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TYOLOGY OF PROCEEDINGS ON CASES OF VIOLATIONS OF THE LEGISLATION ON TAXES AND FEES¹

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The author notes a lack of specific indications that would separate tax offence from administrative offence.

Various types of proceedings on cases of tax offences are considered in the article. Focus is given to the fact that an evidentiary base obtained in the legal regime of tax legislation may be used for the purposes of proceedings on administrative offense.

It is argued that a literal adherence to the norms of tax and administrative legislation virtually eliminates the possibility of an administrative investigation into the violations revealed during tax control-verification events.

Keywords: tax offences, administrative offences in tax field, tax crimes, proceedings on cases of tax offences, responsibility for offences in the field of taxes and fees.

Analysis of law enforcement practices (2002-2012) of bringing to responsibility for offenses in the field of taxes and fees, as well as comparative legal analysis of the norms of the Code on Administrative Offences of the RF (hereinafter - CAO RF) [1] and the Tax Code of the RF (hereinafter - TC RF) [2] allows us to conclude that the legislation on administrative offenses in part of regulation relations in the field of finance, taxes and fees after the start of market reforms in the Russian Federation has been rebuilding too slow, as a result in legislative array have appeared

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parallel systems of customs and tax responsibility having unified with administrative responsibility legal nature. At that customs responsibility was absorbed by the norms of CAO RF, 2001. However, tax responsibility without sufficient doctrinal and practical reasons continues to persist in TC RF.

This situation leads to duplication of norms, legal uncertainties and other negative consequences hindering the realization of principles of bringing to legal responsibility elaborated in long evolution of the development of law.

Duplication of a number of material and procedural norms of CAO RF and TC RF confuses law enforcement, disorients taxpayers and entails a lot of negative consequences.

In addition, the feature of taking decision on the case of an offense in the field of taxes and fees, as well as sentencing, is that for the same offense in tax field several subjects of legal relations are liable: legal entity (usually in accordance with the norms of the TC RF), official or just an individual (in accordance with the norms of CAO RF). And in the presence of signs of crime – also a physical person (in accordance with the Criminal Code of the RF).

The analyses has shown that there are no specific signs, which segregate tax offence from of administrative one. Both of these types of offences are of single-order and related in their legal nature. Thus, in order to streamline legal relations arising in the area of taxes and fees, as well as to unify bringing to responsibility for these offences, it appears appropriate to consider various types of proceedings on review of offences in the researched field.

At that, it should be borne in mind that the legal regulation of this field is carried by the norms of both substantive and procedural law of various branches, what causes a lot of conflicts and contradictions in the practical application of tax legislation. All this determines the need for a systematic analysis of the complex of proceedings on cases of offences in the field of taxes and fees.

Posing of this issue is quite reasonable, in view of the expanded procedural legislation. Unfortunately, the modern development of the legislation on taxes and fees and the science of tax law do not give the whole picture of tax proceedings. Most often only its individual types within the framework of tax, administrative and criminal-procedural legislation are considered, or types of proceedings on cases of violations the legislation on taxes and fees are considered as elements of the structure of tax protective process [12, 92]. In this connection, it becomes relevant to study different types of proceedings in the researched field, to determinate and examine their specificity, as well as specific types of proceedings on cases of violations the legislation on taxes and fees.

So, in accordance with article 10 TC RF, procedure of bringing to responsibility and proceedings concerning tax offenses are enshrined by norms of chapters 14 and 15 TC RF; proceedings concerning violations of the legislation on taxes and fees that contain signs of administrative offense or crime are conducted in the manner prescribed respectively by the legislation on administrative offenses and criminal-procedural legislation. Thus, a wrongful deed (actions, inaction) both of natural and legal persons is classified on three grounds: tax, administrative offence and a criminal offence. In this approach, the current legislation provides for the following types of proceedings on cases of violations the legislation on taxes and fees:

- proceedings on cases of tax offences;
- proceedings on cases of violations the legislation on taxes and fees, which contain signs of administrative offence;
- proceedings on cases of tax crimes.

It seems appropriate to consider each of the proceedings on cases of violations the legislation on taxes and fees and to identify their essential features.

There are various points of view on the subject. So, for example, I. I. Kucherov distinguishes the following types of proceedings on cases of violations the legislation on taxes and fees:

- proceedings on cases of tax offences;
- proceedings on cases of administrative offences;
- preliminary investigation [13, 370].

Proceedings on cases of tax offences are implemented with observance the procedures provided for by TC RF. It should be noted that article 100.1 TC RF regulating the procedure of reviewing cases of tax offences is of reference nature and does not directly regulate the procedure of consideration cases of tax offences. According to paragraph 1 of this article, cases concerning tax offences which were found in the course of a cameral or on-site tax audit shall be considered in accordance with the procedure envisaged by article 101 TC RF, and cases concerning tax offences which were found in the course of other tax control events (with the exception of the offences envisaged by articles 120, 122 and 123 TC RF) shall be considered in accordance with the procedure envisaged by article 101.4 TC RF.

Thus, the Tax Code actually provides for two procedures of registration of tax control results, which evidence about tax offences. *The first* of them regulates documenting the results of directly cameral and on-site inspections (article 100 TC RF), *the second* is designed for the cases of detection evidence of violations the legislation on taxes and fees, except for tax offenses, cases on detection of which are considered in the manner prescribed by article 101 TC RF (article 101.4 TC RF). They also

correspond with two procedures for consideration cases of violation the tax legislation (article 101, 101.4 TC RF).

It should be noted that the procedure of the proceedings on a case of tax offenses provided for by TC RF, which is provided for in article 101.4 TC RF, was introduced by the Federal Law No. 137-FL from July 27, 2006 [3]. Prior to these changes TC RF had been providing a uniform procedure of proceedings on case of tax offence, contained in article 101 TC RF.

On the basis of direct reference in paragraph 2 article 100.1 TC RF, tax offences, proceedings on which can only take place under article 101 TC RF, include:

- gross violation of the rules for accounting for income and expenses and objects of taxation, article 120 TC RF,
- non-payment or incomplete payment of tax, article 122 TC RF;
- failure by a tax agent to fulfil his obligation to withhold or transfer taxes, article 123 TC RF.

It should be noted that both the procedures of consideration of cases on tax offences are similar enough. However, it must be borne in mind that the rules established by article 101.4 TC RF are more simplistic and not so fully regulated. Article 101.4 TC RF is designed to simplify the proceedings on cases of tax offences that do not require control measures for detecting them.

In turn, V. E. Kuznechenkova defines the following types of tax proceedings:

- proceedings for the adoption of tax normative legal acts by representative bodies and proceedings for the adoption of tax normative legal acts by executive authorities (tax law-making process);
- tax control proceedings;
- proceedings on cases of violations the legislation on taxes and fees;
- proceedings against acts of tax bodies, actions (inaction) of their officials (tax law enforcement process) [9, 12].

It should be noted that the Federal Law No. 153-FL from July 2, 2013 [7] changes the TC RF, including in part of the regulation of proceedings on appealing against acts of tax authorities. These mentioned changes significantly complement the procedural norms of the institute of appeal and terminate the numerous contradictions that were repeatedly pointed out by tax service [8, 12].

Here you should pay attention to the specifics of the tax control proceedings. According V. E. Kuznechenkova, tax control proceedings are a way of ensuring the rule of law in tax law. The specifics of the tax control proceedings depend on the areas of financial and economic activity of taxpayers, taxes types, taxpayer's legal status, and so on.

Characteristic features of tax control proceedings are:

- implementation of tax control proceedings during formation the monetary funds of the State and local self-government. Tax control proceedings are not implemented in areas of financial activity such as allocation and use of money funds;
- carrying out of tax control proceedings by state bodies, whose competence includes supervisory powers;
- availability of a special procedural form, that is, a totality of requirements aimed at ensuring compliance with the legislation by controlling entities during implementation of tax control proceedings and expressed in a specific procedure and conditions of conduct the forms of tax control. Actions on implementation of tax control are regulated by a totality of appropriate procedural norms of legislation on taxes and fees.

Under certain law conditions violation of tax procedural form may lead to the recognition illegal all the activities for the implementation of tax control.

The immediate purpose of tax control proceedings is, on the one hand, the identification of grounds for the implementation of coercive tax seizures in the budgetary system, on the other hand, enshrining in a corresponding act the grounds both for application measures of responsibility for violations of legislation on taxes and fees, and for coercive performance of the obligation to pay a tax (fee).

Thus, the proceedings concerning cases of tax offenses committed by a taxpayer, payer of fees or tax agent is a procedure of taking decisions on application tax penalties based on the results of consideration tax audits materials regarding violators of legislation on taxes and fees. The corresponding procedure is defined in articles 100, 101, 101.4 TC RF.

Turning to the next aspect of the stated issue, it should be noted that proceedings on cases of administrative offences in the field of taxes and fees are recognized as an order settled by the system of administrative and procedural norm, as well as the forms and methods of procedural activity of tax authorities (their officials) to initiate a certain group of individually-specific cases of the mentioned offences that are notable for subject characteristic and connectedness with material legal relations that arise in the field of public administration, juridical registration the facts of offences; administrative investigation; consideration of cases and bring the perpetrators to administrative responsibility in accordance with the current legislation [9, 96].

Responsibility for administrative offences in the field of taxes and fees is enshrined in articles 15.3-15.11, part 1 article 19.4, article 19.4.1, part 1 article 19.5, 19.6, 19.7 CAO RF.

On the base of violations identified by tax body, for which individuals or officials of organizations recognized as taxpayers, payers of fees or tax agents shall be subject to administrative responsibility, an authorized official of the tax body draws up a protocol on administrative offence.

Review of cases concerning these offences and imposition of administrative sanctions against mentioned perpetrators shall be carried out in accordance with the administrative legislation of the Russian Federation and the subjects of the Russian Federation.

In the text of TC RF the legislator affirms the right of officials of tax authorities to draw up a protocol on administrative offense. The decision to initiate proceedings on administrative offence is taken by an official authorized to draw up a protocol on administrative offences, in the form of a ruling after detection of the fact of commission an administrative offence.

Thus, body of evidence gained in the legal regime of tax legislation may be also used for the purposes of administrative offense proceedings.

At present, the literal adherence to the norms of tax and administrative legislation virtually eliminates the possibility of an administrative investigation into the violations revealed during tax control-verification events.

On the basis of article 26.1 CAO RF, the circumstances to be clarified concerning a case of administrative offence through administrative investigation, first of all, are:

- 1) determination the nature and extent of damage caused by an administrative offence;
- 2) determination of person's guiltiness of committing an administrative offence;
- 3) circumstances mitigating administrative responsibility and circumstances aggravating administrative responsibility;
- 4) causes and conditions of commission an administrative offence.

Further, it is worth noting that, according to the current legislation, investigation of tax crimes is implemented in the form of a preliminary investigation. So, the preliminary investigation of criminal cases on tax crimes is carried out by investigators of the Investigation Committee of the Russian Federation [5].

The jurisdiction of the Investigation Committee of the Russian Federation includes investigation mostly serious and particularly serious crimes, including

crimes committed in the field of taxes and fees. So on the basis of the provisions of the Federal Law of the Russian Federation No. 383-FL from December 29, 2009 [4], investigative jurisdiction of investigation crimes committed in the field of taxes and fees has changed. It should be noted that from January 01, 2011 preliminary investigation of crimes under articles 198, 199, 199.1 and 199.2 of the Criminal Code of the RF is carried out by investigators of the Investigation Committee of the Russian Federation, and not investigators of internal affairs bodies, as it was previously.

Preliminary investigation begins with the initiation of criminal proceedings on violation the legislation on taxes and fees, which contains signs of crime.

Investigative activities are permitted after the adoption, in accordance with the law, of decision to institute criminal proceedings, i.e., the said step of the process, in fact, is a legal prerequisite for investigation implementation [10, 266].

Investigator is entitled to institute criminal proceedings if there are motives and grounds (article 140 of the Code of Criminal Procedure of the RF). Federal Law No. 407-FL from December 06, 2011 [6] introduces into the said article part 1.1, according to which, the reason for initiation criminal proceedings on crimes under articles 198-199.2 of the Criminal Code of the RF is only those materials that are directed by tax authorities in accordance with the legislation on taxes and fees to address the issue of initiation a criminal case. This norm was introduced as an additional guarantee of the rights of economic operators.

Motives for instituting criminal proceedings on tax crimes may be only the messages of tax authorities. Ground for instituting a criminal case is the availability of sufficient evidences pointing to signs of crime.

In the event that they discover circumstances which require the taking of action for which the appropriate powers are assigned by this Code to tax authorities, internal affairs bodies and investigative bodies shall be obliged to send materials to the appropriate tax authority within ten days from the day on which those circumstances are discovered in order that a decision may be taken on the basis of those materials (see paragraph 2 article 36 TC RF).

If, within two months from the date of expiry of the time limit for the fulfilment of a demand for the payment of tax (fee) which was sent to a taxpayer (levy payer, tax agent) on the basis of a decision on the imposition of sanctions for the commission of a tax offence, the taxpayer (levy payer, tax agent) has not fully paid (transferred) the amounts stated in that demand of arrears, the level of which gives reason to suspect the commission of a violation the legislation on taxes and fees bearing elements of a crime, and corresponding penalties and fines, tax authorities shall be obliged, within 10 days from the day on which those circumstances

are discovered, to send materials to investigative bodies authorized to conduct preliminary investigation in criminal cases involving crimes such as are provided for in articles 198 to 199.2 of the Criminal Code of the RF in order for a decision to be adopted on the institution of criminal proceedings (see paragraph 3 article 32 TC RF).

Under a reasoned request of the investigator of the Investigation Committee of the Russian Federation, tax body represents additional documents and materials required for taking decision in accordance with the legislation.

In investigation of tax crimes the investigator can conduct various investigation activities to obtain evidence. These include: interrogation, confrontation, seizure, search, inspection and etc. In addition, the investigator may also appoint a judicial expertise.

Article 162 of the Code of Criminal Procedure of the RF stipulates that preliminary investigation on criminal cases must be completed not later than within two months. This period includes time from the date of institution of proceedings and till the transfer of the case with indictment to prosecutor or till the termination or suspension of the proceedings. The head of corresponding investigative body may extend the term of preliminary investigation up to 3 months. Further extension of the term may be made only in exceptional cases.

It should be noted that tax offenses are classified as particularly dangerous and harmful to the community and impinge on the financial stability and economic security of the State; they are prohibited by the Criminal Code of the Russian Federation under threat of punishment. These are articles 198, 199, 199.1 and 199.2 of the Criminal Code of the RF.

Based on the conducted research it seems appropriate to draw the following conclusions.

All violations of the legislation on taxes and fees are divided into three main types: basically tax offences; violations of legislation on taxes and fees, which contain the signs of administrative offence (tax misconducts); violations of legislation on taxes and fees, which contain the elements of crime (tax crimes). Accordingly, one should speak about three types of legal responsibility for violations the legislation on taxes and fees, basically tax one (as a variety of financial one), administrative and criminal one.

Together all kinds of violations of the legislation on taxes and fees make up the concept of "tax delinquency". We understand tax delinquency as the totality of all the deeds prohibited by the current legislation on taxes and fees, committed in the state, a particular region, a city for a certain period of time.

Approach of M. N. Kobzar'-Frolova to the study of problems of tort delinquency is a very original [11]. Based on the analysis of the current state of tax-tort situations, practice of their legal settlement, as well as studying the problems of normative-legal regulation of administrative-jurisdictional activity of tax authorities the author determines the measures aimed at improving the efficiency of law enforcement process in the field of study.

As rightly pointed out by the author, tax torts, being the "economic basis" of common crime, significantly affect the state of economy, especially in the present context of the economic crisis of the world society. At the same time, a large part of the population of Russia does not consider tax offences socially dangerous. The society has not formed a negative attitude towards the violators of tax legislation. Law-abiding taxpayers are not sure that all taxes are transferred to improve their well-being and development of the state economy – to ensure safety of life and health, social needs of citizens, good state governance, edition of justified laws, etc.

The author's position, that the increase in offences in the sphere of tax affairs is caused by numerous shortcomings, uncertainty of norms and constant change of the tax legislation, is justified. The state, on the one hand, in the legislative and by-laws requires accurate and timely payment of taxes, but, on the other hand, does not provide the society with reliable legal mechanisms of free economic activity, which is an important factor that does not contribute to the decrease in tax offenses.

These and many other reasons are the basis of tax offences, which require careful study, comprehensive analysis, development of techniques and methods of their prevention and resolving.

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