

## Features of establishing legal facts in tax law enforcement

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**The subject.** The article is devoted to the study of peculiarity of legal facts in tax law and law enforcement.

**The purpose.** The article is aimed to identify key features of legal facts significant to law enforcement and to assess how knowledge of these features affects the law enforcement.

**Methodology.** The author uses analysis of scientific sources as well as formally legal method and interpretation of legal norms and judicial acts.

**Results, scope of application.** The author distinguishes specific features of legal facts in tax relations, which determine the specifics of their establishment. The presence of public will in the basis of the legal fact cannot be considered as its specific legal and tax feature, because any legal fact acquires their value only by will of the state. The author identifies the characteristics of the legal facts important for tax law enforcement: the complexity of the tax legal facts; "a fact-relationship" among the elements of the set of facts; legal facts (sets of facts) in large part are outside the regulation of the tax law; uncertainty of the entity, establishing the legal facts.

Tax obligation arises from the existence of the economic relation, as a rule, in sphere of civil turnover. Transaction as a legal fact must be viewed as a legal act in relation to civil law, but transaction will be a legal deed in relation to the tax law. The transaction in relation to tax law can be called indirect legal fact.

Transaction as a legal fact often has two aims: the aim of the first level is the entry into civil law relations to obtain material benefits, and the purpose of the second level is the entry into the tax-legal relationship for paying tax.

In addition to the complexity of the tax legal facts law enforcement practice is difficult because of large number of defective legal facts in tax relations. Defects of tax legal facts, the reasons for their occurrence and consequences for tax relations are analyzed. Formally, the defective legal facts give rise to legal consequences in tax relations.

The various qualifications of tax legal facts by the taxpayer or the tax authority can be determined by using different evidence or by different valuation of the same evidence.

**Conclusions.** Attention to peculiarities of tax legal facts is a prerequisite to the effective tax law enforcement in modern conditions.

**Keywords:** legal fact; tax; tax legal relation; tax obligation; proof; defect; law enforcement.

### ***Информация о статье:***

Дата поступления – 24 марта 2017 г.

Дата принятия в печать – 20 апреля 2017 г.

Дата онлайн-размещения – 20 июня 2017 г.

### ***Article info:***

Received – 2017 March 24

Accepted – 2017 April 20

Available online - 2017 June 20

## 1. The importance of legal facts for law enforcement.

Law enforcement activity largely depends on the establishment of certain legal facts and is largely due to the specifics of these facts, which often predetermine not only the degree of participation of the law enforcement body in the process of their establishment, but also the requirements for evidence.

## 2. General and specific features of legal facts.

Alekseev S.S. divides the signs of legal facts into general and specific ones [1, p. 152-153]. Common signs are typical for all facts of real life, not just for legal ones. Common features in theory include a specific, individual character [2, p. 9]. Specific signs of legal facts are: 1) giving legal character to law; 2) the ability to generate legal consequences due to legal significance [3, p. 21].

Kucheryavenko N.P. indicates that tax legal relations presuppose a complex set of causal relationships that generate them. These are will of the state, expressed through the appropriate legal norms, that relates specific legal consequences to specific life circumstances [1, p. 333]. In our opinion, these features can not be considered as a feature of legal facts in tax law, since any legal fact assumes its importance only because of the will of the state, expressed through legal norms.

## 3. Features of legal facts, significant for tax enforcement.

3.1. The complexity of tax legal facts. For the appearance of a tax obligation, the actual composition is almost always required, although this feature can not be considered as a specific feature of the tax obligation. It was noted in the theory of civil law that obligatory relations traditionally arise, change and cease due to the onset of non-legal facts, namely, actual compositions [1, p. 54].

3.2. One of the elements of this composition, as a rule, is the "fact-legal relationship". At the same time, as a rule, legal importance is due to the fact of existence (or absence) of this or that legal relationship [2, p. 681]. As a rule, this fact-relation is subject to taxation. Legal facts provide a link between the legal form and actual public relations [3, p. 20]. Since the actual basis of the tax liability is economic (property) relations, legal facts have a property character, taking into account the government's influence on the data of the relationship. Thus, tax liability arises from the existence of an economic relationship, as a rule, in the sphere of civil turnover. For example, there are legal relations of property or other real relationship, obligatory legal relations that support the sale of goods (works, services), etc.

There is a point of view according to which tax obligation arises not because of the existence of a civil legal relationship, but by virtue of its implementation [4, p. 118]. Objects of taxation appear when transactions are actually executed, and not when contracts are concluded. Actual actions performed in fulfillment of civil obligations should be the basis for taxation. In other words, the basis for the formation of a tax legal relationship is a single fact of economic reality, otherwise known as "economic transactions" (for example, income generation, the implementation of certain types of activities) [6, p. 84], and not a civil-law form of property relations [7].

In our opinion, these arguments do not in the least refute the abovementioned, since the actual actions performed in fulfillment of civil obligations, in fact, constitute this relationship, the existence of which leads to the emergence of a tax liability.

A radical conclusion about the absence of legal significance of the civil form in tax relations is based on a narrow approach to the transaction as a legal fact. In the opinion of supporters of this approach, the transaction is aimed exclusively at the emergence, change and termination of civil and legal consequences. Recognizing the transaction as a legal fact would mean that tax consequences are the legal result to which the transaction is directed. And this contradicts its legal definition [11, p. 102-103].

Indeed, one of the manifestations of the autonomy of tax law is the independence of the tax qualification of transactions from civil law. Such independence leads to the fact that in some cases invalid civil transaction is recognized as valid for tax purposes due to the reality of financial and economic transactions between parties. However, in any case, the legal fact in both civil and tax law will be the transaction, only its qualification will differ. It seems that the transaction as a legal fact should be considered as a legal act in relation to civil law, since it is aimed at civil and legal consequences, and in relation to the right to a tax transaction will be a legal act, since the tax consequences are usually a by-product of the deal. Any legitimate "economic operation" exists only in a legal form, namely in the form of a legal relationship.

The conformist nature of financial relations as their peculiarity is highlighted by M.V. Karaseva. It seems that this feature completely extends to the tax relations that are part of the financial ones.

The same legal fact can contribute to the emergence of two or more legal relationships. In this case, in relation to one legal relationship, this will be a legal act, and in relation to another one this will be a legal action. For example, the adoption of inheritance is a legal act for the emergence of legal relations of property, and a legal action for legal relations for the payment of tax on the property of an individual.

The potential application of tax rules has an impact on the scope of civil turnover [8, p. 87] and even forces some scholars to talk about the concept of a tripartite legal relationship, according to which the treaty establishes ties not only between the parties, but also between the parties and the state, in particular, about taxation [8, p. 119]. The model of a potential tax legal relationship is being laid already at the stage of contract conclusion, when the parties have properly expressed their will [12, p. 89]. Thus, when entering into a civil legal relationship a person can and even must realize their tax consequences. In our opinion, a legal fact often has two purposes: the first level goal is to enter into civil relations for obtaining material wealth, and the second level goal is to enter into tax and legal relations for the payment of tax. Thus, by analogy with indirect intent in criminal law, a transaction with regard to tax law can be called an indirect legal fact.

3.3. Legal facts are in a large part outside the regulation of the tax law.

Legal facts provide a link between the legal form and the actual social relations [7, p. 20]. Since the actual basis of the tax liability is economic (property) relations, respectively, and legal facts have a property character, taking into account the government's influence on the data of the relationship. Thus, the tax liability arises from the existence of a civil or labor legal relationship that has an economic character. At the same time, it should be remembered that legal facts do not have attributes that allow them to be divided into public-law and private law [3, p. 22]. The same legal facts can lead to the application of several rules of law. In this sense, we can talk about the intersectoral nature of legal facts.

3.4. Uncertainty of the subject establishing legal facts.

It is not always clear who sets them: taxpayers, the tax authority or a court. In my opinion, in tax relations, legal facts are originally established by the taxpayer, they are recorded in the registers of accounting and tax accounting, as well as in tax reporting. At the same time, the legislation is based

on the good faith of the taxpayer, which implies the reliability of the information contained in the accounting and tax documentation. However, this does not absolve the taxpayer from retaining evidence for at least four years confirming the correctness of the establishment of legal facts.

The fiscal authorities in the course of tax control measures verify the correctness and completeness of the establishment of legal facts and either agree with the taxpayer or not. In this case, the legal facts are established in the act of a tax audit. At the same time, the burden of proving due to the presumption of good faith of the taxpayer rests with the tax authorities.

If there is a dispute about the correctness of the legal qualification of the facts or evaluation of evidence, the court often makes the final decision. In some cases, the courts are unable to reach a consensus on the legal qualification of the facts. For example, if transport organizations and individual entrepreneurs use UTII, it is not entirely clear whether in determining the object of taxation, all vehicles belonging to the taxpayer or only those used in entrepreneurial activities in the past tax period should be taken into account. One courts consider, that when determining the tax base for UTII, the tax authority should proceed from the number of vehicles actually used in carrying out business activities. Other judges believe that the possibility of applying UTII depends not on the actual operation of vehicles, but on their availability from the person on the basis of ownership or other right. Still others take a compromise position, according to which, it is lawful to calculate the UTII, taking into account the operation of all serviceable vehicles participating in the transportation process.

Some authors believe that judicial acts are legal facts [3, p. 70]. It is hard to accept, because these acts do not add anything to the actual circumstances of tax relationship.

#### 4. Defective legal facts: various consequences for civil and tax legal relationships.

Besides the complexity of tax legal facts, law enforcement practice is hampered by a large number of defective legal facts in tax relations. As a general rule, a defective legal fact is a special kind of facts that has defect and (or) inconsistency with the actual reflected action (or event) and, as a consequence, causes legal consequences in the form of invalidity and rebuilding of violated right [8]. The purpose of the implementation of tax regulations is the completion of the budget and regulation of the economy. For the taxpayer, the goal of the implementation of tax regulation is to fulfill its responsibility, provided that the level of its welfare is kept as high as possible [9, p. 66]. In other words, if a state urges the need for certain goods belonging to a taxpayer to enter into a tax law, the latter, entering into an inevitable relationship with the state, seeks to preserve its assets as much as possible by minimizing payments to the budget.

The taxpayer often seeks to avoid taxation by building legal structures that formally differ from legal models of legal facts, but, in effect, mediate identical economic processes. For example, the introduction into the authorized capital of the created organization of property with the subsequent re-sale of a 100% share of its authorized capital in order to evade VAT payment. The trend of constant struggle against such phenomena is evident even in the analysis of changes and additions to the tax legislation. An example is the constant change in the list of objects of taxation of excises through the inclusion of additional transactions capable of masking transactions on the sale of excisable goods.

The concept of the substance over the form used by the courts to overcome such defects presupposes the establishment of the essence of these facts when establishing tax legal facts. Thus defective is only the legal fact that the content has drawbacks, not the form. An example of an essential defect of a legal fact is the state registration of a vehicle that has ceased to exist: "within the meaning of Articles 38 and 358 of the Code, for recognition of the established fact of the existence of a taxable object, it is necessary that the object is a vehicle, which meets certain

physical characteristics and is registered in accordance with the established procedure; At the same time registration of vehicles in the traffic police, subject to the actual absence of disputable vehicles from the taxpayer, is not the basis for calculating and paying the transport tax."

The formal defect can be considered the absence of documentary registration of existing relations: "in the absence of title documents confirming the assignment of land to the category of defense lands, the grounds for their qualification as being used for defense can be confirmed by information on the status of the organization (classifying it as a strategic enterprise and organizations engaged in development, manufacture and repair of weapons, military equipment and ammunition) and documents confirming and the actual use of land for these purposes".

Formally defective legal facts give rise to legal consequences of tax relations. For example, from the point of view of civil law, the lack of state registration of the right to property entails the absence of the very right of ownership, but for the purposes of taxation this lack of registration can be overcome and does not prevent the appearance of a legal fact. Thus, the absence of state registration of the right to an item of a fixed asset due to the fact that the taxpayer has not realized the right to timely formalize it into ownership can not be considered as a basis for depriving the taxpayer of the right to record expenses related to the creation and (or) acquisition of this object through depreciation.

A different approach to the recognition of legal facts in civil and tax enforcement has acquired the character of a trend and is considered a manifestation of autonomy Tax law from civil law [10]. For example, from the point of view of civil legislation, the inseparable improvements of the leased premises are an integral part of this premise and the property of the lessor, which does not prevent the incorporation of these inalienable improvements as an independent object of fixed assets on the balance of the tenant. It should be noted that legal facts are introduced in law enforcement through evidence, that is, factual data relevant for establishing legal facts, expressed in the form prescribed by law [6, p. 702]. Formal defects of legal facts, as a rule, are connected with the shortcomings of the evidence by which these facts are established. However, the lack of one proof can be filled with the help of another proof. The establishment of a legal fact is always preceded by a legal qualification, under which the comparison of information about actual circumstances with their legal model, fixed in the legal norm can be understood. It is as a result of qualification that the factual fact is recognized as a legal fact and acquires its properties [6, p. 703]. Information about the actual circumstances is contained in the evidence. The different qualifications of a taxpayer and a tax authority can be determined either by the use of different evidence or by different estimates of the same evidence.

Conclusions. Thus, taking into account the specifics of tax legal facts is an obligatory condition for the implementation of proper law enforcement activity in the modern conditions.

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БИБЛИОГРАФИЧЕСКОЕ ОПИСАНИЕ СТАТЬИ	BIBLIOGRAPHIC DESCRIPTION
<b>Красюков А.В.</b> Особенности установления юри-дических фактов в налоговом право-применении / А.В. Красюков // Правоприме-нение. – 2017. – Т. 1, № 2. – С. 124–132. – DOI : 10.24147/2542-1514.2017.1(2).124-132.	<b>Krasnyukov A.V.</b> Features of establishing legal facts in tax law enforcement. Pravoprimerenie = Law En-forcement Review, 2017, vol. 1, no. 2, pp. 124–132. DOI: 10.24147/2542-1514.2017.1(2).124-132. (In Russ.).