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Kondrat'ev S. V.

ANALYSIS OF CONTEMPORARY CONDITION AND PROBLEMS OF EXERCISING ADMINISTRATIVE RESPONSIBILITY FOR OFFENCES IN THE FIELD OF TAXES AND FEES IN ECONOMIC LEGAL PROCEEDINGS

Kondrat'ev Stanislav Valentinovich,
degree-seeking student of Financial University under the Government of the Russian Federation, Head of the division of pre-trial settlement in the Department of the Federal Tax Service for Moscow region, Moscow.

The author carries out identification of problems of exercising administrative responsibility in the field of taxes and fees and determines possible ways to resolve them on the basis of the proposed by the author legal measures aimed at the streamlining the system of administrative prohibitions and the unification of application measures of administrative responsibility for offences in the field of taxes and fees.

Keywords: administrative responsibility, administrative prohibitions, offences in the field of taxes and fees, differentiation of tax and administrative offences.

Currently, it is indisputable fact that over the past three decades in Russia there was an intensive development of the system of administrative law: the financial law detached from the administrative law; in the financial law were formed virtually autonomous sub-branches: budgetary, tax, currency ones; the entrepreneurial, banking, commercial and other detached out from the civil law; the social security law – out of the labor law. Such intensive development path, of course, has certain legal effects, which can include the fact that the legislation in the newly emerging branches of law has outpaced the development of relevant scientific concepts (theoretical foundation), and a certain gap between the legislation and its scientific basis is reflected in the quality and content of the very legislation. In addition, this imbalance is at the heart of emergence of numerous theoretical concepts that have enough contentious nature.

Thus, in the conditions of transforming system of law of the Russian Federation, there is an acute need of theoretical reflection and formation of a legal framework designed to ensure financial stability and economic security of the State.

The relevance of this research relates exactly to the fact that at present there are no comprehensive studies, based on the application of comparative-legal method of study of different groups of social relations, for the regulation of which there should be a uniform approach to the legal regulation on the part of the legislator. We believe that the results of this comprehensive study will identify problems of both practical and theoretical nature, existing in the financial system of the State, as well as the legislative framework, and identify possible ways of overcoming them to form a stable tax system and the achievement of objectives defined by the Concept of long-term socio-economic development of the Russian Federation up to the year 2020.

These issues are also important to the day-to-day activity of various bodies of state power of the Russian Federation, whose functions include monitoring and oversight in the tax system of the State, and, consequently, detection and suppression of offences, as well as for judicial bodies that provide follow-up assessment of the legality of law enforcement activity.

This work aims at differentiation of tax and administrative offences that are committed in the area of taxes and fees and serve as a ground for administrative responsibility. The applied goal of the work, in turn, is identification of the problems of realization of administrative responsibility in the area of taxes and fees and determination of possible ways to resolve them on the basis of offered in this study legal measures aimed at the streamlining the system of administrative prohibitions and the unification of administrative responsibility measures for offences in the studied area. The problem still exists, and it remains unresolved.

It is well known, the legal basis of state administrations' activity in the area of taxes and fees, the backbone of law enforcement in the studied area is the Tax Code of the Russian Federation (hereinafter – TC RF) and the Code on Administrative Offences of the Russian Federation (hereinafter – CAO RF). It seems appropriate to consider some of the issues related to the identification of the role and importance of these fundamental laws governing the legal relations in the considered by us area.

It is well known that CAO RF was elaborated in course of two convocations of the State Duma of the Federal Assembly, almost eight years. It should be appropriate to note that the current CAO RF is focused on protection of constitutional human and civil rights and freedoms, property regardless of its organizational forms, conditions of normal life of Russians. The role of this codified law can hardly be overestimated.

Firstly, it shields a wide range of public relations; they are fundamental

human and civil rights and freedoms, property, public safety, economic interests of natural and legal persons.

Secondly, CAO RF is almost for all citizens, officials and entrepreneurs, organizations, lawful conduct of which is associated with the observance of prohibitions enshrined in the Code.

Thirdly, CAO RF specifies the scope of legitimate activity of state bodies and their officials on the application of norms of administrative responsibility, as well as a democratic procedure of consideration of cases relating to administrative offences [1, 5].

In 2012, the scientific community summed up the results of ten-year validity period of CAO RF. This period of formation of the Russian Statehood, which has embarked on the path of building a democratic state, was characterized by high intensity of development in all areas of public administration, at that the dynamism of improvement of CAO RF was certainly associated with the accelerated development of modern public relations. Attention should be drawn to the fact that if in 2002 just 5 Federal Laws amending the Code were adopted, in the year 2003 – 8, 2004 – 11, 2005 – 18, and in 2006 their number already reached 28 Federal Laws. Up to 2010, the number of laws which amended CAO RF ranged from 17 to 25. However, years 2010 and 2011 brought surprises to legal scholars in the form of 46 and 48 legislative amendments to CAO RF. For the year 2012, there were adopted 37 laws, which amended the chief administrative-tort law of the country. However, as rightly pointed out by Professor A. P. Shergin "there is an important issue for the legislator and law enforcers concerning the stability of legislation on administrative responsibility" [4, 83-84].

Thus, if to talk about the dynamics of changes for 10 years, about 250 Federal Laws were adopted during this time, and today their number has exceeded 350.

According to official statistics, administrative offences were and still are the most common types of wrongful conduct. According to the official data of the Ministry of Internal Affairs of Russia only in 2013 year they revealed 68.4 million administrative offences, of which more than half (51.3%; 2012: 44 %), [6] were recorded with the use of special technical means of photography and video recording, working in automatic mode.

Thus, the scope of administrative delinquency, the diversity of its manifestations and inflicted damage determine the need to counter administrative offences, lower the threshold of danger to interests protected by law. In this approach, there are objective reasons for the significant adjustment of the administrative law doctrine with taking into account the features of modern development in our country.

To this end, the state improves the legislation on administrative responsibility. Nowadays, there is a task, on the basis of new realities, as well as the analysis of implementation of the current CAO RF, to implement the third codification of administrative-tort legislation. New codification of administrative legislation, which is held by the expert group of the Committee for Constitutional Legislation and State Construction of the State Duma of the Federal Assembly of the Russian Federation, at the present time, is a significant milestone in the development of the theory of administrative-tort law. Realization of this task involves the study and analysis of the problems of legal regulation of administrative responsibility, sectorial identification of administrative-tort norms, the role of administrative-legal prohibitions in the modern Russian legal system and etc.

In this context, it appears appropriate to draw attention to some of the conceptual issues associated with the new codification of administrative-tort legislation.

In the legal doctrine the provision that tort law norms containing, in addition to legal prohibitions, norms of responsibility for their violation i.e. sanctions, are concentrated in a single codified act (for example: Criminal Code, Civil Code and other codified laws) has been rather long time and already has confirmed its validity. At the same time the procedural order of bringing to responsibility or a trial is enshrined in a special code (in particular the Code of Criminal Procedure – CCP RF, the Civil Procedure Code – CPC RF and other). So, in the current CAO RF the substantive norms of administrative responsibility are prescribed in sections 1 and 2 of the Code, the bodies competent to consider cases on administrative offences, the order of proceedings under this category of cases, as well as the execution of judgments on cases of administrative offences are prescribed in sections 3-5 of the codified law.

Thus, the proposals of a number of scientists about the delimitation of administrative-tort law, administrative-jurisdictional process presuppose the usefulness of separate codification of substantive and procedural norms of administrative responsibility. We should agree with the position of A. P. Shergin, "that the development of issues of administrative responsibility should be based on the theoretical concept of administrative-tort law and the recognition of administrative-jurisdictional process as an independent kind of legal process" [5, 89-90].

The joint codification of substantive and procedural norms of administrative responsibility in one normative act, as it is done in CAO RF, is not the most optimal variant of regulation of its normative framework [2, 37]. One of the priorities, in our view, should be the development of two independent codified laws of the Russian

Federation: Administrative-tort Code governing the substantive relations of this type of legal responsibility and Procedural Executive Code on Administrative-tort Cases governing the procedural relations of exercising administrative responsibility. This idea was not only supported in the scientific literature, but also was implemented in author's projects of the named codes of the Republic of Kazakhstan, in adoption of the Procedural Executive Code on Administrative Offences of the Republic of Belarus, as well as in the legislation of other states.

Here we should note that within the legal status of subjects of legal relations we should distinguish its components such as rights, duties and responsibility. With regard to the considered by issue, special mention should be made of such its element as the duty to pay legally established taxes and fees arising from article 57 of the Constitution of the Russian Federation and paragraph 1 article 3 of the Tax Code of the Russian Federation.

Failure to perform duties, of course, leads to legal responsibility. In the theory of State and law the legal responsibility is understood as the duty of an offender to undergo negative consequences provided for by a sanction for violation of a law norm. With this approach, in the legal doctrine there are five main types of legal responsibility: criminal-law, administrative-legal, civil-law, disciplinary and material responsibility. Thus, a person, who commits violation of a norm of tax law, may be punished only in accordance with these kinds of legal responsibility.

In our view, conduct of a comparative-legal analysis of various types of legal responsibility for violation of tax law norms provided for in CAO RF, the Tax Code and, in some cases, the Criminal Code of the RF, is of great interest, both for the theory and practice of law enforcement. The interest is due to the similarity of compositions of these offences.

Based on the study of normative legal acts, as well as the analysis of other sources of law in the investigated area, it should be noted that there is absence of a legal definition of the concept of administrative responsibility, including in CAO RF, as well as the concept of tax responsibility in TC RF. However, there is an interpretation of the concept of corresponding offences in these codified acts. Thus, according to article 2.1 of the corresponding code, "a wrongful, guilty action (omission) of a natural person or legal entity which is administratively punishable under this Code or the laws on administrative offences of subjects of the Russian Federation shall be regarded as an administrative offence". In accordance with article 106 of TC RF, "a tax offence shall be understood as 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".

Thus, proceeding from the analysis of these concepts content, it follows that such signs as wrongfulness, guiltiness and punishability are common to both compositions of offences. Seemingly, the difference lies in the subject of offence. In the first case, the subject of offence is natural and legal persons, and, in the second case – taxpayers, tax agents and other persons to whom the Tax Code establishes responsibility. However, article 107 of TC RF establishes provisions that physical and legal persons also carry responsibility for these offences. The main difference is the procedure of bringing to responsibility. In the case of an administrative offence, proceedings are conducted under chapters 24-30 of CAO RF, in the case of a tax offence, proceedings shall be conducted in accordance with chapters 14 and 15 of TC RF.

In any case, in the process of bringing to responsibility we should keep in mind the note to article 15.3 of CAO RF: "The administrative responsibility, established in respect of officials in this Article, in Articles from 15.4 to 15.9 and in Article 15.11 of this Code, shall apply to the persons specified in Article 2.4 of this Code, safe for the citizens exercising business activities without forming a legal entity". That is, the officials of organizations can be brought to administrative responsibility. However, we should not forget that one of the major innovations of CAO RF was the administrative responsibility of also legal persons, and that essentially distinguishes it from the previous Code on Administrative Offences of the RSFSR. However, the legislator disregarded it in the sphere of tax relations.

It should be noted that TC RF to date includes 9 compositions of administrative offences (articles 116, 119, 120, 126, 128, 129.132-134), for which, according to paragraphs 3 and 4 article 108, there comes administrative responsibility. In more detail the reasoning of the stated assertion will be given by us in further study.

Also it should be noted that currently there is also a problem, which is that there are independent compositions of delicts in article 128 and 129 of TC RF, which provide for responsibility, in *the first* case, of a witness for non-appearance or evasion of appearance without good reason of a person who is summoned as a witness in connection with a case involving a tax offence, in *the second* one – for refusal by an expert, translator or specialist to participate in a tax audit or willful giving of a false report by an expert and or willful making of a false translation by a translator.

Comparative analysis of legal provisions contained in articles 90 part 1 of TC RF and 25.6 of CAO RF shows that the interpretation of the concept of "witness", contained in CAO RF, involves an extensive semantic interpretation of

the said term, because any law-enforcement proceedings are focused on consideration specific legal cases and taking decisions on them. Therefore, the concept applies to cases arising from tax legal relations. The provisions of article 129 of TC RF (refusal by an expert, translator or specialist to participate in a tax audit, willful giving of a false report by an expert and or willful making of a false translation by a translator), in fact, duplicate article 17.9 of CAO RF (knowingly false testimony of a witness, explanation of a specialist or intentionally incorrect translation) in part of the prosecution of an expert. Thus, in our view, it is also appropriate to exclude these compositions of offences from TC RF [3, 14-20].

Note that when the adoption of CAO RF the relevant norms were removed from TC RF and consolidated in a separate chapter of CAO RF with the extention to regulate these relations of general procedural order (chapter 16 of CAO RF), the separate regulation in the field of tax relations has been being exercised so far. Moreover, a number of substantive and procedural norms of CAO RF and TC RF duplicate each other, that makes confusion in law enforcement, misguides citizens and legal persons who are taxpayers, and entails a lot of negative consequences.

Therefore, law enforcers get problems in the legal qualification of offences identified in the field of taxes and fees and, accordingly, in bringing offenders to justice: either according to TC RF – to tax responsibility, or on the basis of CAO RF – to administrative one, or in some cases – to criminal one, on the basis of Criminal Code of the RF. To address these and many other problems of legal regulation of bringing to responsibility for offences in the field of taxes and fees, it seems the most important to identify the legal nature of offences in the investigated area. These aspects will be discussed later in this study.

To ensure the representativeness of the research and credibility of the author's proposals and recommendations both of theoretical and applied nature, we have studied the experience of law-enforcement activity for 2011-2013 of the Federal Tax Service of the RF, DFMS (Department of the Federal Migration Service) for Moscow, DFMS for Moscow region concerning bringing to responsibility for offences relating to taxes and fees, as well as the practice of pre-trial settlement of disputes both at the stage of examination of audit materials and at the stage of consideration of complaints (appeals and statements) from taxpayers.

Let us turn only to law-enforcement activity of DFMS for Moscow region.

Table 1 shows summarized information about law-enforcement activity of DFMS for Moscow region regarding bringing to responsibility under TC Rf and CAO RF for 2011-2014.

Table 1

Norm of TC RF	Similar norm of CAO RF	Bringing to tax responsibility	Bringing to administrative responsibility	percentage ratio of applied norms of TC RF and norms of CAO RF
A violation by a taxpayer of the established time limit for the submission of an application for registration with a tax authority (paragraph 1 article 116 TC RF)	A violation of the established time limit for submission an application for registration with a tax body (part 1 article 15.3 CAO RF)	607	524	92,22%
A failure by a taxpayer (levy payer, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information (paragraph 1 article 126 TC RF)	A failure to submit within the prescribed time limit, established by the legislation on taxes and fees, or refusal to submit to tax bodies any documents, which are necessary for exercising tax control (part 1 article 15.6 CAO RF)	50823	11918	16.79%
A failure to file a tax declaration to the tax authority at the place of registration within the deadline established by the legislation on taxes and fees (paragraph 1 article 119 TC RF)	A violation of the time limit established by the legislation on taxes and fees for submitting a tax declaration to a tax body at the place of registration (part 1 article 15.5 CAO RF)	115280	17848	19.55%
A gross violation of the rules for accounting for income and (or) expenses and (or) objects of taxation (paragraph 1 article 120 TC RF)	A gross violation of the rules of bookkeeping and of submission of accounting statement, as well as of the procedure and time limits for keeping accounting documents (article 15.11 CAO RF)	118	162	118.88%
A violation by a taxpayer of the time limit, which is established by this Code, for the submission to a tax body of information on the opening or closure by the taxpayer of an account with a bank (paragraph 1 article 118 TC RF) (became invalid, Federal Law No. 52-FL from 02.04.2014)	A violation of the established time limit for the submission to a tax body of information on the opening or closure of an account with a bank or other credit organization (article 15.4 CAO RF)	6679	727	5.27%
	TOTAL: 2011-2014	**173473**	**31178**	**17,97%**

On the basis of analysis of law-enforcement activity of DFMS for Moscow region for 2011-2014 regarding bringing to responsibility under TC RF and CAO RF, it was determined that the largest number of offences – 115280 was committed for failure to file a tax declaration to the tax authority at the place of registration within the deadline established by the legislation on taxes and fees (paragraph 1 article 119 of TC RF), respectively 17848 officials were brought to administrative responsibility for violation of the time limit established by the legislation on taxes and fees for submitting a tax declaration to a tax body at the place of registration (article 15.5 of CAO RF). Also, based on paragraph 1 article 126 of TC RF – a failure by a taxpayer (levy payer, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information, 50823 culprits were brought to responsibility, at the same time for almost the same offence – A failure to submit within the prescribed time limit, established by the legislation on taxes and fees, or refusal to submit to tax bodies any documents, which are necessary for exercising tax control (part 1 article 15.6 CAO RF), only 11918 culprits were brought to responsibility.

The reasons for non-application of the norms of CAO RF, in our view, are, first of all, in a small limitation period for bringing to responsibility – article 4.5 of CAO RF. A decision on a case of administrative offence cannot be taken after two months (as to a case of administrative offence considered by a judge, after three months) from the date of commission of the administrative offence, for violation of legislation of the Russian Federation, including in the field of taxes and fees. It should also be noted that there is smaller duration of collection period and a more complicated procedure of implementation penalties, because decisions are taken by court.

Procedure for prosecution of officials under article 15.4 of CAO RF is connected with the limitation of time required to draw up a protocol, as well as with the impossibility of personal delivery to an official of a notification on the need to appear for drawing up the protocol. Notifications sent by mail to the address of residence of heads return back due to the absence of the addressee. Accordingly, there is a failure of an official of an organization to appear for drawing up a protocol on administrative offence. There are a number of other reasons and conditions, which we will study in more detail later.

Despite the fact that the norms of tax and administrative legislation practically duplicate each other, however, the delimitation of compositions is made under the subject of offence, i.e. if an offence has been committed by an official of enterprise or organization, the offenders are brought to administrative responsibility pursuant to CAO RF, in other cases, accordingly to tax responsibility under TC RF.

Thus, there is an urgent need for synthesis and analysis of the current state of legal regulation in the field of taxes and fees in order to streamline legal relations arising in this sphere, as well as to unify bringing to responsibility for offences.

Based on the above, it appears appropriate to draw some conclusions.

Analysis of current state, as well as consideration of some problems in implementing of administrative responsibility for offences in the field of taxes and fees shows that the system of legal responsibility in the field of taxes and fees in domestic legislation, which prevails to the present time, is not logical and coherent. First of all, question about the legal nature of tax responsibility remains controversial; there are overlapping systems of legal sanctions.

Currently, a paradoxical situation has occurred, when for the same offence in the tax sphere the legislation in force provides for several kinds of responsibility – administrative or fiscal, and in some cases criminal one.

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