

REVIEW OF RUSSIAN SCIENTIFIC RESEARCHES ON CHINESE LAW OF PUBLIC FINANCE**

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The article provides a systematic review of the scientific works of Russian legal scholars in the field of public finance law in China, in particular tax, budget and currency law. Today, it is premature to talk about fully functioning schools of Chinese law in the Russian legal science. However, at the same time there are examples of successfully conducted fundamental researches on Chinese public finance law. Authors have to admit that the last few years have not been marked by the appearance of any monograph on Chinese public finance law in Russia – the studies conducted today are usually devoted to specific problems and are published on the pages of the relevant journals. There are obvious reasons for this – difficulties in Chinese language learning and understanding specific Chinese legislation, which is characterized by uncertainty, ambiguity and plurality of sources of law. Existing studies can be classified into studies entirely devoted to the study of particular institutions or branches of Chinese law, and studies of a comparative nature. The article examines and systematizes the work of Soviet and Russian legal scholars devoted to various areas of research in the fields of tax, budget and currency law of China, with an assessment of their significance and contribution to the development of the relevant branch of knowledge. The materials in this article may be useful for future researches, which, in turn, can predetermine the strengthening of bilateral relations, as well as the implementation of joint investment projects. The article allows to identify unexplored areas in the considered field, thereby laying the foundation for future research. Authors note research issues that seem to be perspective based on the conducted review.

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1. Introduction

The gradually increasing interest in the law of China [1, p. 82] combined with a relatively limited list of scientific works on the topic predetermines the demand for systematization of these works. The law of public finance in China is not an exception here¹.

Economic and legal works on public finance of the PRC have not been previously systematized (or compiled) in any way [for more details about the compilation and systematization of the works in the field of Sinology in Russia: 2], neither were they subjected to independent analysis. As a result there is no full picture of the state of research in this field. At the same time, it seems very important to do this in the light of the recognized lack of scholarly knowledge of the law of one of the leading countries in the world [3, p. 15], thus contributing to the foundation for future research, including comparative studies in this area.

From the methodological perspective this review² is structured on the basis of the problem-chronological principle and includes domestic (Soviet and Russian) works³ in Russian devoted to different research areas of tax law, budget law, basics of monetary circulation, as well as currency

regulation and control of modern mainland China⁴. The appeal of some authors of economic works to the current Chinese legal regulation grounded the inclusion of such studies in this review, since they make a significant, although not decisive, contribution to the formation of the proper picture of the phenomenon under research - the law of public finance in China.

The authors of this review don't set the purpose to at least briefly outline all the results of scientific research in the designated area, but intend to contribute to the formation of the holistic picture of the state of research in the field. The reviewed sources, which are numbered in tens, are mainly scientific articles in specialized journals. Amid them single monographs, books, as well as dissertations are of particular interest. The presentation of the material in the article is grouped into three sections familiar to Russian jurisprudence - tax law, budget law and organization of money circulation. The unevenness of the study of the corresponding scientific areas predetermined the differences in the sizes of the sections of the article, which, according to the authors, are inevitable.

2. Research of Chinese Tax Law

The body of research in the field of Chinese tax law, numbering in dozens of sources, is represented by a wide list of domestic legal and economic works in different formats, from scientific articles to dissertations. The first impulse [2, p. 8] for their appearance naturally arose with the formation of the People's Republic of China (PRC) in 1949, and the second - with the beginning of large-scale economic reforms in connection with the beginning of the transition to a socialist market economy in 1978. Periodically published translations from Chinese into Russian of regulations in the field of public finance should be recognized as a separate contribution to increasing the level of research of foreign tax legislation [7, p. 229-238, 253-256, 277-281; eight; 9, p. 146-157].

In the Soviet period most researches in the

¹ In this article the authors decided to use the neutral term "public finance law" to combine under one name tax law, budget law, currency law, and the law of the monetary circulation. For the purposes of this study this term seems to be more neutral and appropriate in comparison with the generally accepted in Russian jurisprudence term "financial law" and the widely used in Chinese legal science term "economic law".

² This methodological approach has been successfully used in the Russian science of financial law many times.

³ It should be noted that according to the just remark of P.V. Troshchinskii, "Russia rightfully occupies one of the leading places in the world of sinological science. Domestic scientists have published many major works on the issues of Chinese law. Knowledge of their content is mandatory for modern researchers of the law of the PRC, because they have laid a solid foundation on which the present and future generations of specialists can conduct their scientific research" [1, p. 83].

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⁴ This does not mean that there were no scientific works of domestic researchers on tax regulation in China before the formation of the PRC in 1949. [5; 6].

field of legal regulation of taxation in China concentrated on the legal institution of the tax system, which in the first decades of the PRC's existence was understood as the system of taxes [10, p. 210-211]. The researchers focused on the issues of legislative and practical implementation of the tasks of socialist construction, which were posed to the newly created tax system of the PRC.

From the very beginning of the existence of the PRC, Soviet authors⁵ to one degree or another paid close attention to the ongoing financial reforms. So **B.G. Boldyrev** in his works [11; 12] noted the successes of the new Chinese socialist state in the tax, budgetary and credit spheres in the first years of the existence of the PRC. Based on the study of the history of taxation in China [12, p. 121-127], B.G. Boldyrev traced the qualitative changes in the new tax system of the PRC, in which many aspects of construction were based on the experience of the USSR [12, p. 128].

Overcoming the shortcomings of the old, Kuomintang, tax system, as noted by **A.I. Chekhutov**, became possible only with the centralization of financial management, which led to the limitation of the powers of local governments to regulate the taxation, and the centralization of the system of tax authorities. It should be noted that A.I. Chekhutov included in the problems of building the PRC tax system not only the problems associated with taxes, but also the organization of tax administration by state authorities and the delineation of powers between the levels of government to establish, introduce and change taxes [13, p. 30-36, 112-126].

The creation of the PRC tax system in the early 50s of the XX century (after the All-China Tax Conference in November 1949) was reduced, first of all, to changes in the system of taxes and fees: instead of hundreds of previously existing taxes, only 14 taxes were introduced, including agricultural tax, commodity tax, trade and industrial tax, etc. which were also studied in detail by the authors [11, p. 28-29; 12, p. 129-144; 9, p. 11-33]. In addition, taxation was to be carried out on the basis of new principles, among which the

following principles were mentioned – the unity of the tax system, the division of taxes into central and local, the introduction of new taxes only on the basis of decisions of the Central People's Government [12, p. 129]. However, after a few years, the shortcomings of the existing tax system were discovered, among which there were a plurality of tax payments for industry and trade, a multi-tier taxation (multiple taxation of the same product) [14, p. 68; 10, p. 218]. At the same time, the issues of collection and payment of non-tax compulsory public payments in China, which in different years of the first decade of the PRC's existence made up to 11% of all state budget revenues, remained poorly studied [10, p. 201-202].

It is noteworthy that in the considered historical period of the development of the PRC tax system, both taxes and profits contributed by state enterprises to the budget were recognized as having the same economic nature, which boils down to mobilizing funds from the public sector of the economy [10, p. 202-203]. At the same time **I.B. Shevel** pointed out that the differences between taxes and other forms of mobilization of income to the centralized state funds are the obligatory character of taxes, the size and timing of payments established by the state [9, p. 5].

With the beginning in 1978 of the policy of reforms and opening up aimed at the transition to a socialist market economy, a new active phase of reforming tax legislation in China began, which was analyzed in detail by I.B. Shevel [9, p. 41-90], who highlighted its several successive stages corresponding to the general economic reform in China [15, p. 109-484] and regulatory and policy documents of the authorities of the China and the Chinese Communist Party.

The reorganization of the system of payments of state enterprises and, to a lesser extent, taxation of other sectors of the national economy (including the collective property sector), as well as adaptation to an open foreign economic policy of China were the main directions of the first stage of the reform (1978-1984) of the tax system [9, with. 43, 45-51, 55-59]. As part of the second stage (1984-1988) work continued on the transition of state-owned enterprises from distributing profits to the state budget to paying taxes. There were active changes

⁵ Including Atlas Z.V., Boldyrev B.G., Borisov S., Vovk C.M., Ganshin G.A., Popov A.N., Shevel I.B., Chekhutov A.I.

in the rules of taxation of persons with a foreign element (foreign and mixed enterprises, foreign citizens, enterprises of special economic zones). The transition to the collection of agricultural tax from in-kind to monetary form since 1985 was another important change [9, p. 69]. The third stage (since 1988) was characterized by a significant decrease in the pace of reform, although it was marked by the introduction of new taxes (for example, taxes on wealth, on banquets, stamp duty) [9, p. 78-85].

Referring to the positive experience of China in consistently ensuring the transition from a rigid command and distribution system to a system of planned market economy, which had a direct connection with taxation, the author at the same time dwells on some problematic issues. Among them the following are noted – failure to implement the principles of equality of taxation, certainty of taxation [9, p. 115-116].

The works of I.B. Shevel also reflected one of the latest large-scale tax reforms in the PRC - the reform of 1994, which affected the taxation of turnover, taxation of corporate income and household income, as well as the distribution of tax revenues between the budgets of the budgetary system of China [16, p. 25-37].

Unlike many other branches of Chinese law [17, p. 124-136] tax law in modern Russian Sinology is represented by fundamental works - the works of **R.A. Shepenko**, who made the most significant contribution to the study of Chinese tax law. He authored numerous scientific articles [18; 19; twenty; 21; 22; 23, etc.], monographs ("Legal Regulation of Taxation in the People's Republic of China" (2001), "Tax Law of China: Sources and Subjects" (2004), "Tax Law of China: Collection and Liability" (2005), "Hong Kong Tax Law" (2007)) [24; 25; 26; 27] and doctoral dissertation ("Legal regulation of the tax system of the People's Republic of China"), defended in 2005 [28].

The sphere of scientific interests of R.A. Shepenko includes legal regulation of the main institutions of tax law in China. The operation of the concept of "one state - two systems", which allows the coexistence of several tax systems within one state, is among the most important issues in his research. At the same time the

existence of the tax system does not depend on the recognition of a public-territorial entity as a subject of international law [29, p. 13]. The author makes a fair conclusion that the tax law of China is essentially formed by four components – the tax law of mainland China, special administrative regions of Hong Kong [27; 30] and Macau, as well as Taiwan [22, p. 34-35], and represents special case of the operation of tax rules in space.

In research of the system of sources of tax law in China the author concludes that there is a plurality of their types – the Constitution of the PRC, tax and non-tax laws, administrative regulations, public documents, notifications, reports of the Ministry of Finance of the PRC, local tax legislation, statutes and regulations of a local nature [24, p. : 9-15; 25, p. 50-101, 138-149]. Precedent, doctrine and international treaties acquire independent significance in the system of sources [25, p. 153-163, 163-212]. This situation inevitably leads to the question of clarity in the construction of the hierarchy of sources of tax law, which is not always obvious.

R.A. Shepenko includes departments (tax and customs authorities), taxpayers and tax agents in the list of the main participants of tax legal relations in China [25, p. 283-395], the legal status of which did not remain unchanged during the ongoing tax reforms. The author also pays close attention to the issues of interaction of taxpayers with the state in the framework of paying taxes [26, p. 237-290], tax control [26, p. 237-244; 31], bringing to legal responsibility for violations of tax norms [32; 26, p. 291-434; 33], legal regulation of certain taxes [34; 35; 36; 37; 38; 39].

Later the study of Chinese tax law in Russia was supplemented by a unique attempt to conduct a joint study by Russian and Chinese scientists-economists of tax systems in Russia and China [40], as well as the publication (2010) of a textbook on the tax system of the PRC in Russian [41].

One of the latest comprehensive research works in the field of Chinese tax law is candidate's dissertation of **V.V. Sevalnev** ("Legal regulation of taxation of the innovation sector of the PRC"), defended in 2012 [42]. The author investigated the measures of state tax and legal support of the innovation sector in the PRC.

We have to admit that the last few years have not been marked by the appearance in Russia of any monograph on the tax law of China. Current studies are usually devoted to specific problems of tax reforms or current legal regulation and are published on the pages of specialized scientific journals. A number of researchers have written papers on financial reforms [43; 44; 45; 46, etc.] and the historical aspect of tax reforms in China [47; 48, etc.], on the legal regulation of the PRC tax system [49; 50, etc.], on the legal regulation of certain taxes [51; 52; 53, etc.], about individual institutions (norms) of tax law in China [54; 55; 56], on the legal regulation of certain sectors of the economy [57; 58; 59].

At the same time there has been recently an increase of interest to comparative studies of tax law in the BRICS countries. In particular, the authors' attention was drawn to issues of fiscal policy [60], international coordination in the field of cross-border taxation [61], mediation in tax disputes [55], general anti-avoidance rules and the fight against tax evasion [62; 63]. The significant share of comparative legal studies of tax law in the BRICS countries falls on the BRICS Institute of Law (Yekaterinburg), although in general comparative legal studies in the context of BRICS can hardly be considered numerous.

The analysis of state of research in the field of tax legislation in China shows that to date entire areas of knowledge remain unexplored. Thus the issues of the PRC's participation in international taxation, the issues of harmonization of the tax legislation of mainland China, Hong Kong and Macau in the context of the "one state-two systems" concept, methods of protecting the rights and interests of taxpayers and other persons participating in tax legal relations (in particular banks), legal regulation of non-tax compulsory public payments, targeted fees, etc.

It should also be noted that the ongoing active changes in Chinese tax legislation, which are expressed primarily in the translation of the normative text into legislative acts from the level of subordinate regulation, for a long time remain unreported for Russian readers. In this regard regular reviews of changes in tax regulation in the PRC would be very useful.

3. Research of Chinese Budget Law

In contrast to tax law China's budget law has received relatively less attention from Russian researchers. However despite the fact that the designated area of knowledge is represented by single sources, there are also published translations of regulatory legal acts [64, p. 59-63; 65, p. 551-568].

The first years of the existence of the PRC and the formation of the Chinese financial system were studied by **B.G. Boldyrev**. The creation of a new unified state budget [11, p. 17-28], the formation of a new budgetary system of the PRC, the introduction of budget classification, budget planning, etc. [12, p. 79-120] were among the issues considered.

I.B. Shevel also made research of the state budget of the PRC. Among other things the author noted that such a budget was central to the financial system of the PRC as the country's main financial plan, it was based on the indicators of the national economic plan and had directive significance. From its very inception the PRC's budgetary system included the central budget and local budgets, which were constituent parts of the state budget. The budgetary system of the PRC was based on the principles of the unity of the state budget, democratic centralism and the policy of equality of nationalities [10, p. 196], which were subsequently revised. The author considered the issues of revenues and expenditures of the budgets of the budgetary system of the PRC [10, p. 198-268; 16; 66], as well as issues of interaction of budgets of different levels in the light of mechanisms and volumes of redistribution of financial resources [10, p. 268-279]. I.B. Shevel was one of the first in the science to point out the problem of significant volumes of extra-budgetary funds, the funds of which were not recognized as income and expenditures of the budgets of the budgetary system of the PRC [10, p. 279-283].

For a long time Russian legal science practically did not pay attention to the issues of China's budget law. Among the works of the 1990s we could mention the candidate's dissertation by **S.P. Savinsky**, defended in 1996 [67], which is

devoted to the economic aspects of reforming the budgetary system of the PRC. The paper addresses issues related to the need to update both the tax and budgetary systems of the PRC in the light of the socio-economic transformations that took place in the last quarter of the 20th century. The issue of interaction between the central and local budgets, studied by the author, is of special interest.

In recent years there has been an increase in interest in the national budgetary legislation of China, *inter alia* from comparative perspective. This interest is fully justified, since research of national budget legislation allows not only to understand the peculiarities of the financial system of the state, but also to understand the prerequisites for increasing the competitiveness of the national economy at the international level [68], harmonization of national policy and legislation [69; 60].

The monographs "Interbudgetary Relations in Russia and China" (2007) [70] and "Budgetary Reforms in Russia and China" (2009) are examples of the mutual interest of Russian and Chinese scholars in the problems of budgetary reforms [71]. Despite the fact that methodologically the material in the mentioned works is set out separately about Russia and China, without enriching the treasury of scientific knowledge with conclusions of a comparative legal nature, these works represent one of the first attempts of joint research, and this direction of cooperation between scientists of the two countries should only be welcomed.

In the past ten years one of the central questions that Russian researchers regularly turn to is the delineation of financial resources between the levels of the PRC budget system [72; 25, p. 101-135; 73; 74; 75; 76; 77; 78]. Issues of budgetary decentralization and interbudgetary relations are increasingly disclosed on the pages of specialized scientific journals. **D.V. Kadochnikov** notes that the Chinese budget system is relatively decentralized in income and extremely decentralized in expenditures, and such decentralization of expenditures is achieved mainly due to the redistribution of funds from the central to subnational budgets through interbudgetary transfers [79, p. 89]. **L.V. Novoselova** addresses,

among other things, the issue of reforming interbudgetary relations in the context of the debt position of local governments [76, p. 83-88], considering the reasons for the complication of the situation in this matter within the framework of the previously existing budget legislation of the PRC. At the same time it should be noted the prevailing interest of economics in this issue, while the legal formulation of interbudgetary relations in China is still unknown.

Another issue that attracts researchers is the legal regulation of the budgetary system of the PRC. **A.A. Trofimov** conducted a study of the structure of the budgetary system of the PRC, which includes the central budget and local budgets, as well as the budgets of extra-budgetary funds (budgets of government funds, social insurance funds, budgets for operations with state capital) [80]. Comparative legal analysis of the legal foundations of the budgetary systems in Russia and China [81], as well as the specifics of modern budgetary and legal regulation [82; 83] makes it possible to trace the common and different approaches of Russian and Chinese legislators to solving the same issues in the process of budget execution, financial control, implementation of inter-budgetary relations, etc. The principles of building the budgetary system of the PRC, such as the principles of independence of budgets, the distribution of taxes and the implementation of the transfer system, jurisdiction, and the obligation to exercise control, have significant specificity.

Interest in certain problems of Chinese budget law is embodied in scientific articles on the state budget of the PRC [84; 85], the budgetary process in China [86], state financial control [87; 88].

At the same time questions about the legal status of subjects of budget law of the PRC, the specifics of the budgetary process of the PRC, treasury execution of budgets in the PRC, financial control, types of financial transfers to the PRC, etc. have not yet been covered by complex research.

It is very noteworthy that some issues that are extremely relevant for the PRC are not at all touched upon in Russian studies, for example, the problems of legal regulation of the state debt of local governments, which were substantially reformed with the adoption of amendments to the Law of the

PRC "On Budget" in 2014, should be recognized as completely unexplored. This can partly be explained by the generally small research interest on the part of Russian science in relation to the budget law of China.

However the loss of topical issues from the horizons of Russian researchers may be partly due to the lack of information in Russian about the novelties of legal regulation in the relevant area, which again brings us back to the issue of regular reviews of key changes in legal regulation in the PRC. In turn, the researchers' lack of knowledge of the Chinese language, difficulties in translating from the Chinese language, the peculiarities of the source system and the uncertainty of legal norms can lead to errors associated with the application of irrelevant legal regulation⁶.

4. Research of Basics of Monetary Circulation and Currency Law

The issues of building a monetary system and creating a legal basis for strengthening the national Chinese currency logically fall into the field of view of domestic researchers, but their number, calculated in several items, and complexity are significantly behind the research in other areas of public finance.

During the Soviet period the issues of organizing monetary circulation were practically not studied. Some of the few works dealing with the organization of monetary circulation are the works of **B.G. Boldyrev** [11; 12]. The attention of B.G. Boldyrev was drawn to the problems associated with organizational, including legal, problems of eliminating inflation and the struggle to strengthen the national currency. The author pointed out that the prerequisites for building a system of monetary circulation in the PRC were created long before the formation of the Central People's Government of the PRC [11, p. 7-9]. The

measures taken by the country's leadership in the early 1950s made it possible to increase the level of public confidence in the national currency - the yuan, centralize the authority to organize monetary circulation, which subsequently led to an increase in the yuan exchange rate [12, p. 47-78].

Works on the organization of monetary circulation at the present stage remain extremely few. As one of the few examples of such works, one can mention the article by **L.V. Novoselova**, who, noting the significant economic successes of China achieved in the course of many years of dynamic development, mentions the emergence of prerequisites for the internationalization of the yuan, the use of the yuan in international trade [90, p. 167-173].

The currency regulation issues have attracted the attention of researchers relatively recently, and here we see mainly the works of economists, which touch upon the issues of legal regulation. In particular two candidate's dissertations could be mentioned – the one of **I.M. Sofyannikov**, who addressed the evolution of foreign exchange regulation in the PRC in the light of socio-economic transformations in the country, the role and functions of foreign exchange control bodies (State Department of Foreign Exchange Control), the essence of foreign exchange certificates [91], as well as **Zhang Jun**, who came to the conclusion that "In general, the reform in the field of currency regulation contributes to the improvement of macro-control over the international balance of payments of the PRC, reduction of currency leakage from the country" [92, p. 7-8].

Scientific articles devoted to the regulation of cryptocurrency [93], currency regulation [94; 95], currency control [96], peculiarities of monetary policy in China [97], monetary policy [98]. are of particular interest.

Thus the overwhelming majority of issues related to the organization of monetary circulation, as well as currency regulation and control in the PRC, are currently outside of scope of research. It seems that the problems of legal regulation of legal means of payment on the territory of the PRC in the light of the use of cryptocurrencies, methods of currency regulation, and directions of currency control in China can be attributed to promising

⁶ Sometimes such difficulties lead to errors caused by the application of irrelevant legal regulation. See, for example: [89]; Analytical report "Research of foreign experience in the legal regulation of interbudgetary relations." URL: http://iclr.ru/files/pages/research/papers/ИМСПИ_Межбюджетные-отношения.pdf (date of reference: 10.04.2020).

areas for research.

5. Conclusion

The study shows that today it is premature to talk about fully-formed and fully functioning centers for the study of Chinese public finance law in the Russian science of Sinology, with several outstanding researchers in the field of public finance law of the PRC being identified. At the same time tax law is the undisputed favorite among scientists, leaving behind other areas of scientific research in the field of public finance law.

Recently Russian authors have rarely referred to the study of Chinese public finance law. In part this may be due to the researchers' lack of knowledge of the Chinese language, the difficulties of translation from the Chinese language, the peculiarities of the system of sources and legal technique. We have to admit that the last few years have not been marked by the appearance in Russia of any monograph of a legal nature on the law of public finance of the PRC - the studies conducted today are usually devoted to specific problems and are published on the pages of specialized journals.

Existing studies can be classified into studies entirely devoted to the study of foreign law (individual institutions or branches of Chinese law) and studies of a comparative legal nature. In turn the latter can be grouped into comparative studies of Russian and Chinese law on one hand, and comparative studies of the law of the BRICS countries on the other hand. The analysis showed that among Russian studies in the field of public law of the PRC as a whole, studies devoted specifically to the law of the PRC prevail, comparative studies are in the minority.

Despite the fact that Soviet and Russian scientists have carried out colossal work to study Chinese legislation and the practice of its application, at the same time entire legal institutions of Chinese public finance law remain unexplored. We also have to state that active economic transformations, supported by the reform of Chinese legal regulation, lead to the loss of the relevance of a number of works, opening up horizons for new research. In this part regular

reviews of changes in Chinese national regulation in the relevant area would be very useful.

The review outlined the unexplored issues of public finance law of the CRC and allows us to propose new directions for future research in the field of tax and budget law of China, as well as the legal regulation of monetary circulation and foreign exchange regulation and control. The relevance of research on these topics is associated with the possibility of taking into account foreign (Chinese) experience in carrying out the reforms planned by the Russian leadership, creating prerequisites for the possible harmonization and unification of the legislation of the BRICS countries. This analysis may be useful for future researches, which, in turn, can predetermine the strengthening of bilateral relations, as well as the implementation of joint investment projects.

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