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ELECTRONIC PLATFORM OPERATORS AS PARTICIPANTS OF TAX RELATIONS IN THE DIGITAL ERA (THE CASE OF PROFESSIONAL INCOME TAX)**

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The subject. The research concerns analysis of legal status of a new participant of tax relations in the digital era - an operator of electronic platform.
The purpose of the article is to confirm or disprove hypothesis that operators of electronic platforms are participants of tax relations and their rights and obligations must be described in tax legislation.
The research methodology includes an interpretation of tax legislation, other legal acts governing the legal status of operators of electronic platforms, analysis of rights and obligations of other participants of tax relations.
The main results and scope of their application. Due to the lack of an unambiguous definition of the legal status of operators of electronic platforms, obstacles are existed in the use of the transactional principle to taxation in case of professional income tax in Russia. Administration of this tax implies a complete absence of tax reporting as well as an unusual moment of the payment of this tax - at the time of the transaction, when self-employed taxpayer receives payment for his services by a consumer. This mechanism eliminates the unnecessarily complicated process of notifying the tax authorities about such transactions, but implies additional obligations to the operators of electronic platforms and the taxpayers themselves. It actualizes the necessity of detailed description of legal status of the operators of electronic platforms in tax legislation.
Conclusions. The legal status of operators of electronic platforms in terms of belonging to the participants in tax relations already provided for in the Tax Code of the Russian Federation is not defined. Although they act as intermediaries in calculating and paying professional income tax. Such a lack creates a number of practical problems and does not contribute to the development of a transactional approach to taxation. At the present stage, it would be logical to recognize the operators of electronic platforms as tax representatives of taxpayers or withholding agents. According to the further development of the technical capabilities of tax administration, operators of electronic platforms may become a new participants of tax relations, who are conventionally called by the author «technological intermediaries».

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1. Introduction

The digital transformation of the modern economy has significantly changed the direction of development of tax law, identifying new challenges for the state and taxpayers both at the international and domestic levels. One of the most important innovations of the digital era is the possibility of effective contactless interaction of taxpayers with representatives of tax authorities in a transactional mode, which implies in the future the refusal of tax reporting, as well as the collection of tax directly at the time of the financial transaction.

Mikhail Mishustin, as the head of the Federal Tax Service, declared the formation of a transactional virtual environment in which conduct their activities by tax authorities, in connection with the mobile app "My tax", the appearance of which is associated with the administration of calculation and payment of the special tax regime "Tax on professional income". Describing the tax on professional income, and stressing the significance of its legal structure in the process of digitalization of the scope of taxation, Mikhail Mishustin noted that thereby creates a virtual transaction environment in a closed digital ecosystem in which all entities will conduct transactions that will make the economy transparent by default, and FTS will automatically calculate and withhold tax at the time of the transaction. As you know, the implementation of research on transactional taxation is very popular in foreign countries.

The Federal law from November 27, 2018 No. 422-FZ "On the experiment of establishing a special tax regime "Tax on professional income" in the Federal city of Moscow, the Moscow and Kaluga regions, as well as in the Republic of Tatarstan" (hereinafter – Federal law No. 422) on a pilot basis set to calculate and pay a new special tax regime for so-called "self-employed" individuals and individual entrepreneurs, by yourself receive income, operating without an employer and attract employees. In accordance with Federal Law No. 101-FZ of April 1, 2020 "On Amendments to Article 1 of the Federal Law on Conducting an Experiment to establish a special tax regime "Tax on Professional Income", from July 1, 2020, such a tax regime can be put into effect on the territory of any subject of the Russian Federation on the basis of their laws.

During the period of validity of Federal Law No. 422, a significant number of studies have appeared in the legal literature, which, as a rule, address the problems of legal regulation of relevant relations by labor law. Certain aspects of the implementation of entrepreneurial activity by "self-employed" persons are also studied by specialists in civil and business law. In tax law, the study focuses primarily on the legal status of a taxpayer of professional income tax from the point of view of assessing the content of his rights, legitimate interests, duties and responsibilities established by Federal Law No. 422. At the same time, the issue of determining the legal status of a new participant in tax relations, which appeared during the digitalization of the economy, and actually ensures the transactionality of tax relations in the calculation and payment of professional income tax – the operator of electronic platforms, remains unexplored.

The importance of an adequate definition of the subject composition of financial and tax relations in the period of digitalization, as well as the need to form doctrinal concepts of the tax and legal status of persons acting as digital platforms-intermediaries in tax relations, was mentioned by N. V. Omelekhina in her speech at the scientific and practical conference "Digitalization of Public Finance: features in emergency situations", organized by the Institute of Legislation and Comparative Law under the Government of the Russian Federation on July 21, 2020. According to the speaker, such questions have fundamental research value in studying the processes of digitalization in the context of their mutual influence on tax law, along with determining the existence of a new digital subject of tax relations, establishing the level of legal regulation of tax relations of the digital era, as well as establishing the possibility of a new form of implementation of tax and financial relations.

Currently, an organization or individual entrepreneur can act as an operator of electronic

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platforms, in accordance with Federal Law No. 422, providing services using the Internet to provide technical, organizational, information and other opportunities using information technologies and systems to establish contacts and conclude transactions for the sale of goods (works, services, property rights) between sellers (performers) and buyers (customers). While the tax code does not mention such participant of the tax relations, as the operator of an electronic platform, or in article 9 of the tax code of the Russian Federation "Participants of the relations regulated by legislation on taxes and fees", nor in other articles of the Tax Code of the Russian Federation.

Thus, the tax and legal status of the operator of the electronic platform is currently limited to intermediary functions, which consist in ensuring the transfer to the tax authorities of information about transactions performed by a self-employed taxpayer that are subject to taxation by the business income tax, as well as in transferring the corresponding tax to the budget on behalf of the payer. This implies the need to study the issues of determining the status of operators of electronic platforms in terms of its content, as well as the place in the system of subjects of tax law.

2. Disadvantages of modern legal regulation of the status of operators of electronic platforms

System analysis of legal regulation of transactional tax implemented with the implementation of tax legislation on tax on professional income, as well as practical study of the application of the regime of tax on professional income on the example of the taxi market , conducted by the author in the composition of the expert group of the division of administrative modeling of activity of public authorities of the Institute of state and municipal management of the HSE allowed to generalize and formulate the following fundamental questions, in our opinion, to the resolution by improving the norms of tax law.

2.1. The absence of legal regulation of the procedures for interaction of participants in legal relations arising in the calculation and payment of professional income tax, as well as requirements for operators of electronic platforms.

Indeed, operators of electronic platforms can join the information exchange with tax authorities voluntarily and thereby become participants in tax legal relations if they meet the requirements (criteria) that are unilaterally determined by the Federal Tax Service of Russia. At the same time, there is no unambiguous certainty about the legal force of the provisions establishing requirements for operators of electronic platforms. So, in paragraph 2 of art. 3 of the Federal Law No. 422 states that " the procedure for using the mobile application "My Tax" is posted on the Internet on the official website of the federal executive body authorized to control and supervise taxes and fees." In compliance with these provisions on the website https://www.nalog.ru The PDF format contains the "Protocol of information exchange, the procedure for information interaction, requirements (criteria) for operators of electronic platforms and credit organizations that interact with tax authorities". It is important to note that this document does not have a name and details specific to the official act in the form of a date, number, etc. To date, information exchange with the Federal Tax Service of Russia is carried out by 19 operators of electronic platforms and 4 credit institutions (as of July 1, 2020). In fact, today the opportunity to become such an operator is provided to an indefinite number of persons who comply with these rules.

In our opinion, the so-called "industry" principle should be applied to the content of requirements for operators of electronic platforms, which should become necessary and sufficient for their access to the relevant market, as well as for ensuring the possibility of functioning on it. It is well known that in recent years, when implementing tax control, the Federal Tax Service of Russia uses the so-called sectoral approach instead of the territorial one, which has shown its effectiveness, in particular, in the implementation of tax control over the calculation and payment of VAT, according to which the tax authorities select the most problematic industries from the point of view of paying taxes, selected by types of activities, in respect of which tax verification measures are consistently carried out. In our opinion, this principle is quite applicable to the tax experiment on the tax on professional income. First, one of the models, according to which the legal

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status of operators of electronic platforms is established, can be implemented first in the industry or in those industries in which such an experiment is currently being implemented most successfully; secondly, it is logical to set requirements for operators of electronic platforms primarily depending on the industry of self-employed people, as well as the types of services provided by them. We believe that this problem deserves a separate study.

2.2. Uncertainty of the legal status of operators of electronic platforms from the point of view of tax and legal regulation.

Identification of operators of electronic platforms as a participant of tax relations is complicated by the fact that, in spite of their real participation in various tax matters with the functions of electronic intermediaries, they are not listed per se in article 9 of the tax code. This causes difficulties, among other things, with determining the legal status of such a subject from the point of view of classifying it as private or public in accordance with the well-known classification of subjects of tax law, presented in the works of D. V. Vinnitsky [18, p.98].

As well-known, modern tax law is characterized by three models of relations between taxpayers and tax authorities related to the calculation of taxes:

- the tax is calculated by the tax authority and sends a notification to the taxpayer;
- the tax is calculated by the taxpayer himself without anyone's mediation;
- the tax agent is responsible for calculating, withholding and transferring the tax.

Thus, to taxpayers-physical persons not having status of individual entrepreneur (which also includes part of the "self-employed" persons), property taxes calculate the tax authorities on the basis of information they receive from other parties (usually also the power that guarantees their authenticity, for example, from the bodies of the MIA of Russia in respect of vehicle tax) and the income – tax agents (tax on income of physical persons, insurance premiums). Therefore, the calculation of the actual income tax on professional income by the tax authorities, despite some convenience of this situation for taxpayers, is not logical from the point of view of designing a system of legal regulation of tax relations.

Based on this, we consider it possible to implement in the conditions of Russian legal reality two variants of legal regulation that determine the role of operators of electronic platforms in the procedures for calculating and paying taxes - giving them the status of a tax agent or tax representative in accordance with the legal structures currently existing in Russian tax legislation, or defining operators of electronic platforms as new subjects of tax relations, conventionally called technological representatives. If any of these options need to formally adopt the legislation, mediating the interaction of participants in a transactional environment, as well as establishing requirements that will allow in the future subject to the successful implementation of the provisions of the Federal law No. 422 as tax experiment to recognize it afterwards a permanent special tax regime that is fully consistent with the purposes and principles of the tax code.

In this regard, we consider it important to note the need to create a legal regulation related to the establishment of the taxpayer's right to correct information transmitted by the operator of electronic platforms to the tax authorities. This right is primarily due to possible objective circumstances of a "technical" nature, which must be hypothetically taken into account in order to protect the rights and legitimate interests of taxpayers who have switched to the special tax regime "Professional Income Tax".

2.3. Stages of transformation of tax legislation in relation to the establishment of the legal status of digital intermediaries-operators of electronic platforms.

It implies the need to develop the possibility of applying a transactional approach to taxation "in its pure form" on the basis of the exclusive use of information technologies in the calculation of taxes and control over the submission of tax reports, which will significantly save state resources and encourage taxpayers to behave lawfully, and other participants in tax relations – to entrepreneurial activity.

This means that, in our opinion, it is logical

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not to transfer tax regulation to the widespread use of transactional principles of taxation, but a gradual process of transformation, which at the first stage involves the use of existing structures in modern tax legislation and the corresponding terminology, and at the second-the creation of new models of tax relations. At the same time, the transition to the second stage, as mentioned above, is possible in the case of technological readiness of the tax authorities for it.

This approach is correlated with the program documents on digital transformation, which provide for the periodization of the implementation of digital transformations. for example,
A.V. Bryzgalin argued that the process of tax digitalization in Russia goes through three stages:

1. the model of "digital maturity" (websites, personal electronic services, electronic document management and reporting);

2. "fully digital organization" of administrative processes (mobile applications, individual proactive services);

3. "adaptive platform" (2025), which connects the IT platforms of the Federal Tax Service and taxpayers in real time, when the fulfillment of tax obligations occurs automatically and "effortlessly".

In accordance with this periodization of the stages of digitalization of taxation, digital mediation as a new type of tax relations can be implemented at the second or third stage, and modern Russian reality rather assumes only a gradual transition from the first stage to the second.

3. Options for legal regulation of the status of operators of electronic platforms, taking into account the stages of digitalization of taxation

The stage-by-stage transformation of the tax legislation of the Russian Federation in order to realize the possibility of large-scale application of the transactional approach in taxation, as mentioned above, implies a gradual change of two stages in tax and legal regulation. At the first stage, we consider it expedient to adapt the existing tax-legal structures to new tasks, at the second (when the appropriate level of technological development is reached) - to create fundamentally new theoretical entities and the corresponding norms of tax law.

The first stage of the formation of transactional taxation includes the creation of legal mechanisms and tools to protect the rights and interests of participants in tax relations, taking into account the recognition of the status of tax representatives or tax agents for operators of electronic platforms.

3.1. Operators of electronic platforms as tax representatives: features of legal regulation

Recognition of operators of electronic platforms as tax representatives will not entail fundamental changes in tax and other branches of legislation, except for the corresponding reference in Federal Law No. 422. When using the model relations, the taxpayer and tax representative in a transactional environment, the net operator of an electronic platform is hypothetically possible to consider as the authorised representative (article 29 of the tax code). At the conclusion of a civil contract a self-employed operator of an electronic platform in the implementation of this model of relationship, you need to set up a trust and place it according to the rules of article 29 of the Tax Code.

The positive aspects of using the model of legal regulation, according to which the operators of electronic platforms are granted the status of a tax representative:

1. There is no need to make large-scale changes to tax or other legislation;

2. The ability of the taxpayer to control the process of calculating the tax on professional income, implementing the model of civil relations, without the need to apply to the tax authority.

The negative features of the transformation of the tax and legal status of operators of electronic platforms into tax representatives are the additional costs (temporary and/or financial) of operators associated with the calculation of the tax on professional income.

3.2. Operators of electronic platforms as tax agents: features of legal regulation

So, one of the private entities of the tax acts as a tax agent which, in accordance with article 24 of the tax code duties on calculation, deduction at the

taxpayer and transfer of taxes to the budget system of the Russian Federation. At the same time, in the traditional sense of Russian tax legislation, the duties of tax agents can be assigned to organizations, individual entrepreneurs, as well as notaries and lawyers who make payments to individuals of any income or when performing other operations specified in the Tax Code of the Russian Federation (for example, buying and renting state property). Thus, a tax agent is a person who is reliably aware of the taxpayer's income due to the fact that this person is the source of it.

As you know, in a situation of self-employed relationship of the "employee-employer" initially paradoxical, because the meaning of the status of self-employed is the lack of employer and independent search of earning opportunities. At the same time, the number of self-employed, according to official data, at the end of 2018 amounted to more than 2 million people . As D. V. Tyutin points out, this category of persons usually includes nannies, tutors, nurses, housekeepers, etc. It is logical to assume that over time their number will only increase, which will cause an additional burden on the tax authorities associated with the calculation of the amount of tax on professional income, as well as hypothetical disputes regarding such amounts.

An additional argument in favor of the idea under consideration, a kind of "rudiments" for the possibility of final transformation of the intermediary status of operators of electronic platforms into a tax-agency status is seen in the proximity of separate mechanisms of legal regulation of relations between taxpayers and operators and taxpayers with tax agents.

Thus, we believe it is appropriate to consider tax law as a pragmatic model in matters of the legal status of operators of electronic platforms (that is, a model under which, according to the terminology of D. M. Zhilin [20, p. 30-32], reality is "adjusted") and not to create new models of legal regulation without an objective need in the presence of legal structures adequate to the current situation.

In addition, it is well known that the use of the model of relations with the involvement of tax agents has a number of undeniable advantages for the state, associated with the absence of the need for "point" administration of taxes and fees in relation to a significant number of taxpayers, most often not having the appropriate knowledge and competence to implement the possibility of self-calculation of taxes. Similar advantages are seen in the recognition of operators of electronic platforms as tax agents: the state is exempt from the responsibilities of budget administration costs of calculating tax on professional income and the need for direct interaction with each of the taxpayers, physical persons-taxpayers "delegate" its responsibility to calculate, withhold and remit tax on professional income to another person.

An absolute risk in such a situation is the increasing burden on the operators of electronic platforms, which, presumably, have only technical potential, but not the intellectual resource that allows them to professionally monitor tax legislation and conduct appropriate calculations and other necessary operations.

At the same time, it can be noted that the existing model of legal regulation, which assumes the calculation of the amounts of tax on professional income by the tax authority, is not unambiguously beneficial for the taxpayer. In turn, the assignment of this duty to a private entity (an operator of an electronic platform or a self-employed taxpayer) does not entail only negative consequences for them without proper balancing of their capabilities, related, for example, to the intensity of taxpayers ' use of the services of electronic platform operators as a result of their "coming out of the shadows". It is also important to point out that the role of operators of electronic platforms in relations regulated by Federal Law No. 422 is not only in the implementation of exclusively entrepreneurial interests related to making a profit for the provision of intermediary services. They also perform an important social function, which is expressed in simultaneously ensuring the interests of both public financial and private (self-employed taxpayers).

Therefore, as a conclusion, we consider it possible to indicate the positive and negative aspects of the transformation of the legal status of the operator of the electronic platform into a tax agent.

The positive aspects of using the model of

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legal regulation, according to which the operators of electronic platforms are granted the status of a tax agent:

1. there is no need to spend budget funds in connection with the calculation of the amounts of tax on professional income by tax or other state bodies;

2. ensuring the stability of tax legislation and implementing the principle of regulatory savings due to the absence of the need to create new legal structures of tax relations;

3. the possibility for the taxpayer to control the calculation of the tax on professional income, and in case of disagreement with the amount of tax, to adjust it in relations with private entities, and not with tax authorities, which implies a reduction in the burden of tax authorities and, as a result, state expenditures.

as a negative feature of the transformation of the tax and legal status of operators of electronic platforms into tax agents, we can note the possible monopolization of the market of services provided by operators of electronic platforms, associated with the complexity of requirements for them.

Thus, it would be convenient for all parties to tax relations related to income taxation of the self-employed to use the model of relations with the participation of an intermediary in the status of a tax agent. This suggests that the current issue is the need to expand the concept of tax agents in connection with the emergence of a new special tax regime in the form of a tax on professional income and new participants in tax relations – the self-employed and operators of electronic platforms.

3.3. Operators of electronic platforms as technological intermediaries: features of legal regulation

The transition to the legal model of the technology intermediary means that the calculation and payment of the tax on professional income should be carried out automatically when funds are received for the payment of services provided to the self-employed. It is assumed that such a function of "automatic withholding" of tax should appear as an additional option for each of the operators of electronic platforms. At the same time, the tax authorities will not take part in the process of calculating the tax on professional income, since the tax on professional income will be automatically transferred to the accounts of the Federal Treasury.

Further, information about taxable transactions will be sent to the tax authorities directly from the operators of electronic platforms, which implies that the taxpayer is exempt from the obligation to create a check and transfer it through the "My Tax" application.

It is logical that if such an option of legal regulation is chosen, the self-employed, as taxpayers using a special tax regime in the form of calculating and paying professional income tax, should carry out their activities exclusively on the terms of using the services of electronic platform operators, which may entail both certain benefits for all parties involved in transactional taxation organized in this way, and risks. For example, the benefits of digitalization of self-employed markets will definitely help to structure them, possibly expand and / or supplement them with new types of services (types of business activities), as well as make them transparent to consumers and regulatory authorities.

It should be emphasized that the use of operators of electronic platforms as technological intermediaries in tax relations does not imply that they will replace the tax authorities and claim to perform the functions/exercise the powers of a state authority. Such a model of relations is aimed, in our opinion, exclusively at stimulating taxpayers to "come out of the shadows" and redistribute the functions of private subjects of tax relations. We believe that further informatization will somehow lead to the transfer of a number of actions performed by counterparties and having tax consequences to a digital format. Not an exception in this case will be the sphere of taxation.

As for the tax authorities, their powers in this version of legal regulation will not undergo any encroachments. It is assumed that they will exercise tax control over taxpayers and operators (as technological representatives) in all those forms that are currently provided for by tax legislation.

In this regard, tax control may also concern the registration of taxpayers on tax registration, as well as tax audits. Consider it logical to set the

permission of the tax authority for selective audits of operators of electronic sites with regulatory constraints on their timing and quantity, which in the short term will mainly be in the form of tax monitoring in accordance with the provisions of the Decree of the RF Government of February 21, 2020 No. 381-р "On approval of the Concept of development and functioning in the Russian Federation systems of tax monitoring". The issues of legal regulation of the powers of tax authorities applying a risk-based approach in the implementation of tax monitoring is one of the most controversial issues that arise in the literature when discussing the issue of digitalization of tax control.

We believe that it is in this option that the idea of establishing the obligation to form checks, as well as to pay professional income tax for self-employed operators of electronic platforms, can be implemented most comfortably for all parties to tax legal relations.

With this model of relations, there is no need to provide additional security requirements when transferring information from one entity to another, and it is also necessary to address the possibility of access of various participants in the relationship to certain personal information about a self-employed taxpayer.

This is due to the fact that such changes to regulatory legal acts should have a large-scale cross-sectoral nature and not be limited to tax legislation. In this regard, the specific wording of the rules cannot be formulated at the present time very specifically.

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