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The Relation of Financial, Tax and Administrative Responsibility

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ABSTRACT

The tax system and the corresponding area of legal regulation of a new type is emerging in Russia for almost 15 years, but the problems of efficiency of the tax liability lately has been paying more and more attention. Tax ratio has a complex economic-legal nature. The economic content of tax relations is mediated by macroeconomic parameters of national economic policy, statistical parameters of tax planning and tax administration. The beginning of the tax administrative relationships manifest in the power relations on establishment, introduction, collection of taxes and fees, as well as fiscal control. The constitutional principle of separation of powers determines the administrative and judicial procedure for appealing against acts of tax authorities and actions and inactions of their officials. This article is devoted to analysis of the problems associated with the content, structure of tax legal relations, similar to this aspect of the problem of tax offences, their classification and establishing the appropriate tax liability for committing them. The article examines the nature and types of taxation, the tax legal relations, rights and duties of subjects of tax relations.

Keywords: Administrative Responsibility, Tax Responsibility, Financial Responsibility, Regulation, Policy
JEL Classifications: H20, F62, G38

1. INTRODUCTION

Taxation is traditionally the prerogative of state power, as the public nature of the relationship between the taxpayer and the state remains dominant. To streamline this sector, establishing the rule of law in various segments of the market economy and in a broader context, for solving diverse tasks related to the functioning of the Russian state, it is necessary to use the entire potential tax liability.

In international law an increased public danger of tax crimes has traditionally emphasized. That's why tax offences creating pre-criminal background are given so much attention, both legislative and doctrinal and institutional level.

2. MAIN PART

The progress made in our country with the collection of taxes does not remove from the agenda the need for a more in-depth, methodological-theoretical analysis of tax liability. This Institute has a certain research potential to clarify the grounds and procedure of bringing to responsibility for tax offenses, ratio of different types of liability for offences in the tax sphere, addressing issues of exoneration of violators of tax laws.

There is also the possibility of using the potential of the problem, to clarify the legal nature and content of tax relations as a form of financial relations, to systematize the various approaches of scientists on the issue of the sectoral nature of tax law, the relationship between financial, legal, tax, administrative and criminal liability.

There is a large judicial-arbitration practice which should be organically included in the analysis of the proposed subjects.

Complex theoretical, methodological and practical problems are identified in terms of legal parallelism when the liability for violations in the tax area is formed by the junction of the norms of tax and administrative legislation.

In our view, actualization of the problem is largely associated with insufficient development of the theory of tax legal relations, its structure and content, especially in connection with the release in the Tax code of the categories of "tax liability," "taxpayer"

and its types. Moreover, as the notion of "tax" is integrative, it cannot affect the formation of the elemental composition of the dynamically developing institution of fiscal responsibility, justify it as a form of legal responsibility, identify its forms, system and structural relations.

However, the conceptual basis of the implementation of the establishment of the tax liability in an organic conjunction with the theory of taxation and tax offences is still not sufficiently developed, which affects the quality of the theory and practice of public activities in General, the effectiveness and stability of the financial legislation. This is reflected in the stability of the legal system and its major subsystems associated with the tax regulation.

The dynamics of the tax legislation also is complicated by the uneven changes in legislation having some resonant legal consequences for different social groups in the number of taxpayers.

Thus, the scientific problem of the tax liability involves several aspects.

First, it is necessary to analyze the legal nature, content of tax legal relations, including in establishing tax liability, taking into account existing achievements, the financial-law science and tax law.

Equally important aspect related to the analysis of controversial moments of the ratio of financial, tax and administrative responsibility, clarification of grounds and procedure of bringing to responsibility for tax offenses. You should to compare the results with the modern approaches of foreign legislators on the problems of determining grounds and procedure of bringing to responsibility for tax offence, according to the criterion of integrity and consistency of the conceptual apparatus of the tax offences, the establishment of subjects and types of responsibility. It is also necessary to specify categorical a number of the research topic: Types and forms of legal liability for violations in the tax area.

No less important is the analysis of the compositions of tax offences. Of theoretical importance is the definition of the main approaches to their classification, as it was on such a theoretical basis is possible a thorough analysis of tax liability and financial sanctions for violations of tax laws.

There are methodological-theoretical and empirical groundwork for a more in-depth study of the problems of implementation of tax liability, including in the context of generalization of foreign experience of tax administration and tax courts.

The issue of the protection of the rights of subjects of tax relations has particular importance. Moreover, the legal positions of the constitutional court of the Russian Federation, practice of the Supreme Court and Arbitration Court, regional court and arbitration practice related to this aspect are characterized by several new trends.

In terms of updating the methodological tools of legal science and the growing interest in interdisciplinary research is required in a new way to raise questions about the correlation of norms of administrative, financial and tax law in establishing liability for tax violations.

The study of these problems in the unity of the determine the possibility of extrapolating the findings to the modeling of the state policy in the sphere of taxation, establish a regional policy in this sphere, implementation of European standards for the protection of the rights of taxpayers.

The participants of the relations regulated by the legislation on taxes and fees are the organizations and physical persons recognized as taxpayers. The term "taxpayer" refers to the number of specific terms of the legislation on taxes and fees and only used in the values determined in the relevant articles of the Tax Code of the Russian Federation. In article 11 of the Tax code of the Russian Federation the concept of "taxpayer" with a status "specific" means that this category is inherent primarily to the tax law. In other areas of law or legislation the term "taxpayer" may be used only in the meaning which he attaches to the Tax Code of the Russian Federation.

Taxpayers as subjects of tax law characterizes the potential to be a party to certain legal relations regarding the establishment, administration or collection of taxes, tax control or subjection to tax liability.

According to laws of some foreign countries, for example, Germany taxpayers may be the family as a whole and not a specific citizen. This approach is associated not only with necessity of realization of principles of the constitutional state in a broad sense, but with the fact that the tax law of Germany as a fundamental principle is the ability of the physical (or legal) persons to carry out tax payments.

The main characteristic of taxpayers that distinguish them from all other persons is the existence of a duty to pay taxes or fees. In accordance with article 38 of the tax code objects of taxation may be property, profit, income or other economic base, the presence of which the taxpayer of the legislation on taxes and duties associates the emergence of the obligation to pay tax. Consequently, the obligation to pay tax arises when a person has of the object of taxation. This position has a high potential of conflict that is caused, to a certain extent, conflicting correlation of the rules governing the objects of civil rights, with the rules setting forth the objects of taxation. So, the researchers, analyzing the dynamics of judicial practice in this area, make the following important conclusions. The first relates to the fact that, although the definition of the object of taxation is de jure is associated with the fact of state registration of right of ownership and other real rights to immovable property, however, affect the conclusion about the presence or absence of the object of taxation. The definition of object of taxation also affected by the correct classification of transactions. It was also noted the nuances of the impact of limitation periods in the taxation of legal entities, the correct definition of real estate.

Thus, the problem is the tension between the norms of civil and tax law, clarification of the doctrine of the conceptual apparatus

of the object of taxation. Here it is useful to use the achievements of related Sciences to develop an optimal legislative model of the object of taxation.

Tax liability, as a kind of financial responsibility, is inseparably connected with the concept of a tax offense. Chapter 16 of the tax code of the Russian Federation has established the types of tax offenses and liability for committing them, which emphasizes the withdrawal of legal science that state coercion is a key indicator of legal liability.

Differentiation of financial responsibility and administrative is carried out according to the criterion of provoslavnaya characteristic of financial law. For administrative and legal responsibility characteristic the need for penalties, punitive measures.

Financial responsibility is due to the nature of financial relations, characterized by specific features, for example, when compared with administrative usually indicates that they are a kind of property relations are of a monetary nature have the financial resources of the state as the object of the relationship.

This view of financial relations also forms the specifics of the legal responsibility in this segment of public relations. The complexity of the financial relationship creates a financial inconsistency of the offense that is the basis not only of the similarity of financial, administrative and disciplinary offenses. Economic (financial) background action (or inaction) the subject of the financial relationship predetermines the possibility of strengthening the legal responsibility, depending on the severity of the offense.

Moreover, the differences between administrative, legal and financial legal responsibility associated with differences in the subjects themselves offences. So, the subject of financial exploitation of a crime is the subject of financial activities, subject to the same administrative offense, as a rule, recognized officer of the organization. It is no accident that legal structure of administrative liability of legal persons have not received due development in the regulation of legal remedies of the administrative code. In contrast, the tax code establishes the tax liability of legal persons (e.g. Bank) for tax violations.

Thus, the implementation of financial-legal liability is to apply to the perpetrators of financial sanctions, which are measures of financial and legal coercion.

However, the violator may be subject to such measures of administrative and criminal legal action, depending on the degree of social danger of a wrongful act in the sphere of public Finance.

Financial offences differ, first and foremost, the subject of self-financing activities when compared with administrative offences and criminal offences.

Thus, when describing the rights and duties of subjects of administrative responsibility is not enough attention is paid to its subjective component, that is, the rights of the person and similar obligations of the state. Often called the rights and obligations of the parties does not relate to the rights and obligations enshrined in procedural norms. In the investigation of administrative offences, a person authorized to consider case about an administrative offence, the state is not entitled to compel a citizen or legal person to give a report on the Commission of the offenses in accordance with paragraph 1 of article 25.1. of the Code of administrative offenses as mentioned above.

The protection of society against administrative violations is not only the protection of state interests in the sphere of public control, and protection of a particular individual or a legal entity which is a member of the society, from attacks on its legitimate interests. In this case, the state's interests in the application of administrative responsibility are a priority, which is natural and appropriate. But at the same time officials representing them have a much wider scope of authority, while the victim's interests are represented slightly.

The law on administrative liability has a tendency of separation of substantive and procedural norms. In order to improve procedural bases of administrative responsibility are being developed to improve the judicial procedures for imposing administrative penalties. The analysis of individual legislative acts providing for administrative responsibility, suggests the inadequacy of procedural rules, expressing a form of exercising administrative responsibility, about tightening measures and the simplification of procedure of attraction to administrative responsibility.

Tax liability in a broad sense is a complex interdisciplinary Institute that combines legal norms related to the actual tax liability for tax offences, administrative responsibility for administrative offences in the field of taxes and fees, as well as criminal liability for tax crimes.

As the main government tool for regulating economic relations and trends is the tax system as a whole, and a comprehensive study of the tax liability has great research potential.

The question about the grounds and order of bringing to responsibility for tax offences is a key throughout the system build logically and institutionally grounded tax policy of any state.

In the increasing role of court practice in the legal regulation of economic activities of significant role was played by the decisions taken in the framework of the constitutionality of tax legislation. In modern legal literature, made many attempts to organize them.

As administrative offenses are considered a failure by officials of enterprises, institutions and organizations and also citizens of requirements of the tax legislation, the responsibility for which is provided by the administrative code.

A tax crime is guilty of wrongful socially dangerous act tax entity, namely, the evasion of taxes or mandatory payments by not submitting required financial statements, or the inclusion of knowingly distorted data on revenues or objects of taxation, or by any other means, committed on a large or especially large size, is prohibited by the criminal law.

The comparison of article 116 of the tax code and 15.3 of the code of administrative offenses shows that the coincidence of the nature of the offence of breach of the deadline of application for registration, the tax code means by the authority of the tax administration, the tax authority, whereas the administrative code also calls on the state off-budget fund.

The same is the method of the offence. The objective side of the offence is characterized by a wrongful act in the form of inactivity and expressed in the form of violation of the deadline for submission of application for registration, i.e., characterized by inaction.

If the tax law does not provide for the possibility of isolating aggravating circumstances, in accordance with the administrative code they are conducting activities without registration with the specified authorities.

The main difference between the tax and administrative responsibility is determined by the subject of the offense. In accordance with the tax code, the guilty person is the taxpayer. Administrative code considers as the subject of the offense, officials of legal entities, as well as officials of the bodies performing registration of an individual entrepreneur.

As you can see, physical persons, including individual entrepreneurs, cannot be held responsible under article 15.3 of the administrative code due to the fact that the registration with the tax authority, on an off-budget Fund is based on the information provided by relevant organs, organizations. According to article 85 of the tax code, which establishes the obligation of authorities, institutions, organizations and officials to inform the tax authorities of the information related to the registration of taxpayers. Such bodies are judicial authorities issuing licenses for notarial activities, the councils of lawyer chambers of subjects of the Russian Federation, the bodies registering individuals at the place of residence; authorities conducting registration of acts of civil status of physical persons; the bodies engaged in registration of immovable property; the bodies engaged in registration of vehicles; agencies of tutorship and guardianship; educational and medical institutions; the bodies (institutions) authorized to perform notarial acts; notaries engaged in private practice; the accounting bodies and (or) registration of users of natural resources, as well as licensing activities, associated with these resources; the authorities of the issuing and replacement of identity documents of the citizen of the Russian Federation on the territory of the Russian Federation.

With the transfer of registration functions to the tax authorities was streamlined structure of the bodies for which the legislator was obligated to provide such information.

Thus, the dualism of norms of tax and administrative responsibility part 15.3 of the articles of the administrative code and article 116 of the tax code is due not only to the physical duality of the personality of the subject of the offense, but also the technological features of providing information to the tax authority.

Judicial practice has developed as criteria for accountability in paragraph 2 of article 116 of the tax code of a taxpayer operating on the territory of one district in a few separate divisions: The prosecution produced in a single size, not the number of separate units.

The discussion about the content, branch and forms of realization of tax liability is gradually gaining inter-sectoral and even theoretical nature often returning researchers to the origins of the discussion about legal responsibility; about the relationship between social and legal responsibility, legal obligation and responsibility, state coercion and responsibility.

Issues about the relation of financial liability and financial and legal sanctions are also discussed (Barashyan, 2016). Gradually, during the discussions there were several positions regarding the understanding of the tax liability.

The first position (Emelyanov and Chernogor, 2014; Rukavishnikova, 2006) consider that a tax liability is a type of financial liability; tax penalties are the variety of financial and legal sanctions.

In the soviet period some authors had determined the administrative responsibility through the obligation of the perpetrator to give an account of his guilty actions. This approach is contrary to the current laws because in accordance with p.1, article 25.1. of the Administrative code a person is not obliged to give explanations, so as to give an explanation is his right.

There is methodologically common approach according to which administrative liability has common and special features. So, Bakhrakh (Bakhrakh, 2010) reveals that on the one hand, administrative responsibility is inherent in all signs of legal responsibility, i.e., it occurs on the basis of law for the violation of legal norms specified in jurisdictional acts of competent authorities and related to a state coercion. On the other hand, it is part of administrative enforcement and has all its qualities (carried out by the subjects of functional authority within the framework of off-duty subordination, etc. (Bakhrakh, 2008). Such an approach raises a number of objections of scientists who believe that the allocation of administrative coercion as one of the administrative responsibility was inappropriate, just as inappropriate to consider the sign of the negative legal responsibility under the law the obligation of the subject of offences to undergo certain measures of a state coercion. Also depending on what branch of law is the offence the appropriate measures of state coercion will be used. Consequently, administrative responsibility cannot be achieved without appropriate state (or administrative) compulsion (Rossinsky and Starilov, 2009). It is necessary to consider these signs of administrative responsibility without separating them and in unity implying that the content of administrative responsibility as an independent type of retrospective forms of legal responsibility is administrative enforcement.

In current discussions about the fate of the administrative responsibility there are many aspects (by which attributes to determine administrative responsibility; about the relationship of

administrative liability and administrative offenses, the synthesis of the material and procedural aspects in its understanding). Still one of the most controversial issues is the question of the correlation of tax and administrative liability. So, the issues of administrative responsibility for violation of legislation on taxes and charges are debated as well as the problems of application of administrative responsibility for violation of tax legislation by the tax code and the Administrative code.

Very radical measures proposed up to the inclusion of norms of administrative responsibility of all participants of tax legal relations in the Code of administrative offenses with concurrent cancellation of the corresponding Chapters 15, 16, 18 and certain provisions of Chapter 14 of the tax code on the so-called fiscal responsibility which is the administrative responsibility for violation of tax legislation and must be included in the legislation on administrative offences, which at the federal level is the Administrative code of the Russian Federation.

And yet, despite this onset of scientists in the administrative sphere lawyers-financiers is not going to give up, accumulating their arguments in favor of understanding tax and legal liability as a type of financial liability.

Of course, the solution to all these problems, the potential of financial liability is not the only one: Other legal and institutional factors play a significant role.

However, for the purposes to build a legal tax state with well-defined characteristics of the financial activities of the state formation, the development of the financial liability has an important appointment.

The researchers of the tax liability under the sectoral financial and legal science consider it as a derivative of legal liability, where financial liability is a species of a more general phenomenon of legal liability. Tax liability with this logic is a type of financial liability, along with, for example, budget and legal responsibility. Statement of financial liability even at the broader Foundation of social responsibility, according to scientists, should contribute to a more diverse financial liability in the aspects of positive and negative responsibility.

This derivation and the secondary nature of tax liability over the primary categories of social, legal and financial liability determines the need to deepen the methodological analysis of the problem. Moreover, on the surface of the analysis other very important issues are discussed: About a ratio of tax and administrative liability; the tax and criminal liability for tax crimes; the possibility of understanding the tax liability as a complex inter-sectoral Institute.

In recent years, the methodological problems of research of legal liability for the purposes of further study of the financial, legal and tax liability has been repeatedly subjected to analysis. However, the greatest efforts in this direction have been made by such researchers as Emelyanov and Chernogor, Rukavishnikova, Kozyrev (Emelyanov and Chernogor, 2014; Rukavishnikova, 2006; Kozyrev, 2004).

So, Kozyrev did not evaluate the state of knowledge regarding the problem of responsibility for tax offenses: "… The majority of such works is in the nature of scientific and practical commentary and does not always examine the problem comprehensively from a practical and theoretical point and the extensive use of scientific methodology."

Tax liability as a type of financial liability is inextricably linked with the concept of a tax offense. Chapter 16 of the Tax Code of the Russian Federation has established the types of tax offenses and liability for committing them, which underlines the conclusion of the legal science that state coercion is the key feature of legal liability.

What are the features of financial and legal responsibility determining the institution of fiscal responsibility? First, it is associated with restitution of rights in the field of public finance. By itself this field has a number of the most important principles of making financial and legal decisions (taking into account public and private interests, the legislature making of important decisions in the area of public finance, clarity and certainty of solutions, stability of solutions, realism and objectivity, transparency.

Therefore, the right-restoring function will be more efficiently implemented if the principles of making financial and legal decisions are more objective and defined.

Implementation of financial-legal (tax) liability will be the use of financial-legal sanctions. In this case, as rightly pointed out Emelyanov and Chernogor financial liability is implemented in such a way that in case of default of financial obligations the offender is forced to suffer restrictions of rights established by a financial sanction (Emelyanov and Chernogor, 2014).

Thus, financial law, i.e., the right-restoring liability respect to public finance liability can be implemented by a subject of financial liability voluntarily, i.e., before applying to the court of general jurisdiction or arbitration court at any stage of the process.

Stage of state enforcement of financial and legal responsibilities historically comes after the refusal to fulfil this duty. The peculiarity of the criminal, administrative and disciplinary liability is that outside activities of competent state authorities and officials such responsibility cannot be exercised.

A differentiation of financial and administrative liability is carried out according to the criterion of restitution of rights that is characteristic for financial law. Administrative liability is characterized by the need of penalties, punitive measures.

Financial liability also exists because of the specificity of financial relations characterized by specific features, for example, when compared with administrative relations usually indicates that they are a kind of property, a monetary nature, have the financial resources of the state as an object of legal relations.

3. CONCLUSIONS

Moreover, the differences between administrative, legal and financial-legal liability are related to differences of subjects of the offences. So, the subject of financial offences is the subject of the financial activity, the subject of administrative offense, as a rule, is an officer of the organization. No accident, therefore, that the legal construction of administrative liability of legal persons has not been properly developed in terms of legal regulation by the code of administrative offences. In contrast, the Tax code of the RF establishes the tax liability for legal persons (for example, Bank) for tax violations.

Thus, the implementation of financial liability is in the use of financial sanctions to offenders which are measures of financial and legal coercion.

However, the offender may be subject to such measures of administrative and criminal legal action depending on the degree of public danger of the committed wrongful acts in the field of public finance.

Financial offences are different, first and foremost, with the subject of independent financial activity when compared with administrative offences and crimes.

Researchers take an interest in the issues of administrative responsibility (Barashyan, 2016). The issues of conceptual bases of administrative responsibility are explored especially in connection with the subsequent consolidation of the legal institution of administrative liability of legal entities after the entry into force of the new Administrative code on July 1, 2002.

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