

PROCEDURAL POWERS OF TAX AUTHORITIES IN THE FIELD OF FISCAL SECURITY PROVISION

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The subject. The article is devoted to the analysis of the procedural competence of tax authorities in the context of ensuring national fiscal security.

The purpose of the article is to identify the features of the procedural powers of the tax authorities in the field of fiscal security provision. The hypothesis of the study is that the purpose of tax authorities' procedural powers is dual and it should be aimed at implementation of the fiscal function of the state and municipalities, as well as at protection the tax- payer from illegal and unjustified seizure of taxes in accordance with legal principles. The overall objective involves a number of specific tasks:

- definition of the concepts of competence and procedural legal status of tax authorities in the field of fiscal security;
- identification of the objectives of law enforcement activities of tax authorities in the field of fiscal security provision;
- identification of the principles of law enforcement activities of tax authorities in the field of fiscal security provision.

The methodology of the study includes general scientific methods (analysis, synthesis, comparative method, description) as well as particular academic methods (interpretation of legal acts, formal-legal method).

The main results and scope of their application. The competence of the tax authorities directly in the tax sphere is a set of their powers to control and monitor compliance with the legislation on taxes and fees, the correctness of the calculation, completeness and timeliness of the payment of taxes and fees to the budget; to bring persons who have committed tax offenses to responsibility; to consider and resolve complaints of citizens on acts of the ruling subjects of tax relations (tax bodies and officials). Procedural and legal status of the tax authorities can be understood as a system of powers that ensure the proper procedure and conditions for the tax authorities to exercise their legal functions in accordance with the principles of law and the requirements of the procedural form. Both material and procedural powers of the tax authorities are implemented in tax authorities' activity in the field of fiscal security provision.

The legal consolidation of the dual purpose of the tax authorities will contribute to provision of the national fiscal security. This dual purpose should be aimed at both the implementation of the fiscal function of the state and municipalities, as well as at protection the tax- payer from illegal and unjustified seizure of taxes. The system of principles of procedural activities of tax authorities to ensure tax security should include general legal, inter-sectoral and special tax procedural principles.

Conclusions. The procedural aspects of the tax authorities' exercise of their powers must be systematized in national legislation. If there is lack of legislative consolidation of the principles and objectives of law enforcement activities of the tax authorities, such situation significantly worsens the possibility of applying the law in a single procedural form, making it difficult to implement the objectives of ensuring the national fiscal security.

1. Introduction

The Constitution of the Russian Federation provides for the possibility of restricting human and civil rights and freedoms in order to protect the rights and legitimate interests of other persons and to ensure the security of the state. One example of this limitation of ownership is the constitutional obligation of everyone to pay legally established taxes and fees. Legislation determines the General procedure and the specific procedural aspects of implementation of this duty, in framing the terms of the rights of each subject of tax legal relations. However, more L.S. Yavich noted: “the Right nothing, if his position not find its implementation in activities people and their organizations, in public relations” [1, p. 201]. Accordingly, any law enforcement activity (and especially in the tax sphere) should be limited not only by the competence of certain officials, but also by the procedures strictly regulated in the legislation, as well as be implemented in accordance with these regulatory requirements in order to minimize the possibility of exceeding the constitutionally stipulated limitation of the taxpayer's property rights and not to become an independent threat to tax security.

The specifics of the procedural activities of the tax authorities to ensure tax security remains a problem, almost not developed. In the writings of experts in the field of administrative and financial law, such as F. H. Bancheva, D. G. Bachurin, D. V. Vinnitsky, I. V. Gudimov, V. N. Ivanov, M. V. Karasev, V. E. Kuznechenkova, I. I. Kuchеров, T. N. Makarenko, O. V. Staroverova, contains only General theoretical categories and definitions or conclusions regarding certain aspects of the procedural and legal status of tax authorities, but not its systematic analysis from the standpoint of tax security.

In this regard, the purpose of our study is to identify the features of the procedural powers of the tax authorities to ensure tax security.

The overall objective involves a number of specific tasks:

- definition of the concept of competence and procedural legal status of tax authorities in the field of tax security;
- identification of the objectives of law enforcement activities of tax authorities to ensure tax security;
- identification of the principles of law enforcement activities of tax authorities to ensure tax security.

2. Competence and procedural legal status of tax authorities in the field of tax security.

In the Russian Federation, the tax authorities are under

the jurisdiction of the Ministry of Finance, but have their own competence and structure. As a Federal Executive body, the Federal tax service implements the specific tasks of the Federal Executive bodies and thus carries out the functional state management of the collection of funds to the budget and extra-budgetary funds. The collection of sufficient funds for the implementation of the functions of the state means the achievement of the objectives of tax security. The second aspect of the goal of ensuring the tax security of the country - ensuring optimal and effective development of the country's economy by influencing the objects of management: legal entities and individuals – also corresponds to the goals of the tax authorities.

There are many approaches to the concept of the competence of public authorities, including tax authorities, and officials. Some legal experts consider the competence of “the ability of tax administration bodies with power to act as an authorized party in procedural tax relations. Power orders in the presence of a certain legal fact oblige officials of tax administration bodies to perform the actions prescribed by the legislation on taxes and fees, i.e. to exercise their powers. At the same time, the rights and obligations of the tax administration body, combining within its competence in specific tax legal relations, remain relatively independent” [2, p. 186]. However, the above definition rather contains generally accepted features of the procedural legal capacity of tax authorities and their officials. In the theory of state and law, there is a stable definition of the authority's competence as a set of its powers on the subjects of jurisdiction.

We consider it correct to adhere to this definition and determine the competence of tax authorities directly in the tax sphere as a set of established by the legislation on taxes and fees of their powers to control and monitor compliance with the legislation on taxes and fees, the correctness of the calculation, completeness and timeliness of the introduction of taxes and fees in the relevant budget; bringing to responsibility of persons who have committed offenses for which the tax legislation establishes liability; consideration and resolution of complaints of citizens on acts of the ruling subjects of tax relations (bodies and officials).

Powers in the theory of law are understood to be inextricably linked rights and obligations of public administration bodies. The main powers of the tax authorities in the tax sphere has been restated in the Tax code of the Russian Federation (further – NK the Russian Federation) (mainly in Articles 31, 32), the RF Law “On tax authorities in the Russian Federation” (Articles 7-9)

(hereinafter – the Law on the tax authorities) and the above-mentioned Position about Federal tax service (section 2). Analysis of these laws, as well as departmental regulations in the field of taxation allows us to identify a significant number of rules that enshrine the procedure for the implementation of the basic powers of the tax authorities, and collectively form the procedural form of law enforcement [3, p. 23; 4, p. 25]. As a result of giving a procedural form to public relations arising in connection with ensuring the right of the state to part of the taxpayers' funds in the form of mandatory payments to the budget and extra-budgetary funds, the tax authorities are objectively endowed with additional (procedural) rights and obligations. Accordingly, the regulated rules of law of the tax authorities are the implementation of both material and procedural powers of the tax authorities.

This circumstance makes it possible to isolate (naturally, with some degree of conditionality) procedural powers from the total mass of the powers of the tax authorities, which together form the basis of the procedural status of the tax authorities.

In this article procedural powers of tax authorities are considered only within the tax process as resulting in the form of activity of authorized state bodies in the tax sphere established by the law: 1) on calculation of taxes and fees to budgets of various levels, and also insurance contributions to off-budget funds; 2) on control of correctness of calculation and payment of taxes and fees, and also other, closely connected with this activity; 3) to bring to responsibility persons who have committed offenses for which the tax legislation establishes liability; 4) consideration and resolution of complaints against acts of the ruling subjects of tax relations (bodies and officials)

When describing the status of tax authorities in the tax process, it should be taken into account that the provisions of the Law of the Russian Federation "On tax authorities in the Russian Federation" in the part contrary to the tax code do not apply.

The main procedural powers of the tax authorities include the right to make seizure of documents during tax audits, the right to inspect any premises and territories used by the taxpayer to extract income, the right (which, based on the principle of legality, is more correctly designated as an obligation) of higher authorities to cancel decisions of lower tax authorities in case of their non-compliance with the legislation on taxes and fees; the obligation to send to the taxpayer copies of the act of tax audit and the decision of tax authority, and also other powers arising in the course of performance by tax authorities of the functions assigned

to them.

The concept of functions is closely related to the concept of competence in the theory of public administration. Under the functions of administrative scientists understand "ways of information interaction between subjects and objects of social management. These are sustainable, relatively independent types of administrative activities in General. They differ from each other in the immediate purpose, content, implementation procedures, information used" [5, p.166].

In the theory of administrative law management functions in the form of expression are divided into legal and non-legal. The implementation of legal directly entails certain legally significant consequences. Main legal functions: adoption of legal acts of management, conclusion of contracts and other legal significant actions. The procedural powers exercised in the course of activities of tax authorities on calculation of taxes, control and proceedings on cases of violation of the legislation on taxes and fees are designed to ensure the proper execution of the state bodies of their legal functions.

Non-legal functions of the office are expressed in the implementation of various organizational actions: meetings and discussions; forecasting and development of plans (for example, a plan to verify compliance with tax legislation by organizations and individuals).

On the basis of the above it is possible to define procedural powers of tax authorities as the powers providing the appropriate order and conditions of implementation by tax authorities of the legal functions assigned to them according to the principles of the right and requirements of the procedural form. If the material powers of the tax authorities are realized only by virtue of their consolidation in the relevant regulatory legal acts, the additional basis for the emergence of procedural powers of the tax authority in the relative legal relationship is the implementation of the material power. For example, the actual basis for the seizure of items and documents will be the earlier decision on the appointment of an on-site tax audit.

The procedural powers of the tax authorities in Russia have not been consolidated either in an independent regulatory legal act or even in a separate section of the tax code [6, p. 17; 7, p. 7], which significantly worsens the possibility of applying the law in a single procedural form, making it difficult to implement the objectives of ensuring the tax security of the country.

Meanwhile, world experience shows that only uniform rules can provide the greatest guarantee against abuse of power. Thus, for example, in Switzerland there is a Federal law on administrative procedures, as well as laws

on administrative procedures of the cantons, establishing procedures for issuing, amending, revoking Executive orders and appealing against them, formulating General procedural principles [8, p. 9].

In the Tax code of France, the procedural aspects of the activities of tax authorities (including tax control) are clearly spelled out in the "Book of tax procedures", which is essentially a procedural Tax code [9, p. 75].

The settlement of the specific social relations arising between the participants in the conditions of a certain abstractness of legal norms mostly depends on the discretion of the law enforcement agent, which ultimately underlies the formation of law enforcement practice. Still G. F. Shershenevich wrote that application of norms of the right "on their exact sense, despite results of application in these or those concrete cases", there is that principle of legality which makes sense of a legal order [10, p. 317]. That is why the inclusion in the normative array of goals and principles of procedural activity in a particular area as some "guidelines" for the law enforcement officer, in a situation of legal vacuum revealing the "meaning" of legal regulation - largely contributes to the proper observance of the rule of law and reduces threats to the security of the state arising from improper law enforcement.

3. Objectives of law enforcement activities of tax authorities to ensure tax security.

Tasks of tax authorities as participants of tax legal relations - control of observance of the legislation on taxes and fees, behind correctness of calculation, completeness and timeliness of introduction in the budget system of the Russian Federation of taxes and fees, and in the cases provided by the legislation of the Russian Federation, behind correctness of calculation, completeness and timeliness of introduction in the budget system of the Russian Federation of other obligatory payments established by the legislation of the Russian Federation – are defined in Art. 6 of the Law on tax authorities.

In the tax code there is no regulatory consolidation of the objectives of the tax authorities to implement the powers granted to them. For the reasons mentioned in the previous section, this circumstance does not seem to be in accordance with the principle of legality and potentially threatens the tax security of the state.

It is significant that the codified sources of branches of the Russian procedural law contain articles fixing the tasks of a particular process: this is article 6 Of the criminal procedure code of the Russian Federation, and article 2 of the Civil procedure code of the Russian

Federation. Even Soviet scientists-processualists noted: "Any of the procedural forms included as an element (subsystem) in a more complex system, in turn, should also be considered as a complex system with its specific substantive and procedural content, with its features and characteristics. In other words, individual procedural forms are only special, specific, which does not exclude, but only emphasizes in their content the common that unites them with other procedural forms that are part of the same system. The identification of structural links between the various procedural forms... will make scientifically sound recommendations for the improvement of individual procedural forms, their possible unification within reasonable limits (for example, at the level of principles and basic provisions) [11, p. 150]. And today scientists note that at the present stage "an important trend in the development of legislation is its unification, which corresponds to the trend of integration of legal regulation" [12, p. 106].

It would be unfair to argue that the rights of the state, as well as the rights and freedoms of the taxpayer, which should be protected in the tax process, are less important than similar values protected in civil and criminal proceedings. Moreover, the doctrine of tax law specifies a combination of different objectives in the implementation of tax law.

And if some researchers see such a goal only "ensuring the performance of organizations and individuals of their tax duties" [13, c. 68], others note "the financial and legal dualism of the purpose of activity of law enforcement agencies in the tax sphere", fundamentally connected with the problem of correlation of qualitative and quantitative indicators in the implementation of tax authorities of their powers [14, p. 187]. This dualism is due to the public-legal nature of tax relations, which consists not only in meeting the financial and legal needs of the state, but also in the protection of the taxpayer and other members of society [15, p. 96].

"In procedural tax legal relations, the imperious nature of the activities of tax administration bodies conducting the tax process at various stages is combined with the rights and guarantees of persons participating in the tax case. It is Important to note that although procedural tax legal relations are characterized as power relations, the state bodies conducting the tax proceedings are obliged to explain to the participants in the process their rights for the purpose of their possible use. In this case, the procedural actions and decisions of the tax administration are not only a means of fulfilling their obligations to disclose tax offenses and bring violators to legal responsibility, but also a means of ensuring the rights and legitimate interests of participants in the tax process" [2,

c. 187]. “From the point of view of building in the Russian Federation of the democratic legal state (article 1 of the Constitution of the Russian Federation) taxpayers and tax authorities in the person of their officials, have to understand correctly the constitutional nature ... of powers of tax authorities” [16, page 156]. “The rights granted by law to a public authority and the duties assigned to it may be exercised and shall be interpreted exclusively within the framework of its functions and tasks (emphasis added). – K. M.), established by law” [17, c. 494]. In this regard, in our opinion, it would be correct to Supplement Chapter 5 of the tax code with an article “Objectives of the tax authorities” containing approximately the following provisions.

“The activities of the tax authorities are aimed at ensuring the tax security of the state through:

- realization of the right of the state and municipalities to a part of the taxpayer's property in accordance with the legislation on taxes and fees;

- protection of the taxpayer from illegal and unjustified seizure of funds belonging to him and his charges of committing a tax offense.

Within the framework of these objectives, the tax authorities solve the following tasks: strengthening the rule of law, prevention of offenses, control over the payment and recovery of the amounts of taxes and fees established by law, establishing the guilt or innocence of a person in committing an offense in cases provided for by the legislation on taxes and fees.”

4. Principles of implementation of procedural powers of tax authorities to ensure tax security.

The activities of the tax authorities can achieve the above objectives of ensuring tax security only if it complies with the generally recognized procedural principles. The principles of procedural activity are presented in the legislation of developed European countries. In the French tax legislation it is: the principle of economic expediency, equality of the parties and some others [9, p. 73, 76]. In German – the prohibition of abuse of power (the administrative body can not appoint or even carry out any measures that, although within its powers, but serve only the purpose of causing harm to a citizen), the principle of proportionality and some others [18, p. 185-186].

The principles of administrative procedures are detailed in Swiss law. General procedural principles are classified into: constitutional principles; principles enshrined in laws (so-called “written procedural principles”); unwritten General procedural principles (such principles, which, because of their obviousness to all citizens are not reflected in the law) [8, p. 11-15].

The first is the principle of equality before the law and the courts. From it, the Federal Court singled out the following sub-principles: prohibition of arbitrariness (the decision is arbitrary, if it obviously contradicts the basic meaning of the law, internally contradictory or clearly contrary to the principle of justice); the principle of faith and trust; prohibition of contradictory behavior of the administration; prohibition of the retroactive force of the law; the principle of legal security (the administration, faced with similar cases, is obliged to adhere to similar practices; there must be a good reason for the change in practice, and it must be consistent). In addition, the activities of the Federal Supreme Court of Switzerland gives birth to new principles, which were given the force of constitutional. These include, in particular, the essential principle of proportionality, by virtue of which any measure taken by the administration must be appropriate and necessary to achieve the objective.

In our opinion, the introduction of a number of these principles into Russian legislation may be effective in suppressing tax authorities' dishonesty as a threat to tax security and contribute to the further strengthening of the rule of law.

The written procedural principles include: the principle of burden-of-proof distribution (agencies are obliged to determine the actual side of the case by their own efforts and means, except in certain cases); the principle of coordination of procedures and the obligation to submit the case to the competent authority (by initiating the procedure, a person has the right to apply only to one Agency); the principle of communication by mail (preventing “red tape”); the obligation to justify the decision in writing; the obligation to explain the possibilities of appeal; ban the senseless use of the right – of overformalized (any act shall be applied strictly in accordance with its meaning and purpose, it is forbidden to use a formal precept only for its own sake, pursuing only the compliance forms).

The unwritten principles include the principle of teleological interpretation of the law; the principle of “more covers less” (if a person commits acts greater than required by law, it is wrong to accuse him of imperfection of the required); the principle of direct action of the Constitution.

Already now in the norms regulating the tax process, the principles of legality, presumption of innocence, procedural equality of the parties, transparency, efficiency [19, c. 67]. Some aspects of the principle of burden of proof are implemented in part 6 of article 108 of the tax code, ban overformalized – clause 6, article 101, paragraph 12, article 101.1 of the Tax Code). Some principles are formulated in the practice of the judiciary,

especially constitutional justice. For example, in item 3 of the Resolution No. 14-P of July 16, 2004. The constitutional Court of the Russian Federation stated the principle of inadmissibility of excessive application of tax control measures.

The introduction of other principles into the practice of tax law enforcement will contribute to the correct resolution of legal cases and reduce social tension in the already conflicting relations between taxpayers and the tax administration. For example, the official application of the principle of faith and trust, the principle of legal security would simplify the situation with contradictory or vague explanations of tax and financial authorities at the request of taxpayers on the application of certain rules of legislation on taxes and fees. As you know, the "proverb" were cases when, in response to a specific question of the taxpayer, the tax or financial authority is limited to quoting the tax code or the use of the most common language that does not allow to obtain a clear and unambiguous interpretation of the controversial rules. Or with a difference literally in some days gives absolutely opposite explanations of the same norm of the legislation on different inquiries. Some researchers reasonably consider it necessary to clearly establish the principle of legality in the legislation as the basis for the activities of the tax authorities, since the activities of the tax authority outside the established powers are often justified by the fact that there is no corresponding prohibition in the legislation [20, p. 201].

In Russian legal science attempts are made to highlight the principles of the tax process. However, if some researchers do not differentiate these principles, their classification, given by others, is very controversial. V. I. Gudimov, referring to the principles of tax control production, the principles of the tax process and the principles of control activities, it is difficult to distinguish them. If we analyze the composition of the principles he cited from the standpoint of the inclusion of tax control proceedings in the tax process as a broader concept, we can refer to the General tax procedural: the principle of legality, the principle of the tax process by specially authorized entities; the principle of compliance with the procedural form; the principle of tax secrecy; the principle of timeliness of procedural actions; the principle of comprehensiveness, completeness and objectivity of the study of the circumstances of the legal case; the principle of public and state control over tax enforcement; the principle of priority of preventive measures [21, p. 29-35]. These principles are implemented in all tax procedural proceedings (and in the calculation of the amount of tax by the tax authority, and in bringing to tax liability). Of course, they

are also present in the tax control production, however, in a specific refraction. The principles of continuity of tax control, unity and differentiation of tax control can be attributed to the special control, among those cited by V. I. Gudimov.

Attempt of classification of the tax procedure made by D. G. principles of state planning Committee Bachurin. They identified: constitutional (General legal principles); General principles of control activities and "specialized tax procedural principles" [22, p. 41]. However, some of the principles referred by the researcher to the third group, in fact, as the principles of control activities are intersectoral, with the only difference that they are characteristic of other branches of Russian law (mainly criminal procedure and administrative). This is the principle of placing the burden of proof of the circumstances of the offense on the authorities; the principle of due process; the principle of presumption of innocence; the principle of procedural independence in decision-making. In addition, the General principles of control activities, in our opinion, it would be correct to include (in addition to transparency, scientific, cost-effectiveness, efficiency, reliability) the principles of expediency (taking into account the specifics of the situation at the time of the decision, the choice of the best option for the implementation of legal requirements in specific circumstances) [10, p. 317-318]; justice, including social justice (the activities of tax authorities and their officials in the interests of not any citizens or groups, but in the interests of the whole society; law enforcement acts must be simultaneously justified, legal, expedient and humane) [23, p. 26].

On the basis of the above, the following composition of the system of principles of procedural activities of tax authorities to ensure tax security is reasonable and appropriate.

General legal principles: legality; equality; right to protection; prohibition of arbitrariness; teleological interpretation of legal norms; direct effect of the Constitution.

Cross-sectoral principles: transparency; presumption of innocence; scientific validity; feasibility (including economic); equity; efficiency; reliability; prevention of harm; ban the senseless use of the right – of overformalized; the duty to justify decisions in writing; be bound by the explanation of the possibilities of appeal; the principle of coordination procedures; the principle of procedural forms; the principle of timely implementation of procedural actions; the principle of comprehensive, complete and objective investigation of the circumstances of the legal case; the principle of public and state control; procedural independence of the law

enforcement.

Special tax procedural principles: the principle of tax secrecy; the principle of priority of preventive measures; proportionality; “more covers less”.

4. Conclusions.

Thus, the aim of the study was achieved - the features of the procedural powers of tax authorities to ensure tax security. The procedural and legal status of tax authorities can be understood as a system of powers that ensure the proper procedure and conditions for the implementation by tax authorities of their legal functions in accordance with the principles of law and the requirements of the procedural form.

In regulated by the law of the tax authorities to ensure tax security is the implementation of both material and procedural powers of the tax authorities.

In Russia, the procedural aspects of the tax authorities ' exercise of their powers are not systematized. This circumstance causes the lack of legislative consolidation of the principles and objectives of law enforcement activities of the tax authorities, which significantly worsens the possibility of applying the law in a single procedural form, making it difficult to implement the objectives of ensuring the tax security of the country. Ensuring the tax security of the state will contribute to the legal consolidation of the dual purpose of the tax authorities, which should be aimed at both the implementation of the fiscal function of the state and municipalities, and to protect the taxpayer from illegal and unjustified seizure of funds belonging to him. The system of principles of procedural activities of tax authorities to ensure tax security should include General legal, inter-sectoral and special tax procedural principles.

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