

ELEMENTS OF PROGRESSIVE PERSONAL INCOME TAXATION IN THE CONTEXT OF THE PRINCIPLE OF FORWARD AND BACKWARD LINKS**

Nikolay M. Artemov¹, Karina A. Ponomareva²

¹ *Kutafin Moscow State Law University (MSAL), Moscow, Russia*

² *Dostoevsky Omsk State University, Omsk, Russia*

Article info

Received –
2020 October 19
Accepted –
2021 January 15
Available online –
2021 April 15

Keywords

Personal income tax,
tax relations,
comparative law,
progressive taxation,
the principle of direct
and inverse relations,
the principle of social
justice, tax security,
EU, OECD

The subject. The idea of progressive tax scale in Russia received a fundamentally new development in 2020. The leading position of the personal income tax in most countries is due to a number of circumstances. First, it is a personal tax, the object of which is the income actually received by the payer, and not the estimated average income that could be received in specific economic conditions. Second, income tax allows to maximize the implementation of the basic principles of taxation – universality and uniformity. In recent decades, national regimes of personal income taxation regimes have been actively developed both in foreign countries and in Russia.

Purpose of the study. The article considers the elements of progressive taxation of personal income in the context of the principle of direct and inverse relations. Dealing with selected provisions of the national legislation of European countries and Russia the article shows that elements of progressive taxation can be applied only in particular aspects. The proposals of taxation of rich taxpayers are also brought into light.

Methodology. The research was carried out with the application of the formally legal interpretation of legal acts as well as the comparative analysis of Russian and European legal literature. Structural and systemic methods are also the basis of the research,

The main results. The establishment of a classical progressive system in the Russian Federation will encourage a change in the model of behavior of both persons who have the opportunity to increase their income, but do not intend to do so due to a decrease in the nominal increase in wages, and persons who previously declared income in full, but if the tax model changes, they will apply personal income tax evasion schemes. In addition, the results of a comparative analysis of the experience of the EU Member States show the ineffectiveness of the progressive income tax scale as a tool to combat social inequality.

The comparison provided in the research also examines the problems of proportional and progressive taxation in the context of the principle of equity. In the context of the practice of applying progressive taxation, the experience of foreign countries is studied. Based on foreign experience, it can be concluded that the introduction of family taxation would require a fundamental change in the basis of income taxation in the Russian Federation, as well as would entail discrimination of taxpayers in terms of registered and civil marriage and abuse in order to extract tax benefits. The authors conclude that a more appropriate option for taking into account family circumstances is the widespread use of tax deductions. Since Russian legislation does not establish poverty criteria, personal income tax is levied even on income in the amount of the subsistence minimum. This also does not correspond to the principle of social justice, because in the absence of such criteria, poverty cannot be considered a basis for tax exemption.

Thus, the establishment of a classical progressive system in the Russian Federation will encourage a change in the model of behavior of both persons who have the opportunity to increase their income, but do not intend to do so due to a decrease in the nominal increase in wages, and persons who previously declared income in full, but if the tax model changes, they will apply personal income tax evasion schemes.

We believe that in the context of the principle of equity, the essence of progressive taxation is not the establishment of several tax rates and is not determined by the number of tax deductions that can be granted only to a small number of persons, including wealthy taxpayers, but that it reflects the ability of a person to pay tax. In our opinion, this ability should be guaranteed by the exemption from taxation of the minimum amount of income (minimum wage).

Conclusions. According to the results of the study, it is concluded that the establishment of a classical progressive system in the Russian Federation will encourage a change in the behavior model of both persons who have the opportunity to increase their income, but do not intend to do so due to a decrease in the nominal increase in wages, and persons who previously declared income in full, but if the tax model changes, they will use personal income tax evasion schemes. In addition, the results of a comparative analysis of the experience of the EU member States show the ineffectiveness of the progressive income tax scale as a tool to combat social inequality. It is proposed to apply only elements of progressive taxation when reforming the Russian tax regime for individuals, namely, to establish a non-taxable minimum in the amount of the minimum wage, which will ensure tax fairness for taxpayers with lower-average incomes.

** The reported study was funded by Russian Foundation of Basic Research (RFBR), project number 20-11-00292 “Legal support of national tax security in international economic integration context”.

1. Introduction

In recent years, the personal income tax regime has been undergoing a transformation. Professor A. A. Shakhmametyev rightly emphasizes the fact that "the direct or territorial physical or legal "dependence" of the subject has been supplemented by an expanded one based on the taxpayer's personal ties with this country" [1, p. 75]. The main trends in the development of the legal regulation of income taxation in different states relate to the reduction of tax rates and the expansion of the tax base [2-6]. However, lower tax rates are often offset by higher social security contributions and consumption taxes. The aging of the population in developed countries implies an increase in public spending on pensions and health care [7, p. 45].

In addition, in 2020, the idea of introducing a progressive tax scale in Russia received a fundamentally new development. This debatable problem requires detailed consideration by the legislator, practitioners and representatives of the science of financial law.

2. Direct and inverse relations in the system of legal regulation of taxation of personal income.

Let us consider some problems in the field of legal regulation of taxation of personal income using a systematic approach [8, 9].

According to the remark of Professors N. M. Artemov and E. M. Ashmarina, even in such spheres as budget and tax activities, we cannot but pay attention to the presence of elements of imperatively limited dispositivity (that is, even in public spheres there is a dualism of legal regulation today) [11, p. 196].

The role of finance and financial law in providing feedback in the management of the state and society is highlighted by the professor O. N. Gorbunova. She notes that "the system of direct and inverse relations, on the one hand, creates conditions for conducting continuous broad financial monitoring, strictly on cash flows. At the same time, since finance is a universal source of information, feedback in this area of state activity is

carried out through feedback signals that serve as a message about the development of all areas of practical activity of the state, where positive results are immediately reflected in finance: the budget is successfully replenished, etc." [12, p. 29].

Feedback is a particularly important link in management relationships. However, the lack of feedback is a very common problem in the management of public finances. Not all feedbacks are created by managing entities, but "the only way for any entity to regulate and manage is to establish feedback of consequences with the resources consumed by the regulated process" [10, p. 50]. For example, the obligation to finance public functions and services is a justification for the power of the State to levy taxes on the members of this society. However, in the modern world, companies and individuals have high mobility, as a result of which they can participate in the life of several states. In cross-border tax relations, direct and reverse links have a specific manifestation: those entities that benefit from its services should finance the state. In other words, the state has no reason to apply tax jurisdiction to the subject without the necessary connecting factor. In the context of income tax and income tax, such a factor is the economic attachment of the subject to the state, which caused the division of taxpayers into residents and non-residents.

S. G. Pepelyaev rightly points out that the specifics of creating and terminating the status of a tax resident are not defined in detail in Russian legislation [13, p. 33]. The current rules for determining tax residency in the Russian Federation are based only on the criteria of physical presence. On the one hand, this creates simplicity from the point of view of tax administration and certainty in the practice of its application. On the other hand, this single criterion makes it possible to circumvent tax legislation. In 2015 The Federal Tax Service of Russia has made unsuccessful attempts to expand the interpretation of the provisions of the Tax Code of the Russian Federation by using the criteria of the center of vital interests and permanent residence provided for in the double tax treaties (hereinafter referred to as the DTTs).

The problem, according to A.V. Demin, is that, despite its internal nature, being mandatory for tax authorities, written explanations of the Ministry of Finance of the Russian Federation are automatically perceived as such by taxpayers, acquiring the force of a kind of administrative precedents [14, p. 15].

The specified specifics cause collisions. Thus, the need to determine the status of a tax resident of the Russian Federation in the context of the application of the provisions of the DTT was caused by the adoption of a number of contradictory acts [15, p. 89]. In its letters, the Federal Tax Service of Russia identified the center of vital interests at the location of the family, main business or work and indicated that the fact that an individual is in the Russian Federation for less than 183 calendar days during the tax period (calendar year) does not automatically lead to the loss of the status of a tax resident of the Russian Federation. However, the Ministry of Finance of the Russian Federation stated the opposite position, stating that the above-mentioned letters of the Federal Tax Service of the Russian Federation are not applicable due to non-compliance with the tax legislation of the Russian Federation and the provisions of the SIDN, as well as inconsistency with the position of the Ministry of Finance of the Russian Federation.

We believe that the position of the Ministry of Finance of the Russian Federation is the only correct one, since from the point of view of the principle of legality, it is impossible to be guided by concepts that are not enshrined in Russian tax legislation. Otherwise, the principle of legal certainty is violated. Moreover, even in the SIDS, it is proposed to define residency by the center of vital interests only if the individual is a resident of both Contracting States in accordance with their national legislation.

The letters of the Federal Tax Service of Russia are not normative legal acts, but they have begun to contain norms that establish rules of conduct. The law enforcement activity of the tax authorities thus becomes mandatory for an indefinite number of persons. In this regard, we can agree with A.V. Zhigachev, who believes that the boundaries of "normativity" and "non-normativity"

have become more blurred [16]. The normative nature of the acts of the Federal Tax Service was noted even by the Constitutional Court of the Russian Federation: "by virtue of the principle of departmental subordination ... such acts indirectly, through the law enforcement activities of tax officials, acquire, in fact, mandatory for an indefinite circle of taxpayers."

Giving the letters of the executive authorities the force of a normative interpretation turns, according to N. S. Malyutin, "a norm of the law into a rule that is threatened with emasculation" [17, p. 15]. In this situation, the will of the legislator, who has the exclusive authority to adopt acts of tax legislation, is replaced by the position of the executive authorities. This is a violation of the provisions of paragraph 2 of Article 4 of the Tax Code of the Russian Federation, according to which the federal executive authorities authorized to exercise the functions of control and supervision in the field of taxes and fees and in the field of customs affairs, and their territorial bodies do not have the right to issue regulatory legal acts on taxes and fees.

An example of how the Russian tax practice violates the principle of certainty of taxation and the functioning of feedbacks is the situation that has developed in law enforcement practice in connection with the issue of "business fragmentation"[18].

In a letter dated August 11, 2017, No. SA-4-7/15895@ the Federal Tax Service of Russia outlined its vision of the general signs that indicate the consistency of the actions of participants in business splitting schemes in order to avoid fulfilling tax obligations. It is necessary to pay attention to the fact that these signs can only indicate in their totality and mutual connection a formal division (fragmentation) of the business in order to obtain an unjustified tax benefit. The key concept that is subject to criticism is the vague criteria for taxpayers to receive a tax benefit and the definition of the edge when it passes into the category of unjustified.

It is absolutely not justified to give the letters of the Federal Tax Service of Russia and the Ministry of Finance of Russia the status of normative acts. The explanations of the Federal Tax Service of Russia do not correspond to the characteristics of a regulatory legal act either in form, or by the issuing authority, or by the procedure for adoption and publication, or

by other characteristics.

We can say that because of the numerous letters of the Federal Tax Service, the tax law is "not visible". The current situation violates the principle of legal certainty and causes a negative reaction from taxpayers, which is a manifestation of feedback in tax legal relations. So, after the adoption of only one article 54.1 of the Tax Code of the Russian Federation, a huge array of explanations of the Federal Tax Service appeared, which are not formally normative legal acts, but actually have normative properties. Taxpayers are forced to follow the provisions contained in the letters of the Federal Tax Service when planning economic activities.

In our opinion, feedback should work in a completely different way: the executive authorities should respond to the requests of taxpayers, and the State Duma should adopt laws that respond to the challenges of modern realities. The clarity of the will of the legislator is an ideal to which it is important to strive. Otherwise, it is impossible to achieve a balance between the interests of the state and taxpayers: the more ambiguities, the greater the imbalance. This means the need for an objective assessment of the content and effectiveness of legal norms that are designed to ensure the implementation of the principle of fairness in tax law by legal means.

If we talk about international experience, then, as A. O. Chetverikov rightly notes, "the most profound contradiction inherent in the very nature of international integration is the conflict between the unifying aspirations of states and their unwillingness to sacrifice their national identity (identity), including original legal institutions and traditions" [19, p. 61]. Taxation is still an area in which the member States of integration associations retain sovereignty, especially in the field of direct taxation. The powers of taxation conflict with the purposes of these associations, as well as with fundamental economic freedoms. These freedoms, which are enshrined both in the founding treaties of international organizations and in the "hard law" acts that develop their provisions (for example, EU directives) and in the "soft law" acts, have an impact on national tax systems. Bilateral tax agreements between States have a

similar impact on them. While these agreements may be seen as a manifestation of tax sovereignty, they also limit the tax powers of the contracting parties.

Globalization and freedom of movement have the effect of allowing goods, services, capital, and labor to move faster and in more directions. On the one hand, this gives taxpayers ample opportunities to move the tax base to low-tax jurisdictions or to contribute to its erosion, which is actively fought by Member States. On the other hand, the movement of taxpayers leads to tax competition between states that seek to attract taxpayers in all possible ways: special regimes, low rates, etc.

Thus, in relation to supranational regulation is possible to allocate two directions of the principle of backward and forward linkages:

in relations between the state and taxpayers – to balance public and private interests through the maintenance of the principle of certainty in terms of instability of legal regulation;

in relations between member States and the integration associations are relationships to establish a uniform legal regulation in the sphere of taxation in the member States.

3. Prospects of introduction of progressive taxation of personal income in the Russian Federation.

Relatively few works of Russian researchers in recent years have been devoted to the problems of progressive taxation [20-23]. However, it should be noted that this issue was considered by the authors in the context of the social orientation of tax law [24], as well as the principle of equality and justice, the social function of tax [25].

At the same time, the problems of proportional and progressive taxation in the context of the principle of justice were the subject of consideration by many scientists – representatives of the pre-revolutionary and Soviet science of financial law. Thus, according to N. I. Turgenev, "taxes should be distributed among all citizens in the same proportionality; everyone's donations for the benefit of the general should correspond to his strength, i.e., his income. All citizens enjoy the benefits of society, therefore, all should contribute to the preservation

of it" [26, p. 134]. In relation to the proportional tax, D. M. Lvov used the term "fair taxation", and in relation to the progressive tax – "feasible taxation" [27, p. 298]. Since the time of Adam Smith, the proportionality of taxation has been understood as the ratio of tax liability and tax capacity [28, p. 341].

I. I. Kucherov, based on the understanding of justice expressed by S. A. Muromtsev, defines the justice of taxation as a set of ideas rooted in society about the perfect order of taxation, emphasizing that a more precise definition cannot be developed without understanding what is the basis of this perfection [29, p. 25].

In the context of the study of the practice of applying progressive taxation, the analysis of the experience of foreign countries that have long used this system is of particular value. Having analyzed the experience of the EU member states, we note that in the EU, income tax rates are usually constructed according to a complex progression, but in a number of states it is levied on the basis of the principle of proportionality. The value of the tax rate varies from 0 to 33% depending on the country and varies depending on the tax discounts provided to taxpayers. In some European countries, the principle of family taxation is applied (France, Germany, Ireland, Luxembourg). Depending on the family status of the taxpayer, the tax rates are differentiated. In all European countries, the income tax rate for single taxpayers is higher than for married couples. In the UK, taking into account non-standard tax discounts (work-related expenses, interest on a home loan, etc.), the income tax rate for a single taxpayer is almost 3% higher than for a married couple. In Germany, non-work-related income is transferred in whole or in part to the spouse with the highest income.

In the Russian Federation, the child support factor is taken into account when taxing the income of his parents and is the basis for reducing the tax base, but family taxation is not, since the income of the spouses is subject to personal income tax separately, and their total amount does not affect the amount of tax deductions. In addition, tax deductions in this case are considered by the state more as a mechanism to support a taxpayer with a low income, rather than as a basic

method of taxation, in which the taxable income is part of the family budget.

Based on foreign experience, it can be concluded that the introduction of family taxation would require a fundamental change in the basis of income taxation in the Russian Federation and would cause difficulties in identifying the tax composition of the household, as well as entail discrimination against taxpayers in terms of registered and civil marriage and abuse in order to extract tax benefits. Thus, the replacement of the concept of personal taxation in favor of family taxation is not applicable in the Russian Federation. We believe that a more appropriate option for taking into account family circumstances is the widespread use of tax deductions.

According to A. P. Terekhina, "income taxation has great opportunities to influence the level of real incomes of the population, allows using the system of benefits, the choice of object and tax rates to stimulate stable budget revenues by increasing tax rates as the earnings of citizens grow" [30, p. 36]. This thesis, for all its validity, is not fully applicable to Russian conditions: income from personal income tax accounts for a relatively small part of the income of the Russian budget compared to the budgets of European states. In the Main directions of the tax policy of the Russian Federation, the taxation of individuals has traditionally been given little attention compared to corporate taxation. This is due to the fact that the budget's tax revenues from personal income tax revenues are significantly lower than those from income tax, and in recent years, measures to deoffshorize the Russian economy have been at the forefront. The main directions of the tax policy of the Russian Federation for 2016 and the planning period of 2017 and 2018 contain the thesis that the taxation of personal income requires constant adjustments, on the one hand, in order to exclude unjustified tax benefits, and on the other hand, in order to clarify certain provisions regarding the procedure for determining the tax base and monitoring the completeness and timeliness of tax payment.

Back in 2019, the Ministry of Economic Development of the Russian Federation clearly expressed its position that the transition to a progressive personal income tax scale may lead to

tax evasion and the budgets of the budget system of the Russian Federation do not receive the corresponding amounts of funds from personal income tax.

However, the situation changed in 2020. In an address to the citizens of Russia on June 23, 2020 The President of the Russian Federation proposed to change the tax rate on personal income from 13% to 15% for income exceeding five million rubles per year. It is assumed that these funds will be targeted and will be used for the treatment of children with severe, rare diseases, for the purchase of expensive medicines, equipment and rehabilitation tools, for high-tech operations. This measure was not provided for in the Main Directions of the budget, tax and customs Tariff Policy, and the draft federal law No. 1022669 7 "On Amendments to Part Two of the Tax Code of the Russian Federation regarding the taxation of personal income exceeding 5 million rubles for the tax period" developed for its implementation caused a mixed reaction among scientists and practitioners.

A. V. Reut believes that "this initiative should be regarded as a signal that the tax culture of the part of individuals who will pay tax at an increased rate has reached a higher level" [31, p. 32]. S. G. Pepelyaev, on the contrary, criticizes the proposed structures and believes that the bill deprives taxpayers who receive, for example, only income from securities transactions and other economic activity, of the opportunity to apply tax deductions. This essentially socialist approach discriminates against citizens who receive income from various types of entrepreneurial and investment activities [32, p. 5].

We believe that the increase in personal income tax to 15% will harm the middle class, while for taxpayers with high incomes from 2020, a tax benefit is provided, associated with the ability to pay a fixed payment of 5 million rubles instead of 13% without additional reporting for CFC. It seems that the changes in 2020 will be the first stage of the transition to progressive taxation of personal income and, depending on the implementation of the new provisions of the Tax Code of the Russian Federation, appropriate decisions will be made on further changes in tax legislation.

In our opinion, another option for establishing social guarantees in the field of income taxation can be a zero rate for citizens with an income at the level of the subsistence minimum (setting a non-taxable minimum). This practice is used in Germany, Austria, China, etc. According to the Tax Code of the Russian Federation, income is an economic benefit: in the case when the income is equal to the subsistence minimum, earnings only compensate for the labor spent. Thus, progressive taxation does not necessarily imply the introduction of several tax rates: a sufficient condition for this is the establishment of a non-taxable minimum according to the criterion of the amount of the taxpayer's income.

Since Russian legislation does not establish poverty criteria, personal income tax is levied even on income in the amount of the subsistence minimum. This also does not correspond to the principle of social justice, because in the absence of such criteria, poverty cannot be considered a basis for tax exemption.

In the abstract, it is fair to tax the rich more heavily. In practice, it is the low income received by the majority of individuals in the Russian Federation that is the main source of personal income tax. According to V. G. Panskov, only such a tax system can be considered fair, in which, after paying taxes, a reduction in the inequality in the economic situation of payers is achieved [22, p. 110]. However, in this case, the state will receive huge loss of income (primarily at the expense of the subjects of the Russian Federation with low incomes of the population) with relatively small additional budget revenues, which will not solve the issues of social justice. Thus, not only the taxpayers themselves, but also entire regions will fall into a situation in which the rich become richer, and the poor – even poorer.

Moreover, taxpayers who receive large incomes have ample opportunities to avoid paying tax or minimize it, for example, by changing their tax residency. In this case, the state loses, first of all, the tax base that is taxed at high rates, as a result of which the value of the increased tax rates is lost and the functioning of the distributive function of taxation is disrupted. Tax evasion actions are often committed by rich taxpayers, which negatively affects the feedback in tax relations, since it makes

taxation unfair from the point of view of citizens.

Thus, the establishment of a classical progressive system in the Russian Federation will encourage a change in the model of behavior of both persons who have the opportunity to increase their income, but do not intend to do so due to a decrease in the nominal increase in wages, and persons who previously declared income in full, but if the tax model changes, they will apply personal income tax evasion schemes. In addition, the results of a comparative analysis of the experience of the EU member States show the ineffectiveness of the progressive income tax scale as a tool to combat social inequality. Low capital gains tax rates will help reduce capital flight and improve the efficiency of interest deductions, reducing incentives for capital exports and tax evasion.

We believe that in the context of the principle of equity, the essence of progressive taxation is not the establishment of several tax rates and is not determined by the number of tax deductions that can be granted only to a small number of persons, including wealthy taxpayers, but that it reflects the ability of a person to pay tax. In our opinion, this ability should be guaranteed by the exemption from taxation of the minimum amount of income (minimum wage).

In addition, the Russian Federation still has elements of "wealth taxation" and progressive taxation, as we have already discussed earlier [33]. However, these elements are present in property taxes, being tied, for example, to vehicles owned by a wealthy taxpayer. Thus, it is, in fact, a tax aimed at withdrawing part of the income of a person who owns an expensive vehicle, and therefore has the income to purchase such property.

4. Conclusions.

Thus, "the Russian system of taxation of personal income with its simplicity, which provides a flat scale, is generally competitive" [34, p. 60]. However, an important direction of its development is to adapt to the current challenges of the global economy, as well as to supplement the existing system with elements of progressive taxation, taking into account a number of factors: "when establishing a progressive scale of income tax rates in the Russian tax system, it is very

important to think through and economically justify tax rates in relation to the tax base. Otherwise, all the advantages of the progressive scale of taxation may turn into its disadvantages" [22, p. 111].

The establishment of a classical progressive system in the Russian Federation will encourage a change in the model of behavior of both persons who have the opportunity to increase their income, but do not intend to do so due to a decrease in the nominal increase in wages, and persons who previously declared income in full, but if the tax model changes, they will apply personal income tax evasion schemes. In addition, the results of a comparative analysis of the experience of the EU member States show the ineffectiveness of the progressive income tax scale as a tool to combat social inequality.

It is proposed to apply only elements of progressive taxation when reforming the Russian tax regime for individuals, namely, to establish a non-taxable minimum in the amount of the minimum wage, which will ensure tax fairness for taxpayers with lower-average incomes.

We believe that the task set by our state in 2020 of gradually introducing progressive taxation of individuals should be solved only in the context of the principle of social justice. This should not be a simple borrowing of foreign experience with its gradation of tax rates. This should be a qualitative state of the tax system, in which the principles of certainty of taxation and the principle of direct and inverse relations are observed. First, every taxpayer should feel like a taxpayer and understand which tax he pays based on the amount of income received. Secondly, the non-taxable minimum will ensure compliance with the solvency of a low-income taxpayer.

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INFORMATION ABOUT AUTHORS

Nikolay M. Artemov – Doctor of Law, Professor, Honoured Lawyer of the Russian Federation, Honoured Worker of Higher School of Russia; Professor, Department of Financial Law
Kutafin Moscow State Law University (MSAL)
9, Sadovaya-Kudrinskaya ul., Moscow, 125993, Russia E-mail: nikoarte@yandex.ru
ORCID: 0000-0002-2462-3961

Karina A. Ponomareva – PhD in Law, Associate Professor; Associate Professor, Department of State and Municipal Law
Dostoevsky Omsk State University
55a, Mira pr., Omsk, 644077, Russia
E-mail: karinaponomareva@gmail.com
ORCID: 0000-0002-2951-3067

BIBLIOGRAPHIC DESCRIPTION

Artemov N.M., Ponomareva K.A. Elements of progressive personal income taxation in the context of the principle of forward and backward links. *Pravoprimerenie = Law Enforcement Review*, 2021, vol. 5, no. 1, pp. 68–79. DOI: 10.24147/2542-1514. 2021.5(1).68-79. (In Russ.).