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THE CONTROL FUNCTIONS OF THE FEDERAL TAX SERVICE IN THE SPHERE OF REGISTRATION OF LEGAL ENTITIES

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State registration of legal persons is considered in the article as an element of state control over the subjects of entrepreneurial activity and taxation.

The author notes that for conducting of registration action it is necessary to collect information about the object or the process of registration, to carry out its analysis, processing, generalization.

The essence of the Federal Tax Service control functions in the area of registration of legal entities is determined in the article.

Keywords: state registration, registering body, control, supervision, the Federal Tax Service of Russia.

For the implementation of state tasks to create an efficient market economy and coordination of all kinds of economic activity in society the state influence is subdivided into:

- creation of economic entities;
- planning;
- business regulation;
- monitoring over entrepreneurial activity.

State registration refers to the relations of power and subordination. That is, state registration procedure is carried out by the public authorities, which exercise their powers on the basis of law norms through establishment of rights for entities who have applied for state registration. Failure to comply with the procedure of state registration entails bringing to administrative responsibility.

Recording is a part of the registration. For registration one needs to gather information about the object or the process of registration: its gathering, analysis, processing and generalization.

Recording is considered as a management function, which is closely linked with another function of management – control.

One should notice an important feature of both recording and registration. These forms of state-managerial impact on social relations are subject to control purposes, in relation to it they are the lower-order tasks. In this connection, state registration of legal entities can be considered as an element of the system of state control over the subjects of entrepreneurial activity and taxation.

The concepts of “recording”, “control” and “registration” are interrelated. Control is a broader concept in relation to registration and recording, however, without the registration and recording of objects and processes conducting of control over them is impossible.

Since state registration is a manifestation of powers of authority and significantly affects the rights and interests of the various categories of subjects, its implementation is the responsibility of public authorities. On the basis of the current structure of federal bodies of executive power (it includes three types of such bodies: ministries, federal services and federal agencies) the powers for registration refer to functions of federal services.

According to the Decree of the RF President No. 314 from March 09, 2004, federal service is a federal body of executive power executing control and supervisory functions within the assigned field of activity, as well as special functions in the field of defense, national security, protection of the State border of the Russian Federation, fight against crime, public safety. The content of the control and supervisory function, in accordance with this Decree of the President, includes also registration of acts, rights, documents, objects, as well as issuance of individual legal acts [2].

Functions of state registration of legal entities and natural persons as individual entrepreneurs and peasant farms are referred under jurisdiction of the Federal Tax Service of the Russian Federation (hereinafter – FTS RF) that is under the authority of the Ministry of Finance of the Russian Federation. It should be said that the body responsible for the state registration of non-commercial organizations, public associations and parties is the Ministry of Justice of the Russian Federation.

FTS RF acts in accordance with the Provision on the Federal Tax Service, approved by the RF Government Decree No. 506 from September 30, 2004 “On Approval of a Provision on the Federal Tax Service” [3] (hereinafter – Provision). Thus,

in accordance with the Provision in the field of state registration of legal entities FTS RF implements state registration of legal entities and physical persons as individual entrepreneurs and peasant farms; keeps in the prescribed order the Unified State Register of Legal Entities, Unified State Register of Individual Entrepreneurs and the Unified State Register of Taxpayers; approves forms of applications, notifications, messages submitted when state registration of legal entities, peasant farms and physical persons as individual entrepreneurs; approves the requirements for documents submitted to a registering body; approves form and content of a document confirming the fact of the record in the Unified State Register of Legal Entities or Unified State Register of Individual Entrepreneurs; approves the procedure of submitting documents to registering body using informational and telecommunication networks of common use, including the Internet, including Federal State Information System "Unified Portal of public and Municipal Services"; approves the procedure of interaction of registering bodies in the location of reorganized and established as a result of reorganization legal entities.

Control functions of the Federal Tax Service in the sphere of registration of legal entities consist in the fact that registering body (officials), using specific techniques and methods, figures out presence or absence of applicant's violations of legality and advisability. If there are such violations, the body takes measures to eliminate them, to restore violated rights, to bring guilty officials to responsibility.

It is difficult to agree with D. A. Stepanov that control and supervisory functions in the area of registration of legal entities are virtually non-existent. The author substantiates his words by the fact that public authorities are not responsible for the consequences of activity of a registered legal person; State does not bear any responsibility for the actions of officials of the legal entity, if the latter inflict damage to the State, citizens, organizations [5, 26].

It seems that state control is already carried out at the time of filing of documents on the establishment of a legal entity in a registering body. The latter checks information about future address (location) of the permanent executive body of the legal entity that will be used for communications with the organization, identifies signs of "nominee director". These actions are aimed at fighting "fly-by-night" companies, which can potentially cause damage to the State, citizens, and organizations. When registration of liquidation of a legal person the monitoring functions of a registering body are manifested in verifying the absence of debts on taxes and fees, as well as contributions to the regional Pension Fund of the Russian Federation, otherwise it will be followed by a refusal of state registration of liquidation of a legal person.

Attention should be drawn to the expansion in recent years of the list of grounds for denial of state registration and to the expansion of powers of registering body to verify accuracy of information in the documents submitted for state registration.

So, based on subparagraph "p" paragraph 1 article 23 of the Federal Law No. 129-FL from August 08, 2001 "On State Registration of Legal Entities" (as amended on 21.12.2013) [1] (hereinafter – the Law on Registration) registering body has the right to refuse state registration if there is confirmed information about the unreliability of submitted information about address of legal person, that is, that such an address has been specified without the intention to use it for communication with legal entity. However, in the Decree of the Plenary Session of the Higher Arbitration Court of the RF from July 30, 2013 No. 61 "On some Issues of the Practice of Consideration Disputes concerning the Validity of Address of a Legal Entity" [4], the Plenary Session of the HAC RF explained that courts should bear in mind that, within the meaning of paragraph 4 article 9 of the Law on Registration a registering body does not have the right to place on a person, who has applied with the relevant application for state registration, the burden of validation the accuracy of any presented information about legal entity's address, including by submitting additional documents other than provided for by the Law on Registration.

State registration of legal entities gives rise to the duty of an organization to observe the legislation on taxes and fees, timely submit reporting, comply with antitrust and civil legislation. Controlling bodies on their part shall have the right to control and supervise a newly registered legal person, may bring it to various types of responsibility.

The competence of FTS RF is largely defined by its powers as an authorized federal executive body engaged in state registration of the subjects of entrepreneurship. FTS RF keeps the unified state registers of legal entities and individual entrepreneurs, as well as implements control and supervision in the fiscal sphere.

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