

Kizilov V. V.

GAPS IN NORMATIVE REGULATION OF SUBMISSION OF REVISED TAX DECLARATIONS

*Kizilov Viacheslav
Vladimirovich,*

c.j.s, Associate Professor, department of administrative and financial law of the non-state educational institution «Omsk Institute of Law», Omsk;

Considers problems associated with the emergence of rights and duties on the clarification of tax declarations, as well as the application of tax penalties for noncompliance the obligation of filing a revised tax declaration. Attention is drawn to the possibility of emergence of tax liabilities in connection with the elimination of errors of accounting, making changes in the accounting, which do not relate to the mistakes of drawing up a tax declaration.

Keywords: tax declaration, revised tax declaration, mistakes of declaration filling in.

In accordance with part 1 of Article 81 of the Tax Code of the Russian Federation, taxpayer must make the necessary amendments in a tax return and submit to the tax authority revised tax return only in the case when the taxpayer discovered in the tax return not reflected or incomplete information as well as errors leading to an underestimation of the amount of tax payable.

Discovery by the taxpayer in the submitted by him tax declaration of false information, as well as errors that do not lead to an underestimation of the amount of tax payable, the legislator does not associate with the emergence of responsibilities of a taxpayer to submit a revised declaration, and gives the taxpayer the right to make necessary changes in his tax return and submit to the tax authorities revised tax declaration. At the same time the submission after the filing deadline of revised tax declaration at realization the right (paragraph 2 part 1 of Article 81 of the Tax Code of the RF), rather than at the performance of the statutory duties (paragraph

1 part 1 Article 81 of the Tax Code of the RF), is not considered as non-compliance with deadlines, if initial declaration was submitted on time. [4] A different interpretation of the norms of Article 81 of the Tax Code of the RF would lead to unpunished increasing refining of tax returns by a taxpayer beyond the deadline of submission if there is a fact of understatement of tax responsibilities.

Every fact of submission a revised declaration, entailing an increase of tax obligations of the taxpayer, outside the deadline is the fact of a tax offense under part 1 of article 119 of the Tax Code of the RF:

“1. A failure by a taxpayer to submit a tax declaration within the time limit established by legislation on taxes and fees to the tax authority where the taxpayer is registered

shall result in the exaction of a fine equal to 5 per cent of the unpaid amount of tax which is payable (additionally payable) on the basis of that declaration for each full or not full month from the day established as the deadline for its submission, but not more than 30 per cent of that amount and not less than 1,000 RUR.” [1]

Moreover, the actual payment by a taxpayer of discovered by himself amounts of lowering taxes does not save the taxpayer from applying to him sanctions under part 1 article 119 of the Tax Code of the RF. Rigidity and justification for the use of tax penalties has been confirmed in the information letter of the Presidium of the Higher Arbitration Court of the Russian Federation No. 71 of March 17, 2003 “Review of Practical Experience of the Resolving by Arbitration Courts of Cases Associated With the Application of Particular Provisions of Part One of the Tax Code of the Russian Federation”:

“13. Payment of the amount of the calculated tax in the prescribed by legislation on taxes and fees time limit itself does not relieve the taxpayer from responsibility for late submission of a tax declaration, under article 119 of the Tax Code of the RF.

Tax authority appealed to the arbitration court with an application to exaction from a joint-stock company a fine under paragraph 1 of article 119 of the Tax Code of the RF, for failure to submit within the prescribed time tax return for income tax.

Defendant did not recognize the claim on the grounds that the amount of the calculated tax was completely paid by him to the budget, and the tax authority did not reveal arrears.

The court upheld the arguments of the taxpayer and refused to satisfy the application on the following grounds.

According to paragraph 1 article 119 of the Code a failure by a taxpayer to submit a tax declaration within the time limit established by legislation on taxes

and fees to the tax authority where the taxpayer is registered shall result in the exaction of a fine equal to 5 per cent of the unpaid amount of tax which is payable (additionally payable) on the basis of that declaration for each full or not full month from the day established as the deadline for its submission, but not more than 30 per cent of that amount and not less than 1,000 RUR.

Offense described in the above norm has a material composition because committing of appropriate acts is associated with the emergence of the taxpayer debts to the budget on a specific tax.

As can be seen from the case materials, the defendant has paid income tax in full by the due date. Failure to submit a tax return on the mentioned tax has not led to the emergence of debt to the budget and did not cause adverse effects to it.

In the light of the foregoing, there are no reasons for bringing the company to liability under paragraph 1 article 119 of the Tax Code of the RF.

The Court of appeal instance cancelled the decision of the Court of first instance and satisfied the application, drawing attention to the following.

The obligation of a taxpayer to pay the legally established taxes is stipulated in subparagraph 1 of paragraph 1 article 23 of the Tax Code RF, and the responsibility for failure to perform it - in article 122 of the Code. Since in the present case, the defendant had timely paid the income tax, he was not brought to this responsibility.

Article 119 of the Code establishes liability for a failure to fulfill other obligation - to submit in appropriate cases tax return. This obligation is enshrined in subparagraph 4 of paragraph 1 article 23 of the Tax Code of the RF.

So far as the claim was made for the exaction of fine for failure to submit the tax return, references of the defendant on timely performing his other obligations (to pay tax) have no legal significance to decide on the substantiation of this claim.

The fact of failure to submit a tax return for income tax is confirmed by the case materials and is not disputed by the defendant, and therefore the requirement of the tax authority to exact a fine under paragraph 1 article 119 of the Tax Code of the RF, is substantiated "[9].

It is generally recognized that the tax sanction is a measure of responsibility for a tax offense, i.e. that is a guilty, illegal (in violation of the legislation on taxes and fees) deed (action or inaction) of the taxpayer for which the Tax Code of the RF establishes responsibility. However, the Tax Code contains an open list of circumstances precluding guilt of committing a tax offense, and mitigating liability for its commission (articles 111 and 112 of the Tax Code of the RF). These circumstances are established by the court or tax authority, considering a specific case, and taken into account when applying tax sanctions. Therefore, in recognition of requirements

of justice and ratability, differentiation of responsibility depending on the severity of the offense, the size and nature of the damage inflicted, it is possible to reduce tax sanctions under part 1 of article 119 of the Tax Code of the RF. And precisely on this should focus a taxpayer who is at fault, to evade responsibility in full will not be possible.

If the taxpayer fails to submit a revised declaration, ignoring the obligation provided in part 1 article 81 of the Tax Code of the RF, then upon detection by a tax authority the fact of understatement of tax liabilities the taxpayer expects additional sanctions provided for by part 3 article 120 and parts 1 and 3 article 122 of the Tax Code of the RF (depending on classification of a tax offense).

It should be noted that the submission of the revised tax return, reducing the tax liability of a taxpayer, does not lead to exaction of fine, since under the terms of paragraph 1 article 119 of the Tax Code of the RF, there is no basis for its calculation. Therefore deadlines of submission revised declarations which do not lead to an increase in tax liability of a taxpayer, are not regulated by part 1 article 81 of the Tax Code of the RF.

Tax sanctions of part 1 article 119 of the Tax Code of the RF are applied only in respect of offenses related to late filing of declaration [3], but in recognition of the provisions of part 3 and 4 of article 81 of the Tax Code of the RF. At its core, the provisions of part 3 and 4 of article 81 of the Tax Code of the RF define exclusions of bringing to responsibility for tax offenses under Article 119 of the Tax Code of the RF. That is, the sanctions of article 119 of the Tax Code of the RF are not applied to a taxpayer if:

- revised tax return has been submitted to the tax authorities before the taxpayer learned about the discovery by tax authority the fact of not reflecting or incomplete reporting information in the tax return, as well as errors, which lead to an underestimation of the amount of tax payable, or about the appointment of Field Tax Audit;

- before the submission of a revised tax return the taxpayer has paid the remaining amount of tax and corresponding penalties (for the cases of the declaration submission after the deadline for payment of tax);

- revised tax declaration has been submitted after the Field Tax Audit for the relevant tax period, the results of which did not reveal not reflected data or incomplete reporting of information in the tax return, and the mistakes that lead to an underestimation of the amount of tax payable.

In cases where the taxpayer within the tax (reporting) period submits revised calculation in violation of the time terms of the Tax Code of the RF, in our

opinion, there may emerge responsibility under part 1 article 126 of the Tax Code of the RF:

“1. Failure by a taxpayer (payer of fee, tax agent) to submit to the tax authorities within the prescribed time limit documents and (or) other information as is envisaged by this Code and other acts of tax and fee legislation

shall result in the exaction of a fine in the amount of 200 RUR for each document which is not submitted” [1].

This is indicated by the authors of the commentary to the Tax Code of the RF, placed in the reference and legal system “Garant” in 2010. [7]

Seemingly everything concerning the revised declarations is simple and clear. However, in our opinion, the wording of paragraph 1 article 81 of the Tax Code of the RF contains some problems. So, the obligation to submit revised declarations is associated with the fact of *not reflecting in a declaration or incomplete reporting information, as well as the presence of errors, which lead to an underestimation of the amount of tax payable*. As can be seen from the conditions of emergence taxpayer obligations legislator distinguishes errors and not reflection (partial reflection) of information. Although, at first glance, the notion of error could absorb the situations of the second notion. As we see it, expression worded in such a way is not accidental in provision of law. Under a mistake in filling out a declaration should be understood a clerical error (typo) made unconsciously. For example, during filling out can be confused boxes, randomly mixed up numbers in numeric values, erroneously written comma (delimiter). We must distinguish error in declarations from errors in accounting and tax accounting. [8] The errors referred to in paragraph 1 article 81 of the Tax Code of the RF are applied only to a declaration! Error of a person completing a tax return, characterizes the guilt of this deed, as a committed through negligence. Not reflection or incomplete reflection of information in a declaration may indicate the manifestation of both forms of guilt – negligence and intent, but more often of intent.

In our opinion, it is referred to not reflection or incomplete reporting of information in the declaration when without error correction in the accounting and tax accounting of a taxpayer, a tax authority during the audit (or auditor) on the basis of the same accounting policy of the taxpayer would form a tax return different from the submitted one by the taxpayer.

Analysis of the provisions of article 81 of the Tax Code of the RF with a view to literal interpretation leads to the fact that the norms of the article do not regulate the situation when the change in tax obligations of a taxpayer derives from correcting mistakes in accounting and/or tax accounting, or as a result of events

occurring after the reporting date. Errors in accounting or tax accounting are not identical to mistakes of filling in a tax return.

The concept of a tax return is enshrined in part 1 article 80 of the Tax Code of the RF: “A tax declaration shall be a written statement of a taxpayer, or a statement of a taxpayer prepared in electronic form and transmitted via telecommunications channels with the use of an electronic digital signature, concerning objects of taxation, income received and expenses incurred, sources of income, the tax base, tax exemptions, the calculated amount of tax and (or) other data which serve as a basis for the calculation and payment of tax”. The tax return cannot be equated to the primary accounting documents and accounting registers, mistakes correction of which implies the change of the declaration submitted to the tax authority.

Absence of any restrictions concerning submission revised tax returns in our opinion is not justified. Preclusive term to perform this action (three years) does not sufficiently protect tax authorities from the abuse of a taxpayer in the continuous refinement of tax returns. It is quite possible for a taxpayer to use provided for by the Tax Code mechanism of revising tax returns for the actual implementation of installment payment of taxes (without compliance with the procedure for changing the tax payment term). If correctly plan tax payments, terms of submission revised declarations, the taxpayer evading fine sanctions under article 119 of the Tax Code, shall pay over tax only penalties, which are always less than the interest on loans at banks and credit institutions.

As we see it, the change of tax liabilities due to correcting errors in accounting, the corrections procedure of which is provided under the Provision on accounting “Correcting Errors in the Accounting and Reporting” [6], is quite possible to reflect in the current tax period specifying in accounting statement the cause of emergence of a tax obligation, its amount and the value of calculated penalties for late payment of tax, without submission of a revised tax return.

In particular, the Provision on accounting provides for the correction of errors caused by:

- incorrect use of the legislation of the Russian Federation on accounting and (or) normative legal acts on accountancy;
- misapplication of accounting policy of an organization;
- inaccuracies in calculations;
- incorrect classification or assessment of the facts of economic activity;
- incorrect use of the information available at the date of the accounting reporting signing;
- bad faith actions of organizations’ officials.

Besides, inaccuracies or omissions in the reflection the facts of economic activity in the accounting and (or) accounting reporting of an organization identified as a result of obtaining new information, which has not been available to the organization at the time of reflection (not reflection) of such facts of economic activity are not considered to be mistakes. [6]

Tax liabilities for previously submitted declarations may change not only due to correction of errors in accounting, but also as a result of occurrence certain events after the accounting date. For example, after taking inventory of property of a taxpayer that is implemented due to:

- transfer of property to rent, purchase, sale, and also at the transformation of state or municipal unitary enterprise;
- change of materially responsible persons;
- detecting the facts of theft, misuse or damage of property;
- natural disaster, fire, or other emergency situations caused by extreme conditions;
- reorganization or liquidation of an organization;
- occurrence of other cases stipulated by the legislation of the Russian Federation [2].

The taxpayer's tax liability may be influenced by events occurred after the accounting date. These events, their enumeration and reflection in the balance are stipulated by the Provision on accounting "Subsequent Events" PBU 7/98 (PBU – Polozhenija Buhgalterskogo Ucheta, in Russian) [5], which, in our opinion, cannot be attributed to errors in the accounting and all the more to mistakes of filling in a tax return.

Approximate list of economic activity facts, which can be recognized as events after the accounting date is set out in the annex to the PBU 7/98. In particular, it takes into account those events that prove economic conditions existed at the accounting date, in which the organization conducted its activities:

- announcement in the prescribed procedure an organization's debtor as a bankrupt, if on accounting date in respect of the debtor has already been conducted bankruptcy proceeding;
- valuation of the assets made after the accounting date, the results of which indicate a steady and significant decline in their value as determined of the accounting date;

- obtaining information about the financial condition and results of activities of a subsidiary or dependent company (or partnership), whose securities are listed on stock exchanges, which proves steady and substantial impairment of long-term investments of an organization;

- sale of inventories after the reporting date, showing that the calculation of possible realizable value of inventories of the accounting date was unjustified;

- declaration dividends by subsidiary and dependent companies for the periods prior to the reporting date;

- discovery after reporting date the fact that the percentage of the construction object readiness used to determine the financial results as of the reporting date by method "Income according to the cost of work as it become completed" was unfounded;

- getting from an insurance company materials to clarify the amount of the indemnity in respect of which as of the reporting date were being conducted negotiations;

- discovery after reporting date a substantial error in accounting or violations of legislation at the implementation of the organization's activities, which lead to a distortion of the accounting reporting for a reporting period.

As events, indicating economic conditions emerged after the reporting date in which the organization conducted its activities, are listed:

- making a decision on reorganization of an Organization;
- acquisition of an enterprise as a property complex;
- reconstruction or planned reconstruction;
- making a decision on emission of shares and other securities;
- big transaction, connected with the acquisition and retirement of fixed assets and financial investments;
- fire, accident, natural disaster or other emergency situation, which destroyed a large part of the Organization assets;
- termination of substantial part of the Organization core activities, if it could not be foreseen as of the reporting date;
- significant reduction in the cost of fixed assets, if this decline occurred after the reporting date;
- unpredictable changes in foreign currency rates after the reporting date;
- actions of public authorities (nationalization, etc.).

Lawful actions of a taxpayer may change tax obligations on a previously submitted declaration in connection with the change of transaction terms, as a result of which there is a change in the rights and obligations (obligations of parties) from the date, before making a decision about the change. Normatively this possibility is stipulated by articles 421 (Freedom of contract), 425 (Operation of contract), 453 (Effect of amendment and termination of a contract) of the Civil Code of the RF. So, part 2 article 425 of the Civil Code of the RF establishes that parties are free to determine that the conditions of concluded by them contract are applied to their relations that have arose before the signing the contract. Part 3 article 453 of the Civil Code of the RF provides for the possibility of changing the obligations of parties, not only from the date of signing the parties' agreement on modifying their contract, but also from the date specified in the contract, although the parties have not the right to demand the return of what was done by them under the obligation up to the moment of the change or termination of the contract, unless otherwise is provided by law or by the agreement of the parties.

Considering the above said and in order to impute taxpayer's obligation of submitting revised declarations in all cases leading to change in accounting and tax accounting of the taxpayer and, as a consequence, entailing an increase in tax liability of the taxpayer in the accounting period, the norm of the first paragraph of part 1 Article 81 of the Tax Code of the RF should be adjusted by setting out its new edition:

"1. In the event that a taxpayer discovers that information has not been disclosed or has not been fully disclosed in a tax declaration which he has submitted to a tax authority, or discovers errors which result in an understatement of the amount of tax payable, the taxpayer will be obliged to make necessary amendments to the tax return and to submit a revised tax return to the tax authority in accordance with the procedure established by this Article. Rules for submitting a revised tax return apply to cases of increase of tax liability as a result of corrections made by the taxpayer in the accounting, in connection with the identification of errors or occurrence of events after the reporting date".

As we see it, part 3 and part 4 of article 81 of the Tax Code of the RF is more appropriate in article 119 of the Tax Code of the RF, which establishes responsibility for the appropriate tax offence. In connection with this we should exclude them from Article 81 of the Tax Code of the RF (in fact, they are the conditions for exemption from liability for tax offenses) and enter them to article 119 of the Tax Code of the RF, as clause 3 and 4 unchanged.

References:

1. The Tax Code of the Russian Federation, part one No. 148-FL of July 31, 1998 [Nalogovyj kodeks Rossijskoj Federacii, chast' pervaja ot 31 ijulja 1998 g. № 146-FZ]. *System GARANT* [Electronic resource], Moscow: 2012.
2. Federal Law No. 129-FL of November 21, 1996 "On accounting" [Federal'nyj zakon ot 21 nojabrja 1996 g. № 129-FZ «O buhgalterskom uchete»]. *System GARANT* [Electronic resource], Moscow: 2012.
3. The resolution of the Presidium of the Higher Arbitration Court of the Russian Federation No. 3299/10 of October 12, 2010 [Postanovlenie Prezidiuma VAS RF ot 12 oktjabrja 2010 g. № 3299/10]. *System GARANT* [Electronic resource], Moscow: 2012.
4. The resolution of the Presidium of the Higher Arbitration Court of the Russian Federation No. 7265/11 of November 15, 2011 [Postanovlenie Prezidiuma VAS RF ot 15 nojabrja 2011 g. № 7265/11]. *System GARANT* [Electronic resource], Moscow: 2012.
5. The order of the Ministry of Finance of the Russian Federation No. 56n of November 25, 1998 "On the approval of the provision on accounting "Events after reporting date" (PBU 7/98 – polozhenie po buhgalterskomu uchetu, in Russian [PA 7/98 – provision on accounting])" [Prikaz Minfina RF ot 25 nojabrja 1998 g. № 56n «Ob utverzhdenii Polozhenija po buhgalterskomu uchetu «Sobytija posle otchetnoj daty» (PBU 7/98) »]. *System GARANT* [Electronic resource], Moscow: 2012.
6. The order of the Ministry of Finance of the Russian Federation No. 63n of June 28, 2010 "On the approval of the provision on accounting "Correction of errors in accounting and reporting (PA 22/2010 – provision on accounting)" [Prikaz Minfina RF ot 28 ijunja 2010 g. № 63n «Ob utverzhdenii Polozhenija po buhgalterskomu uchetu «Ispravlenie oshibok v buhgalterskom uchete i otchetnosti» (PBU 22/2010) »]. *System GARANT* [Electronic resource], Moscow: 2012.
7. Gorshkova L. L., Borisov Yu. K., Kudryavtseva A. L., Godunova N. S. *Comments to the Tax Code of the Russian Federation (to part one and two)* [Kommentarij k Nalogovomu kodeksu Rossijskoj Federatsii (chastjam pervoj i vtoroj)]. under edition of L. L. Gorshkova, *System GARANT* [Electronic resource], Moscow: 2012.
8. Filina F. N. *Summing up the year: correction of errors in accounting and tax accounting* [Podvodim itogi goda: ispravlenie oshibok v buhgalterskom i nalogovom uchete]. Moscow: GrossMedia, Rosbuh, 2008.
9. *System GARANT* [Electronic resource], Moscow: 2012.