

## TAX OBLIGATION FULFILLMENT

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The subject. The article is devoted to the study of the mechanism of tax obligation fulfillment. The author established that there are several points of view in understanding the legal essence of the fulfillment of an obligation in Russia and abroad: 1) contractual theories (the general contractual theory, the theory of a real contract, the limited contractual theory); 2) the theory of target impact; 3) the theory of real impact.

The purpose of the article is to determine the legal essence of tax obligation fulfillment, to study the concept of the tax obligation fulfillment, the mechanism for exercising subjective rights and obligations, and the criteria for the proper fulfillment of a tax obligation.

The methodology. The author uses general and specific scientific methods of scientific research: observation, systemic-structural, dialectical, analysis, comparative jurisprudence and others.

The main results, scope of application. There are two sides of the tax obligation fulfillment: legal and factual. From an actual point of view, the tax obligation fulfillment is a set of operations by its parties with the object of the obligation. As a result, the object of the obligation must pass from one owner to another. From a legal point of view, the tax obligation fulfillment always represents the realization of its content through the exercise of rights and the fulfillment of obligations.

The author believes that the tax obligation fulfillment should not be equated with the fulfillment of the obligation to pay tax, since not every obligation is executed through the payment of tax. In this regard, a situation may arise when the obligation is properly fulfilled by the debtor, and the creditor does not receive the property grant (for example, if a loss is received at the end of the tax period).

The mechanism of the implementation of subjective tax rights and the fulfillment of obligations is a certain system of legal means and algorithms of behavior that allow to determine the appropriate size of the claim of a public law entity on the taxpayer's property and ensuring the transfer of the monetary is equivalent to this economic benefit to the budget system. This mechanism is a set of algorithms for the behavior of subjects of tax liability, defined by law, using specific legal means. As such means, depending on the party of the tax obligation, the law provides, for example, a tax return, a requirement to pay tax, etc.

The mechanism of exercising subjective rights and fulfilling obligations includes the following stages: 1) pre-implementation; 2) procedural implementation; 3) actual implementation; 4) protection of the violated right.

The author identifies five criteria for the proper fulfillment of a tax obligation: 1) the proper subjects of execution; 2) the proper place; 3) the proper time; 4) the proper object; 5) the proper way.

Conclusions. The legal essence of the tax obligation fulfillment can be characterized as a transaction between its parties, aimed to mutual termination and the emergence of the rights of its parties. In order to protect the rights of bona fide taxpayers the author proposes to enshrine in tax legislation a ban on contradictory behavior in the process of fulfilling a tax obligation.

## 1. Introduction

The legal nature of the fulfillment of the obligation has long been a matter of interest to law scholars not only in Russia but also abroad. So, in Europe there are several points of view on understanding the legal basis of the fulfillment of the obligation:

1) Contractual theories (general contract theory, real contract theory, limited contract theory) determine fulfillment as a contract or performance agreement. Fulfilling the obligation, according to the supporters of these theories, the debtor and the creditor enter into a contract or agreement that mediates their will to terminate the obligation. This contract is concluded by the debtor's provision of performance and acceptance by the creditor of this performance, which is regarded as an order by him with his claim, which as a result of this order is terminated.

At the same time, the limited contractual theory considers fulfillment as a contract only in respect of those obligations, the results of which are transferred under the acceptance certificate. If the preparation of a such act is not required, then a transaction is not required for the fulfillment of the obligation, the provision itself is sufficient.

The theory of a real contract distinguishes two elements in the composition of the contract on termination of the obligation by performance: 1) the commission of the indebted provision (the objective element of the composition) and 2) the agreement on the purpose of the provision (the subjective element of the composition).

2) According to the theory of targeted impact, the performance of an obligation is not a deal. The obligation is fulfilled by making a conditional provision, which must be accompanied by a unilateral declaration by the performer that he acted in order to fulfill a certain obligation.

3) Adherents of the theory of the real impact of the provision consider that the obligation terminates if the interests of the creditor are satisfied. In most cases, the debtor's activity to provide the necessary benefit is sufficient for this. However, in some cases, it is necessary to have a more active participation of the creditor himself,

for example, to accept the execution ([1, p. 237] cited in [2, p. 140]).

Among Russian scholars, there is a common believe that the fulfillment of an obligation is a contract aimed at terminating an obligation (legal transaction theories). However, there are representatives of the law community who believe that the termination of the obligation through fulfillment occurs by virtue of the prescription of the law and, therefore, does not depend on the presence of the corresponding will of the parties (the theory of legal liberation) [2, p. 144].

Supporters of the "legal theory" can be divided into those who consider the fulfillment of an obligation as a combination of two unilateral deals of the debtor and the creditor aimed at terminating the obligation and consisting in unilateral acts of proposal and acceptance of performance [3, p. 23 - 25]. And those who adhere to a differentiated approach, by virtue of which, if the performance of the obligation requires the mutual and agreed will of the two parties, then the performance is a bilateral transaction, and when only the activity of the debtor is enough - unilateral [4, p. 880]. In legal study, there is even a special kind of deals - remission, among which scholars identify the fulfillment of an obligation [5, p. 75 - 83].

In this regard, scholars propose to consider the fulfillment of the obligation as an individually legal procedure that terminates an auxiliary contract [6 p. 78], aimed at ensuring the achievement of a certain economic good [7 p. 34].

According to other specialists, the fulfillment of an obligation is not a transaction, but a legal act, in other words - a lawful legal action, the legal consequences of which occur regardless of the subjective moment, that is, the direction of the debtor's actions [8, p. 471; 9, p. 360 - 361; 10, p. 8]. Still others believe that the fulfillment of an obligation is a law enforcement act consisting in the recognition of the subjective right to which the obligation is corresponded [11, p. 66].

In this work, based on the analysis of the mechanism for the fulfillment of a tax obligation, we will have to figure out which of the above approaches to understanding the fulfillment of an obligation is correct in relation to a tax liability.

## **2. The concept of fulfillment of a tax obligation**

According to some scholars, the nature of the obligation is broader and more versatile and has a more voluminous social content than specific rights and obligations. Therefore, they propose to separate the terms: "fulfillment of duty" and "realization of the obligation" [12, p. 40]. It seems that this proposal requires additional justification, so the terms "execution" and "implementation" will be used synonymously in this work.

In the law literature, the performance of an obligation in one interpretation or another is usually understood as the commission or abstention from committing actions that make up the subject of the obligation (for example, [9, p. 417; 5, p. 10; 13, p. 7]) or the content of the rights and obligations of its parties [14, p. 37; 5, p. 10]. This approach does not cause discussions and is well-established in the Russian legal study.

Therefore, in the performance of a tax obligation, two parties should be distinguished: legal and actual. From the actual point of view, the fulfillment of a tax obligation is a set of operations of its parties with the object of the obligation, as a result of which the latter must pass from one owner to another. From a legal point of view, the fulfillment of a tax obligation is always the realization of its content through the exercise of rights and the performance of obligations.

Under the implementation of subjective law in the legal doctrine is traditionally understood the implementation of its content, the commission by the authorized person of those actions, the possibility of which is provided by the content of the relevant subjective right in order to meet their legitimate interests, needs [15, p. 7]. Thus, the exercise of law is associated with the transformation of the component of the content of the subjective right from possibility to reality [16, p. 44].

The result of exercising the creditor's right in a tax liability, as a rule, is the appropriation of funds transferred by the debtor as performance. The transfer of this property leads to the termination of the obligation due to the satisfaction of the property interest of the creditor.

Thus, the subjective right in the tax liability can be realized exclusively through the fulfillment (voluntary and compulsory) obligation of the taxpayer, and the proper performance of the obligation necessarily leads to the exercise of the subjective right.

According to law scholars, the implementation of subjective rights and the fulfillment of obligations can be called a means of realizing the obligation, expressed in achieving its ultimate goal - satisfying the property interests of the authorized person [17, p. 94]. With regard to a tax liability, the ultimate goal is the satisfaction of a public fiscal interest.<sup>1</sup>

Satisfaction of public fiscal interest is achieved by redistribution of economic benefits in the share established by law in favor of public law entities. This redistribution does not imply the establishment of specific amounts of payments, but only a certain share of the economic benefit available or received by the taxpayer. In this regard, the size of the property claims of the tax authorities are determined in the process of fulfilling the tax obligation.

Consequently, it is not necessary to equate the fulfillment of a tax obligation with the fulfillment of the obligation to pay tax, since not every obligation is realized through the payment of tax. In this regard, a situation may arise when the obligation will be performed by the debtor properly, and the creditor will not receive property provision (for example, when receiving a loss at the end of the tax period).

Nor should the purpose of the tax liability be considered to be to ensure the participation of the tax debtor in covering public expenses [19, p.

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<sup>1</sup> There is an opinion that in objective reality there is no legal state when subjective rights are not realized or subjective duties are not fulfilled. Failure to achieve the ideal basic goal of a subjective right (satisfaction of property interest), which was laid down by a positive right, demonstrates only that it was carried out on an additional (optional) component, namely, the non-basic right in the content of the subjective right was realized. [18, P. 55]. In accordance with this approach instead of the power to recover the amount of tax, the power to write off a bad tax debt is exercised. At the same time, we can say that the right to levy a tax has been realized, since the refusal to exercise the right is an integral part of this right (authority).

301], since in this case the duties of taxpayers would vary from year to year depending on the budget indicators. For example, with a budget surplus, the amount of tax liability should be reduced, and with a deficit - accordingly increase. However, in reality this does not happen.

The lack of funds from the state for the execution of the budget on revenues is not a basis for the presentation of additional property claims within the framework of executed or fulfilled tax obligations, even if these claims are disguised as a change in the practice of applying the norms of tax law or their interpretation. Moreover, direct changes in existing tax liabilities under the pretext of receiving the so-called "excess profits" by the taxpayer in the current tax period are not allowed.<sup>2</sup>

However, the role of satisfying the public fiscal interest as the purpose of fulfilling a tax obligation should not be underestimated. It is this interest that dictates some changes in tax legislation that bring the tax liability closer to the civil law. For example, the normative consolidation of the possibility of paying tax by a third party (Article 45 of the Tax Code of the Russian Federation) is quite consistent with this interest, since it is important for the state to receive its part of the property from civil circulation, and the identity of the payer can be neglected.

Subjective right provides the entitled person with the opportunity to choose a certain lawful behavior in order to achieve the desired result (good), a potential opportunity, only fixed in the law [20, p. 127 - 128]. As a general rule, the subject, at his discretion, can both exercise the right and refuse to exercise it. There are exceptions to this rule when the law obliges to exercise rights or when the refusal to exercise the right is recognized as an abuse of the right [18, p. 56]. When this choice is not available, then the behavior of the person becomes a necessity, that is, a duty. In this case, the subjective right is "linked" with the obligation of the person: the commission of a particular action becomes both the right of the person and his duty [21, p. 37].

The tax liability is cited by many as an example of such a "closure" in terms of the subjective rights of the tax creditor [22, p. 15; 23, p. 30; 24, p. 1, 3 - 6]. However, in my opinion, it is necessary to separate the rights of the tax creditor, which is a public law formation and the rights of state-authorized bodies (for more information on the financial legal personality of state-authorized bodies, see [25, p. 110]).

The tax creditor is free to exercise his right: he can both exercise it and refuse it. At the same time, the refusal to exercise the right (but not the right itself) to levy a tax is allowed only in the form of a law (a normative act of a representative body of local self-government). This refusal can be implemented directly (for example, the abolition of tax or exemption from taxation of some operations), or by fixing special mechanisms in the law (for example, writing off bad debts).

The bodies authorized by the state do not have the right to refuse to exercise the rights granted to them by law, in the presence of all the necessary legal facts, so these rights are obligations, it is proposed to call them powers. Powers should be considered as separate powers constituting the subjective right of the tax creditor, the exercise of which by the tax authorities should be regulated in detail and deprived, as far as possible, of the freedom of discretion on their part.

The fulfillment of duties, in turn, is their implementation by turning into reality the need for a certain behavior of the parties to the legal relationship [26, p. 103 - 104; 17, p. 95].

### **3. Mechanism of exercise of rights and obligations in tax liability**

Mechanisms for the implementation of rights and obligations have a certain similarity, in fact, representing a single whole, since the fulfillment of the duty plays a key role in the implementation of the subjective right and is one of the guarantees of its implementation [27, p. 8].

The mechanism of implementation of subjective civil rights and performance of duties is such an organization of legal means and the creation of conditions that allow to achieve the result laid down in the matrix of the legal connection of law and obligation [21, p. 40]. To the full extent, these words can be attributed to the tax liability.

<sup>2</sup>

<https://www.rbc.ru/business/09/08/2018/5b6c5ee59a7947e3df0554a3> (retrieved 2021-01-01).).

Thus, the mechanism for exercising subjective tax rights and fulfilling obligations is a certain system of legal means and algorithms of behavior that allow determining the appropriate amount of the claim of a public law entity to the property of the taxpayer and ensuring the transfer of the monetary equivalent of this economic benefit to the budget system.

Since subjective tax rights and obligations, as we have established above, can be exercised only through the active behavior of the parties to the tax liability, the above mechanism is a set of algorithms for the behavior of tax liability entities using specific legal means determined by law. As such means, depending on the party to the tax liability, the law provides, for example, a tax return (and other forms of tax reporting), a requirement to pay tax, etc.

For example, the mechanism for exercising a subjective right and fulfilling the obligation to pay property tax of individuals consists of the following algorithms of behavior:

*The first option:*

- calculate the tax and send a tax notice (tax authority);
- receive a tax notice (taxpayer);
- pay the tax in the manner prescribed by law (taxpayer);
- reflect the tax as paid to the budget system (tax authority).

*The second option:*

- pay a single tax payment of an individual (EPP - further) in sufficient amount (taxpayer);
- calculate the tax and send a tax notice (tax authority);
- to offset the EPP for the payment of tax and reflect the tax as paid to the budget system (tax authority).

The legal means of the above mechanism are tax notice and payment documents. It seems permissible in some cases as a means of exercising a subjective right or performance of an obligation to consider security tax obligations (surety, pledge, bank guarantee), as well as interim measures of a non-obligation nature (for example, suspension of a bank account transaction).

The mechanism of exercising a subjective right and fulfilling a duty in a broad sense,

according to some scholars, includes the following stages:

- pre-realization: formation and establishment of rights and obligations,
- procedural implementation,
- actual implementation,
- protection of the violated right [28, p. 3].

With regard to tax rights and obligations, we can also distinguish a pre-implementation or preparatory stage aimed at facilitating the emergence and fulfillment of a tax obligation, which consists in registering taxpayers with the tax authority (registration of taxable items), as well as accumulating information about the taxpayer and his taxable items from other sources.

Procedural implementation consists in accounting and tax accounting, preparation and submission of tax reporting. In some cases, at this stage, a decision is required to recover arrears, arrears in penalties and fines. The actual realization consists in the payment of tax or its compulsory collection.

Protection of the violated right in tax relations is carried out in two forms: jurisdictional and self-defense. Jurisdictional protection is divided into judicial and extrajudicial. Self-defense is realized by refusing to fulfill the illegal requirements of the counterparty [29, p. 24].

In the law literature, there are regimes for the implementation of legal relations as a system of methods and methods of legal regulation of a person's behavior, including a special procedure for the emergence and formation of the content of rights and obligations, procedures for their implementation, the specifics of sanctions and ways of their implementation. There are normative-legal, organizational-legal, contractual-legal and law enforcement regimes of realization of the right [30, p. 152; 31, p. 78; 32, p. 101].

With regard to a tax liability, the main one is the regulatory and legal regime, since the procedure for its execution is almost entirely determined by law. However, with regard to tax liabilities based on an agreement (for example, an investment tax credit), we can talk about a mixed regime for the implementation of rights and obligations, since the procedure for the implementation of such an obligation is established by both law and contract.

#### 4. Proper fulfillment of tax obligation

Despite the regime of realization of rights and obligations in the obligation, it is always based on the principle of proper performance. The principle of proper performance of the obligation can be considered as an organized set of elements, each of which has a relatively independent and at the same time necessary for the existence of the entire system value [33, p. 116]. At the same time, there are five criteria for the proper performance of the obligation:

- Appropriate enforcers;
- Appropriate place;
- Due time;
- Proper facility;
- proper method [34, p. 534; 14, p. 37; 33, p. 116;].

It should be noted that some authors distinguish a shorter list of signs of proper execution [35, p. 43]. These criteria are quite applicable in determining the proper performance of a tax obligation.

*1) Subjects of fulfillment of tax obligation are represented by the tax creditor and tax debtor.*

*Proper debtor.* For a long time, the principle of independence of fulfillment of a tax obligation enshrined in Article 45 of the Tax Code of the Russian Federation by both scientists and practitioners was interpreted as evidence of the personal nature of the tax obligation and, thus, the impossibility of its execution by a third party, unless otherwise provided by tax legislation.<sup>3</sup>

Thus, the Constitutional Court of the Russian Federation in its ruling No. 41-O of 22.01.2004. indicated that the tax is considered to be paid independently if it is paid on behalf of the taxpayer and at the expense of his own funds.<sup>4</sup>

<sup>3</sup> By a personal obligation, we mean an obligation inextricably linked to the identity of the creditor or debtor.

<sup>4</sup> Determination of the Constitutional Court of the Russian Federation of 22.01.2004 N 41-O "On refusal to accept for consideration the complaint of an open joint-stock company "Sibirskiy Tyazhpromelectroproekt" and citizens Tarasova Galina Mikhailovna on violation of constitutional rights and freedoms by the first paragraph of paragraph 1 of Article 45 of the Tax Code of the Russian Federation» //Economics and life. 2004. № 20.

As an exception, the fulfillment of a tax obligation by a third party was allowed in the following cases:

- legal or authorized representative of the taxpayer (Articles 26 – 29 of the Tax Code of the Russian Federation);
- liquidation commission (liquidator) or founders of the liquidated organization (Article 49 of the Tax Code of the Russian Federation);
- heirs or successors of the taxpayer (Articles 44, 50 of the Tax Code of the Russian Federation);
- the guarantor or the bank that issued the guarantee, as well as the pledgiver (Articles 73 - 74.1 of the Tax Code of the Russian Federation).

Such regulation of the fulfillment of a tax obligation gave rise to a certain dissonance, a logical trap. First, if the tax liability is inextricably linked with the identity of the taxpayer and requires him to independently fulfill the obligation to pay tax, then why is it allowed to pay tax by a third party at all, even as an exception?

Secondly, in what way the personality of the taxpayer affects the essence of the tax liability, that is, the obligation to transfer money (things determined by generic characteristics) to the budget system is not clear.

It seems that the monetary obligation cannot be so related to the identity of the debtor that this will be an obstacle for the creditor in accepting the performance offered by a third party for the debtor.

In connection with the above dissonance or due to the increasing need for financial resources by the legislator, the legal regulation of the fulfillment of the tax obligation has been changed, and now it can be executed by any third party.<sup>5</sup>

Thus, the tax obligation as a general rule must be fulfilled by the taxpayer, as well as by other persons to whom the object of the tax obligation (tax) passed in the course of its execution (tax agent, bank, etc.) or on other legal grounds (representatives, successors, etc.).

At the same time, any third party has the right to fulfill the obligation to pay tax for the taxpayer on a voluntary basis, either by providing

<sup>5</sup> Federal Law of 30.11.2016 N 401-FZ "On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation . 2016. № 49. Art. 6844.

interim measures (pledge or surety), or directly by paying tax.

Do not confuse the fulfillment of a tax obligation by a third party and the transfer of debt. The latter involves the complete termination of the status of a tax debtor in one person with its simultaneous occurrence in another person. Such a transfer of status in tax relations is possible only in the order of universal succession (reorganization of legal entities or inheritance of an individual).

Contractual forms of debt transfer in tax law are not applicable. And the existence of the right of any third party to fulfill a tax obligation for the taxpayer if the tax creditor has an obligation to accept such execution deprives this issue of any relevance in tax law.

*Proper creditor.* Public-law entities as a tax creditor are represented in tax relations by a single authorized body - the Federal Treasury and its territorial bodies, which provides cash services to all budgets of the budget system, including the conduct and accounting of all operations on budget revenues, as well as the distribution of tax revenues between the budgets of the budget system. In other words, the above body is authorized to receive all taxes to the budget system.<sup>67</sup>

Therefore, despite the plurality of persons on the side of the tax creditor (the Russian Federation, the subjects of the Russian Federation and municipalities), the debtor has practically no problem of choosing the appropriate tax creditor.

On the part of the taxpayer, in order to fulfill the tax obligation, it is required to correctly determine the object (specify the budget classification code - CSC) and the place of fulfillment of the tax obligation (specify the code of

the all-Russian classifier of the territories of municipalities - OKTMO), as well as indicate the bank details of the Federal Treasury body.

Incorrect indication of the CSC and (or) OKTMO code by the tax debtor may lead to the fulfillment of a tax obligation to an improper creditor. For example, if the CSC transport tax is indicated instead of the BCC of land tax, the tax will be credited not to the budget of the subject of the Russian Federation, but to the budget of the municipality. Or incorrect indication of the OKTMO code can lead to the receipt of local tax to the budget of an improper municipality.

However, the entry of a tax payment into the budget system, even when credited to an improper budget, leaves the tax debtor with the opportunity to clarify the purpose of the payment in the manner prescribed by Art. 45 of the Tax Code of the Russian Federation and fulfill the tax obligation properly.

If the violations are eliminated through the procedure for clarifying the purpose of payment, then such improper fulfillment of a tax obligation cannot be the basis for bringing the tax debtor to legal liability and charging penalties.<sup>8</sup>

Only incorrect indication of bank details of the federal treasury body in the performance of a tax obligation, as a result of which the tax does not enter the budget system, leads to non-fulfillment of the tax obligation by the tax debtor.

*2) Place of occurrence of the tax liability.* The place of occurrence of the tax liability is of fundamental importance for determining the appropriate tax creditor in the performance of the obligation to pay regional and local taxes, as well as federal taxes, in respect of which the legislation establishes the standards for deductions to the lower budgets of the budget system.

The place of occurrence of a tax liability is predetermined by the place of occurrence (location) of the subject of taxation (sale of goods, immovable property, etc.) and determines the place of fulfillment of the tax obligation: regional and local taxes are subject to crediting to the budget at the place of origin (location) of the subject of taxation.

<sup>6</sup> Cm. p. 5.12 of the Regulations on the Federal Treasury, approved by the Decree of the Government of the Russian Federation of 01.12.2004 No. 703 "On the Federal Treasury" / Collected Legislation of the Russian Federation. 2004. № 49. Art. 4908.

<sup>7</sup> See: order of the Ministry of Finance of Russia of 18.12.2013 No 125n "On approval of the Procedure for accounting by the Federal Treasury of revenues to the budget system of the Russian Federation and their distribution between the budgets of the budget system of the Russian Federation" // Rossiyskaya Gazeta. 28 February 2014.

<sup>8</sup> Cm. Resolution of the FAS of the North Caucasus District in case No. A32-26703/2018 of 22.05.20019. ATP "ConsultantPlus".

To ensure the proper fulfillment of the tax obligation in the proper place, the taxpayer (tax agent) in the payment details must indicate the code of the all-Russian classifier of municipalities (OKTMO) of the municipality in the territory of which the subject of taxation arose. On the basis of this information, the bodies of the Federal Treasury ensure the transfer of tax to the relevant budget of the budget system.

3) *Due time.* As a general rule, the tax must be paid within the period established by the legislation on taxes and fees.

It should be noted that the deadline for payment of tax provided for by the current legislation can be changed to a later one by granting a deferral (installment) or an investment tax credit. In this case, the requirement of timely payment will be met, despite the violation of the statutory deadline for payment of tax. The term of payment of tax is not subject to change to an earlier one, since the taxpayer initially has the right to fulfill his obligation ahead of schedule.

When the state conducts a tax amnesty, the requirement of timeliness of the fulfillment of a tax obligation is often overcome with the help of a legal construction - fiction. For example, in accordance with Federal Law No. 269-FZ of 22.12.2006. "On the simplified procedure for declaring income by individuals" in case of payment of a declaration payment, taxes for past tax periods are considered paid in a timely manner.<sup>9</sup>

4) *Proper facility.* The object of the tax liability is an economic good in the form of a tax that passes from the tax debtor to the tax creditor.

As a general rule, the tax obligation is fulfilled in the currency of the Russian Federation. If the tax base is expressed in foreign currency, the amount of tax (fee) payable is translated into rubles at the rate of the Central Bank of the Russian Federation on the day of payment of the tax.

The Tax Code of the Russian Federation may provide for exceptional cases when tax (fee) can be paid in foreign currency. Currently, such an exception is provided for in Art. 333.29 paragraph 5, according to which the state fee for the issuance, extension of validity and restoration in exceptional

cases of visas to foreign citizens and stateless persons by representative offices of the federal executive body in charge of foreign affairs issues located at checkpoints across the State Border of the Russian Federation can be paid in foreign currency at the rate, established by the Central Bank of the Russian Federation on the date of its payment.

Due to the periodic nature of the payment of tax and the existence of various taxes and taxation systems, the object of the tax liability must be individualized in relation to the type of tax and the payment period.

Individualization of the tax payment for the purpose of subsequent crediting to a specific budget of the budget system of the Russian Federation is made by specifying the code of budget classification (CBC) and the tax period.

5) *Proper method.* Tax legislation in Art. 45 of the Tax Code of the Russian Federation provides for the following ways of fulfilling a tax obligation:

1) by means of payment of cash - this method is intended for the fulfillment of a tax obligation by individuals;

2) through the payment of non-cash funds - a universal way, but is the main one for organizations and individual entrepreneurs;<sup>10</sup>

3) through intra-budgetary settlements - the method used by organizations that opened a personal account, when paying tax to the same budget that finances the taxpayer;

4) by offsetting counterclaims in case of excessive payment (collection) of tax payments - a universal method intended for all taxpayers who are creditors in tax liabilities from unjust enrichment, or individuals who have paid a single tax payment;

5) by means of electronic means - this method is intended for the fulfillment of a tax obligation by individuals;

6) through the transfer of property in kind - a method used in individual cases to support the investment activities of organizations (currently used only in production sharing agreements);

7) by withholding funds - when paying tax through a tax agent;

<sup>9</sup> Collection of legislation of the Russian Federation. 2007. № 1. Art. 32.

<sup>10</sup> The peculiarity of this method of fulfilling a tax obligation is that the tax obligation in this case is fulfilled not only through the active actions of the taxpayer, but also by the tax authority.



8) by offsetting a single tax payment of an individual - a method intended for simplified payment of property taxes of individuals and personal income tax.

Since the tax liability, as established above, is a means of realizing the public fiscal interest, the moment of its proper execution should be considered the moment of receipt of the tax payment at the disposal of the state-authorized body - the territorial body of the federal treasury (or the termination of the counterclaim by offset). At the time of crediting funds to the treasury account, tax relations are completed (Article 40 of the BC of the Russian Federation) and the fulfillment of the tax obligation is completed.<sup>11</sup>

Accordingly, the failure to fulfill the tax obligation will be such a violation that led to the non-receipt of funds in the budget system.

### **5. Conclusion**

As a result of the study of the mechanism of fulfillment of a tax obligation, we come to the conclusion that the fulfillment of a tax obligation almost always requires the mutual and agreed will of the two parties to properly determine its object, place of execution and other conditions. For example, such a legislative mechanism for coordinating the will of the parties is provided for in Art. 45 of the Tax Code of the Russian Federation when clarifying the purpose of a tax payment, as well as in Art. 78 of the Tax Code of the Russian Federation when returning and offsetting overpaid taxes. In addition, for the fulfillment of a tax obligation, the most important is the fact of changing (terminating) the rights and obligations of its parties in relation to the economic good that is the object of such an obligation.

Based on the foregoing, it can be concluded that the legal essence of the fulfillment of a tax obligation can be characterized as a transaction of its parties aimed at mutual termination and the emergence of the rights of its parties.

Like any transaction, the fulfillment of a tax obligation will be most effective in conditions of legal certainty and consistency of the behavior of the parties.

In a civil obligation, in order to establish whether its performance is appropriate, it is necessary to compare it with the conditions of the obligation itself (fair for contractual forms) and the requirements of legislation or customs of business turnover. In most cases, there is only a legislative criterion (paragraph 3 of Article 45 of the Tax Code of the Russian Federation) and only in respect of rare forms of contractual tax obligations (for example, an investment tax credit) the terms of the relevant agreement apply.

At the same time, the legislative regulation of the tax obligation is focused on the duties of the taxpayer and the powers of the tax authority, without paying due attention to the rights and other forms of permissible behavior of the tax debtor, which often generates situations of legal uncertainty in the process of fulfilling the obligation.

Payment of an additional amount of tax, even without penalties and fines, may be a burdensome obligation for the taxpayer, knowing about which in advance, he could well not enter into an appropriate relationship. Both the financial authority and the fiscal authority in the tax liability, in fact, are authorized representatives of the tax creditor, whose contradictory behavior in the performance of the obligation is unacceptable.

A certain guarantee against such behavior for taxpayers may be tax monitoring, which expands the taxpayer's ability to interact with the tax authority in order to eliminate the uncertainty of tax and legal regulation. However, this mechanism is very burdensome for the taxpayer because of which, as well as due to legislative restrictions, it is not available for most of them.

The uncertainty of the boundaries between the proper and improper performance of a tax obligation objectively predetermines the need for other mechanisms that allow a bona fide taxpayer to

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<sup>11</sup> The moment of fulfillment of the obligation to pay tax should not be confused with the moment of fulfillment of the tax obligation. The fulfillment of the obligation to pay tax by the taxpayer does not lead to the fulfillment of a tax obligation (except for the fulfillment by offset), but to the transition of the fulfillment of a tax obligation to the next stage (for example, the fulfillment of the obligation of a tax agent or bank). Only such fulfillment of a tax obligation, which leads to the receipt of funds into the budget system or the termination of counterclaims to return funds from the budget, leads to the fulfillment of the tax obligation as a whole.

obtain guarantees that his actions will not be further qualified by the tax administration as an abuse of law. In Western countries, for these purposes, the procedure of fiscal rescript or private ruling in the United States is used [36, p. 62].

In Germany, the fiscal rescript exists in the form of consultations on individual taxes with the fiscal control authority. In Sweden, it takes the form of a preliminary opinion on the tax consequences of the transaction, which is given by a special body - the Tax Law Commission. Preliminary conclusion can be requested by both the taxpayer and the tax administration [37, p. 38 - 44]. In principle, these mechanisms represent a transformed mechanism of estoppel – a ban on contradictory behavior, long known to civil law.

To protect the rights of bona fide taxpayers, it seems necessary in the tax legislation to also enshrine a kind of ban on contradictory behavior in the process of fulfilling a tax obligation. For example, if the taxpayer fulfilled a tax obligation in accordance with the explanations of the financial authority received in the prescribed manner, the tax authority cannot demand other performance. The prohibition on the recovery of penalties in such cases, currently provided for by the tax legislation (Article 75 of the Tax Code of the Russian Federation), is not a sufficient guarantee of the rights of a taxpayer who plans his economic activity based on the explanations received by the competent state body.

## REFERENCES

1. Grachev V.V. On the question of the legal nature of the fulfillment of an obligation. *Zakon*, 2012, no. 9, pp. 137–146. (In Russ.).
2. Tolstoi V.S. *Execution of obligations*. Moscow, 1973. 208 p. (In Russ.).
3. Sergeev A.P. (ed.) *Civil law*. Moscow, 2008. Vol. 1. 1006 p. (In Russ.).
4. Sarbash S.V. *Fulfillment of a contractual obligation*. Moscow, 2005. 636 p. (In Russ.).
5. Vavilin E.V. Secondary Right in the Mechanism of Exercise of Rights and Performance of Duties. *Vestnik Saratovskoi gosudarstvennoi akademii prava*, 2009, no. 1 (65), pp. 77–80. (In Russ.).
6. Kolodub G.V. Selected aspects of the methodology for the study of the execution of civil legal obligations. *Yurist*, 2013, no. 5, pp. 33–36. (In Russ.).
7. Krasavchikov O.L. (ed.) *Soviet civil law*. Moscow, 1985. Vol. 1. 544 p. (In Russ.).
8. Braginskiy M.I., Vitryanskiy V.V. *Contract Law: General Provisions*. Moscow, 1997. 847 p. (In Russ.).
9. Baygusheva Yu.V. *Bank guarantee*, Cand. Diss. Thesis. St. Petersburg, 2008. 24 p. (In Russ.).
10. Rodionova O.M. On the question of the legal nature of the fulfillment of obligations. *Pravo i ekonomika*, 2011, no. 4, pp. 65–67. (In Russ.).
11. Kolodub G.V. The problem of correlation of legal categories (phenomena) “execution of a civil obligation”, “execution of a civil obligation” and “execution of a contract”. *Yurist*, 2013, no. 24, pp. 38–43. (In Russ.).
12. Vitryanskiy V.V. The concept and parties of the obligation. Execution of obligations. *Khozyaistvo i pravo*, 1995, no. 8, pp. 3–20. (In Russ.).
13. Gavze F.I. *Obligations law (general provisions)*. Minsk, Belarusian State University Publ., 1968. 128 p. (In Russ.).
14. Dolinskaya V.V. Subjective rights, their exercise and protection. *Zakony Rossii: opyt, analiz, praktika*, 2015, no. 11, pp. 3–14. (In Russ.).
15. Gribanov V.P. *Exercise and protection of civil rights*. Moscow, 2001. 411 p. (In Russ.).
16. Gruzdev V.V. Exercise of subjective civil rights and execution of civil obligations. *Zakony Rossii: opyt, analiz, praktika*, 2017, no. 8, pp. 91–96. (In Russ.).
17. Vavilin E.V. Civil relations in the mechanism of the implementation of subjective rights and the execution of subjective obligations. *Zhurnal rossiiskogo prava*, 2007, no. 7, pp. 49–59. (In Russ.).
18. Vinnitskiy D.V. *Russian tax law: problems of theory and practice*. St. Petersburg, Yuridicheskii tsentr Press, 2003. 397 p. (In Russ.).
19. Matuzov N.I. *Personality. The rights. Democracy. Theoretical problems of subjective law*. Saratov, 1972. 292 p. (In Russ.).
20. Vavilin E.V. The concept and mechanism for the exercise of civil rights and the execution of duties. *Zhurnal rossiiskogo prava*, 2004, no. 5, pp. 35–43. (In Russ.).
21. Polishuk I. The concept and signs of tax obligation. *Sovremennoe pravo*, 2007, no. 7, pp. 13–19. (In Russ.).
22. Yakushev A.O. Subjective rights and interests in tax law. *Finansovoe pravo*, 2006, no. 9, pp. 29–32. (In Russ.).
23. Kopina A.A. Prevention of violations of tax legislation: new “ideas” of the Federal Tax Service of Russia. *Nalogi*, 2018, no. 17, pp. 1, 3–6. (In Russ.).
24. Karaseva M.V. *Financial legal relationship*. Voronezh, Voronezh State University Publ., 1997. 304 p. (In Russ.).
25. Tarkhov V.A. *Soviet civil law*. Saratov, 1978. 230 p. (In Russ.).
26. Aliev T.T. The concept and content of the exercise of subjective right and the fulfillment of a legal obligation in civil legal relations. *Rossiiskaya yustitsiya*, 2016, no. 1, pp. 7–9. (In Russ.).
27. Vavilin E.V. The action of the mechanism for the exercise of rights and performance of duties. *Arbitrazhnyi i grazhdanskii protsess*, 2009, no. 5, pp. 2–4. (In Russ.).
28. Nasarov V.N. Constitutional framework for the protection of taxpayers' rights. *Finansovoe pravo*, 2007, no. 9, pp. 22–26. (In Russ.).
29. Alekseev S.S. *General theory of law*. Moscow, 1981. Vol. 1. 360 p. (In Russ.).
30. Dolinskaya V.V. *Business Law*, Textbook. Moscow, 2004. 208 p. (In Russ.).
31. Popondopulo V.F. *Legal regime of entrepreneurship*. St. Petersburg, 1994. 208 p. (In Russ.).

32. Ioffe O.S. *Obligatory law*, Selected Works, vol. 3. St. Petersburg, 2004. 837 p. (In Russ.).
33. Mozolin V.P., Maslyaev A.I. (eds.) *Civil law. Part one: Tutorial*. Moscow, Yurist Publ., 2005. 719 p. (In Russ.).
34. Sushkova O.V. Grounds for the fulfillment of obligations. *Sovremennoe pravo*, 2016, no. 8, pp. 41–46. (In Russ.).
35. Vinnickiy D.V. The principle of good faith and abuse of law in the field of taxation. *Pravo i ekonomika*, 2003, no. 1, pp. 59–64. (In Russ.).
36. Pålsson R. *Introduction to tax law*, 2nd ed. Uppsala, Iustus Forlag, 2001. 216 p. (In Swedish).

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