

**NORMATIVE ACTS IN THE SYSTEM OF NATIONAL TAX SECURITY PROVISION\*\*****Kirill V. Maslov***Dostoevsky Omsk State University, Omsk, Russia***Article info**

Received –

2021 March 03

Accepted –

2021 October 10

Available online –

2021 December 24

**Keywords**

Tax security, the law on security,  
the Tax Code, the law on tax  
authorities, legal expertise

The subject. The article characterizes the role of Russian Constitution, federal laws and by-laws in ensuring tax security.

The purpose of the article is to identify legal norms that ensure the tax security of the state, and to confirm the hypothesis that such norms are effective in systemic interaction.

The methodology. The author uses methods of system analysis of scientific papers devoted to the provision of various types of security. Formal logical and legal interpretation of Russian regulatory legal acts is used also.

The main results. Regulatory documents in the field of tax security can be classified into: the Constitution of the Russian Federation at the highest level; program documents (conventions, strategies, charters, concepts, programs, doctrines, standards, directives) as acts of the first level, the legislation of the Russian Federation and its constituent entities is at the second level; departmental regulatory legal acts are at the third level. The law on security should be an act of direct action that determines the content of the management activities of public authorities to ensure security by fixing its goals, principles, the most general forms and means of implementation. The basis of legal provision of tax security at the legislative level should be defined in the federal law on security as well as in the federal law "On Tax Authorities of the Russian Federation" (in intra-governmental relations context because tax authorities are the main subjects of tax administration) and in the Russian Tax Code (concerning relations between public administration bodies and private entities). Any draft legislative acts affecting issues of tax relations and economic management should be examined for compliance with national interests in the field of tax security and the effectiveness of minimizing threats. Each legislative act should take into account the implementation of the goals and principles of ensuring tax security (as well as other types of security) enshrined in the concept document. Such expertise is possible in the process of approving draft laws by the Russian Government as well as when registering relevant by-laws by the Russian Ministry of Justice

Conclusions. The Russian Constitution should consolidate a unified approach to the essence of security as a whole. Legislative acts (first of all, the laws on security, on tax authorities, the Tax Code of the Russian Federation) should provide for the main directions of counteracting threats to tax security arising in the relevant areas of regulation. By-laws and regulations are designed to fix specific managerial ways of dealing with such threats.

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

## 1. Introduction.

The legislation ensuring tax security of the state is largely fragmented. Special legal norms that ensure tax security of the state are part of regulatory acts that regulate security, public administration, and tax relations in general. Such norms can be found at the intersection of the above institutions of legislation. An urgent task is to identify these norms and assess their systemic properties in order to be able to assess whether the existing legal regulation adequately reflects the elements of the mechanism for ensuring the tax security of the state.

The idea of security is inherent in public administration in various spheres [1]. The tax sphere, where various aspects of tax administration should be permeated with this idea, is no exception. A harmonious and consistent regulatory framework is the basis of state policy in the field of security. S.N. Maximov [2], in relation to economic security, includes "the consolidation of an interconnected and coordinated set of goals, objectives, principles, and main directions of their functioning in the competence and responsibility of the state authorities of the Russian Federation" in its legislative support. Scholars have identified important elements, but in order to achieve the state of the system, regulations reflecting various aspects of tax security must disclose them through constructions of interests, threats, subjects and ways of ensuring in relation to each area of security, including tax security.

## 2. Classification of sources of regulatory provision of tax security.

E.A. Chelysheva identifies six levels of regulation:

1) the Constitution of the Russian Federation, legislative acts of the federal level, decrees of the President of the Russian Federation and resolutions of the Government of the Russian Federation on taxation, customs payments, as well as paid environmental management;

2) legal acts of the heads of subjects of the Federation, as well as municipal legal acts;

3) acts of other state bodies of all levels of government;

4) acts of enterprises and organizations;

5) judicial doctrines and explanatory documents;

6) international treaties and agreements in the field of taxation [3].

The advantage of the above classification is the recognition of the importance of each level of public administration in ensuring tax security. At the same time, it should be noted that there is no logical basis for such ranking of legal acts (regardless of their legal force and territory of operation), as well as attribution to the sources of ensuring tax security of acts of customs and environmental legislation. The classification of normative documents in the field of national security proposed by O.A. Chelpachenko (program documents (conventions, strategies, charters, concepts, programs, doctrines, standards, directives) seems to be more correct as acts of the first level, the legislation of the Russian Federation and its subjects is at the second level; departmental regulatory legal acts are at the third level [4]. With regard to tax security, the above classification should be supplemented with the highest level (the Constitution of the Russian Federation and ratified international treaties), as well as municipal legal acts as an element of the second level.

## 3. The significance of the Constitution of the Russian Federation in the regulatory provision of tax security of the state.

The fundamental importance in the legal provision of tax security is the Constitution of the Russian Federation as an act of supreme legal force.

The Constitution of the Russian Federation, establishing in paragraph "m" of Article 71 that defense and security are under the jurisdiction of the Russian Federation, builds a narrowly militarized discourse around the latter (as a state of protection from military, terrorist threats or threats arising from the activities of intelligence services of foreign states). This formulation does not seem to be entirely successful, since security does not exist outside the context of the object of security, which includes not only the neutralization of military

threats, but also risks in every sphere of management: socio-political, socio-cultural and, of course, economic, including tax. At the same time, the Constitution assigns the legal regulation of many branches of government within these spheres to the joint jurisdiction of the Russian Federation and its subjects. For example, security is attributed to the exclusive competence of the Russian Federation, but personnel policy in law enforcement agencies belongs to the joint jurisdiction of the Russian Federation and its subjects (paragraph "l" of Part 1 of Article 72 of the Constitution of the Russian Federation), as well as the establishment of general principles of taxation and administrative legislation in general (paragraphs "i", "k" of Part 1 of Article 72 of the Constitution of the Russian Federation). Ensuring environmental and public safety are also referred to paragraphs "b" and "d" of Article 72 of the Constitution of the Russian Federation to the sphere of joint responsibility. Thus, with a completely reasonable consideration of security in a broader context than the military, a contradiction arises regarding the levels of the control system that provide it. At the same time, it is obvious that ensuring tax security is impossible without the exercise of their powers by the state administration bodies of the subjects of the federation and local self-government bodies, outside the coordinated work of the public power system as a whole. Therefore, it is not enough to include only federal acts among the sources of national security in general (and tax security in particular), and the fundamental approach to security in the Basic Law requires clarification.

An unambiguous understanding of the constitutional essence of security is necessary for the correct application of the related norms of various branches of law based on constitutional provisions, and such a need is actualized with the adoption of amendments in 2020. Thus, paragraph 1 of Article 83 of the Constitution obliges the President of the Russian Federation to appoint and dismiss the heads of federal executive bodies responsible for state security and public security issues only after consultations with the Federation Council. The corresponding norm on the rights of the Federation Council is contained in paragraph

"k" h. 1 article 102. Are we talking only about the Director of the FSB and the Minister of Internal Affairs? But the head of the executive authority in charge of internal affairs issues is mentioned in this paragraph separately from the one in charge of public security issues. Accordingly, we should proceed from the interpretation of security in a broad sense, and we should be talking about the heads of a larger number of federal executive authorities in charge of state security issues of various types? But which ones?

We believe that the text of the Constitution requires a methodologically correct approach to security as a goal of public administration and legal regulation. Security in a broad sense should be considered as a methodological basis for legal regulation. In a narrow sense, we can talk about different types of security - as a sphere of protection from the most significant threats in various spheres of public administration [5]. The provision of each type of security, understood in such a narrow sense, should relate to the powers of various bodies and officials. Therefore, the implementation of proposals to introduce a special section on national security into the Constitution of the Russian Federation would lead to chaos in regulation due to the too different legal nature of measures to counter security threats of different types.

It is the constitutional principles that should act as a guideline for regulating security issues in sectoral legal acts.

At the same time "there is no well-thought-out correlation between the basic law of the country and the legal norms regulating economic activity." [6].

Regulation of certain aspects of security of various types is carried out through more than seventy federal laws, two hundred decrees of the President of the Russian Federation, about five hundred resolutions of the Government of the Russian Federation, and other acts, that is, it is largely fragmented and mainly concerns private threats [7]. Despite a significant number of regulatory acts, scientists rightly state the absence of security mechanisms, the general nature of the components of regulation and control in the field of security, the unrealized need for classification of specific threats in relation to the interests infringed

by them [8].

#### **4. The role of federal legislation in ensuring the tax security of the state.**

The main regulatory act designed to comprehensively regulate security issues is Federal Law No. 390-FZ of December 28, 2010 "On Security".

Widely discussed in science is the absence of a proper definition of the term "security" in the law. However, such definitions, built on a similar model, are present in the Strategies of certain types of security. A more serious omission is that the law ignores the criteria and types of security, as well as the conciseness of the principles of its provision, the lack of comprehensive regulation of the necessary elements of the security system, including insufficiently clear regulation of the activities of special services and their coordination with other subjects of public administration (including taxation management).

The issues of tax security in this law should not be given attention corresponding to its role in government. The Law only mentions the application of socio-economic measures by the authorities in combination with other measures as a principle of ensuring security (paragraph 3 of Article 2) and the content of state policy in this area (part 1 of Article 4).

The elimination of the described defects is possible by specifying and filling in the real content of the current law. The way proposed by scientists to replace it with the federal law "On National Security of the Russian Federation" may turn out to be a "game of words", a change of form without improving the essence of regulation.

Codification of norms on all types of safety (proposed in the literature) it is impossible without losing the quality of legal impact due to the diverse nature of threats and countering them [11].

The proposals to give the law on security the status of a constitutional [12] one reasonably emphasize the maximum importance of security issues in the legal system of the state, but they poorly correlate with the provisions of Part 1 of Article 108 of the Basic Law, which prescribes the adoption of federal constitutional laws only on issues provided for in the Constitution itself. In

addition, initiatives to consolidate in such a constitutional law the methods of activity of each link of the law enforcement system do not fully correspond to the purpose and level of regulation, may lead to the erosion of the subject of the law and the inability to respond promptly when the nature of threats to national security changes [13].

The law on security should be an act of direct action that determines the content of the management activities of public authorities to ensure security by fixing its goals, principles, the most general forms and means of implementation. Moreover, in the current version, even Articles 11 and 12 of this law, describing the powers and functions of the authorities, are blank and therefore extremely concise. Thus, in ensuring each type of security, this law should play, first of all, a methodological role, while the specification of the functions and means of ensuring security of each type is the prerogative of the relevant law in the relevant sphere of public administration.

Legislative acts are the most important source of ensuring tax security. About an independent institute of tax security (and even economic security, despite the opinions of some scientists) there is no need to speak as a subsystem of legislation, since it does not act as a separate subject of legal regulation, which could be isolated from other managerial relations in the state, but as a goal, a methodological basis for regulating relations in the field of state taxation management. Tax security as an interdisciplinary economic and legal phenomenon is ensured through the coordination of not only tax, civil law, criminal procedure legislation (as some scientists note), but, of course, and primarily through the provisions of administrative legal acts. It is also impossible to single out the administrative-legal or financial-legal institution of tax security, since the norms that ensure it are united by the purpose of regulation, and not by the subject that is differentiated (in relation to administrative law - intra-administrative relations between various public administration bodies; in relation to financial law - external relations of subjects of public administration and private participants in tax relations).

Scholars who study certain types of security, as a rule, insist on the adoption of a profile law

devoted to such issues [16], which would make it possible to give complexity to regulation, facilitate the identification of goals and directions of public administration in the relevant area [17]. With regard to tax security, such a law may turn out to be declarative and non-objective in many respects due to a wide range of socio-economic relations of various legal nature affecting it. It is more important to take into account threats, indicators and principles of ensuring tax security in the daily work of public administration bodies on the adoption and implementation of legal norms. The current regulatory legal acts conceptually relate to private threats or, in many cases, do not take into account the threat protection paradigm at all.

The basis of legal provision of tax security consists of legislative norms reflecting the status of participants in relations in the field of tax security (legal bases, principles, organization, directions, powers, forms and means of their activities, as well as the procedure for monitoring and supervision of legality and, in relation to management bodies, the effectiveness of their activities). These norms are not systematized and are dispersed according to many federal laws and legal acts of various legal force. Among the main ones: the Tax Code of the Russian Federation, federal laws "On Tax Authorities", "On Service in the Customs Authorities of the Russian Federation", federal laws regulating the legal foundations, principles and means of special services (Federal Law No. 40-FZ "On the Federal Security Service"), Federal Law "On the General Principles of the Organization of Legislative (Representative) and Executive Bodies of State Power of the Subjects of the Russian Federation", the Criminal Code of the Russian Federation, the Code of Administrative Offenses of the Russian Federation.

The basis of legal provision of tax security at the legislative level, along with the federal law on security, should be, based on the subject of regulation, the Federal Law "On Tax Authorities of the Russian Federation" (in relation to intra-governmental relations, since tax authorities are the main subjects of tax administration) and the Tax Code of the Russian Federation (in relation to relations between public administration bodies and private entities). The analysis of the content of the

first law indicates the need for its conceptual refinement in order to clearly consolidate the threats to tax security, which the activities of tax authorities should be aimed at minimizing, as well as indicators of its effectiveness.

It is in the Law on Tax Authorities, and not in the Tax Code (as suggested by scholars [18]), that measures should be specified to ensure the tax authorities' own security as the most important element of the country's tax security. In addition, there is an urgent need for a more complete reflection of the administrative and legal specifics of the activities of tax authorities, namely, the consolidation of special rules that take into account the essence of tax security in relation to the general norms of legislation on public civil service, on the provision of public services by tax authorities, on interaction with other authorities. All of the above applies equally to the federal law "On Service in the Customs Authorities of the Russian Federation", as well as to the laws on the police and the federal security service.

The Tax Code of the Russian Federation does not assign the purpose of ensuring tax security to tax authorities, although some scientists hold a different opinion [19]. In the first part of the code, the term under study is not mentioned at all, and in the second it is used in the context of establishing tax mechanisms for ensuring other types of security (fire, industrial, etc.). Despite their widespread use in the practice of state taxation management, tax legislation does not contain definitions of the concepts of tax security, tax risks and other interrelated categories [20].

The focus on the consistent elimination of threats to the tax security of the state, of course, can be traced in the Tax Code of the Russian Federation (since it is this legislative act that is designed to systematically regulate relations arising exclusively in the field of taxation), but only indirectly derived from its content.

The adoption of two parts of the Tax Code in the Russian Federation in the late 1990s and early 2000s cannot be assessed otherwise than as a revolution in eliminating threats to tax security. This assessment is due to the following characteristics of the Tax Code of the Russian Federation:

- for the first time, the principles of taxation

were consolidated in it, developed taking into account the verified legal positions of the Constitutional Court of the Russian Federation and aimed at protecting the right of taxpayers to freely carry out entrepreneurial activity. The principle of interpretation of all irremediable doubts, contradictions and ambiguities of legislation in favor of the taxpayer has acquired particular importance in law enforcement activities;

- the code restricted both the subordinate rulemaking and the rulemaking of the subjects of the federation and municipalities in the tax sphere, which previously led to an uncontrolled weighting of the tax burden;

- the code has regulated the rights and obligations of taxpayers and tax administration in procedural relations;

- the Code fixed economically justified elements of specific taxes (for example, the proportional - for twenty years - the rate of personal income tax; an open list of expenses that reduce the tax base for corporate income tax).

The potential inherent in the Tax Code of the Russian Federation makes it possible in many aspects to adequately respond even to newly emerging challenges.

A separate group consists of laws that define the activities of public administration bodies to minimize certain types of threats to tax security of various nature. Among them, one can single out, in particular, Federal Law No. 115-FZ "On countering the legalization (laundering) of proceeds from crime and the financing of terrorism." This law provides for the powers of Rosfinmonitoring, as well as the public obligations of financial organizations to counteract the underestimation of the tax base by making transactions that do not have a reasonable business purpose, including using foreign jurisdictions. Such powers, without being attributed to tax administration in the strict sense, significantly minimize threats, including the tax security of the country.

Federal constitutional laws regulating the state of emergency and martial law play a special role in ensuring tax security. In the current version of these acts, the issues of ensuring tax security in the establishment of appropriate administrative and legal regimes are not specifically defined. As

the experience of overcoming the coronavirus pandemic in 2020 shows, the availability of pre-developed and legislatively fixed principles of functioning of the public administration system (including taxation) is of fundamental importance for prompt and effective regulation in emergency situations.

### **5. By-laws in the system of ensuring the tax security of the state.**

The subordinate activity of executive authorities is so important in ensuring economic and, in particular, tax security that some scientists reduce to it, in general, administrative and legal regulation in this area [21]. Such a position can be considered a narrow approach to the administrative and legal provision of tax security.

Resolutions of the Government of the Russian Federation and acts of federal executive authorities ensure the implementation of the provisions of legislative norms in the field of tax security, giving them the necessary specification in order to maximize the effective implementation of the legitimate interests of the individual, society and the state. A feature of such acts in the field of tax security is the restriction of subordinate rulemaking in the absence of direct legislative delegation, provided for in Article 4 of the Tax Code of the Russian Federation. And if such restrictions seem quite justified for acts regulating relations between tax administration bodies and taxpayers, then they should not apply to relations within the taxation management system (also described in the Tax Code of the Russian Federation, at least in terms of information exchange). Otherwise, without affecting the rights of citizens in any way, it may lead to the impossibility of operational organization and restructuring of the tax administration system when threats to tax security change.

The leading role in the system of by-laws ensuring tax security is played by acts of the Government of the Russian Federation as a body of general competence, as well as the Ministry of Finance of Russia and the Federal Tax Service of Russia as the main administrative bodies. The Government of the Russian Federation, as the highest executive authority in the country, should provide for a regulatory procedure for coordinating

the efforts of various state tax administration bodies to ensure tax security. It is at this level of law-making, and not at the level of federal law (as it is proposed, for example, by S.V. Tropin [22]) problems and gaps in the managerial interaction of tax administration bodies with each other and with other departments can be assessed and resolved most promptly and authoritatively.

However, in the area under study, legal acts of other ministries and departments are also of significant importance, to the extent that they affect threats to tax security that have an industry nature. Currently, in the legal acts developed by each department, the interests of the relevant department are often prioritized, which do not coincide with the interests of other governing bodies or with national ones.

Departmental acts can only effectively implement their security functions when they are adopted in accordance with the established procedure in an appropriate form in accordance with strategic objectives and reflect specific current threats to tax security by methods appropriate to the nature of the threats and the powers of the issuing authorities.

A special group of subordinate sources of ensuring tax security consists of regulations on the relevant public administration bodies, specifying their administrative and legal status, fixing the foundations of control and supervision over the implementation of the established mandatory security rules, as well as the provision of public services related to ensuring tax security. The regulations also regulate the activities of advisory and coordinating bodies in the field of security, including tax (although taxation issues are not directly mentioned in them): The Security Council of the Russian Federation and its Interdepartmental Commissions on Security in the Economic and Social Sphere, on strategic planning issues. It should be noted that until today a separate Federal law "On the Security Council" has not been adopted, as provided for in paragraph "g" of Article 83 of the Constitution of the Russian Federation. Its appearance would make it possible to fill the functioning of this body with more significant content, to strengthen its role in the public administration system, both in terms of the

management of this system and the coordination of its elements, which is especially important for the security of the tax service with its multifactorial threats.

The functions of state taxation management bodies should be fixed in their provisions, taking into account the need to anticipate, prevent threats to tax security, stop their action and restore the state of the management system in case of their implementation. The regulatory framework for ensuring security in the financial sector should not just correspond to the level of threats, but outpace the development of illegal financial practices. The implementation of the measures stipulated in each such act should be effectively ensured by the complex of powers of the relevant authorities, including the use of state coercion against those whose behavior threatens tax security. Administrative regulations for the provision of public services and interdepartmental interaction, as well as interdepartmental agreements, play a special, albeit indirect, role in the legal provision of tax security.

## **6. The importance of regional and municipal rulemaking for ensuring the tax security of the state.**

It is impossible to lose sight of the regulatory legal acts adopted in the subjects of the federation and municipalities. If federal acts determine the priorities of national security, the vectors of its provision and development, as well as the general mechanism of implementation, then at the level of the subjects of the federation, with regard to tax security, specific forms and methods of its provision by regional authorities, as well as the procedure for their interaction in this area with local self-government bodies should be fixed. It is difficult to agree with the proposals for the adoption of model laws of the subjects of the federation on internal security, since such a law would have to prescribe measures to counter the composition of threats that are too heterogeneous for one act. At the same time, due to the level of regulation, such a law should not have a framework character.

The entire functioning of the economic security system, of course, is not limited to "conducting an examination of the adopted regulatory legal acts

and state decisions on financial and economic issues from the position of protecting national interests" [27] in the relevant area. At the same time, such expertise is an essential element of the law-making activities of public administration bodies to ensure, among other things, tax security. "The lack of expertise and evaluation of legislation from the point of view of financial security criteria"[28] is reasonably recognized as a dangerous negative trend in lawmaking.

Taking into account the diverse nature of threats to tax security, any draft legislative acts affecting issues of tax relations and economic management should be examined for compliance with national interests in the field of tax security and the effectiveness of minimizing threats. Each legislative act should take into account the implementation of the goals and principles of ensuring tax (as well as other types of) security enshrined in the concept document. Such expertise is possible during the approval of draft laws by the Government of the Russian Federation, as well as during the registration of relevant by-laws by the Ministry of Justice of the Russian Federation.

## **7. Conclusions.**

Thus, legislation, including strategic planning documents, should fix in relation to each security sphere, including tax: threats (risks), interests, subjects and ways to ensure it. Meanwhile, in this context, it is chaotic and gap-like, which makes it difficult to correctly articulate the goals of legal regulation and cannot but affect its effectiveness.

In the system of regulatory provision of tax security, the Constitution of the Russian Federation should consolidate a unified approach to the essence of security as a whole, legislative acts (first of all, laws on security, on tax authorities, the Tax Code of the Russian Federation) – the main directions of countering threats to tax security arising in the relevant areas of regulation, and by-laws - specific management ways to combat such threats. Regulatory regulation is subject to coordination at the level of strategic planning acts in order to ensure timely updating of legislation based on the results of a systematic analysis of changes in the types and nature of threats, forecasting their

evolution, as well as monitoring the effectiveness of the assessment methods themselves.



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Maslov K.V. Normative acts in the system of national tax security provision. *Pravoprimenenie = Law Enforcement Review*, 2021, vol. 5, no. 4, pp. 148–158. DOI: 10.52468/2542-1514.2021.5(4).148-158. (In Russ.).