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TAX LAW SYSTEM IN THE CONTEXT OF DIGITALIZATION: PROBLEMS AND PROSPECTS**

Olga I. Lyutova
HSE University, Moscow, Russia

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Topic. The analysis of trends and prospects for the development of the tax law system is carried out.
The purpose of the article is to develop a criterion for structuring the branch of tax law relevant for the period of digitalization.
The methodology of the study includes an analysis of regulatory acts of tax legislation regulating the legal regulation of digital transformation of taxation.
The main results and the scope of their application. Due to the lack of a single criterion for the formation of the structure of tax law (in different years, the tax system or the system of tax legislation was considered as such), obstacles are created in the unambiguity of understanding the system and types of tax law institutions. This leads to a number of practical problems related to the "alignment" of new tax law norms that appeared in the digital era into the "classical" tax legal relationship.
Conclusions. The criterion on the basis of which the modern legislator, as well as representatives of the tax and legal doctrine, divides tax law into institutions is a controversial issue of the relevant branch of science. Such uncertainty does not give an unambiguous understanding of the legal nature of new tax law institutions, for example, the institute of a single tax payment. At the present stage, it would be logical to use the category of "tax obligation" as a kind of link in the system of tax law, which is predetermined by its fundamental role in tax and legal regulation.

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1. Introduction

Issues of the system and structure of tax law are permanently relevant for tax legal doctrine due to the high degree of their significance. Systematization of tax law plays an important role in the research agenda, since it allows «to create a foundation» for the perception of disparate norms for research purposes, as well as rule-making (including to ensure the functioning of the tax enforcement mechanism, relevant to modern socio-economic conditions) and law enforcement activities.

Research into the issues of digital transformation of the tax law system under the influence of the increased use of information and communication technologies is also fundamentally important. As researchers note, in the context of the scale of implementation of digital phenomena and the corresponding economic changes, referred to in the literature as the Fourth Industrial Revolution [1, 2, 3], the increasing role of tax and legal regulation as a factor in the development of digitalization is unconditional.

Indeed, tax legislation and ongoing processes correlate with each other according to the principle of direct and feedback connections, causing mutual evolutionary processes. These circumstances require a transformation of essential approaches to structuring the branch of tax law, both in the context of its institutional division and in matters of industry independence.

2. The problem of choosing a criterion for structuring tax law

The main difficulty in conducting such a study is that if generally accepted scientific categories of the subject and method of legal regulation, the system of law, as well as legal principles and sources of law are used for the sectoral division of law, then the question of the criteria for separating norms into legal institutions is most often resolved ambiguously as in financial and legal sciences and in other legal sciences.

To date, several approaches to determining the structure and content of legal branches have been formed both in the theory of law and in tax law. For example, Professor M.K. Yukov, analyzing the system of the branch of Soviet civil procedural law, implements an approach that can conditionally be designated as functional. The author believes it is logical to use the phenomenon of functions of legal norms, rather than the subject of legal regulation, as the main criterion for dividing normative material into structural units [4]. This position seems controversial, both in relation to procedural and substantive norms and the corresponding legal institutions, for the following reasons.

The category «functions of legal norms» itself is actively used in legal doctrine and is used in the theory of state and law most often for the purpose of classifying legal norms into regulatory and protective [5]. At the same time, the functions of legal norms are usually understood as the main directions of the regulatory impact of a particular legal regulation on the behavior of the relevant subjects, which is aimed at fulfilling tasks determined by the industry specific legal regulation of certain social relations, as well as ensuring the rule of law in cases of non-fulfillment and / or improper execution of legal requirements.

Tax law, like most other industries, is characterized by a division of tax legislation into regulatory and protective. For example, D.V. Tyutin, in his textbook on tax law, substantiates the advisability of structuring tax law into two blocks - regulatory and protective. At the same time, the implementation of the norms of regulatory tax law is aimed at the ultimate goal of legal regulation in relation to this industry - financial support for the activities of public legal entities, and protective tax law includes norms that provide for the consequences of non-compliance with the norms of regulatory tax law [6].

In this regard, we consider it fundamentally important to note that in this case we are not talking about dividing tax law into institutions. Characterizing regulatory and protective tax law, despite a certain degree of conventionality of such division precisely in the context of tax relations [7], the authors emphasize the practical importance of taking into account the functional orientation of tax legislation in matters. It consists in ensuring the unity of legal regulation of taxation by various legal means, in which protective standards must

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correspond to the corresponding regulatory ones, which is especially important in the context of establishing measures of responsibility for tax offenses not only in the Tax Code of the Russian Federation, but also in the Code of Administrative Offenses of the Russian Federation, as well as the Criminal Code of the Russian Federation.

In the context of digitalization of the economy in the context of the development of regulatory and protective tax law, an important task is to prevent an excessive shift of tax and legal regulation towards the protective function, as well as to ensure that the legislator maintains a balance of regulatory and protective rules when establishing the rights and obligations of participants in tax relations.

The imbalance of regulatory and protective principles is most clearly noticeable in the modern version of establishing rules on tax control, which is currently based on the concept of a risk-based approach. The tax risk criteria used by tax authorities are very numerous and are mainly contained in by-laws, and the stages of the process of assessing such risks are not systematic. This leads to a high level of discretion of regulatory authorities, which occurs when assessing risks during tax audits [8, p. 60], which is based on an imbalance of regulatory and protective regulations, leading to a lack of guarantees protecting controlled persons from the initiation of excessive tax control measures against them.

Thus, the development of legal regulation of taxation in the digital era, when the number of opportunities for the regulatory body to collect information about taxpayers increases, should be carried out on the basis of legislative establishment of the basis for the interaction of private and public subjects of tax relations, subject to minimizing the possibility of their reflection in non-normative acts.

Despite the importance of dividing tax law into regulatory and protective, primarily from the point of view of the application of tax legislation, it should be recognized that it does not give an unambiguous idea of the sectoral structure of tax and legal regulation. In addition, the basis for the construction of most branches of Russian law, including tax law, is the division of relations into types, and not the functional nature of the rules of law.

From a historical point of view, the phenomenon of the Russian tax system has traditionally been used as a fundamental concept for structuring tax law, the links of which some scientists consider appropriate to consider as a set of forms of tax relations grouped on the basis of the provisions of tax legislation; it is characterized by their joint balanced fiscal and regulatory impact on social -economic processes that in one way or another mediate the establishment of taxation rules [9].

The tax system is a multidimensional concept. On the one hand, it represents a single entity aimed at ensuring the existence of the state as a public legal entity, as well as solving the problems facing it, and on the other hand, it is a combination of several areas of taxation, each of which differs from the other in its content and structural originality in terms of from the point of view of legal regulation.

Today, there are two approaches to the concept of the tax system – narrow and broad. According to the first approach, which is currently considered narrow[1], the tax system is a set of taxes (for example, in the works of M.N. Sobolev and in the works of the German economist A. Wagner) [10, 11, 12], within the framework of the second - broad - it is a complex system of elements, which include not only taxes themselves, but also other tax and legal phenomena. At the same time, scientists' ideas about the elemental composition of the tax system have evolved from the first approach to the second historically with the development of tax legislation and the theory of tax law.

Within the framework of a broad approach, Professor K.S. was one of the first to define the tax

[1] In a narrow sense, the concept of the tax system was used not only in scientific and educational literature, but also, for example, by the Constitutional Court of the Russian Federation in a number of Resolutions: dated 07.01.2015 № 19-P, 07.10.2017 № 19-P, 06.06.2019 № 22-P, as well as in the Definitions: dated 06.08.2004 № 224-O, 02.05.2009 № 367-O-O, etc.

system. Belsky. In his opinion, it is a set of interconnected parts (elements) in the field of taxation based on certain principles [13].

Over the years, the elements of the Russian tax system, in addition to the actual taxes and fees relevant to a particular period of legal regulation, included, in particular, the principles of organization and functioning of the tax system; the procedure for establishing, introducing, changing and canceling taxes and/or their individual elements; issues of distribution of taxes and fees between budgets of various levels of the budget system of the Russian Federation, as well as state extra-budgetary funds; various types of rights, obligations and legitimate interests of participants in tax relations; organization of various tax processes and procedures (collection of taxes, submission of tax reports, bringing to tax liability), etc.

Recognizing the unconditional value of such a definition of the concept of the tax system, which is rightfully considered fundamental in the science of tax law, due to the fact that other researchers criticize and/or supplement it with other elements, one cannot help but note the abstractness of the content of the elements themselves, the concept of each of which, in its own right, in turn, requires scientific comprehension and interpretation due to objective ambiguity.

Thus, using the structure of the Russian tax system as a methodological basis for the institutionalization of tax law at the present stage of development of the science of tax law is difficult due to, firstly, the lack of legal regulation of the definition of the concept of the tax system itself, as well as its elements, and, secondly, due to the lack of a uniform understanding of it in tax and legal doctrine.

3. New criteria for structuring tax law in the digital era

In the context of digitalization, the understanding of the tax system as a set of taxes is gradually losing its relevance. This is predetermined by the trend in the development of legal regulation of tax administration, aimed at unifying the calculation and payment, including forced collection, of various taxes, and is expressed, in particular, in the following innovations in tax legislation:

1. the emergence of a single tax payment, which makes it possible to fulfill the obligation to pay several taxes simultaneously;

2. the introduction of new special tax regimes (for example, a tax on professional income), when used, the obligation for payers to pay a single payment instead of several taxes is established.

Thus, from the point of view of designing a modern tax system, tax procedures and regimes are of fundamental importance. This means that when assessing the concept of the tax system, the concept of tax obligation comes to the fore as a set of various obligations of private entities: for paying tax, for submitting tax reports, for tax registration, for maintaining and accounting for income and expenses and other obligations provided for clause 1 art. 23 Tax Code of the Russian Federation.

Analysis of the tax system as a set of various tax obligations of payers is of value in modern conditions, since it allows us to evaluate not only the statics, but also the dynamics of the development of tax relations, to predict their development in the near future, possible as a result of the use of various new digital technologies, for example, blockchain, cloud technologies, artificial intelligence [14, 15], etc.

Speaking about the Russian tax law system back in the pre-digital period, I.A. Tsindeliani called it traditionally formed as a pandect or institutional, focused on the structure of tax legislation and the corresponding tax system [16, p. 49].

It is important to note that the processes of digitalization and globalization have actually become catalysts for the following scientific discussions, one way or another related to related issues of the subject of legal regulation, as well as the transformation of the structure of tax law and legislation:

- determining the place of international tax law in the legal system as a whole, as well as establishing its subject and method of legal regulation;

- formation of a scientific concept and legal basis for the inclusion or absence of the need to include legal regulation of the establishment and

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collection of certain fees and other payments in the subject of tax law;

- highlighting the institution of tax administration and changing the paradigm of tax relations related to the implementation of tax control;

- decodification of tax legislation, expressed in the establishment of new special tax regimes, as well as other experimental rules related to taxation, not in the Tax Code of the Russian Federation, but in other laws;

- a significant increase in the volume of by-law regulation of tax relations, in relation to which their positivity in tax legislation is objectively necessary;

- a fundamental transformation from the point of view of content of a number of fundamental tax and legal concepts (for example, the concept of tax sovereignty, tax legal personality, income and others), on the content of which the essence and structure of various tax law institutions and others depend.

For a long time, each type of tax relations was regulated by a separate regulatory act, and control in the field of taxation was carried out by several government bodies. However, the events of political and economic instability in the 90s of the last century showed the ineffectiveness of this approach, since taxes in Russia constitute a system and the size of one of them can vary significantly depending on the tax conditions established by the legislator in relation to another tax.

This approach involves structuring the branch of tax law on institutions in accordance with the provisions of Art. 2 of the Tax Code of the Russian Federation, which defines the types of relations regulated by the legislation of the Russian Federation on taxes and fees. Let us note that the institutionalization of tax law on the principle of exclusive conditionality by the structure of tax legislation actually states the use of a formal criterion and is based on the concept of legal positivism. In modern legal theory, positivist theories are subject to well-founded criticism in modern legal science [17], since «standards can be established not only in normative acts, but also in individual decisions, which in their content reflect the formal requirements of equality and justice» [18], which means the initial conditionality of the application of the corresponding criterion.

Thus, it is difficult to agree with the authors who claim that the tax legislation system is subjective, since it depends on the will of the legislator, who at his discretion determines the subject and content of the law, and the tax law system is an objective phenomenon. We believe that the industry system is also formed on the basis of the opinion of representatives of the relevant science and cannot be considered absolutely free from their subjective judgments. In a number of works devoted to theoretical issues of taxation and fees, Professor A.V. Demin repeatedly noted this fact [19]. Accordingly, the number and types of tax law institutions cannot be based solely on trends in the development of tax legislation and will always be relative.

First of all, it is fundamentally important to note the emergence of new institutions of tax law, which leads to a non-standard structuring of the relevant industry in comparison with what is traditionally proposed in educational literature.

Digitalization of the economy and related regulatory innovations are additional confirmation of this conclusion. For example, in modern conditions, groups of norms appear that are tax in their content, but they are difficult to unambiguously identify from the point of view of belonging to one or another institution of tax law. New institutions of tax law often do not fit into the existing structure of tax law, as a result of which it does not always, as rightly noted by R.V. Klimovsky, moves along the path of formation of a harmonious stable system, and represents a pile-up of elements (institutions) with weak internal and external connections [20].

In particular, numerous discussions in the legal literature [21, 22] are caused by the legal regulation of tax obligations related to the calculation and payment of a single tax payment, including from the point of view of its institutionalization in tax law. So, A.V. Krasyukov, noting the ambiguity of the legal status of the single tax payment from the point of view of its legal nature, points out that its main purpose is to implement the mechanism of advance payment by the taxpayer of a public legal entity, in which the

first acts as a tax debtor, and the second as a tax creditor, which allows you to simplify the process of fulfilling tax obligations for paying property taxes of individuals by reducing the number of payments [23].

Another example is the ambiguity of the legal status of operators of electronic platforms involved in fulfilling the obligation of self-employed taxpayers to pay tax on professional income, introduced by Federal Law № 422-FZ of November 27, 2018 «On conducting an experiment to establish a special tax regime «Tax on professional income». Firstly, despite the participation of these persons in tax relations, the provisions on them are not implemented in the norm of the Tax Code of the Russian Federation regulating the status of subjects of tax law [24], and, secondly, their legal status (for example, as a tax agent or representative taxpayer) has not been determined to date [25, p. 55-56]. This means that in tax law there has thus been a tendency towards decodification - key issues related to the fulfillment of tax obligations (in this case, the issue of the list of taxable persons) are regulated by another regulatory act outside the Tax Code of the Russian Federation.

Thus, from the point of view of institutional division, focused on the structure of Russian tax legislation, a single tax payment can be attributed both to the institution of calculation and payment of tax, and to the institutions within which the legal regulation of taxation of individuals is carried out, in respect of which the corresponding payment is permitted for use. In addition, since the mechanism of a single tax payment presupposes both the possibility of paying tax in the usual manner and repaying arrears, the difficulty lies in its identification in the structure of the institution of tax liability itself.

4. Conclusion

Under the influence of digital transformation, not only is the structure of tax law changing from the point of view of the emergence of new institutions in it, as well as the loss of force of irrelevant provisions, but the issue of searching for a new criterion for systematizing tax law is also becoming relevant. Taking into account the development of the tax legislation of the Russian Federation along the path of a significant transformation of tax liability as a central institution of tax law, it seems appropriate to consider the various responsibilities of private subjects of tax relations as a systematizing single principle of the digital transformation of tax law.

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INFORMATION ABOUT AUTHOR

Olga I. Lyutova – PhD in Law, leading researcher, Institute for Public Administration and Governance
HSE University
11, Myasnitskaya ul., Moscow, 101000, Russia E-mail: olyutova@hse.ru
ORCID: 0000-0002-6603-8859
ResearcherID: AAD-7366-2019

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