

**Kirill V. Maslov**  
*Dostoevsky Omsk State University*

## **LAW ENFORCEMENT AS A METHOD OF PROVISION FOR NATIONAL TAX SECURITY**

The place of law enforcement in the system of provision for national tax security is analyzed in the article. The author analyzes scientific approaches to the concept of national security as a generic term to the tax security, highlights its elements and contents.

The author notes that the state, public and personal safety shouldn't be opposed each other, but they should be considered as elements of a unified system of national security

Full and effective implementation of the rights and legitimate interests of citizens and their communities equally meets the needs of national security as the protection of the interests of the state as a whole.

The author is convinced that national security and tax security in particular are achievable only in conditions of genuine state sovereignty. The characteristics of the forms of tax sovereignty, as well as classification of threats to tax sovereignty and tax security, are given in the article.

The author's concepts of national security and tax security are given in the article as well as their tasks are defined. National tax security is defined by author as a level of development of public relations in the sphere of taxation, when the amount of collecting taxes corresponds to the number of planned tax revenues taking into account the need for full funding of all functions and tasks of the state and municipalities both in the current period and in the future.

The interests of the tax security, of course, must be taken into account in the enforcement process in tax relations. The author describes the mechanism of the interdependence of the national tax security and law enforcement in tax relations. The ignoring of threats to tax security by tax enforcers reduces the level of security and does not meet the objectives of the implementation of the law in a sovereign state.

It is concluded that law enforcement is one of the most important methods of provision for national tax security.

*Keywords: tax security, tax sovereignty, law enforcement, national security, threats, methods.*

### ***Article info:***

Received – 2016 November 02

Accepted – 2016 December 20

Available online - 2017 March 20

The current stage of economic development of Russia is characterized by new challenges and threats, undermining economic national security of the country, which actualizes the problem of finding solutions aimed at stabilizing the revenue part of the budgets of all levels.

Taxes and other compulsory payments are one of the key sources of budget revenues. The sovereign right of the state is anchored in collection of taxes [1, p. 99, 107]. "A significant proportion of tax sources in the budgets of many countries plays the [key] role in tax revenues for the stable development of the economy and national security" [2, p. 23-26]. According to expert estimates, the property tax system of the Russian Federation is close to the average world standards, while the simplicity of the interaction of taxpayers with tax authorities our country lags behind considerably from them<sup>1</sup>. In such circumstances, the main reserve of leveling tax threats to national security is the improvement of tax administration and of tax enforcement as its key component.

The research of relationship between law enforcement and the provision of tax security of the state

---

<sup>1</sup> Paying Taxes 2017. Report by PwC and the World Bank Group // <http://www.pwc.com/gx/en/services/tax/paying-taxes-2017.html>

is impossible without revealing the essential features of these phenomena and the formulation of their definitions.

There are many similar categories connected to security: these are public security, national security, public security etc.

The views of researchers on the relationship of these categories vary widely: from identification [3, p. 14] and ending delimitation depending on the subject (the state, the titular nation, society) [4]. In the Russian Federation Constitution are three main varieties of the security marked with "state security" (Part 5 Art.13), "The safety of citizens" (Part 1 Art. 56), "Public security" (Part 1 Art. 72).

The most well-reasoned, and therefore is a preferred position, representing the national security as a generic term, and public safety, and personal security as the species selected, depending on the subject whose interests are protected [5, p. 169-173].

National security, in our view, is unacceptable to be understood in the context of protecting the interests of the titular nation, as a minimum, because the adjective "national" is derived from the English "nation", indicating not only and not so much a nation (people) as the state. Based on the National Security Strategy, the latter involves the security of the state, society and the individual in their unity.

That's why the state security, public security and personal security should be viewed as elements of a single system of national security. "Security of the State, of society and of the individual are in dialectical relationships" [6, p. 67] and are based on the unity and mutual responsibility [7, p. 350-353]. This approach involves the community on a fundamental level, the interests and needs of each security principal. "Security of the integrated complex social system as a set of interconnected structural elements is determined by the security of its weakest structural element" [6, p. 67].

The national security in general and the tax security in particular are achievable only in conditions of the true state sovereignty.

One can distinguish economic sovereignty, part of which is fiscal sovereignty in the structure of state sovereignty [8]. Categories of tax and fiscal sovereignty, are often used as synonyms in the legal acts and legal literature [9; 10; 11]. We can hardly agree with such an identification, because even etymologically fiscal sovereignty (from the *fiscus* (lat.) refers to the collection of not only fiscal, but all budget revenues.

There is no legal definition of tax sovereignty in Russian legal system. Some of its elements are disclosed in decisions of the Constitutional Court of the Russian Federation: there are recognition of the rights of the state by the international community to lay and collect taxes on its territory<sup>2</sup>, including force, acting unilaterally<sup>3</sup>; the right of the state to determine indicators of assessment the financial and economic activity of the taxpayer needed for tax purposes<sup>4</sup>.

In the context of the tax sovereignty the supremacy refers to the ability of the state power to impose and collect taxes and charges on the entire territory of the country in respect of any groups and individuals, regardless of their will.

The independence of the state power in the field of taxation means the ability to define and implement tax policies, without being influenced by foreign governments or certain groups of taxpayers inside the country, including acting in the interests of the entire state population.

---

<sup>2</sup> Decision of the Constitutional Court of the Russian Federation of December 7, 2010; Nr. 1572-O-O.

<sup>3</sup> Judgement of the Constitutional Court of the Russian Federation of June 25, 2016; Nr. 16-P.

<sup>4</sup> Judgement of the Constitutional Court of the Russian Federation of October 12, 1998; Nr. 24-P.

The autonomy of the state authorities is also closely connected to independence. This attribute indicates that, contrary to popular opinion [11; 12, p. 44], the conclusion of international treaties, in which the state assumes the obligations in the field of taxation, does not limit tax sovereignty, but on the contrary, it is one of the ways of its realization. International cooperation in the area of enforcement (the exchange of tax information, combating tax crimes, joint activities of tax authorities of various states) significantly contributes to tax security of each state.

In some aspects tax sovereignty can be limited by the existence of the universally recognized principles and norms of international law. According to A.V. Demin, "the maintenance of tax rules is being more and more influenced by the will of the international community, which significantly limits the fiscal sovereignty and law-making discretion of the States". [13]

It is difficult to agree with MJ Orlov in fact that taxes are a form of limitation of the fiscal sovereignty [14, c. 19]. Taxes as compulsory payments are the manifestation of the sovereignty of the state. Legal principles of taxation limit sovereignty to a reasonable extent. Illustrating this limitation, the Constitutional Court of the Russian Federation noted that, although the legislator is acting within its discretionary powers while in determining the tax liabilities and possessing fiscal sovereignty, tax regulation should have a sufficient degree of certainty. Tax sovereignty can be limited (but only by the national courts) in case and to the extent that decisions of legislative bodies in the tax area are beginning to present a threat to security of the state tax. Thus, Sec. 4 of Art. 2 of the General Part of the Tax Code of the Republic of Belarus prohibits the establishment of taxes, dues (duties) and benefits which can threat to national security of Belarus, its territorial integrity, political and economic stability [15].

Power means the ability of the state to exercise legislative power, governance and law enforcement in tax relations throughout the country. It is difficult to accept the position that every subject of tax policy (including regions and municipalities) may have sovereignty within the limited powers [16] .

Scholars of constitutional law mention an important sign of sovereignty, and namely, the unity of state power [17, c . 7]. With regard to the field of taxation means the unity of the system integrity of the bodies forming and implementing tax policy (Ministry of Finance of Russia and his subordinate services). Because only negative from the standpoint of maintaining the tax sovereignty of the legislator should assess the decision to transfer the right to initiate criminal prosecution for tax crimes of the specialized system of tax authorities investigation bodies. On the contrary, from the viewpoint of the unity of state power need to consider giving the tax authorities' powers in the field of operational and investigative activities. It is unacceptable to reduce the implementation of tax sovereignty only to the identification and collection of taxes. The external manifestation of tax sovereignty is to:

- 1) the establishment and imposing of taxes in the state [18, p. 191; 14, p. 19], as well as for the subjects of economically related entities;
- 2) the collection of taxes, including their unilateral recovery [19, cp 371], as well as the rejection of their collection ("tax amnesty") [20, p. 28-31];
- 3) establishing and implementing control and accountability mechanisms in the tax field [21, p. 10];
- 4) the resolution of disputes between the participants of tax relations [22, p. 11-12].

Tax sovereignty of any state is continually subjected to "trial of strength" on the part of other subjects. Threats to tax sovereignty, as well as to tax security, depending on the source of origin can be divided into public (emanating from the authorities of the government and state-like entities) and private (the sources are persons without public-law status).

Threats can be classified into internal and external. Internal threats originate in the territory under the jurisdiction of the state. Among them are attempts of the regions to break the unity of the tax system of the country, up to the "tax separatism". Source of occurrence of external threats can be found outside the territory of the State, like actions and decisions of other states or MNEs.

Tax competition may contribute to the improvement of the tax system of competing states. However, in a situation where it is associated with the provision of the benefits of an administrative nature (in particular, concealment of information on the beneficiaries of the business) it is a serious challenge to the sovereignty and security of other countries.

Scholars speak about synonymous meanings of the terms "economic sovereignty" and "economic security", and, therefore, their manifestations in the tax field [24, p. 71-75]. We believe that these concepts can not be synonymous.

Providing of security should be the sole purpose of existence (functioning) of the state and of realizing of its sovereignty [25, p. 121]. The financial activity of the state is carried out "in order to implement the backside of social and economic development, maintain the defense capability and security of the country" [26, c. 86].

Tax is a payment made by each person in order to ensure personal and property safety, for the protection of the state [27]. "People agree to pay taxes as a way to reward those who provide services to the general security" [28, c. 232]

Proper collection of taxes is recognized by the Constitutional Court of the Russian Federation as the proper condition of maintenance of functions of public power. According to Art. 55 of the Russian Constitution, the establishment of taxes is a reasonable limitation of private property rights, as it is necessary "in order to protect the constitutional order, morality, health, rights and lawful interests of others, national defense and state security,"

"Enforcing tax liabilities is the necessary condition of the financial independence of the state and, consequently, its economic security" [29, c. 25]. Thus, the tax sovereignty is a key factor in ensuring of the tax security of the state.

There are a few science approaches to the content of "security" category in general and to the "national security":

- 1) security as a characteristic of the society as of a complex system in its functioning and development (systematic approach) [30, p. 23, 31, p. 109]
2. ) Security as the level of public relations, ensuring their further sustainable development (sociological approach) [32].
- 3) Security as a conscious need of the subject, or the value (axiological approach) [33].
- 4) Security as the activity of the subjects to stop threats (dynamic approach) [34, p. 30].
- 5) Security as a condition of protection [35], when there is no danger [36, c. 88] or threats (static approach) [37, c. 83]. In this context the terms characterizing certain types of national security are classically used in legal researches [38; 39, c. 8-9] and in legislation.

Такой уровень достигим только при условии систематической и непрерывной работы всех участников общественных отношений по его обеспечению.

Если рассматривать государственное управление в широком смысле как упорядочивающее воздействие всех органов публичной власти на те или иные сферы общественной жизни [41, с. 118], то следует признать, что осуществление такого управления в правовых формах представляет собой правовое обеспечение.

Правовое обеспечение налоговой безопасности государства может осуществляться путем использования широкого круга методов как нормотворческой, так и правоприменительной природы.

Принятие правоприменительных актов является важнейшим средством реализации органами власти своих полномочий по обеспечению налоговой безопасности, поскольку именно в таких актах реально выражается «принудительность права» [42, с. 144].

«Налоговое правоприменение как форма реализации норм налогового права способствует развитию и охране уже существующих налоговых отношений и формированию новых посредством создания новых юридических фактов, предоставлению субъективных прав и возложению юридических обязанностей на участников налогового процесса, привлечение к налогово-правовой ответственности» [43, с. 21].

Приведенные задачи правоприменения целиком и полностью отвечают целям деятельности по обеспечению налоговой безопасности государства, что позволяет говорить о правоприменении как об одном из ключевых средств обеспечения налоговой безопасности государства.

Правоприменение пронизывает абсолютное большинство управленческих процессов, поскольку отражает пределы самостоятельности субъектов управления, процедуры подготовки и принятия управленческих решений. [44, с. 66]. Указанное обстоятельство обуславливает важнейшее значение правоприменительной деятельности для обеспечения налоговой безопасности государства.

Учитывая выявленную суверенную природу налоговой безопасности государства, ее интересы, несомненно, должны учитываться в процессе правоприменения в налоговых отношениях. Игнорирование угроз налоговой безопасности правоприменителями в равной степени снижает уровень ее обеспечения и не отвечает задачам реализации норм права в суверенном государстве.

Thus, national security can be defined as a level of development of social relations in the state, in which their protection from internal and external threats is ensured in accordance with national values.

In accordance with the above mentioned approach tax security of the state is the level of development of social relations in the sphere of taxation in which the amount of collected taxes corresponds to the amount which has been planned in view of the need for full funding of all the functions and tasks of the state and municipalities in the current period and in perspective.

Adopting of legal enforcement acts is a key tool for implementing authorities of their powers to ensure the tax security tax, because such acts actually express the "force of law" [42, p. 144].

"Tax Enforcement as a form of implementation of the norms of tax law contributes to the development and protection of existing fiscal relations and the formation of new means of creating new legal facts, providing subjective rights and laying the legal obligations on the parties of the tax process, the involvement of tax liability" [43, p. 21].

Law enforcement pervades the vast majority of administrative processes and reflects limits of independence of controlling subjects and procedures of decision-making. [44, с. 66]. This circumstance leads to critical law enforcement activities to ensure the tax security of the state.

### **References**

1. Karaseva M.V. Financial relationship. Moscow, 2001. 288 p. (In Russ.).
2. Zhuravleva O.O., Ismailova L.Yu., Problems of unification of approaches to tax administration. *Finansovoe pravo*, 2011, no. 10, pp. 23 - 26. (In Russ.).
3. Redkous V.M. Administrative-legal provision of national security in the States - participants of Commonwealth of Independent States. Abstract of Diss. Cand. Thesis. Moscow, 2011. 47 p. (In Russ.).

4. Kortunov S.V. Conceptual fundamentals of national and international security. Moscow, 2007. 307 p. (In Russ.).
5. Yurchenko M.V., Davydov A.V. Scientific-theoretical bases of a category "national security of Russia". *Vestnik Buryatskogo gosudarstvennogo universiteta*, 2011, no. 6, pp. 169-173. (In Russ.).
6. Litvinov, E. P. Philosophical foundations of the concept of security. *Prostranstvo i vremya*, 2012, no. 1(7), pp. 66-73. (In Russ.).
7. Bashuk V.V. Understanding of national security in the philosophical, legal and socio-cultural aspects. *Teoriya i praktika obshestvennogo razvitiya*, 2013, no. 9, pp. 350-353. (In Russ.).
8. Ostroukhov B.A. International legal and fiscal issues of state sovereignty. *Yuridicheskiy mir*, 2009, no. 3, pp. 27-32. (In Russ.).
9. Havanova I.A. Fiscal (tax) sovereignty and its borders in integration formations. *Zhurnal rossiiskogo prava*, 2013, no. 11, pp. 41 – 51. (In Russ.).
10. Solovyova N.A. (ed.). 101 the term tax law: the legislative and doctrinal interpretation. Moscow, 2015. 452 p. (In Russ.).
11. Shakhmametiev A.A. International tax law. Moscow, 2014. 824 p. (In Russ.).
12. Krivyh I.A. Sources of the tax law of the Russian Federation: concept, classification problems, basic principles of action. Diss. Cand. Thesis. Ekaterinburg, 2009. 284 p. (In Russ.).
13. Demin A.V. The Principle of certainty in taxation. Moscow, 2015. 368 p. (In Russ.).
14. Orlov M.Yu. Tax as a form of reasonable limit fiscal sovereignty of the state. *Finansovoe pravo*, 2006, no. 2, pp. 18-23. (In Russ.).
15. Pilipenko A.A. Economic and legal principles of formation of tax system. *Finansovoe pravo*, 2006, no. 10, pp. 21-31. (In Russ.).
16. Ovchinnikova N. About. Tax planning and tax control by law enforcement agencies: a Practical guide. Moscow, 2008. 284 p. (In Russ.).
17. Kazannik A.I., Kostyukov A.N. (eds.). Constitutional law: University course: textbook: in 2 vol. Vol. 2. Moscow, 2016. 528 p. (In Russ.).
18. Kuchеров I.I. Theory of taxes and duties (legal aspects). Moscow, 2009. 473 p. (In Russ.).
19. Godma P.M. Financial law. Moscow, 1978. 428 p. (In Russ.).
20. Pokachalova E.V., Belova T.A. "Tax Amnesty" in the system of financial and legal concepts and institutions. *Nalogi*, 2015, no. 2, pp. 28-31. (In Russ.).
21. Pogorletskiy A.I. Principles of international taxation and international tax planning. Saint-Petersburg, 2005. 388 p. (In Russ.).
22. Ovsyannikov S.V. Constitutional and legal basis of tax relations. Abstract of Diss. Cand. Thesis. Saint-Petersburg, 2001. 41 p. (In Russ.).
23. Kudryashova E.V. Jurisdiction (sovereignty) of States and tax the immune system in indirect taxation. *Finansovoe pravo*, 2005, no. 10, pp. 35-43. (In Russ.).
24. Boldyrev O.Y. The challenges of globalization and problems of protection of the economic sovereignty of the state. *Konstitutsionnoe i munitsipalnoe pravo*, 2014, no. 5, pp. 71 - 75. (In Russ.).
25. Egorov S.N. Axiomatic foundations of the theory of law. Saint-Petersburg, 2001. 272 p. (In Russ.).
26. Khimicheva N.I. (ed.). Financial law: Textbook. Moscow, 2012. 749 p. (In Russ.).
27. Montesquieu Ch. On the spirit of laws, in: Selected works. In 2 vols. Vol. 1. Moscow, 1955. 800 p. (In Russ.).
28. Bastiat F. Robbery by law. Chelyabinsk, 2006. 264 p. (In Russ.).
29. Kuchеров I.I., Kikin A.I. Measures of the tax procedural coercion: proc. allowance. Moscow, 2011. 124 p. (In Russ.).
30. Stepashin S.V. The safety of man and society (political and legal). Saint-Petersburg, 1994. 240 p. (In Russ.).
31. Polikarpov V.S. Philosophy of security. Saint-Petersburg, Rostov-on-Don, Taganrog, 2001. 168 p. (In Russ.).
32. Mikhalkin N.V. The Security of the Russian Federation. Issues of theory and practice. Moscow, 1993. 114 p. (In Russ.).
33. Rybalkin N. N. The philosophy of security. Moscow, 2006. 296 p. (In Russ.).
34. Timokhin P. P. Formation of the concept of Russia's security. *Bezopasnost'*, 1993, no. 6, pp. 30-56. (In Russ.).
35. Tropin S.A. Economic security of Russia. *Zakonodatelstvo i ekonomika*, 2004, no. 5, pp. 31-35. (In Russ.).

36. Belov P.G. Systematic way of ensuring the national security of Russia. *Bezopasnost'*, 1994, no. 6, pp. 88-94. (In Russ.).
37. Rozhdestvenskiy Yu.V. Safety of Russia and the literature (abstracts of judgment). *Bezopasnost'*, 1995, no. 3, pp. 83-88. (In Russ.).
38. Mayorov V.I. Administrative-legal problems of management of safety of traffic. Abstract of Diss. Doct. Thesis. Ekaterinburg, 1997. 30 p. (In Russ.).
39. Siusiukin A.V. Administrative-legal regulation of economic security. Abstract of Diss. Cand. Thesis. Rostov-on-Don, 2004. 25 p. (In Russ.).
40. Guskov Yu.V., Reznik E. P. Security: the problem of understanding the nature. *Naukovedenie*, 2013, no. 5. Available at: <http://naukovedenie.ru/PDF/23evn513.pdf> (date of access 01.11.2016). (In Russ.).
41. Starilov Yu.N. The course of General administrative law. In 3 vol. Vol. I: History. Science. Object. Norm. Subjects. Moscow, 2002. 728 p. (In Russ.).
42. Alekseev S.S. Social value of law in Soviet society. Moscow, 1971. 224 p. (In Russ.).
43. Dementiev I.V. Tax enforcement as a form of realization of the tax law. *Finansovoe pravo*, 2013, no. 6, pp. 21 - 24. (In Russ.).
44. Kudryavtsev V.N. Right and behavior. Moscow, 1988. 280 p. (In Russ.).

### ***Information about the author***

Kirill V. Maslov,  
Candidate of Legal Sciences, Associate Professor,  
Chair of Constitutional and Municipal Law,  
Dostoevsky Omsk State University,  
644077, Omsk, Mira pr., 55a,  
e-mail: mas\_law@mail.ru  
ORCID: <http://orcid.org/0000-0001-8384-277X>  
ResearcherID: M-6609-2016  
SPIN-code: 5325-9716, AuthorID: 678481

### ***Bibliographic description***

Maslov K.V. Law enforcement as a method of provision for national tax security. *Pravoprimerenie = Law Enforcement Review*, 2017, vol. 1, no. 1, pp. . –  
**DOI** 10.24147/2542-1514.2017.1(1).28-37  
(In Russ.).