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THE ECONOMIC BASIS OF A TAX: THE CONCEPT AND THE PRINCIPLE

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The subject. The article investigates the legal content of the concept of the economic basis of a tax and the relevant principle. The reason for choosing this subject of investigation lies in the emerging practice of how the statutory principle applies which is set out in article 3(3) of the Russian Tax Code, according to which taxes and levies should have an economic basis.
Purpose of the study. The article analyses the existing ideas about the economic basis of taxes, proposes and substantiates the legal definition of the concept, specifies the types of taxable economic benefit and discloses the content of the principle of the economic grounds of a tax.
Methodology. The methodological framework comprises a systemic analysis of the provisions of Russian tax legislation, studying the practice of courts and administrative bodies, higher courts and opinions of experts, the historical background and the interrelation between the economic and legal aspects of taxation.
Conclusions. The economic basis of a tax should be understood to mean gaining an economic benefit to which tax legislation pegs the emergence of the obligation to pay the tax. Economic benefit should be understood as a positive economic outcome. The article delves into the types of economic benefit, which includes the following: added value, profit, net profit and natural resource royalty. To impose a specific tax, the principle of economic basis of a tax means an imperative requirement for the taxpayer to have relevant economic benefit.

1. Existing perceptions

In accordance with paragraph 3 of Article 3 of the Tax Code of the Russian Federation, taxes and fees must have an economic basis and may not be arbitrary. Despite the fact that the principle of economic basis of a tax was enshrined in the tax legislation 25 years ago, there is still no legislative or doctrinal definition of the concept of economic basis of a tax, and the science and practice have not yet disclosed the content of the relevant principle.

At the same time, the norm-principle enshrined in Clause 3, Article 3, paragraph 3 of the Tax Code is increasingly being applied by the courts[1]. Thus, in one of the disputed issues, the Constitutional Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation, referring to this principle, came to directly opposite results in their decisions[2] , which only emphasises the need to work on the disclosure of the content of this concept.

Tax legal relations are a type of financial legal relations. As noted by Professor M.V. Karaseva, financial legal relationship in its essence is an economic relationship [1, p. 17]. Therefore, considering taxes as a phenomenon, it should be concluded that in their establishment and collection matters not only the legal form, the presence of which since the mid-90's has been given the main attention in legislation, practice and scientific research, but also the content, reflecting the economic and legal nature (essence) of the tax.

The economic-legal nature of tax is expressed, among other things, in the economic basis of tax (hereinafter - EON). In tax-legal studies there is an opinion that attempts to identify the essence of EON and accurately outline its boundaries are faced with complex and legally uncertain concepts of economic theory, so there is no need to establish what with exhaustive completeness is the economic basis of tax [2, p. 37].

However, this approach does not allow to apply the provisions of Article 3.3.3 of the Tax Code of the Russian Federation with confidence. Moreover, this approach can lead to "economic vulgarisation" of tax law.

There are well known cases when, seemingly based on economic logic and economic sense, the highest judicial bodies issued decisions that were seriously criticised and rejected by the majority of specialists. Such decisions include, for example, the Decision of the Constitutional Court of the Russian Federation of 08.04.2004 No. 169-O[3] , which

[1] Item 16 of the Review of the practice of consideration by the courts of cases related to the application of Chapters 26.2 and 26.5 of the Tax Code of the Russian Federation in relation to small and medium-sized businesses, approved by the Presidium of the Supreme Court of the Russian Federation on 04.07.2018; item. 58 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 3 (2018), approved by the Presidium of the Supreme Court of the Russian Federation on 14.11.2018; para. 29 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 1 (2019), approved by the Presidium of the Supreme Court of the Russian Federation on 24.04.2019; para. 31 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 2 (2019), approved by the Presidium of the Supreme Court of the Russian Federation on 17.07.2019; para. 42 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 3 (2019), approved by the Presidium of the Supreme Court of the Russian Federation on 27.11.2019; para. 43. Review of judicial practice of the Supreme Court of the Russian Federation No. 4 (2020), approved by the Presidium of the Supreme Court of the Russian Federation 23.12.2020; para. 35. of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 3 (2021), approved by the Presidium of the Supreme Court of the Russian Federation on 10.11.2021; para. 18 of the Review of Judicial Practice of the Supreme Court of the Russian Federation No. 1 (2022), approved by the Presidium of the Supreme Court of the Russian Federation on 01.06.2022).

[2] See Definitions of the Constitutional Court of the Russian Federation of 01.10.2009 No. 1269-O-O-O and of 01.12.2009 No. 1484-O-O-O, Decisions of the Presidium of the Supreme Arbitration Court of the Russian Federation of 08.12.2009 No. 11715/09 and of 08.11.2011 No. 5292/11.

[3] Definition of the Constitutional Court of the Russian Federation from 08.04.2004 № 169-O on refusal to accept for consideration the complaint of Limited Liability Company "Prom Line" on violation of constitutional rights and freedoms by the

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mentions "conditions for the movement of cash flows equivalent in value, although different in direction, one from the taxpayer to the supplier in the form of actually paid tax amounts, and the other - to the taxpayer from the budget in the form of a tax deduction granted by law". Based on this "economic logic", the court concluded that VAT deductions are impossible if the goods were paid for with borrowed funds [3; 4; 5].

Another example is the refusal of the Supreme Arbitration Court of the Russian Federation and the Constitutional Court of the Russian Federation to recognise the right of taxpayers to refund VAT, sales tax and excise taxes only insofar as "the amount of tax was included in the price of goods (work, services) and was actually collected not at the expense of their profits (results of economic activity), but from buyers (customers), i.e. actual, but not legal tax payers"[4] . It looks quite logical, but such a "combat" application of the economic theory on the transferability of indirect taxes has not found understanding neither among taxpayers, nor among scientists [6; 7; 8; 9].

These examples show the lack of developed methodology of economic and legal analysis of tax relations and intuitive, unreflective and insufficiently conscious approach to this issue. It is not by chance that the voiced calls of Professor A.A. Ivanov to try to better understand the essence of the existing economic relations in resolving tax disputes [10; 11] caused concern among lawyers that "considering Economics with a capital letter as the only purpose of law, it is possible, unfortunately, to provoke the end of Law with a capital letter" [12, p. 122]. [12, c. 122].

For the purposes of terminological rigour it should be noted that in this article we are not talking about the "economic analysis of law" (Economics and Law, Economic Analysis of Law), but about economic and legal analysis of tax relations as economic in nature. Due to the relatively recent interest in the economic analysis of law, which has been developing abroad for more than half a century, starting with the work of Ronald Coase [13, p. 72], these concepts are often confused. In the latter case, the category of fairness prevails, while in the former case - rationality, i.e. the assessment of the choice of a particular behaviour based on the effective ratio of benefits (advantages) and costs (risks) [14].

The proposal to understand the principle of the economic basis of tax as a requirement of economic logic is akin to ideas about the potential of the so-called principle of justice as a universal means of interpreting laws - by virtue of its maximum generality and humanity, the requirement of justice is very attractive, but it is of little use as a practical tool and is capable of generating even more discrepancies, since there are innumerable ideas about it[5].

One of the ideologists of tax reform in Russia S.D. Shatalov notes that the legislation on taxes and fees with such strict requirements to it should not provide for declarative provisions, the content and meaning of which are not fully defined, because the implementation of such provisions is difficult, and such a provision itself may cause disputes [15, p. 31].

Since Article 3(3) of the Tax Code enshrines a legal norm and not a declaration, intention or wish, its adequate interpretation and application is impossible without a legal definition of the concept of the economic basis of taxes.

Proposed definitions and their justification

To answer the question of what an EON is is to find out on what basis the state considers it

provision of paragraph 2 of Article 171 of the Tax Code of the Russian Federation. // Bulletin of the Constitutional Court of the Russian Federation, No. 6, 2004.

[4] Resolution of the Presidium of the HAC RF of 01.09.1998 № 2345/98, Resolution of the Constitutional Court of the RF of 30.01.2001 № 2-P, Definition of the Constitutional Court of the RF of 02.10.2003 № 317-O.

[5] In our opinion, we can talk about fairness, including in the tax sphere, as a super-principle, metaprinciple, principle of principles, even more precisely – as an ideal, the way of approaching which is the entire system of law and the activities of lawyers (jurisprudence). It is indicative that the reference to the principle of fairness was excluded from paragraph 1 of Article 3(1) of Part 1 of the Tax Code of the Russian Federation during the first revision six months after its enactment.

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possible to levy a particular tax.

The obligation of citizens to participate in the financing of public needs, generally recognised since the Declaration of Human and Civil Rights of 1789, does not in itself explain why this or that tax is introduced. Acknowledging that the category of "economic basis of tax" still needs theoretical understanding, S.I. Ayvazyan expressed the following opinion: "Not any fact (event, action, state) can become a legally significant (legal) fact giving rise to the obligation to pay tax, but only that which indicates the emergence of income, profit, acquisition of property, increase in its value, the emergence of another material good as a result of economic activity of the taxpayer, as well as on other grounds, not related to the economic activity of the taxpayer. These economic realities and can become the economic basis of the tax" [16, c. 237].

According to S.V. Ovsyannikov, it is the presence at the disposal of the taxpayer of a certain good with economic value, serves as a mandatory prerequisite for the imposition of a tax obligation - this provision is enshrined in the legislation in the form of a principle that assumes the presence of an independent economic basis for each tax [17, p. 47 - 48].

One of the first purposeful definition of EON was given by A.P. Yudenkov: "Economic basis is such economic states and processes that imply the formation of the source of tax, in particular, the appearance of certain income and property at the taxpayer" [18, p. 37] [18, c. 37]. A.V. Churkin expresses similar considerations in his work: "The economic basis of tax should be considered the appearance of a taxpayer of a certain material good, which predetermines the emergence of the obligation to pay tax and can actually serve as a source of tax" [19, p. 87]. [19, c. 87].

The reference to the source in the above definitions can be agreed only conditionally, in the sense of indicating some economic substance: taking into account the monetary method of payment of taxes (Article 45 of the Tax Code of the Russian Federation), the source for the payment of tax should be understood as previously available or newly received funds.

In order to find an answer to this question, it should be remembered that taxation is a process of forced redistribution of newly created material goods in society. Thus, Professor S.D. Tsypkin noted that "taxes are a form of redistribution of national income" [20, p. 128]. [20, c. 128]. Consequently, a taxpayer who has no material wealth cannot be subject to taxation. But it is not the property already available to the taxpayer that is subject to redistribution, but its growth, i.e. improvement of welfare. It is not by chance that S.G. Pepelyaev emphasises that the totality of different forms of income at the macroeconomic level forms the national income, which is the source of taxes [21, p. 213]. The same opinion is held by a group of other authors: "The source of taxes is the new value, i.e. national income created in production by labour, natural resources and capital" [22, p. 91]. [22, c. 91].

The Constitutional Court of the Russian Federation in its decisions uses the term "economic object" for these purposes: "Normative-legal regulation in the sphere of taxes and fees falls within the competence of the legislator, who has a fairly wide discretion in choosing specific directions and content of the tax policy, independently decides on the appropriateness of taxation of certain economic objects, guided by constitutional principles of regulation of economic relations"[6].

In our opinion, this increase in property can be labelled by the term "economic benefit"[7].

[6] Decisions of the Constitutional Court of the Russian Federation of 22.06.2009 No. 10-P, of 16.07.2012 No. 18-P, of 25.12.2012 No. 33-P, of 23.06.2015 No. 1259-O, of 01.07.2015 No. 19-P, of 31.05.2016 No. 14-P, of 31.03.2022 No. 13-P, of 26.01.2023 No. 4-P, of 31.05.2023 No. 28-P; definitions of the Constitutional Court of the Russian Federation of 16.07.2009 No. 939-O-O-O, of 01.10.2009 No. 1345-O-O-O, of 24.02.2011 No. 197-O-O-O, of 01.03.2011 No. 273-O-O-O, of 12.04.2011 No. 440-O-O-O, of 29.09.2011 No. 1338-O-O, of 04.06.2013 No. 873-O.

[7] It should be noted that economic benefit serves as a basis for the definition of income in Article 41 of the Tax Code of the Russian Federation, and is also mentioned in Article 105.15 "Preparation and submission of documentation for tax control purposes", Article 257 "Procedure for determining the value of depreciable property" of the Tax Code of the Russian Federation and Article 268.1 "Specifics of recognition of income and

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On the basis of the system of basic taxes that existed earlier and currently exist in the world, we can distinguish different types of economic benefit - net income, profit, excess profit[8] , rent (both natural rent and regularly received income from the use of capital), value added (to be more precise - value added). Receipt of these and other types of economic benefits gives the state a reason to levy a tax.

Article 1 of the Law of the Russian Federation of 06.12.1991 No. 1992-1 "On Value Added Tax"[9] contained the following provision, the like of which cannot be found, unfortunately, in relation to other taxes: "This Law introduces the value added tax. The tax is a form of withdrawal to the budget of a part of the added value created at all stages of production and defined as the difference between the value of sold goods, works and services and the value of material costs allocated to the costs of production and circulation". In essence, the law defined VAT as a form of withdrawal to the budget of a part of the value added generated by the taxpayer.

Indeed, tax is essentially a withdrawal of the relevant part of the value added (in Russia - 9.09% or 16.67%[10]), net income of an individual (9%, 13%, 15%, 30%, 35%) profit of an organisation (3%, 5%, 9%, 10%, 13%, 15%, 20%, 30%), etc. Therefore, by analogy with the above definition, profit tax can be defined as a form of withdrawal to the budget of a part of profit received by an organisation, personal income tax - as a form of withdrawal to the budget of a part of net income received by an individual, etc.

In other words, the economic basis of a tax is what is taxed, what is actually subject to taxation, i.e. withdrawal into public funds and redistribution. It can be compared to the purchase of a pie, an appropriate part of which the taxpayer has to share with others.

At the same time, we should agree with the clarifying remark of A.I. Khudyakov and G.M. Brodsky that "contrary to popular opinion, payment of tax on income does not mean that such tax divides income into two parts: one part the taxpayer must give to the state in the form of tax, and the other part is entitled to keep in his property. This tax means only that the taxpayer must pay tax in the amount corresponding to a certain part of the income" [23, c. 17]. Thus, it is the economic benefit that is withdrawn as a tax, but not the gross income received in any form (including sales proceeds). The source for payment of tax is both gross income received in monetary form, which formed the taxable economic benefit, and other monetary funds - earlier or later received. It is they that are alienated in favour of the state or municipality.

It is incorrect to say, for example, that value added tax is imposed on operations involving the sale of goods, work and services[11]. Realisation is a legal fact, which as an object of taxation serves as a trigger in the mechanism of tax calculation. It is impossible to withdraw and redistribute as a tax a part of a legal fact. In the Resolution of 17.02.2009 № 9181/08, the Presidium of the Supreme Arbitration Court of the Russian Federation correctly stated that "value added tax is taxed on the economic benefit actually received by the company" (in this case - value added).

Quite often EON is reflected in the very name

expenses when acquiring an enterprise as a property complex" of the Tax Code of the Russian Federation. The Civil Code of the Russian Federation contains references to the received or lost benefit, as well as the beneficiary (in cases when a party to a transaction is not the beneficiary, i.e. there is a "split" of subjects and relations).

[8] In general, excess profits are taxed indirectly and in a very limited way, in the form of excise taxes and a specific tax on gambling. However, Russian practice knows an example of direct taxation of excess profits during the NEP period (Decree of the CEC of the USSR, SNK of the USSR of 18.05.1927 "On the state tax on excess profits"). 2023 marked the return of excess profit tax to the Russian tax system as a one-off payment.

[9] Law of the Russian Federation of 27.12.1991 No. 2118-1 "On the Fundamentals of the Tax System in the Russian Federation" // "Rossiyskaya Gazeta", No. 56, 10.03.1992.

[10] If we understand the tax rate as the share of withdrawal of the relevant economic benefit, then for VAT the real (real) rates are 10/110 and 20/120, while the rates of 0%, 10% and 20% are estimated (technical).

[11] Resolution of the Presidium of the HAC RF of 02.10.2007 No. 3355/07.

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of the tax: it is explicitly stated what part of the economic benefit available to the taxpayer is withdrawn in the public interest (income tax, value added tax). This is understandable, because the names of phenomena should reflect their essence. However, in a number of cases, the economic basis of a tax is not obvious (excise tax, social taxes[12], personal income tax, mineral extraction tax), and sometimes deliberately hidden by the legislator. For example, by levying a tax on motorway users[13] a part of revenue was withdrawn, and by means of a special tax[14] - a part of added value[15]. In such cases, the economic basis should be judged first of all on the basis of what economic indicator the established object of taxation and the tax calculation procedure lead to taxation[16].

The conducted research allows us to give the following definition. The economic basis of tax is the receipt of economic benefit, to which the tax legislation connects the emergence of the obligation to pay tax. Since the key words in this definition are "obtaining economic benefit", the question immediately arises - what should be understood by it? The "pie" subject to sharing is a positive result of some economic activity (exchange) or possession of certain types of property, it is an increase in the property of the taxpayer, which means improvement of his property status. Economic benefit is a positive result of economic exchange[17] or possession of certain types of property[18]. The most common types of economic benefit are value added, profit, net income and natural rent.

The proposed definition of EON means that the right of the state to demand the payment of tax is predetermined not by the presence of the object of taxation, as it is considered [19, p. 188], but by the presence of an economic basis, i.e. the receipt of some economic benefit by the taxpayer.

2. Types of economic benefit

The main type of economic benefit is net income, which corresponds to the ideas of classical economic theory that income, not capital, should be taxed. Thus, N.I. Turgenev pointed out that "tax should always be levied on income, and moreover on net income" [25, p. 22]. [25, c. 22]. And the net income can be both real (actually) received, for example, wages[19], and imputed, i.e. predetermined, attributed and rather conditional[20].

[12] Hereinafter, social taxes are understood as both the unified social tax and mandatory insurance contributions to social funds.

[13] See Art. 5 of the Law of the Russian Federation of 18.10.1991 No. 1759-1 "On Road Funds in the Russian Federation".

[14] See para. 25 of Decree of the President of the Russian Federation No. 2270 dated 22.12.1993 "On Some Changes in Taxation and in the Relationship between Budgets of Different Levels".

[15] The tradition of concealing the taxable type of economic benefit goes back to the past. For example, under Ivan III, the indication of the target nature concealed the true nature of pischal (for cannon casting), polonyanichnye (for the ransom of soldier's men), zasechnye (for the construction of zasechnye lines on the southern and south-eastern outskirts of Russia), and streletsky (for the maintenance of the regular army) taxes. See: [24, c. 82].

[16] For example, Section 4 of the Special Part of the Tax Code of the Republic of Kazakhstan provides for corporate income tax. However, taking into account the provisions of Article 100 on the need to deduct expenses incurred in connection with the implementation of activities aimed at generating income, it can be concluded that the RK TC actually provides for the collection of corporate income tax.

[17] In A.P. Yudenkov's terminology - economic process.

[18] In A.P. Yudenkov's terminology - economic state.

[19] See also: Resolution of the Constitutional Court of the Russian Federation of 28.10.1999 No. 14-P "On the Case of Verifying the Constitutionality of Article 2 of the Federal Law on Amendments and Additions to the Law of the Russian Federation "On Profit Tax of Enterprises and Organisations" in Connection with the Complaint of OJSC Energomashbank".

[20] Historically, imputed taxes can include not only the per capita tax and the window tax that existed in France and other European countries (based on the external sign of wealth - the number of windows and doors facing the street), but also most other taxes, because the system of "tax

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Profit is a "commercial" type of net income, i.e. net income received by organisations. Net income received by individual entrepreneurs is not called profit, although according to the meaning of subparagraph 3, paragraph 1, Article 2, paragraph 1 of the Civil Code of the Russian Federation, which defines the concept of "entrepreneurial activity", and Article 23 "Entrepreneurial activity of a citizen" of the Civil Code of the Russian Federation, the activities of individual entrepreneurs are aimed precisely at making profit. It is not by chance that Article 221 "Professional Tax Deductions" of the Tax Code of the Russian Federation contains a reference to Chapter 25 of the Tax Code of the Russian Federation.

Special parts (subspecies) of net income are excess profits from the sale of certain goods - as a rule, those in high demand[21], as well as natural rent (also a kind of excess profit), which is formed only due to the exploitation of natural resources and is therefore subject to increased exemption (taxation)[22]. So-called excess income subject to luxury tax is also a special subset of net income. Within net income, one can distinguish such a subspecies as capital gains (increase in the value of property)[23]. Net income is also formed by savings on expenses compared to ordinary income, for example, savings from the employment of socially well-off labour resources (the basis for social tax) or, for example, in the form of so-called material benefits (the basis for personal income tax in strictly defined legal cases).

A special (synthetic) type of economic benefit is value added, which consists mainly of labour costs and profits.

The use of different types of economic benefit rather than a single one, as suggested by proponents of the flat tax theory (on land, property, capital, income or expenditure)[24] is related to the need to capture the taxpayers' ability to pay as accurately as possible.

In historical retrospect, it is noticeable that while the list of taxable benefits remains unchanged, the subject of taxation and the object of taxation are constantly changing. Where once fireplaces, carriages and canes were recognised as luxury items for tax purposes, today it is expensive cars, yachts and housing. The sale of salt and matches used to generate super profits, while today the most profitable are petroleum products. States are constantly selecting items and objects that can serve as a reliable indicator of the occurrence of economic benefits to the taxpayer. Therefore, for example, paintings of famous masters or unique jewellery that clearly have a "tax potential" and are extremely difficult or practically impossible to administer the presence or transfer of which in the conditions of free business turnover are still not considered as taxable items.

Despite current perceptions, most pre-existing taxes, if you look closely, had an economic basis. An example of a "strange" tax is the so-called air column tax, which was levied on projecting bay windows and balconies until the early 20th century. It is believed that it arose as a result of the theory that a bay window or balcony rests on an air column, the base of which is located on the land belonging to the city, so they should have been taxed [27, p. 302]. This is rather a legal explanation, while the economic basis lies in the presence of external signs (indicators) of affluence and, consequently, tax solvency. Of course, we can talk about too approximate and sometimes erroneous assessment of taxpayers' wealth in this way. However, we should not forget that these taxes corresponded to the level of social development and real possibilities of what today we call tax

administration" did not allow to confidently identify the received economic benefit and determine its size.

[21] Among the historical analogues of modern excise taxes are excise taxes on soap, paraffin, matches, salt, sugar, chocolate, alcohol, crystal, jewellery, and furniture.

[22] Although the taxation of mining was carried out in Russia as early as the 17th century, the mining tax as a form of payment for subsoil use was introduced in 1719 by Peter the Great; it was levied in kind in the amount of a tenth of the gross mineral production. See: [26, c. 43].

[23] Currently, capital gains tax is actually part of corporate income tax and personal income tax, as these taxes are also levied when property is sold at a price higher than the purchase price.

[24] For more details see: [24, c. 40 - 41].

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administration.

The questionable [28, p. 20] tax on bachelors, single and childless citizens, levied from 1 October 1941 to 1 January 1992, also had an economic basis, namely, the withdrawal of part of discretionary (free) net income, which is objectively higher for individuals without children and dependents. In essence, this tax was an instrument of family taxation and the corresponding redistribution of the tax burden.

3. Content of the principle of economic basis of tax

"The intrinsic nature of a tax should be the guiding principle in determining its effects, not merely the label or name of the tax. [...] The concept of the legal nature of a tax as a guiding principle is not merely a matter of a posteriori concern; once a tax is imposed, the answers to unresolved questions must be found in the nature of the tax itself, unless, of course, policy decisions, as has been noted in the legislative history, make it necessary to deviate from the nature of the tax. Moreover, the legal character is bound to be a matter of primary concern. It should be a guiding principle in the design of the tax without, however, becoming an intolerable "corset". The nature of the tax should provide an optimal model, deviations from which can be resolved only after detailed discussions, so that the tax legislation does not represent a mishmash of often short-term political interests", - so Prof. Ben J. Terra noted the role of the economic and legal nature of the tax, allowing to find answers to the questions arising in the collection of the tax [29, p. 13].

A.I. Khudyakov and G.M. Brodsky pay special attention to the relationship between economics and law in taxes: "Tax relation, being a kind of economic relation, has its own objective laws, which the state must take into account when establishing a tax and determining its legal regime. If the state will not take into account the regularities inherent in the tax relationship as a kind of economic relationship, then sooner or later the economic content of the tax relationship will "rebel" against its legal form" [23, p. 34]. [23, c. 34].

Paragraph 3 of Article 3 of the Tax Code of the Russian Federation implies that any tax levied in any case must have an economic basis. Therefore, the principle of economic basis of tax is an imperative requirement that the taxpayer has an appropriate economic benefit for the normative establishment of the tax and its collection in a particular situation.

The historical roots of the EON principle can be found in the principle of justice formulated by A. Smith, according to which the contributions of members of society to the government should be proportionate to the benefits received.

The EON principle should be taken into account not only when establishing new taxes, but also when establishing tax exemptions, as well as when interpreting and applying tax legislation.

4. Key findings

The concept of the economic basis of tax, which was introduced into the tax system when the Tax Code of the Russian Federation was adopted, is increasingly entering the legal turnover, and the principle of the economic basis of tax is increasingly being applied in practice. The task of achieving legal certainty requires filling both the concept and the principle with specific universally recognised content.

System analysis of the norms of the tax legislation of Russia, the study of legal positions of the highest judicial bodies and opinions of specialists, historical and economic aspects of taxation allow us to come to the conclusion that the economic basis of tax should be understood as the receipt of economic benefit, with which the tax legislation connects the emergence of the obligation to pay tax. At the same time, economic benefit should be understood as a positive economic result and its types are considered. Among the economic benefit can be distinguished value added, profit, net income, natural rent. The principle of economic basis of the tax is an imperative requirement that the taxpayer has a corresponding economic benefit for the levying of a particular tax.

It should be emphasised that the appeal to the concept of EON is not related to the "economic analysis of law", but to the economic-legal analysis of tax relations.

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