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THE TAX LEGISLATION OF THE STATE AND THE RULES FOR THE USE OF CASH REGISTERS: INTEGRATION ISSUES

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The subject of the study is the legal regulation of the obligation to use cash registers and its relationship with the tax obligation, as well as the ratio of tax control and control over the use of cash registers (operational control).

The purpose of the study is to determine the theoretical, practical and legislative (normative) approaches to the integration of relations for fixing settlements (including with the use of cash registers) in the sphere of tax legislation regulation. The author determined the place of relations in the field of application of cash registers in the system of tax legal relations.

The main hypothesis proposed by the author is that Russian legislation lacks the required quality of a legal link between the use of cash registers and the payment of taxes. According to the Tax Code of the Russian Federation, the obligation to use cash registers is not the responsibility of the taxpayer. At the same time, the obligation of organizations and individual entrepreneurs who make settlements in the Russian Federation is enshrined in a separate legislative act. This act establishes that the use of cash registers is carried out, among other things, for tax purposes, and the tax authorities are vested with the appropriate powers to control the use of cash registers.

The author emphasizes that the use of a cash register is a tool for fixing the calculation - documenting in the trusted zone of the state the fact of the financial and economic life of the taxpayer. The nature of the obligation to use cash registers is the nature of tax legal relations. Although liability for violation of the rules for the use of cash registers under Russian law is administrative in nature, this fact does not contradict the theory of law. Consequently, the transformation of administrative responsibility for violation of the rules for the use of cash registers into tax liability is optional.

In this regard, it is necessary to implement legislative changes in order to integrate into the tax legislation relations on the use of cash registers and control over the use of cash registers. The author, citing foreign legislation as an example, points to various options and degrees of integration. As the best option, it is proposed to include the obligation to record settlements in the Tax Code of the Russian Federation and recognize operational control as part of tax control there.

In the course of the work, the author used both general research methods, including methods analysis and synthesis, as well as industry, including the formal legal method.

Based on the results of the study, the author comes to the conclusion that it is necessary to transform the approach to the use of cash registers, to move to the category of "fixing settlements". The necessity of including operational control in the composition of tax control is emphasized. This fact will create a single set of tools and rules for the work of tax authorities. All of the above will lead to the fact that each specific fact of violation of the rules for the use of cash registers can be reflected in a desk or field tax audit. As a result, the obligation to fix the calculations will become the basis for the functioning of new and promising taxation regimes.

1. Introduction

Cash register equipment (CRE) is a unique tool for controlling the accounting of revenue of persons engaged in entrepreneurial activity.

The parameters of the obligation to apply the CRE, as well as the scope of fiscalization, change over time in each individual state, based on economic, social, political and other aspects.

Despite the fact that one or another state may fix various purposes of the obligation to apply the CRE (fiscal control, control of the movement of goods, protection of taxpayers' rights), one thing remains indisputable (whether the legislator says this directly or not) is to ensure the documentation of the calculation, usually accompanied by the issuance of a check.

The second important parameter of such a duty, which is a common denominator for legislators of various countries, is that the administration and control over the execution of the state order for persons to apply the CRE is entrusted to the tax authorities of the state.

This, perhaps, is where the points connecting the legislation of various states end, giving way to differences, which are most often expressed in the degree of integration of legal relations in the sphere of application and control over the application of the CRE into the system of tax legislation.

At the same time, the issue of goal–setting remains permanently behind the brackets, the solution of which has not found a place in Russian legislation, namely: the use of a cash register is a tool for fixing the calculation - documenting the fact of the taxpayer's financial and economic life in the trusted zone of the state. Only by taking this postulate as a fulcrum, comes the realization of the need to recognize the obligation to apply CRE and control over the application of CRE as part of tax legal relations, which logically follows the need to integrate legislative norms on the application of CRE into the Tax Code of the Russian Federation with the transformation of the corresponding duties and controls.

2. Application of CRE in the system of tax relations

Finance is a necessary branch of government activity, because it provides material resources for all institutions and activities of state power [1, p. 4].

In the relations arising in the process of financial activity of the state, the rules of behavior of people are designed to establish financial and legal norms [2, p. 26], and the social relationship regulated by the rule of law is a legal relationship [3, p. 51], which is understood as an individualized social connection between persons arising on the basis of the norms of law, characterized by the presence of subjective legal rights and obligations and supported (guaranteed) by the coercive force of the state [4, p. 82]. Satisfaction of the public fiscal interest is carried out by redistributing economic benefits in the share established by law in favor of public legal entities [5, p. 138].

One of the subjects of financial relations is always the state itself, represented by an authorized body that performs actions of an imperious nature on behalf of and under the control of state power [6, p. 13]. It is precisely such interrelations existing between the subjects of legal relations, which have a power-property character and arise between the tax authority and the taxpayer, that form tax legal relations [7, p. 12, 23], and the whole set of legal norms that determine the types of taxes, their size and the procedure for their collection can be called the tax law of this state [8, c. 273], i.e. tax law.

It is worth noting that the amount of funds coming to the budget, the stability, speed and regularity of these receipts, and therefore the continuity of financing of various national measures, the success of the implementation of financial and economic policy depend on tax legal relations, the completeness of coverage, and the comprehensiveness of their regulation [9, p. 49-50]. Thus, taxes constitute an organic source of government revenue. At the same time, with the development of civilization and culture, taxes become of primary importance in the financial system of the state [10, p. 286], which has always been and will be interested in creating and observing tax relations that ensure its property interests [11, p.

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XII].

Considering the above, one of the tasks of legal regulation of relations related to the accumulation of budget revenues is to establish such a legal regime that could contribute to improving the conditions for the development of production [12, p. 30].

It would seem that all of the above are common truths. Yes, taxes are important, yes – they are a necessary aspect of the existence of any state that appeared simultaneously with them [13, p. 170-171], but what ensures a confident flow of funds into the state treasury? Naturally, this is effective tax administration and no less effective tax control, which is also ensured by the presence of well-developed procedures [14, p. 245]. It is fair to agree that tax control is aimed at creating a perfect taxation system and achieving such a level of compliance (tax discipline) among taxpayers and tax agents, in which violations of tax legislation are excluded or their number is insignificant [15, pp. 189-190]. Compliance with the norms of tax law is ensured by the ability of the state to apply coercive measures for violation of obligations [16, p. 84].

The effectiveness and efficiency of tax control depends on the clarity of definition and legislative consolidation of its object and subject [17, p. 452], which is especially important, because tax control also covers powers that are not directly related, not expressed in the movement of monetary funds [18, p. 484].

A lot has been written about the forms and methods of tax control: both research and regulatory material, however, outside of such tax control, control over the use of CRE remains in Russian tax legislation until now. At the same time, the institute of CRE is one of the most important in the system of tax legal relations: it is from an effective system of administration and the provision of appropriate tools to tax authorities that it is possible to ensure proper (correct) receipts of tax deductions from individual entrepreneurs and organizations that primarily sell goods, works and services to the public in the budget system. Today, this institution is a response to the challenges of the market economy, when financial activity is not simplified, but complicated, and in order to guarantee the preservation of the social orientation of the economic and financial policy of the state, financial control is being strengthened [19, p. 6].

The application of CRE is part of tax relations, but today there is a rather serious legal divide between the tax obligation and the obligation to apply CRE (whereas the latter is essentially aimed at declaring the amount of future tax liability), between tax control and control over the application of CRE (whereas both of these controls are carried out by tax authorities). In this regard, prerequisites for the integration of the legal regulation of the scope of the CRE into tax legislation, both theoretical and practical, arise fairly.

3. Theoretical prerequisites for integration

The integration of relations in the field of the application of CRE into the system of tax legislation should be understood not only as a mechanical transfer of the norms of one legislative act to another, not only as a legal technique, although even this, according to the author, is enough. And here it is impossible not to agree with the conclusion of almost 120 years ago that the technical imperfection of the law is an imperfection of the whole law, a flaw that hinders the law and harms it in all its goals and objectives. At the same time, the inconspicuous work of legal technology in the lowlands of law contributes to the development of the latter often more than the deepest mental work [20, p. 24]. In the end, it is the level of legal technology that is one of the indicators of the level of legal culture in the country [21, p. 528].

At the same time, we are talking about an extremely important institute of CRE, about the full functioning of the system for transmitting and analyzing information about the calculations being carried out. Despite this, today the use of CRE is still perceived as an obligation to use the cash register in isolation from the obligation to pay taxes. Hence a certain paradox: there is practically no relationship (or it is extremely fragile) between the control over the completeness of revenue accounting (control over the use of CRE) and tax control (desk and field inspections), i.e. the results of these types of control measures do not always serve as a basis for each other or follow one from the other.

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One of the reasons is the unclear consolidation of the status of the CRE and the legislative distancing of control over the CRE from tax control. At the same time, the CRE is only a tool for recording information about calculations for tax purposes. Therefore, when integrating, it is necessary to change the very concept of responsibility [22, p. 29].

That is, on the one hand, we have tax legislation, with its set of rules of conduct, with its methodological and control tools, in which the word «cash register equipment» is mentioned only in context. On the other hand, analyzing the contents of Article 7 of Federal Law No. 54-FZ dated 22.05.2003 «On the Use of Cash register equipment when making payments in the Russian Federation» (hereinafter referred to as the CRE Law), we see a list of forms and methods of control that are not included in the tax control system, which the tax authorities have the right to conduct and conduct. We are talking about unique and peculiar only to operational control tools – surveillance, monitoring and control procurement.

Now, after the completion of the main stages of the cash reform, the CRE has become the basis for the functioning of the automated control system (ACS CRE), a full-fledged tool for the formation of the tax base, and control over the use of such a tool must be carried out already at the stage of the formation of tax obligations. It is obvious that the Tax Code of the Russian Federation should be the platform for such regulation.

It is not just about renaming the control over the use of CRE into operational control (as the term that most reflects the meaning of this control), but about complex systematization, the introduction of the term «fixing calculations», as well as the use of the results of operational control when checking the tax return.

4. Practical prerequisites for integration

The idea of integrating the CRE into the Tax Code of the Russian Federation is not primary regarding those threats to fiscal control that have already been formed, including:

1) a significant reduction in the life cycle of organizations and goods;

2) migration of business to a virtual environment and virtualization of fixed assets (it is worth agreeing that the problem of taxation of e-commerce seems to be increasingly relevant and capable of causing discussions in the science of tax law [23, p. 53]);

3) the beneficiary is not the owner of the used fixed assets and significant property;

4) active development of marketing programs with non-monetary methods of calculation.

It is the transformation of tax relations and their legal regulation that is of particular importance in the aspect of forming an effective response to the challenges posed by digitalization [24, p. 46]. We can safely say that the ability to quickly develop and implement new forms and algorithms of control in the near future will become a determining factor affecting the effectiveness of control work.

With the current regulation, there is a situation when there is a tax established by the Tax Code of the Russian Federation, the control over the payment of which, as well as the corresponding responsibility, is established by it. At the same time, control over the correctness of fixing elements of the tax base is regulated by other legislative acts (the Law on CRE) and by-laws, and responsibility for violating the rules of working with CRE is established in the Administrative Code of the RF[1]. These facts lead to a situation where the tax control procedure is «blurred» among various regulatory legal acts.

Of course, the question may arise: why these tasks cannot be solved using the current structures of the Tax Code of the Russian Federation, such as on-site and desk tax audits?

The system of correlation of desk and on-site tax control is based, on the one hand, on the declarative procedure for determining the amount of

[1] It is worth mentioning, however, that the existence and continued preservation of sanctions for violations in the scope of the CCT in the Administrative Code of the Russian Federation is explained by a broad approach to the meaning of a tax offense, which is understood as any violations of tax law, the commission of which entails the application of sanctions of financial and legal norms, bringing to administrative, criminal or disciplinary responsibility [25, p. 465].

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tax obligations of taxpayers, and on the other hand, on the possibility of repeated retrospective control (on-site control) [26, p. 80].

Conducting on-site control in the volumes necessary to solve the tasks of current control contradicts the state's strategy to reduce the number of on-site inspections. Moreover, it is necessary to take into account the fact that, excluding large chain stores, persons selling goods, works and services often belong to the category of small and micro businesses. The option of using the cameral verification mechanism seems extremely confusing and unpromising in the future (since its tools will require expansion, and restrictions will be removed).

In addition, among the main disadvantages of the existing mechanisms of desk and exit control is that they begin to be applied only after the end of the tax period on the basis of formed tax obligations, in most cases – in the form of a tax return.

Operational control during the tax period in the form of control over the fixation of each fact of the taxpayer's economic life will conceptually revise the model of behavior when the taxpayer independently systematizes his tax obligations, «packing» them into a declaration, and sends them to the tax authority, where it is «unpacked» and examined operationally, and lead to the possibility for the tax authority to independently to calculate the tax liability by generating a tax notice for payment by the taxpayer. That is, each calculation will become a kind of micro-declaration, which gets online to the tax authority and is processed automatically.

Such regulation significantly reduces the number of errors that are detected during post-control: it is both about the accumulation of a recurring error during the tax period, and about the need to make adjustments to previous tax accounting data in the future. At the same time, such a model is aimed at controlling each specific fact of the taxpayer's economic life, i.e. actually occurred, and not declared events. Thus, operational control makes it possible to regulate the behavior of taxpayers at the time they fulfill their obligation to fix payments.

That is why the main emphasis in understanding the sphere of relations under consideration should be shifted from the obligation to apply CRE to the obligation to fix calculations.

Thus, as a result of the introduction of information and communication technologies into tax relations, the tax obligation itself is undergoing a global transformation in terms of its content and at the same time acts as an effective tool for assessing the adequacy of legal reforms of tax legislation [27, p. 116], in connection with which a qualitatively new legal regulation should be created for the operational control system.

5. Normative approach to integration

The establishment by legislators of various countries of the obligation to apply the CRE and the rules of appropriate control in the basic tax law is not a rare phenomenon, which confirms their belonging to tax relations. At the same time, the parameters of integration of the obligation to apply the CRE in tax legislation are different, as well as approaches to determining responsibility for violation of the obligation to apply the CRE [28, p. 110].

In the Russian Federation, the first attempt to integrate the provisions on the application of the CRE into the Tax Code of the Russian Federation was made in 2020, which can be described as the first practical attempt to implement the transition to the obligation to fix calculations, the need for which the author noted back in 2015 in the article «On a new approach to the use of cash registers (theoretical and legal aspects)» [29]. This change is necessary because, being within the framework of the regulation of Law No. 54-FZ, any transformations are inevitably limited to the development of the technology itself – the cash register, whereas today it is advisable to improve the relationship of fixing the calculation: instead of working with the result of business transactions (tax returns), create new revenue accounting tools based on a single target contactless transactional approach in in order to develop control online. Therefore, by switching to the category of «fixing calculations», the taxpayer is given the opportunity to fix calculations not only with the help of CRE, but also in the «cloud», including in the taxpayer's personal account [30, p.

15]. Thus, the state legislatively provides itself with a single tool in the context of the introduction of the duty and regulation of control over its compliance for the sphere of CRE, the sphere of self-employed citizens and the sphere of control over taxpayers of the automated simplified taxation system.

Although it was later decided to send this legislative initiative for revision in order to reduce the volume of invasions into the text of the Tax Code of the Russian Federation, an updated package of draft laws[2] was submitted for public consideration in 2022. The task of dividing the norms that currently make up the legislation on the application of the CRE into those that have a direct tax component and the rest is far from trivial, because here it is necessary to correctly draw a legal line between the requirement for the CRE (for example, the requirements for the registration of a cash register) and the projected tax obligation to record calculations using the CRE.

Considering the published versions of the draft laws on integration, the author wants to note that, despite the obvious tax nature of the obligation to apply the CRE, the correct approach seems to be to supplement the key Article 2 of the Tax Code of the Russian Federation with «relations in the field of fixing settlements», taking into account even the potential possibility of attributing these relations to the already existing parts of the disposition of the article in question: «*collection taxes*» and «*relations arising in the process of tax control*».

It is important to emphasize within the framework of the above legal facet that when integrated into the Tax Code of the Russian Federation, it is worth talking about the inclusion of *relations on fixing payments* in the sphere of regulation of *legislation on taxes and fees*, and not about recognizing legislation on fixing payments by legislation on taxes and fees (or recognizing the Law on the CRE as a whole part of the latter).

Settlement fixing relations include mandatory norms regulating the taxpayer's obligation to fix settlements and the state's control over this obligation. In this regard, the «head» provision that taxpayers are required to record calculations, and the tax authorities exercise operational control over this (as part of tax control), should be included in the Tax Code of the Russian Federation, and their disclosure – It should be contained in the industry law «On Fixing Settlements in the Russian Federation», which regulates not only the rules (procedure) for fixing settlements and detailed control provisions, but also includes requirements for the CRE, fiscal storage, the procedure for maintaining registers (operators of fiscal data, expert organizations), the legal status, the content of the rights and obligations of manufacturers, fiscal data operators, expert organizations, etc. This block of relations should not be recognized as part of the legislation on taxes and fees.

For the purposes of a possible double interpretation of the invasion of settlement fixing relations into the sphere of regulation of the legislation on taxes and fees (Article 2 of the Tax Code of the Russian Federation), it is possible to clarify such integration: for example, «*relations in the field of fixing payments by the taxpayer*» or «*relations in the field of fixing payments include relations on the fulfillment by the taxpayer of the obligation to fix calculations and relations on tax control over the fulfillment of this duty by the taxpayer*».

It is worth noting that the settlement fixing relations have a specificity inherent only to them, which separates such relations from other groups of relations regulated by other federal laws, which are mentioned in the Tax Code of the Russian Federation, including a reference to the relevant obligations of taxpayers. For example, the relations regulated by Federal Law No. 402-FZ dated 06.12.2011 «On Accounting», which covers the relations and the procedure for the formation and accounting of primary documents within the framework of the organization's activities «for yourself», for internal accounting in accordance with the accounting policy approved in the organization.

At the same time, the tax authorities do not monitor the correctness of the information reflected in the accounting documents themselves, but only, if

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necessary, refer to this information in order to verify tax accounting documents (which are formed when fixing calculations), because the state is interested in information that is transmitted to it in the form of information for tax purposes: these are tax returns or information on the basis of which a tax notice is formed (information about fixing calculations).

Thus, information on fixing calculations should be formed according to the rules provided for by tax legislation, since they relate to such an element of tax as the procedure for calculating tax.

In addition, the documents that the taxpayer forms during the recording of calculations and transmits to the counterparty (a cash receipt, a document confirming the calculation generated in the taxpayer's personal account, a self-employed check) are used for tax purposes, because they are presented for accounting, and therefore they need to be given the status of primary tax accounting documents.

6. Conclusion

Summing up, it is worth noting that the integration of the rules for the application of CRE into the Tax Code of the Russian Federation is a natural step in the development of the system of tax administration and tax control. The transition to the new categories of «fixing calculations» and «operational control» with such integration is an equivalent response to the existing threats to the control work of tax authorities, and consequently, to the fiscal interests of the state associated, including with digitalization, with the departure of sellers of goods, works, services to the online environment. The considered transformation of the approach to relations in the sphere of application of the CRE and control over its application in terms of recognition of their tax nature also meets the doctrinal guidelines on tax legal relations.

The integration considered in the framework of this article will create unified methodological tools and rules for the work of tax authorities. All of the above will lead to the fact that each specific fact of the application of the CRE will be reflected in the tax documentation. As a result, the obligation to record calculations will become the basis for the functioning of new and promising tax regimes.

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