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Civil-legal institutions in tax law enforcement

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The subject. The enforcement of civil-legal institutions, such as ответственность за причинение вреда, неосновательное обогащение in tax disputes.
The purpose of the paper is to identify how the civil-legal institutions may help in interpretation and enforcement of tax legal rules.
The methodology. The methods of analysis and synthesis are used. The focus of the scientific analysis concerns the decisions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the courts of general jurisdiction.
Results and scope of application. Damage (harm) caused to the state by tax arrears is fundamentally different from the harm (damage) caused to the civil order, responsibility for which is provided by Art. 1064 of the Russian Civil Code. Concerning the damages to state by tax arrears, these arrears don't affect the initial assets of the state and couldn't be reimbursed using to the civil order (Art. 1064 of the Russian Civil Code). Concerning property deduction on personal income tax, it can't be equaled to tax (arrears) by using the legal fiction. Because the underestimation of the tax base for personal income tax leads to property losses of the budget, this situation is subject to the application of civil law institutions.
Conclusions. Today the law enforcement practice creates a situation of substitution of legality by expediency. The essence of this situation is that, if it is not possible to solve a situation by using tax legal rules, the situations is solved by civil law, although the application of the civil law to these situations is not possible on the merits.

Key words: transformation of tax relations to civil relations. unjust enrichment, civil-law responsibility, protection of taxpayer's rights, tax law, civil law.

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1. Introduction to the subject of research.

The trend of increasing use of civil law institutions for the resolution of tax cases in the sphere of taxation has become very clear in modern conditions of crisis economy. This trend is markedly manifested in the practice of the Constitutional Court, the Supreme Court and courts of general jurisdiction. This trend meets harsh criticism of the legal community. One of the main arguments in favor of the extension of civil legal principles in the enforcement of the tax is, according to opponents, the violation of the public-law guarantees of the rights of taxpayers, stipulated by the legislation on taxes, fees and insurance premiums.

2. Application of the institution of liability for causing harm to the relations to recover arrears of taxes.

In recent years, law enforcement practices in the field of taxation created the so-called rule of "the transformation of tax relations into civil ones" [1-6]. The essence of the problem is that the courts began to actively satisfy civil claims of tax authorities and prosecutors, declared in the criminal proceedings against the heads of enterprises that committed tax crimes, to compensate harm caused to the state in connection with the non-receipt of tax payments to the budget. Law

enforcement practice in these cases was established due to the fact that it was supported by the Supreme Court of the Russian Federation and the Constitutional Court of the Russian Federation[1].

2.1. Critical analysis of the practice of "transforming fiscal relations in civil" in the legal literature. Scholars expressed many objections to such law enforcement practices. The main ones are as follows:

- tax authorities have no right to assert claims for damages in accordance with the Federal Law "On the tax authorities of the Russian Federation" dated 21.03.1991 № 943-1;
- dispute about non-compliance with tax obligations is ruled under public, not civil law (Decision of the Constitutional Court from 17.12.1996 number 20-P);
- civil law does not apply to tax relations in accordance with Art. 2 of the Civil Code of the Russian Federation (hereinafter - the Civil Code);
- "There is a threat of double collection of unpaid taxes: in one case, as part of the involvement of the head of a legal entity in civil liability, and in the other case, from a legal entity within the framework of tax legislation (after all, the courts indicate that the damage is not recognized as the tax amount) " [2, p. 20].

2.2. The restorative nature of liability for damage and its inclusion in recovering arrears.

Art. 1064 of the Civil Code, which is referred by the tax authorities in support of their claims for damages, provides the emergence of civil tort legal relationship of the injury. In other words, compensation for harm in the order of Art. 1064 of the Civil Code is a form of civil liability [7. 431].

At the same time it is known that civil liability in essence is a property-restorative [8, p. 590; 9, p. 102]. And in the context of liability from causing harm under Art. 1064 of the Civil Code of the Russian Federation it is supposed that through the compensation of harm as a measure of responsibility the original position of the victim should be restored. In our case, the state. It is the restoration of the original property position of the victim from causing harm is a fundamental feature of this form of civil liability [7. 482; 10, p. 258, 261].

Accordingly, in Art. 1082 of the Civil Code of the Russian Federation establish and ways of compensation for harm. All of them are such, what can restore only the original position of the victim. These methods include:

A) compensation of harm in kind (a thing of the same kind and quality, reparation of a damaged thing etc.);

B) compensation of damages (Art. 15 of the Civil Code of the Russian Federation), including:

- expenses that the person whose right was violated, has or will have to do to restore the violated right;
- loss or damage to its property (real damage);
- unearned income that this person would have received under normal conditions of civil turnover, had his right not been violated (loss of profit).

The question arises: what kind of harm is caused to the property status of the state by non-payment of the tax (arrears) so that the guilty person could compensate him with one of the above methods? There is clearly no harm. Obviously in the sense that harm (damage) caused to the state by non-payment of tax (arrears) is fundamentally different from harm (damage) caused in civil law order and responsibility for which is provided for in Art. 1064 Civil Code of the Russian Federation. The difference is that civil damages under Art. 1064 of the Civil Code requires the application of damage to the **original** position of the victim, and therefore requires compensation for damages as a measure of responsibility for the restoration of the original assumption of the

[1] См: Определение ВС РФ от 27. 01.2015 № 81-КГ14-19; Определение КС РФ от 19.11.2015 № 2731-О; Определение КС РФ от 19.07.2016 № 1580-О; Определение КС РФ от 28.02.2017 № 396-О.

victim. In short, according to the meaning of Chapter 59 of the Civil Code of the Russian Federation, one can not harm anyone who did not initially have an object of causing harm in relation to a specific situation. With regard to the damage caused to the state due to non-payment of tax, then formed in connection with the arrears does not damage *the original* property status of the state. Harm (damage) caused by non-payment of state tax (arrears) is expressed in the non-receipt of state budget revenue, corresponding to the expectations of the state on the basis of the respective budget as the financial plan and the law on the budget, but that income was not from the state initially, before the formation of the arrears. It is obvious that such damage can not be regarded as loss of earnings, loss of profit components, as loss of profit is formed only in the relationship of civil turnover and income foregone in the state budget, formed in the relations of the public financial turnover, that is, s in property relations regulated by norms of financial law [11]. Accordingly, the damage does not harm the original position of the state as the victim, and therefore does not have a civil identification under Art. 1064 of the Civil Code; *This kind of harm (damage) does not need compensation* [7. *462].* It is satisfied by the state of recovery of arrears.

In this context, the phenomenon of arrears in tax law can not be regarded as a fact of harm in civil law sense and, accordingly, may not be one of the reasons of occurrence of tort legal relations of reparation under Article 1064 of the Civil Code.

It also can not be assumed that arrears as a phenomenon of tax law can be transformed into civil-law harm (damage) in the case of a civil claim in the criminal process against the person guilty of its occurrence. *In other words, arrears, being formed in the public legal sphere, can not be considered as state property, therefore, causing damage to the state in the public legal sense, ie. Being a shortfall in budget income, arrears can not be transformed into civil law harm in the sense of Chapter 59 of the Civil Code of the Russian Federation.*

The Supreme Court of the Russian Federation in the Ruling dated 27 January 2015 built a full statement of reasons just to justify the damage caused to the state in the form of lost budget funds system. However, the court identified this damage with the harm (damage) stipulated in Art. 1064 of the Civil Code of the Russian Federation, not making their differentiation proceeding from the systemic interpretation of the norms of Chapter 59 of the Civil Code of the Russian Federation, based on the doctrine of civil law.

In addition to all it should be stressed that civil liability under Art. 1064 of the Civil Code can not occur on the basis of judicial interpretation. As F. Hayek noted, "the essence of a rule-of-law state is not that everything is regulated by law, but that the state machinery of coercion is put into circulation only in cases stipulated in advance by law, so that the method of its application can be foreseen in advance" [12].

In fact, today, law enforcement practice creates a situation of substitution of legality by expediency. The essence of this situation is that if from the point of view of the tax law it is not possible to resolve the situation, then it is decided from the position of civil law, although the application of civil law to these situations is not possible in essence.

2.3. The right to collect arrears in the context of the legal personality of the state. In modern conditions, it is not so much the problem of proving the legality or illegality of bringing claims by the tax body for compensation of harm to the state and, accordingly, judicial interpretation in connection with the tax crime committed by the head of the enterprise, but rather a scientific analysis of the principle of possibility of establishing such responsibility in the legislation for the state.

The most consistent scientific approach to the answer to the above question positively suggests the study of the possibility of the legislative establishment of the state's right to seek compensation in civil law from the head of the enterprise in connection with the failure to get arrears into the treasury (budget).

According to the legal doctrine, the state acts simultaneously in two persons: as the ruling subject possessing sovereignty (imperium) and, in this sense as a public personality. And at the same time, the state manifests itself as an economic entity that enters into civil turnover for the most

effective implementation of public authority [7, p. 155], giving itself a civil personality. It is emphasized that the civil legal personality of the state is the target or, in another case, a special, because is aimed solely at the most effective exercise of public authority [13, p. 26]. In the definition of the Constitutional Court from 04.12. 1997 № 139-O pointed out that "the Russian Federation, the Russian Federation and municipal entities involved in civil matters as subjects with special legal capacity, which by virtue of their public and legal nature does not coincide with the standing of other entities of civil law - individuals and legal entities , Pursuing private interests. "

With regard to the public personality of the State, it is, of course, the general personality, because the state manages all of its tasks and functions, i.e. it is a direct way of exercising public authority. Drawing on numerous studies on the theory of the state, it should be emphasized that, from a legal point of view, the state is not limited in the establishment and realization of its legal personality, except for the Constitution.

However, the analysis of legislation shows that the state still selectively refers to the establishment and implementation of its civil legal personality. In this context, science noted that "many of the legal families of the world come from the monistic model of the state's participation in public circulation when major and a major participant in the civil law relationship becomes treasury (treasury)" [13, p. 17].

Accordingly, it can be seen that in the most efficient exercise of public authority the State shall provide itself with legal personality for the treasury of the income that can be received through the establishment of public duties of their payment, but only on a contractual basis. Among them there are many non-tax revenues, government loans and other income. In this sense, civil legal personality of the state is an additional one in comparison with its public legal personality. As for the issues of civil liability arising from public offenses, the very problem of such responsibility is surprising. After all, the question arises: why the civil liability comes from public law? Therefore, the legislative establishment of the state's right to demand compensation for damages as a measure of responsibility in the manner of Art. 1064 of the Civil Code of the Russian Federation from the head of the enterprise in connection with non-receipt of funds in the form of arrears in the form of arrears in any case does not correspond to the compensatory nature of civil liability.

3. Application of the institute of unjust enrichment to the relations connected with the provision of tax deductions. The Decision of the Constitutional Court of 25 March 2017 № 9-P can be considered as a way to resolve the tax situation, as well as as civil-legal equalization. The essence of the situation was the following: the tax authority had no legal grounds for the decision to grant property tax deductions for personal income tax (hereinafter - PIT). And after a while tax authorities found a mistake and went to court with a claim for the return of these persons derived from the sum of the budget as the unjust enrichment of Art. 1102 Civil Code.

The Constitutional Court of the Russian Federation adopted the Resolution, according to which "in the absence of special regulation in the legislation on taxes and fees, the wrongful (wrongly) presented property tax deduction is wrongly" does not contradict the Constitution of the Russian Federation "the possibility of recovering from the taxpayer money received as a result of improperly (wrongly) granted by the decision of the tax authority property tax deduction for personal income tax return in order to unjust enrichment if the measure is the only possible way to protect the fiscal interests of the state".

The main characteristics underlying the Constitutional Court Decision, are: 1) the lack of legislation on taxes and fees for special regulation of returning of the wrongfully represented by a property tax deduction for personal income tax, 2) the adoption of the tax authority of unlawful decisions on granting property tax deduction, 3) allocation from the budget of individuals based on the decision of the tax authority of funds, 4) the fact of property losses of the budget. Hence, the logical chain of the situation is as follows: from an individual on the basis of an illegal decision of the tax authority and the allocation of the appropriate amount of the budget was formed unjust enrichment, and the budget has suffered property losses. In fact, in such a situation, according to the Decree of the Constitutional Court, a civil protective legal relationship to return to the budget of

unjust enrichment, the cause of which was the illegal decision of the tax authority, must arise. It is evident that in the RF Constitutional Court Ruling is a resort to the civil-law institute of unjust enrichment is not to tax legal relations and to relations outside the tax and legal, that is, objectively within the scope of civil-law adjustment arising on the basis of unjust enrichment, but the reason for that is the fact of the illegal decision of the tax authority to grant property tax deduction. In this regard, it can be argued that in the absence of tax and legal mechanism for the return of wrongly provided to an individual property tax deduction on personal income tax, the legal situation is *equalized* in the civil procedure.

This Court's position met active opposition of the legal community. In this case, the main argument against the decision of the Constitutional Court is that the court did not use legal means of regulation. And specifically, the Court did not consider the situation through the overdraft, which was formed by the taxpayer as a result of underestimation of the tax base due to the receipt of illegal tax deduction, although the fault of the tax authority.

The Court fixed the reason, on which tax law means cannot be used in this case. The Court noted that the provision of a property tax deduction for personal income tax is based on the decision of the tax authority. It appears that the size of the unfulfilled obligation to pay the tax (arrears) will be determined by the tax authority, which is contrary to the requirement of lawfulness of the tax.

In addition, the argument of the Court can be noted that the consideration of one phenomenon through another in the enforcement of law is a fiction. As you know, every fiction is the recognition of the existing non-existent, and vice versa. An example of such fiction replacing phenomena with one another is given in para. 4, p. 8 Art. 101 of the Tax Code. According to the article, it refers to deductions of VAT and excise duties, which are precisely the attributes of the obligation to pay the tax and links in the mechanism of formation of the tax which do not have functional independence.

The deduction on personal income tax cannot be equaled by law fictions to the tax and, consequently, to the arrears for the following reasons:

1) the property tax deduction has an independent function, and namely, performs exceptionally *regulatory function of taxation:* it stimulates the population to purchase relatively low-cost housing (deduction of 2 million rubles. The property tax deduction cannot be equaled to the personal income tax, and therefore, arrears, since any tax performs primarily *fiscal function***.** Therefore, from a functional point of view, the property tax deduction on personal income tax is a correlate of the tax base (in contrast to the deduction of VAT and excise duties as a correlate of the order of tax calculation). In other words, the law enforcement fiction is unacceptable.

2) the taxpayer is entitled to a property tax deduction for personal income tax. He has the right not to apply for this deduction. Accordingly, since it is the taxpayer's right, we can not speculate on his guilt about the treatment to the competent authority for the implementation of their rights. In extreme cases one can only talk about his honest mistake about expediency of treatment to the competent authority for receiving the tax deduction.

Thus, the Court quite rightly did not use enforcement function of arrears in the present case.

The merit of the court is that, using the RF Civil Code to this situation, it is very clearly said that "understatement of the tax base for personal income tax results in property loss of budget", thus, the Court underlined the civil link between the transfer of assets from the budget and unjust enrichment. This is very important, because the use of a civil enforcement action in the form of return of unjust enrichment requires civil identification of enrichment of one subject at the expense of another.

4. Conclusions. Means of regulation under civil law are beginning to appear in the tax enforcement when means of tax law are insufficient or they are absent.

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