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ON THE QUESTION OF DEVELOPMENT OF THE INSTITUTE OF "TAX OBLIGATION" IN THE CONDITIONS OF THE DIGITALIZATION OF THE ECONOMY**

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The subject. The analysis of trends in the development of the institution of tax liability, which arise as a result of digitalization of the economy.
The purpose of the article is to identify trends in the development of the science of tax law and tax legislation in relation to the theoretical category "tax obligation" and the legal regulation of individual duties of taxpayers.
The research methodology includes an analysis of regulatory acts of tax legislation governing the issues of generally binding tax obligations, as well as the obligation to pay tax and submit tax returns.
The main results and scope of their application. The active use of information and communication technologies in tax relations necessitates a theoretical assessment of the possible transformation of the central category of tax law - tax liability.
This will eliminate the unnecessarily complicated process of notifying the tax authorities about such transactions, which is currently being carried out simultaneously by the operators of electronic platforms and the taxpayers themselves. This will make it possible to develop an opinion on the development of legal regulation of various duties of taxpayers, which are fulfilled in the context of digitalization.
Conclusions. The author proves the static nature of the content of the concept of tax liability, which is a system of its features. The "classic" sign of general obligation inherent in the tax obligation has been questioned as a result of the ambiguous legal regulation of the tax on professional income. According to the author, in this regard, it is necessary to clarify the legal status of the self-employed in terms of their recognition or non-recognition as entrepreneurs. It is also necessary to improve the legal regulation of the use of a single tax payment and the issue of the gradual abandonment of tax reporting. Such norms should appear if the tax authorities have the technical ability to move to a new stage of digitalization.

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1. Introduction

Due to the active development of digitalization of the economy, which is understood as a large-scale process associated with the transformation of various spheres of life through the use of digital technologies or innovative technological solutions [1, p. 2], as well as the appearance of new digital tools and their active implementation in economic relations [2], a global restructuring of various areas of public life is taking place. Such processes have not passed over taxation which, at least according to the fair comment of V.E. Rodigina [3, p. 31], should not be an obstacle to the movement towards digitalization which is aimed at increasing the competitiveness of the Russian Federation, the quality of life of its citizens, ensuring economic growth and national sovereignty.

With the introduction of digital technologies, "classical" tax legal relations, focused mainly on paper document turnover, as well as traditional forms of tax control and tax administration, are subjected to significant transformation. In the current circumstances the harmonization of the areas of tax and legal regulation, first of all, in terms of substantive aspects of tax law terminology, which is a prerequisite for successful transition of the tax system to new conditions of functioning, is of particular value. This circumstance poses to the tax and legal doctrine the task of identifying all possible terminological defects caused by the digital transformation of tax relations.

Traditionally, in the science of tax law as one of the fundamental system-forming categories for tax legislation was considered tax liability, approaches to the content of which have changed along with the changes taking place in social life. The importance of the study of digital restructuring of legal regulation and identification of peculiarities of law enforcement in the context of the analysis of the institute of tax liability is due to the dominant role of this institute in tax law. For example, as A.N. Prokopenko and A.S. Barinov point out, studying the issues of correlation of the concepts of tax liability and tax obligation in the historical aspect, "in modern Russia the formation of the tax system is carried out through the concept of tax liability". [4, c. 77].

During the period of active implementation of digital technologies in social relations, referred to as the Fourth Industrial Revolution [5, p. 11], a significant number of studies appeared in the legal literature, which, as a rule, consider the issues of legal regulation of taxpayer rights in conditions of digitalization [6, 7], including in relation to new "digital" participants of tax relations [8]. The problems associated with tax liability in the context of digital transformation are analyzed, as a rule, in terms of problems of its execution [9, p. 35]. All this raises before the science of tax law a number of questions aimed at the need to adapt the content of the theoretical category of tax liability in general, as well as its individual varieties to the ongoing fundamental changes.

2. Approaches to defining the concept of tax liability

The history of development of tax law shows that the concept of tax liability has always been used, in different periods of time to a certain extent subjected to comprehension for the purposes of practical application, and its use has not been challenged by anyone. Theoretical comprehension of the content of the concept of tax liability in the Russian tax and legal doctrine has its own history.

Research interest to the establishment of the content of the concept of tax liability has become actively manifested in the early 2000s. Professor M. V. Karaseva (Sentsova) fairly characterizes this period as the time "when the market-type tax system created in Russia in connection with the adoption in 1994 of the Civil Code of the RF has become problematic in practice". [10, c. 36]. As noted by tax researchers of that period, this led to the fact that the tax burden began to be considered by taxpayers as excessively high [11, p. 19; 12, p. 7], and the limit of tax exemptions, which was the most important indicator of the country development, was not considered [13, p. 34]. It was during this period, one of the central tasks of science was to prove the system-forming role of the category of tax liability and parallel justification of its paramount importance in the mechanism of tax-legal regulation.

Such trends have led to an increasing need to develop new approaches to solving the problem of strengthening tax discipline, a constituent element of which is the mechanism of execution of tax obligations. For this reason, the key aspect of the study of this category of tax law initially became the issue of forming the arsenal of legal means, which in one way or another are aimed at facilitating the execution of tax duties [14, p. 3]. At the same time, the approach to the issues of defining the concept of tax duty, as well as the characteristics of its features and elements in scientific studies has often been very formal: tax duty was associated with the obligation to pay tax.

In addition, there was a constant interest in "the problem of correlation of the categories of "duty" and "obligation" in the field of tax-legal relations". [15, c. 6]. At that, the concept of obligation was applied in tax law in the sense that had been developed for the purposes of civil law. At that, we see as logical the position of M. N. Sadchikov, according to which civilistic constructions were originally created and exist for the purposes not arising from tax law [16, p. 17]. In this regard, the issue of applying the concept of tax obligations in modern conditions requires a separate study, which initially involves clarification of the meaning of the category of "obligation" for the purposes of tax-legal regulation, by virtue of which this article will not address such an issue.

As the legal regulation of tax relations developed, the scientists' vision of the content of the concept of tax liability became more complicated, resulting in the formation of two approaches to its interpretation, conditionally called "narrow" and "broad".

J.A. Krokhina repeatedly argued about the different points of view on the concept of tax liability. In her opinion, "tax liability in the broad aspect includes a set of measures of proper behavior of the taxpayer, defined in article 23 of the Tax Code. Tax duty in the narrow aspect is a part of tax duties of a taxpayer and represents the implementation of constitutionally established measure of proper behavior to pay the legally established taxes and fees. Execution of tax duty is the primary obligation in relation to other property obligations of the taxpayer and determines the development of other tax legal relations. At the same time execution of the duty to pay taxes and fees is a complex legal fact, since it involves a whole system of duties of a taxpayer: to get registered with a tax authority, keep tax records, independently calculate the tax base and determine on its basis the amount of tax, transfer tax to the appropriate budget, etc. The essence of the fulfillment of tax liability is the payment of tax or fee". [17, c. 146-147].

As a result, in modern tax law there is a paradigm, according to which in case of using the concept of "tax liability" most often there is a tax liability, and when using the concept in plural ("tax liabilities") there are various obligations of a taxpayer (to pay tax, to register for tax, to submit reporting, etc.). In addition, it is important to note the value of using the concept of tax liability in broad and narrow aspects: it is it that allowed to formulate the definition of tax liability through a set of necessary and sufficient features that allow to distinguish tax liability from other legal phenomena.

In the domestic tax and legal doctrine the issue of defining the concept of tax obligation by creating a system of signs of the relevant concept was one of the first to start solving by A.V. Demin. In his opinion, tax liability is the central link, the core of tax law; "taxes and fees are paid not due to their own initiative, not by way of credit or charitable contribution, but by virtue of constitutional-legal obligation. Moreover, in the content of tax legal relations there is always directly or indirectly this obligation to pay the legally established taxes and fees. At that, some tax legal relations (basic) directly express this obligation, others (auxiliary) ensure its implementation. It is impossible to release a particular taxpayer from the execution of a tax obligation by an individual-authoritative decision of a state body" [18].

Thus, at present, the key aspect in the definition of the concept of tax liability is not the justification of its significance and basic nature, but the characterization of its features in terms of possible transformation of their content under the influence of active implementation of information and communication technologies in tax relations, as well as issues of adequacy of legal regulation of individual tax liabilities, implemented with the active

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use of information and communication technologies by participants of tax relations.

3. Peculiarities of the transformation of the content of the concept of tax liability

There is no doubt about the consideration of general obligation as one of the mandatory features of tax liability. However, in the literature on tax law in recent years ideas have begun to appear that this sign of tax liability is losing its relevance, and tax relations, becoming "as comfortable as possible" and "convenient" are moving from the public-law model to the partnership model, which involves equality of parties. For example, M.B. Napso, analyzing the legal construction of professional income tax, notes that recently legal attempts are made to give the tax obligation a voluntary character [19, p. 17-18]. In her opinion, legal regulation of taxation of self-employed is based on the legislator's preference of method of inducement instead of compulsion, "coming out of the shadow" instead of "withdrawal from the shadow", as well as inappropriate substitution of the principle of tax obligation by voluntary procedure of its payment.

In our opinion, in the conditions of digitalization the tax obligation does not cease to be realized in terms of its compulsion. In this case, this feature requires additional justification and separate adjustments in the legal regulation of its content.

First of all, we note that adhering to the concept of legal positivism, it is possible to talk about the substitution of the sign of compulsory tax obligations by voluntariness, and, as a consequence, about the bad faith of individual taxpayers only in conditions where their tax obligations are precisely defined, but, for example, in the tax legislation there is no responsibility for their non-fulfillment. S.M. Mironova and E.Y. Stetsenko note that a new article 129.13 was introduced into the Tax Code on November 27, 2018, which establishes liability for self-employed citizens in case of violation of the procedure and terms of providing information about the made calculation related to the receipt of income from the sale of goods (works, services, property rights) to the tax authority [20, p. 64-65]. Accordingly, until the adoption of the Federal Law of November 27, 2018 No. 422-FZ "On conducting an experiment on the establishment of a special tax regime "Tax on professional income" to recognize self-employed as those who evaded tax, from the formal-legal point of view, in our view, is not logical.

In addition, the key issue in determining whether the self-employed were taxpayers before the legal regulation of their taxation appeared is the possibility of recognizing the activities of the self-employed as entrepreneurial. The problem is the lack of unambiguity in the understanding of entrepreneurial activity in terms of tax law. The ambiguity of definition of entrepreneurial activity when carrying out the activity from renting apartments has already been noted. For example, D.V. Tyutin in his textbook on the tax law says that nowadays the following questions remain open: whether leasing out two (five, ten, etc.) apartments will be an entrepreneurial activity; does the type of property leased out, the number of separate transactions, the total amount of rent, etc. matter for qualification of the activity as entrepreneurial at all? If the final assessment of some "frontier" activity as entrepreneurial is the prerogative of the court (the Ruling of the Constitutional Court of the Russian Federation of July 16, 2015 No. 1770-O explains that the issue of qualification of this or that activity of individuals as entrepreneurial is resolved by law enforcement agencies based on the actual circumstances of a particular case), then the particular person carrying out such activity before the judicial assessment will actually be in a state of legal uncertainty and, in part [21].

As for taxpayers of tax on professional income, it does not seem to us unambiguously correct to recognize their activity as entrepreneurial. In addition to the above reasons associated with the objective uncertainty of the signs of entrepreneurial activity, "projected" to the self-employed, an additional argument in favor of the conclusion about the non-recognition of their activities as entrepreneurial is their non-attribution to individual entrepreneurs, while ensuring the legislator the possibility for the latter to use self-employment regime as a convenient form of execution of tax obligations.

Thus, at the present stage the mandatory tax

liability should be provided by adequate to modern realities normative definition of entrepreneurial activity, which will allow at the legislative level to unambiguously determine the tax consequences of the activities of new participants of tax relations of the digital era.

4. Peculiarities of transformation of the content of the concept of certain types of tax obligations at the stage of digitalization of taxation

4.1. obligation to pay tax

One of the manifestations of the development of legal regulation of such type of tax obligations as tax payment obligation is the emergence of a single tax payment (hereinafter - UST), which is undoubtedly due to increased use of information and communication technologies in tax relations.

The emergence of the UST is associated with the introduction of additions to the Tax Code of the Russian Federation in the form of Article 45.1, which entered into force on January 1, 2019, according to which to simplify the payment of property taxes by individuals, the UST was established, providing for the use by an individual (taxpayer or other person making tax payments for the taxpayer) a single payment order to pay tax on personal income, transport and land taxes. In this case the UTI is transferred by the taxpayer to the budget system of the Russian Federation at the place of residence and then offset by the tax authority against future payments or tax arrears (if any).

I.V. Bit-Shabo, emphasizing the indisputable value of the use of UTII by the taxpayer, calls it one of the modern incentive tools based, among others, on digital technologies, which is aimed at simplification of tax payment by saving time and reducing the number of documents that a taxpayer needs to fill in to pay tax [9, pp. 33-34]. In her opinion, simplification of the procedure of fulfillment of tax obligation by means of application of a single tax payment should increase efficiency of taxation of an individual as it gives the latter an opportunity to plan making tax payments in accordance with the personal schedule of receipt of income, i.e. releases from the necessity to pay taxes in strictly established terms.

Undoubtedly, the use of UTP involves a number of advantages for taxpayers. However, for all the convenience of UTII, its mechanism is not devoid of certain shortcomings, which require the development of legal regulation in this direction.

For example, of serious scientific and practical interest is the legal nature of UTII, advanced by the taxpayer in the period before the date specified in the law of tax payment, and held in the account of the Federal Treasury until the distribution of such funds by the tax authority to the relevant budgets of the budget system.

The relevance of this issue is given by the fact that UST involves the simultaneous payment of two regional and one local tax. In addition, it is possible to apply the mechanism of UTP not only by individuals, but also by legal entities-taxpayers in respect of various taxes as well as insurance contributions, which are also paid to various budgets of the budget system of the Russian Federation, as well as to the budgets of non-budgetary funds.

In this regard, first of all, it is worth noting the opinion of D.V. Tyutin that in terms of mechanism of UTI payment it has much in common with overpaid (collected) tax payments, but it is neither tax, nor insurance contribution, nor fee, nor advance payment, nor penalties or fines [21]. The difference of UTF, in his opinion, consists only in the fact that the funds are paid without the taxpayer determining what tax they will be directed to, because the tax authority decides that.

In this case, the author notes that in respect of overpaid (collected) payments, the issue of their legal nature is not fundamental, since they are in the budget system without appropriate legal grounds. In our view, it does not seem correct to "project" by analogy the conclusion about the non-principled nature of its legal nature on CPT, since in the case of its payment we are not talking about a taxpayer's mistake.

In turn, discussing the legal nature of UTII, A. V. Krasyukov indicates that an advance payment in the form of UTII, in his opinion, falls under the signs of "unclear income" [22, 9]. [22, p. 9], in connection with which is subject to crediting to the federal budget.

From a formal point of view, it is important to note that in accordance with the Federal Law "On

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the Federal Budget for 2019 and the planning period of 2020 and 2021", the EPP is attributed to the federal budget revenues at the rate of 100 percent.

In our opinion, such a situation is in discord with the principles of tax and budget federalism established in the provisions recognizing the Russian Federation as a federal state, as well as Article 12 of the Tax Code, which provides for a three-tiered tax system. All this indicates the development of legal regulation of tax relations in the direction of fiscal unitarism, rather than federalism.

As a conclusion we can note that the digital transformation allows the implementation of the obligation to pay tax when using UTII in direct connection with the legal fact of the transfer of funds, rather than their enrollment in the relevant budget.

4.2. the obligation to provide tax returns

The legal regulation of the tax obligation related to submission of tax returns and, above all, tax returns is undergoing a significant transformation. In recent years, this is expressed in the abolition of the obligation to submit tax returns for property taxation, in the implementation of the legal regulation of which the tax legislation does not divide tax periods into reporting periods.

Thus, starting from 2021 taxpayers-organizations will abolish the obligation to file tax returns for transport and land taxes for 2020 and subsequent periods. Such taxpayers will be sent messages about the amounts of transport and land taxes calculated by the tax authority.

They will receive the information necessary for the tax authorities to calculate transport and land taxes from the Unified State Register of Taxpayers, as well as from the authorities responsible for the state registration of vehicles (traffic police, Gostekhnadzor, GIMS center of EMERCOM of Russia, Rosmorrechflot, Rosaviation, etc.) and real estate rights (territorial offices of Rosreestr).

Another example of the "undeclared" procedure for implementing tax obligations is the abolition of the obligation to submit a tax declaration under the simplified taxation system, which was announced by the Ministry of Finance of Russia back in the draft Main directions of budget, tax and customs-tariff policy for 2019 and the planning period of 2020 and 2021 .

Such innovations of tax and legal regulation are based primarily on the provisions of a number of policy documents. Thus, back in March 2018 in the Address of the President of the Russian Federation to the Federal Assembly it was announced about the course on the complete abolition of tax reporting for entrepreneurs who use information technology. First of all, we should note that with regard to property taxation it is implemented separate provisions on simplified reporting, which do not imply a complete abandonment of the corresponding tax obligation. Simplification of tax reporting for representatives of small and medium-sized businesses who use cash registers, as well as for self-employed people is also indicated as an expected result from the implementation of the subprogram "Development of the Tax and Customs System and Regulation of Production and Turnover of Certain Types of Excisable Goods of the State Program of the Russian Federation "Management of Public Finance and Regulation of Financial Markets" (approved by Resolution of the Government of the Russian Federation No 320 of April 15, 2014).

However, the new procedure of information exchange between tax authorities and taxpayers cannot be considered as reducing the administrative burden on private entities for the following reasons.

As is known, the simplified procedure of tax reporting is applied, for example, in respect of reporting on the tax on property of organizations (the above procedure entered into force in 2020). According to it, the taxpayer who is registered with several tax authorities of the subjects of the Russian Federation at the location of the real estate owned by him, the tax base for which is determined as their average annual value, has the right to submit a tax return for all such objects to one of these tax authorities of his choice. In accordance with clause 1, article 386 of the Tax Code of the RF he has to notify the Administration of the Federal Tax Service of the Subject of the Russian Federation annually in the prescribed form on the choice of the tax authority. In spite of the fact that property tax is a regional one, the tax legislation does not provide powers to

regulate issues of tax reporting for subjects of the Russian Federation; rights and obligations of tax authorities regarding tax returns are uniformly regulated by the Tax Code of the RF without regard to regional specifics.

For the purposes of simplification of tax reporting, in our opinion, it would be advisable to provide for the obligation to submit only one declaration without the need for notification and establish the right of regional FTS of Russia to automatically exchange information about the facts of submitted reporting in cases where it is provided for by the law of a subject of the Russian Federation, as well as establish a procedure for such exchange. In our opinion, the establishment of an obligation for a taxpayer to provide a notice of tax return filing does not contribute to simplifying the procedure of tax reporting. In this case, such a procedure does not make sense because the tax authorities have the relevant information in the information resource, which is regulated by the regulations of the tax authorities, not available for study by a taxpayer. Establishing the possibility of information exchange of tax authorities of the subjects of the Russian Federation at the level of regional laws, rather than documents for official use will be an effective tool to protect the interests of the taxpayer in potentially possible cases of violation of their rights.

To implement this idea, paragraph 1.1 of article 386 of the Tax Code of the RF should be amended to read as follows: "A taxpayer who is registered with several tax authorities at the location of the objects of immovable property owned by him, for which the tax base is determined as their average annual value, in the territory of a subject of the Russian Federation, has the right to submit tax returns in respect of all such objects of immovable property to one of the said tax authorities of his choice.

The tax authority to which the tax returns in respect of the objects of immovable property located in different subjects of the Russian Federation are submitted shall notify those tax authorities of the subjects of the Russian Federation in which the taxpayer is registered at the location of the immovable property in the manner prescribed by the law of the subject of the Russian Federation not later than March 1 of the year that is the tax period in which the procedure for submission of tax returns provided for in this paragraph shall be applied".

Thus, we can note that the conclusion about the possibility of complete refusal in the near future from the obligation to provide tax returns for today seems premature. For example, A.V. Izotov notes that the digital transformation of tax relations is taking place by eliminating the obligation of taxpayers to provide tax returns (tax on professional income, land and transport taxes, UST-online, insurance premiums and others) [23, p. 30]. It should be assumed that such exclusion is possible with the further development of digitalization of tax relations on the way from electronic to "proactive" form of tax administration, as noted in a number of publications [24, p. 437; 25, p. 18; 26; 27], but is not an objective reality.

4. Conclusions

Tax liability is a theoretical category of tax law, which, on the one hand, undergoes a global transformation in terms of its content as a result of the introduction of information and communication technologies in tax relations and, on the other hand, acts as an effective tool to assess the adequacy of legal reforms of tax legislation due to the digital transformation. At the same time, the legal regulation of individual taxpayer obligations requires further improvement.

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