ot 13 iyunya 1996 g. № 63-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
5. Avetisyan K. R., Voronov A. M. Analysis of Innovations in the Field of Legal Regulation of Proceedings on Cases of Administrative Offences in the Field of Taxes and Fees [Analiz novatsii zakonodatel'stva v sfere pravovogo regulirovaniya proizvodstva po delam ob administrativnykh pravonarusheniyakh v oblasti nalogov i sborov]. *Finansovoe pravo – Financial Law*, 2012, no. 4.
6. Voronov A. M. Administrative-tax Jurisdiction and tax Administration: Responses to Questions [Administrativno-nalogovaya yurisdiktsiya i nalogovoe administrirovanie: otvety na voprosy]. *Sbornik materialov Vserossiiskoi nauchno-prakticheskoi konferentsii VGNA Minfina Rossii «Administrativnaya yurisdiktsiya» – Proceedings of the All-Russian scientific-practical conference of All-Russian State Tax Academy of the Russian Ministry of Finance "Administrative Jurisdiction"*, Moscow: 2012.
7. *Summary data of statistical tax reporting (on the calculation and collection of taxes, fees and other charges; debts on taxes, default interest and tax penalties; the tax base and structure of charges for certain types of taxes and fees). 1-NM report for 2011.* Available at: http://www.nalog.ru (accessed: 10.09.2012).

8. Fat'yanov A. A. About the Problem of Correlation of Administrative Responsibility in the Field of Taxes and Fees and Tax Responsibility [O probleme sootnosheniya administrativnoi otvetstvennosti v sfere nalogov i sborov i nalogovoi otvetstvennosti]. *Sbornik materialov Vserossiiskoi nauchno-prakticheskoi konferentsii VGNA Minfina Rossii «Administrativnaya yurisdiktsiya» – Proceedings of the All-Russian scientific-practical conference of All-Russian State Tax Academy of the Russian Ministry of Finance "Administrative Jurisdiction"*, Moscow: 2012.