

## Powerful subjects of tax law enforcement

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The subject. Competence of government bodies and their officials in the sphere of application of the tax law is considered in the article.

The purpose of research is to determine the ratio of tax enforcement and application of the tax law, as well as the relationship between the concepts «party of tax enforcement» and «participant of tax legal relations».

Main results and scope of their application. The circle of participants of tax legal relations is broader than the circle of parties of tax law enforcement. The participants of tax legal relations are simultaneously the subjects of tax law, because they realize their tax status when enter into the tax relationships. The tax and customs authorities are the undoubted parties of the tax law enforcement.

Although the financial authorities at all levels of government are not mentioned by article 9 of the Tax Code of the Russian Federation as participants of tax relations, they are parties of tax enforcement, because they make the agreement for deferment or installment payment of regional and local taxes.

Scope of application. Clarification of participants of tax legal relations and determination of their mutual responsibility is essential to effective law enforcement.

Conclusion. It was concluded that the scope tax law enforcement is tax proceedings, not administrative proceedings, civil (arbitration) proceedings or enforcement proceedings.

The application of the tax law is carried out not only in the form of tax relations, but also in relations of other branches of law

Key words: tax enforcement; tax process; administrative proceedings; enforcement; participants of tax legal relations; The Federal Tax Service; tax authorities.

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### Introduction.

Since tax law is a public-legal branch of legislation, law enforcement is dominant among forms of implementing its norms. Law enforcement activity is an important link between the practice of implementing tax and legal norms and the tax and law-making activities of the state, ensuring their unity and interaction in the legal regulation of tax relations.

1. The relationship between the concepts “party of legal relationship” and “subject of tax law enforcement”

In the theory of law, the key feature of law enforcement activity is the mandatory participation of a special authorized entity which is an official, an authority, etc. [1, p. 275]. The result of law enforcement activity is the law enforcement act. Since the law enforcement is always exercised in the form of a legal relationship, the law enforcement entity acts as a participant of this legal relationship. Theoretical significance has the definition of the ratio of concepts of the participant in

the tax legal relationship and the subject of tax enforcement. For practice it is important to clarify the participants in the tax legal relations defined in Art. 9 of the Tax Code and the definition of their mutual responsibility. Today there is an indirect transfer of the unfulfilled obligation of one participant of the tax legal relationship to another participant. Thus, according to paragraph 21 of Art. 23 of the Tax Code of the Russian Federation individual taxpayers with regard to taxes paid on the basis of tax notifications, are obliged to report on the availability of real property or vehicles to the tax authority at the place of residence or at the location of such objects in the event of non-receipt of tax notifications and non-concerning the specified objects of the taxation for the period of their possession. However, Art. 85 of the Tax Code obliges agencies, institutions, organizations to report to the tax authorities information related to the account of real estate, land and vehicles. But this duty is not supported by the appropriate sanction.

Participants of tax legal relationships are defined in Art. 9 of the Tax Code. These are taxpayers and payers of fees, tax agents, tax and customs authorities. Tax legal relationships are subject to regulation of tax law. Therefore, participants of tax legal relationships are simultaneously subjects of tax law. The number of participants of tax relations is wider than the range of tax law enforcement entities. Taxpayers and tax agents do not perform publicly-authoritative functions, but they are fiscal-obligated persons. In addition, Art. 9 of the Tax Code does not define an exhaustive list of participants in tax legal relations. Other norms of tax legislation fix the tax and legal status of other entities (for example, Articles 342, 60, 85 of the Tax Code of the Russian Federation).

## 2. Tax authorities as subjects of tax enforcement.

The main subject applying the rules of tax law are tax authorities. The tax authorities of the Russian Federation form a unified system for monitoring compliance with the legislation on taxes and fees, the correctness of the calculation, the completeness and timeliness of taxes, fees and insurance contributions, corresponding penalties, fines and interest in the budget system of the Russian Federation, and in cases provided for by the legislation of the Russian Federation , - for the correctness of the calculation, the completeness and timeliness of payment (transfer) to the budgetary system of the Russian Federation of other mandatory payments.

The Federal Tax Service of the Russian Federation is under the jurisdiction of the Ministry of Finance of the Russian Federation and is guided by the Constitution of the Russian Federation, federal constitutional laws, federal laws, acts of the President of the Russian Federation and the Government of the Russian Federation, international treaties of the Russian Federation, normative legal acts of the Ministry of Finance of Russia, and the Regulations on the Federal Tax Service. Fundamental questions of the legal status of tax authorities are established by the Tax Code of the Russian Federation, Law of the Russian Federation No. 943-1 of 21.03.1991 "On Tax Authorities in the Russian Federation", Law of the Russian Federation No. 173-FZ of 10.12.2003 "On Currency Regulation and Currency Control" Other normative legal acts. In the event of a conflict in the legal regulation of the status of tax authorities, the norms of the Tax Code of the Russian Federation [ , p. 28].

In addition to the primary function (tax control) tax authorities are endowed with additional functions by law. In cases provided for by law, the tax authorities may monitor the calculation and payment of non-tax mandatory payments, control and supervision of the production and turnover of tobacco products, the use of cash registers, and currency control.

The competence of the tax authorities is established by normative legal acts of the Federal Tax Service of Russia to monitor the observance of the taxes and fees, monetary relations law and other areas of public activity and authority on the application of measures of responsibility [2, p. 28].

The tax competence of tax authorities has the following features. Firstly, the tax authorities should be guided by the imperative principle inherent in administrative relations: each official performs only what is expressly authorized by law within the limits of competence [1, p. 23]. Secondly, the rights of tax authorities are also the duty of their officials. For example, the right of the tax authorities fixed in the Tax Code of the Russian Federation, to collect arrears, fines and penalties (subparagraph 9, clause 1 of Article 31 of the Tax Code) implies the duty of tax authorities to carry out such actions [3, p. 23]. Thirdly, the tax competence acts as an integral phenomenon, its carrier is the tax authority as a whole, which distinguishes it from the administrative competence of the state body, where rights and duties are distributed among structural divisions and officials [, p. 34].

The scope of authority and the specific competence of various structures of the tax authorities are not the same. Some powers are exercised by all parts of the system of tax authorities, others cover only a part of its links, while others are implemented only on the same level. In this case, there are regular differences between the powers of the tax authorities at different levels, which is due to the nature of the activity and the place occupied by the tax authority of a particular level in the system of the Federal Tax Service of Russia. In practice, the distribution of powers between the links of the tax authority system raises a number of problems. Despite the definition of tax authorities as a single centralized system (Article 30 of the Tax Code of the Russian Federation), the mentioned principles of their activity are still poorly implemented in practice. For example, an entrepreneur who submits a report to a tax inspection at the place of residence is forced by another tax inspectorate on whose territory his property is located to submit to it all the same documentation, including a tax return with a note of the first inspection of acceptance.

### 3. Customs authorities as subjects of tax enforcement.

The following participant of tax legal relations are customs authorities (Art. 9 of the Tax Code of the Russian Federation). Implementing tax collection and tax control in the area of the movement of goods across the customs border of the Customs Union, customs authorities have the rights and obligations of the tax authorities (Art. 34 of the Tax Code) In accordance with the Regulations of the Federal Customs Service, customs authorities, inter alia, carry out the collection of customs duties, taxes, anti-dumping, special and countervailing duties, preliminary anti-dumping, preliminary special and preliminary compensatory duties, customs duties, fines, taking measures for their compulsory collection (paragraph 5.7.); carry out refund of overpaid or overcharged amounts of customs duties, taxes and other funds, advance payments, customs duties, fines, cash collateral; refund of the proceeds from the sale of seized or confiscated goods (paragraph 5.8.); receiving of payment of customs duties, taxes and pays the established procedure foreclose on the collateral (paragraph 5.9.), take decisions on deferment or payment by installments of customs duties, control the accuracy of the calculation and timeliness of payment of customs duties, taxes and customs duties, take measures to enforce them (clause 5.14), ensure the protection of information that has become known to the customs authorities in the exercise of their powers and State, commercial, banking, tax, official or other secrets and confidential information protected by the legislation of the Russian Federation (paragraph 5.62). By exercising the power to enforce reimbursement of excessively paid or excessively collected amounts of taxes, the granting of a deferral or payment by installments of taxes, the control of the correctness of the calculation and timeliness of payment of taxes, the customs authorities enter into tax legal relations. These legal relations are law enforcement tax legal relations, since the customs body always issues an enforceable act (decision to recover the tax, decision on deferral or installment, on offset or tax refund). Thus, the customs authorities are subjects of tax enforcement.

### 4. Financial bodies as subjects of tax enforcement

The next entity involved in the tax legal relationship are financial bodies headed by the Ministry of

Finance of the Russian Federation. Although the financial authorities are not named by Art. 9 of the Tax Code of the Russian Federation as participants in tax relationships, Art. 342 of the Tax Code defines the powers of financial authorities in the field of taxes and fees, which consists in a written explanation to tax authorities, taxpayers, payers of fees and tax agents on the application of legislation on taxes and fees. At the same time, only the Ministry of Finance of the Russian Federation has the right to address its written explanations to the tax authorities. In turn, the tax authorities are obliged to follow the written explanations of the Ministry of Finance of Russia on the application of the RF legislation on taxes and fees (subparagraph 5, clause 1, Art. 32 of the Tax Code of the Russian Federation).

Financial bodies of RF subjects and municipal entities also take part in tax relationships. According to Art. 63 of the Tax Code decisions on changing the terms for payment of regional and local taxes are taken by the tax authorities in agreement with the relevant financial bodies of the constituent entities of the Russian Federation and municipal entities. The change in the tax legal relationship for the payment of such taxes is carried out by issuing an individual tax and legal act by the tax authority with the approval on it of a reconciliation visa. The approval visa is an obligatory requisite of the decision on deferral or installment, without which the law enforcement act does not acquire binding legal force. If the draft decision on the granting of deferrals, installments, investment tax credits is received without agreement by the financial authorities of the constituent entity of the Russian Federation or the municipal entity, a draft decision is being prepared on refusing to grant deferral, installment, investment tax credit due to lack of coordination. It can be concluded that the approval of the decision to postpone or install payment of regional and local taxes is an enforceable act of the financial body, expressed in the form of a visa on the relevant decision of the tax authority and entailing legal consequences (obtaining a decision to grant deferral or installment of legal force). Thus, the financial authorities of the constituent entities of the Russian Federation and municipal entities exercise tax enforcement.

#### 5. Are the territorial units of the bailiff service subject to tax enforcement?

The task of enforcement of judicial acts and acts of other bodies and officials (including decisions of tax authorities to recover arrears of taxes, penalties and fines) is assigned to the Federal Bailiff Service and its territorial bodies (Article 1 of the Federal Law "On Bailiffs" , Article 5 of the Federal Law "On Enforcement Proceedings"). The FSSP also exercises enforcement functions and control and supervisory functions in the established sphere of activity (clause 1 of the Regulation on the Federal Bailiff Service, approved by Presidential Decree No. 1316 of October 13, 2004).

Although the bailiff service is not called a participant of tax legal relationships in Art. 9 of the Tax Code of the Russian Federation, its territorial subdivisions carry out compulsory execution of decisions of tax authorities on recovery of tax at the expense of property of taxpayers (Article 47 of the Tax Code of the Russian Federation). The question arises: are the territorial units of the bailiff service in this case participants of tax legal relations, and if so, do they carry out tax enforcement? For the answer it is necessary to analyze what constitutes an enforcement proceeding. Enforcement is a legal activity of the Federal Bailiff Service and its territorial bodies for compulsory execution (implementation) of judicial acts, acts of other bodies and officials, by transferring money and other property to other citizens, organizations or to appropriate budgets or committing certain actions in their favor Or refraining from performing certain actions [1, p. 11.16]. As part of the enforcement process, including the decisions of tax authorities on the collection of arrears on taxes, penalties and fines from the property of the organization or entrepreneur.

Executive production now is the subject of regulation of one of the branches of Russian law - executive law. The executive law regulates the legal relations developing in the process of enforcement proceedings, where the subjective substantive law or interest protected by law, violated

or contested by the debtor and confirmed by a jurisdictional act, receives its implementation through the mechanism of state coercion [2, p. 10]. However, in the theory of law there is no unity in understanding the place of executive law in the system of Russian law. Experts believe that at present there are grounds to assert that enforcement proceedings are subject to regulation of an independent branch of law, withdrawn from the system of civil and arbitration proceedings [8, p. 31;

#### 6. Is the court a party of tax legal relationships?

The answer is ambiguous. According to Art. 9 of the Tax Code of the Russian Federation the court is not a participant of tax legal relationships. At the same time, the judiciary carries out financial activities of the state by granting deferrals and installments of payment of state duty when submitting lawsuits and complaints to the court. Controlling the payment of state duty, the court exercises state financial control. Thus, the financial activities of the state form part of the competence of the judicial authorities [7, p. 34, 119]. In addition, the courts apply the rules of tax law, considering tax disputes. It appears that in the case when the court grants a deferral or installment payment of the state duty, it enters into the tax legal relationship and participates in it, having the rights and duties defined by Ch. 9 and Ch. 25.3 of the Tax Code. Moreover, the actions of the court for granting deferrals and installments on the state duty are tax law enforcement. When considering tax disputes, the court implements the norms of the tax law, but does not participate in the tax legal relationship, acting as an external party in relation to the taxpayer and to the state in the person of the tax authority. The court in this case is a party to civil procedural or arbitration-procedural legal relations.

#### Conclusions

Tax law enforcement is carried out in the form of a tax legal relationship of a procedural nature. The application of the norms of tax law is carried out not only in the form of a tax legal relationship, but also legal relationships of other sectoral affiliations, primarily administrative court proceedings, civil procedural and arbitration procedural legal relations.

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