

TAXATION IN INSOLVENCY (BANKRUPTCY) PROCEDURES OF LEGAL ENTITIES

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Subject. The article analyzes a set of norms related to the legal regulation of personal income tax, corporate income tax, VAT, and other taxes, as well as the order of their collection (payment) from a bankrupt, depending on its organizational and legal form. The choice of the research object is due to the presence of problems related to ambiguous issues in taxation in bankruptcy proceedings.

The purpose of the study. The article attempts to comprehensively analyze the legal support of the current measures regulating the taxation of bankrupt organizations and individuals, current law enforcement practice, and the legal positions of the country's highest courts.

Methodology. The leading research method is a formal legal one. **Conclusions.** The article reveals and concretizes a number of legal problems. The authors argue their own point of view on the taxation of bankrupt organizations and individuals, taking into account the practice of the highest judicial authorities, which, according to the authors.

It is concluded that there are grounds to talk about the formation of such a new legal institution of financial law as "public bankruptcy law".

1. Introduction

The complex nature of the legal regulation of the dispute resolution on taxation issues of bankruptcy procedures of organizations is of scientific and practical interest. There are reasons to believe that today the significant blocks of both legal norms and legal positions of the highest judicial bodies reflecting peculiarities of the taxation of such entities have been formed. In Russia there is no “reverent” attitude (both on the part of counterparties and on the part of the government bodies) towards a person who doesn’t pay his debts. As a result of which “bankruptcy law”, which is a complex interdisciplinary institution that combines the norms of private and public law is developing rapidly [1, p.17; 2, p.44]. The sphere of financial and legal regulation of “bankruptcy law” includes regulatory and protective legal relations connected with the execution of the financial and tax obligations towards budgetary budgets. These relations arising in separate bankruptcy procedures, due to their public importance, are regulated by the norms of financial law, as the person representing public interests in bankruptcy relations is defined by the Federal Tax Service of Russia. These relations, arising in individual bankruptcy procedures, due to their public significance are regulated by the norms of financial law using the imperative method and the use of appropriate coercive measures by establishing uniform goals and principles of State regulation in this area, the Federal Tax Service of the Russian Federation. The regulatory provisions of the financial legal institution in question in its entirety are characterized by the following features of the system as objectivity, unity, hierarchy, ability to develop. This allows to admit the formation a new legal institution of financial law as “public bankruptcy law”.

2. Controversial issues of the procedure and necessity of paying taxes by a non-organization in bankruptcy proceedings

Current payment debts are not included in the register of creditors’ claims, but are collected

outside the bankruptcy procedure in the usual manner. On the basis of the provisions of art.1. 137 Federal Law of 26.10.2002 127-FZ “On insolvency(bankruptcy)” (hereinafter-Bankruptcy Law) when determining the size of claims of creditors third tier the requirements of the creditors and authorized bodies are taken into account.

Federal Law No.296-FZ of 30.12.2008¹ introduced amendments regarding the special order of satisfaction of creditors’ claims on the debtor’s current obligations (clause 2, article 134 of the Bankruptcy Law). The Plenum of the Supreme Arbitration Court of RF² explained that paragraph 2 of Article 134 of the Bankruptcy Law establishes the order of satisfaction of creditors’ claims payments during bankruptcy proceedings. The provisions of Article 855 of the Civil Code of the Russian Federation, which determines the order of writing off funds from an account when they are insufficient to satisfy all claims presented to the account, do not apply to such relations.

The occurrence of the obligation to pay tax is determined by the presence of the object of taxation and the tax base (paragraph 1. of Article 38, paragraph 1 of Article 44 of the Tax Code of the Russian Federation), and not by the onset of the last day of the period during which the relevant tax must be calculated and paid at the end of the tax period. The occurrence of the obligation to pay tax is determined by the presence of the object.

The date of occurrence of the obligation to pay tax is the date of the end of the tax period, and not the date of submission of the tax return or the date of the end of the tax payment period (paragraph 6 of clause 6 of the Review³).

¹ Federal Law No. 296-FZ of 12/30/2008. Collection of Legislation of the Russian Federation. 2009. No. 1 Article 4.

² Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 07/23/2009 No. 60. Bulletin of the Supreme Arbitration Court of the Russian Federation. 2009. No. 9.

³ Review of judicial practice on issues related to the participation of authorized bodies in bankruptcy cases and bankruptcy procedures applied in these cases (approved by the Presidium of the Supreme Court of the Russian Federation on 12/20/2016) (ed. from 12/26/2018). Bulletin of the Supreme Court of the Russian Federation. 2017. № 9.

The Resolution of the Constitutional Court of the Russian Federation dated 04/09/2024 No. 16-P⁴ states that there are no sufficient grounds to assert the need to assign the relevant penalties to any other category or queue of payments other than the taxes themselves, in connection with the late payment of which penalties are accrued.

Creditors' claims on current payments are repaid primarily before the claims of registered creditors (clause 1 of Article 134 of the Bankruptcy Law). Repayment of current and registered payments is carried out in accordance with the priorities established by paragraphs 2 and 4 of Article 134 of the Bankruptcy Law. Tax calculations are usually carried out as part of the fifth stage of current payments and the third stage of registered payments.

For a long time, there was no unified position on the legal regime of the debtor's obligations with respect to income tax arising after the sale of assets from auctions.

The legal problem was the lack of proper legal regulation. Currently, the situation has changed, taking into account the position of the Constitutional Court of the Russian Federation⁵.

Thus, the Constitutional Court of the Russian Federation in Resolution No. 28-P established a temporary procedure regarding the order of execution of tax obligations when selling debtors' assets in bankruptcy proceedings, according to which income tax is attributed to the registry requirements of the third stage, and also obliged the legislator to resolve the issue of the order of income tax arising from the sale of the bankruptcy estate of debtors.

The Constitutional Court of the Russian Federation agreed that in the absence of a direct indication to the contrary, the actions of the Tax Code of the Russian Federation imply the inclusion in the tax base for corporate income tax of income from the sale of property constituting the

bankruptcy estate in the bankruptcy case.

At the same time, the Constitutional Court of the Russian Federation noted that the current regulatory regulation does not allow to establish with a sufficient degree of certainty the place of the claim for payment of income tax on the sale of property constituting the bankruptcy estate in the bankruptcy case when determining the priority of creditors' claims. In such a situation, there are certain grounds for assigning the corresponding mandatory payment to the current one, namely to the fifth stage, since the specified requirement formally arises after the date of acceptance of the application for recognition of the debtor as bankrupt.

This approach does not take into account that in this case we are talking about mandatory payments that arise not within the framework of the permissible continuation of the economic activity of the organization and not when performing individual actions that ensure the very possibility of completing bankruptcy proceedings, achieving the goals of this procedure, but when selling the entire array (in addition to cash) of the property that makes up the bankruptcy estate.

As determined by the Constitutional Court of the Russian Federation with reference to law enforcement practice, not all mandatory payments formally declared by the authorized body after the date of acceptance of the application for declaring the debtor bankrupt are subject to current payments.

At the same time, in Resolution 28-P of the Constitutional Court of the Russian Federation, it indicated the possibility of taking into account the claim for payment of income tax as repayable after the registry requirements, since with the usual insufficiency of the bankruptcy estate to satisfy even the requirements included in the register, this is equivalent to releasing the taxpayer in this case from the actual performance of tax obligations. The Constitutional Court of the Russian Federation concluded that before making appropriate changes to the legal regulation, claims for payment of corporate income tax on the sale of property constituting the bankruptcy estate in a bankruptcy case are subject to satisfaction as part of the third

⁴ Resolution of the Constitutional Court of the Russian Federation dated 04/09/2024 No. 16-P. Collection of Legislation of the Russian Federation. 2024. No. 17. St. 2392.

⁵ Resolutions of the Constitutional Court of the Russian Federation dated 04/9/2024 No. 16-P; dated 05/31/2023 No. 28-P. Collection of Legislation of the Russian Federation. 2023. No. 24. St. 4388.

stage of creditors' claims included into the register.

The Constitutional Court of the Russian Federation drew attention to the regime for satisfying the requirement to pay tax on the sale of mortgaged property in the context of the provisions of paragraph 6 of Article 138 of the Bankruptcy Law, separately.

Taking into account the above-mentioned legal positions of the Constitutional Court of the Russian Federation, Judicial Board for Economic Disputes of the Supreme Court of the Russian Federation⁶ concluded that the costs of paying income tax on the sale of bankrupt property, both being and not being the subject of collateral, are subject to satisfaction as part of the third stage of the register of creditors' claims. At the same time, the Supreme Court of the Russian Federation considered it necessary to determine the procedure for establishing the requirement to pay income tax when selling the bankruptcy estate in the register (in fact, a special procedure for including tax in the register has been established). Thus, the Supreme Court of the Russian Federation came to the conclusion that the costs of paying income tax on the sale of the bankrupt's property, both being and not being the subject of collateral, are subject to satisfaction as part of the third stage of the register of creditors' claims without any differentiated approach.

Referring to the current legislation, we note that the norms of tax legislation and bankruptcy legislation do not establish a special procedure for calculating income tax.

According to the Tax Code of the Russian Federation, both the sale of assets of bankrupt debtors and all products (works, services) produced by them in the course of their current activities are exempt from VAT. The relevant amendments were introduced by Federal Law No.

320-FZ dated 10/15/2020⁷. A similar rule applies to individuals (income from the sale of property subject to sale is exempt from taxation (in case such a taxpayer is declared bankrupt and the procedure for the sale of property is introduced) (paragraph 63 of Article 217 of the Tax Code of the Russian Federation). Improper fulfillment of this tax obligation before accepting an application for declaring the debtor bankrupt will be qualified as a requirement to be included in the register of creditors according to the rules of paragraph 4 of Article 134 of the Bankruptcy Law. It is also necessary to take into account the provisions of Article 24 and paragraphs 1 and 2 of Article 226 of the Tax Code of the Russian Federation.

With regard to the payment of property tax, the bankrupt organization will calculate and pay the tax until the property is registered and sold.

It is necessary to elaborate on the procedure for the payment of corporate income tax by a bankrupt or STS arising after the sale of the debtor's assets from auctions.

For the entire period of the organization's activity (including bankruptcy proceedings), it is recognized as a payer of income tax. At the same time, income from the sale of property during bankruptcy fully falls under the definition of revenue (income) from sales (Articles 248, 249 of the Tax Code of the Russian Federation). With the accrual method, such income is recognized on the date of sale regardless of the actual receipt of payment (clause 3 of Article 271 of the Tax Code of the Russian Federation).

Depending on the taxation regime applied by the debtor, profit (income) from the sale of property becomes the object of corporate income tax (or USN).

According to the Resolution of the Constitutional Court of the Russian Federation No. 13⁸—Regardless of the time of adoption, the norms of the law that is

⁶ Definition of the SCS of the Supreme Court of the Russian Federation dated 06/29/2023 No. 310-ES 19-11382 (2) in case No. A 09-15885/2017 URL: https://www.vsrfr.ru/stor_pdf_ec.php?id=2260868 (date of application: 04.04.2024)
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⁷ Federal Law No. 320-FZ of 10/15/2020. Collection of Legislation of the Russian Federation. 2020. No. 42 (Part II). Article 6507.

⁸ Resolution of the Constitutional Court of the Russian Federation dated 06/29/2004 No. 13-P. Rossiyskaya Gazeta. 2004. July 7th.

specifically designed to regulate the relevant relations - the Bankruptcy Law, and not the Tax Code of the Russian Federation - are recognized as priority. The practice of determining the priority of corporate income tax formed in the bankruptcy procedure has changed several times in recent years. Until 2020, income tax was paid as the part of the fifth round of current payments⁹.

Subsequently, judicial practice developed on the priority repayment of current mandatory payments related to the collateral of debtors, at the expense of proceeds from the sale and (or) use (leasing) of the specified collateral in bankruptcy proceedings.

Thus, the Supreme Court of the Russian Federation has already expressed its legal position on the priority repayment of value added tax accrued upon leasing of collateral during bankruptcy proceedings, at the expense of the amounts of the corresponding rent before its distribution to the collateral creditor¹⁰. And subsequently, he formed a similar legal position on the priority repayment of property taxes accrued on the specified collateral property during the period of the debtor was in bankruptcy proceedings at the expense of proceeds from the sale of collateral property¹¹.

Thus, during the period under review, the Supreme Court of the Russian Federation formed a unified legal approach to the issue of applying to current mandatory payments related to the debtor's collateral (property taxes accrued on collateral, value added tax accrued when leasing collateral during bankruptcy proceedings), the legal regime established by paragraph 6 of art. 138 of the Bankruptcy Law.

Having conducted an appropriate analysis since

2020¹², we note that a different position has begun to form on the issue of the order of payment by a bankrupt of corporate income tax (or Simplified taxation system -STS) arising after the sale of the debtor's assets from auctions. Thus, in this case, the courts concluded that the payment of tax in connection with the sale of the bankrupt's property at auction should be made at the expense of the debtor's remaining property after satisfying the creditors' claims included in the register of claims. The courts pointed out that the obligation to pay income tax arising in connection with the sale of the property of a bankrupt taxpayer in the framework of bankruptcy proceedings cannot be recognized as a current claim.

During 2021-2022, the formulated approach was supported by the courts in similar disputes and was reflected in numerous judicial acts of the Supreme Court of the Russian Federation¹³.

The analysis of judicial practice showed that the Supreme Court formulated a position on the application of the legal regime established by paragraph 6 of Article 138 of the Bankruptcy Law to the debtor's obligations to pay property taxes accrued on collateral for the period of the debtor's stay in bankruptcy proceedings¹⁴.

Thus, the Supreme Court of the Russian Federation in certain acts adhered to the position that only taxes are subject to payment at the expense of collateral proceeds, the objects of taxation of which are recognized as property that is the subject of collateral, such as corporate property tax, personal property tax, land tax, transport tax¹⁵,

⁹ Resolution of the Constitutional Court of the Russian Federation dated December 23, 1997 No. 21-P. Rossiyskaya Gazeta. 1998. January 6.

¹⁰ See: The definition of the SCES of the Supreme Court of the Russian Federation dated 19.10.2020 No. 305-ES20-10152 in case No. A40-46117/2019. SPS "Garant"

¹¹ Definition of the SCS of the Supreme Court of the Russian Federation dated 04/08/2021 No. 305-ES 20-20287 in case No. A40-48943/2015. URL: https://www.vsrfr.ru/stor_pdf_ec.php?id=1985270 (accessed 04.04.2024).

¹² Definition of the Supreme Court of the Russian Federation dated 02/11/2020 No. 303-ES19-10320. URL: https://vsrf.ru/lk/practice/stor_pdf_ec/1861624 (date of application: 04.04.2024).

¹³ Definitions of the Supreme Court of the Russian Federation dated 06/20/2022 No. 308-ES17-16991 in case No. A53-32017/2016, dated 07/25/2022 No. 305-es22-11487 in case No. A40-61908/2018, etc.

¹⁴ Review of judicial practice of the Supreme Court of the Russian Federation No. 3 for 2021 (approved by the Presidium of the Supreme Court of the Russian Federation on 11/10/2021). Bulletin of the Supreme Court of the Russian Federation. 2022. No. 1-2

¹⁵ For example, the Definition of the Armed Forces of the Russian Federation dated 04/08/2021 No. 305-AC 20-

in others – that are subject to payment and other taxes. The Supreme Court of the Russian Federation has determined that the corporate property tax and land tax accrued on the collateral of a bankrupt debtor during the period when this property is in bankruptcy proceedings are to be repaid as a matter of priority at the expense of funds received from the sale of the collateral, that is, before the distribution of funds to the collateral and other creditors according to the rules established by Article 138 of the Bankruptcy Law. The reverse approach violates the property interests of unsecured creditors, since before the formation of such an approach, these taxes were paid at the expense of other property in the bankruptcy estate and reduced the amount of satisfaction of the claims of unsecured creditors¹⁶.

A balanced approach between the interests of the Federal Tax Service of Russia and collateral creditors was established by the Constitutional Court of the Russian Federation¹⁷. One of the important decisions was the above-described Resolution of the Constitutional Court of the Russian Federation No. 28-P.

It seems that the Constitutional Court of the Russian Federation, in Resolution No. 16-P, unequivocally spoke about property taxes, about the absence of tax obligations (payments) related to the sale of the bankruptcy estate, signs of current payments. The Constitutional Court of the Russian Federation noted that their payment hinders the achievement of the objectives of bankruptcy proceedings from the systemic and teleological interpretation of paragraph 6 of Article 138 of the Bankruptcy Law.

20287 URL:

https://www.vsr.ru/stor_pdf_ec.php?id=1985270 (date of application: 04/05/2024).

¹⁶ URL:

https://www.vsr.ru/stor_pdf_ec.php?id=1985270 (date of application: 04/05/2024).

¹⁷ It should be noted that, with certain frequency, the Constitutional Court of the Russian Federation has repeatedly pointed out the need to ensure a balance of the rights and legitimate interests of persons involved in the bankruptcy case, since this aspect correlates with the public legal purpose of the bankruptcy institution.

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As the Plenum of the Supreme Arbitration Court of the Russian Federation pointed out earlier¹⁸, the distinction between registered and current claims is determined not by the moment of its "maturation", but by the moment of making a provision entailing the occurrence of a counter obligation of the debtor.

Please note that before the adoption of the Resolution of the Constitutional Court of the Russian Federation No. 16-P in relation to other taxes (property tax, land tax, transport tax; tax under the Simplified taxation system), there was no uniformity in judicial practice. In the case of property taxes, the situation was previously difficult in comparison with income tax, since its formal tax base is formed only when the debtor's property is sold during bankruptcy proceedings, but property taxes are accrued by virtue of the very fact that the property is owned. It seems that the Resolution of the Constitutional Court of the Russian Federation No. 28-P contains a legal position common to all taxes related to the sale of assets of the debtor in bankruptcy proceedings, with the exception of restored VAT, given its special legal nature of tax deductions. Resolution No. 28-P noted that, in general, tax obligations arising from the sale of the debtor organization's property and arising after the initiation of bankruptcy proceedings are not current.

Based on the above, the restored VAT has a number of independent grounds for being assigned to the third stage of the register, since such an obligation arises before the initiation of bankruptcy proceedings. Its adjustment in connection with the sale in bankruptcy proceedings of an asset acquired before bankruptcy cannot indicate the current nature of this payment.

The constitutional and legal meaning of clause 6 of Article 138 of the Bankruptcy Law, revealed in the Resolution of the Constitutional Court of the Russian Federation No. 16-P and formulated by the Constitutional Court of the Russian Federation in

¹⁸ Paragraph 3 of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 07/23/2009 No. 63. Bulletin of the Supreme Arbitration Court of the Russian Federation. 2009. No. 9

Resolution No. 28-P, is generally binding, which excludes any other interpretation of this norm in law enforcement practice, including the restored VAT and the unified tax under the Simplified taxation system.

It is important that from 01.01.2023 only the current debt forms a negative balance on the unified (single) tax account (hereinafter referred to as the STA) for a bankrupt. If there is a negative balance on the single tax account in accordance with Article 134 of the Bankruptcy Law, current payments will first be paid. In the absence of a negative balance on the unified tax account and notification of the taxpayer of the calculated amounts of advance payments, the payment will be credited to the suspended debt – to the registry. It seems reasonable to make appropriate changes to clause 8 of Article 45 of the Tax Code of the Russian Federation, taking into account the specifics of bankrupt organizations. This circumstance will certainly affect the enforcement of the aggregate tax obligation and the fulfillment of the debtor's obligation in bankruptcy within the established order of priority by the Bankruptcy Law.

Based on the established legal positions of the courts and the new 8th paragraph of Article 45 of the Tax Code of the Russian Federation, law enforcement issues will arise due to the priority of fulfilling tax obligations for individual taxes in the context of imperative sequence. The order and procedure established by clause 8 of Article 45 of the Tax Code of the Russian Federation and the provisions of the Bankruptcy Law regarding current and registered payments represent a dissonance in law and lack of harmonization, which is the basis for applying to the Constitutional Court of the Russian Federation.

3. Controversial issues of taxation of taxpayers' income in bankruptcy proceedings

It should be assumed that the issues of the order of payment of taxes are important, but the general issues of taxation of bankrupts are a priority,

because priority issues can be determined only after their correct resolution. In this regard, the above-mentioned Resolution of the Constitutional Court of the Russian Federation No. 28 P is of particular interest.

At the moment, despite the legal positions expressed by the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation, a significant number of relevant conceptual and practical issues continue to be actively discussed in the specialized literature [3, p. 46; 4, p. 4; 5, p. 76; 6, p. 4; 7, p. 172], although there is a consensus on them. Based on the publications, the specified Resolution of the Constitutional Court of the Russian Federation was awaited by collateral creditors: it depended on the Constitutional Court of the Russian Federation whether they would receive the bulk of the proceeds from the sale of the mortgaged property of the bankrupt or from it the bankrupts would also have to pay income tax.

It follows from the Decision of the Constitutional Court of the Russian Federation that the norms of bankruptcy legislation and tax legislation, due to their complexity and multidimensional nature, may be in direct or indirect contradiction, which is eventually resolved by the court through the application of the principles of law by determining a fair balance of interests (values) [8]. On the one hand, a special norm takes precedence over a general norm, but one special law does not beg for the action of another special law [9, p. 357]. Accordingly, without moving to the level of principles of law, it can be extremely difficult to determine which special rules in a particular situation are to be applied, which are "more special"¹⁹.

It was through the balance of interests that the well-known clarifications were given in paragraph 1

¹⁹ In particular, in the Resolution of the Presidium of the Supreme Arbitration Court of the Russian Federation dated December 10, 2013 No. 10481/13, competition between the norms of the Tax Code of the Russian Federation and the Bankruptcy Law was noted.

of the Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation No. 11 dated 01/25/2013²⁰, where the priority of special norms of the Bankruptcy Law over special norms of the Tax Code of the Russian Federation was actually recognized. Discussions on this issue have been continuing [10, 11].

Now, in the Resolution of the Constitutional Court of the Russian Federation No. 28 P, bankruptcy legislation was compared, as well as tax legislation in terms of corporate income tax and, in essence, personal income tax (PIT).

The question can be formulated: should the activities of a bankrupt organization be taxed on the sale of goods (works, services)? The question is trivial, since the bankrupt organization is likely to be liquidated as a result of these procedures, as a result of which the main purpose of its activities is the sale of the remaining property and the fair distribution of funds among creditors. At the same time, a response in the style of "no taxes from the bankrupt" will lead to the fact that interested parties will conduct significant transactions through controlled bankrupts in order to avoid their taxation.

Resolution No. 28 P contains significant information regarding the request to the Court: in the case of the sale of the debtor's property in the framework of the bankruptcy case, there is actually no question of the taxpayer's activities aimed at making a profit, and, as a result, the debtor does not receive an economic benefit subject to taxation. In this case, he does not conduct business activities (unlike in cases of sale of goods, works, services by the debtor while continuing business activities during bankruptcy proceedings in the interests of creditors), and his property is sold against his will at a price set in order to maximize satisfaction of creditors' claims. Such taxation of income entails unjustified taxation of income, not profit, since the taxpayer has no expenses to be

accounted for related to the conduct of ordinary business activities. There is a threat of violation of the principle of equality, since in a similar situation, the legislator exempts from taxation the income of individuals when selling their property in the framework of a bankruptcy case.

Thus, the problem is that, by force of paragraph 63 of Article 217 of the Tax Code of the Russian Federation, the income of an individual from the sale of property to be sold in case of recognition as bankrupt and the introduction of the necessary procedure in accordance with the legislation on insolvency (bankruptcy) is not subject to personal income tax. Chapter 25 of the Tax Code of the Russian Federation does not provide for a similar exemption in relation to organizations.

The Constitutional Court of the Russian Federation has repeatedly noted that in taxation equality is understood as uniformity, neutrality and fairness of taxation. This means that the same economic results of taxpayers' activities should entail the same tax burden, and that the principle of equality of the tax burden is violated when a certain category of taxpayers falls into conditions different from other taxpayers, although there are no significant differences between them that would justify unequal legal regulation²¹. At the same time, the principle of equality does not exclude the possibility of establishing different legal conditions for diverse economic entities, however, such differences cannot be arbitrary, they must be based on objective characteristics of the relevant categories of legal entities²².

As a result of bankruptcy, an individual continues to live physically, although with certain economic restrictions. Bankrupts who continue to carry out business activities are a rare phenomenon (the fact that an organization is declared bankrupt in most cases is the result of its previous unprofitable

²⁰ Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dated 01/25/2013 No. 11. Bulletin of the Supreme Arbitration Court of the Russian Federation. 2013. No. 3
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²¹ Decrees of the Constitutional Court of the Russian Federation from 13.03.2008 N.5 P, from 22.06.2009 N. 10 P, from 15.02.2019 N.10 P, from 31.03.2022 N.13 P, etc.

²² Resolutions of the Constitutional Court of the Russian Federation No. 7 P dated 04/27/2001 and No. 13 P dated 03/31/2022.

activities). At the same time, the bankruptcy procedure, without excluding bankruptcy proceedings with the formation of a bankruptcy estate for the sale of the debtor's property, as indicated in the Resolution of the Constitutional Court of the Russian Federation²³, does not in itself interrupt his economic activity and reserves the right to continue, if possible, the production of goods (performance of works, provision of services). The continuation of economic activity on general terms remains legitimate, in any case, until creditors decide to terminate it on the basis of paragraph 6 of Article 129 of the Bankruptcy Law.

Accordingly, the question is significant: is it possible to equalize individuals and organizations to whose incomes there is clearly a different attitude in the Tax Code of the Russian Federation if the relevant entity is in bankruptcy proceedings?

In Resolution No. 28 P, in relation to the answer to this question, it is noted that, taking into account the continuity of entrepreneurial activity and the possibility of obtaining a negative financial result, the sale of property (both voluntary and carried out during bankruptcy proceedings), being inextricably linked to previous economic activities (involving tax accounting and payment of taxes), cannot without special instructions from the legislator and against his will to be withdrawn from the general rules of profit taxation.

Apparently, here the Constitutional Court of the Russian Federation in a sense "takes up" the path of the theory of a legal entity as a fiction [12].

The literature identifies a number of categories of court cases in which the legal personality of organizations is denied (including cases on tearing off the "corporate veil", on "splitting" business, on interaction with "one-dayers", etc.) [13, p. 31]. Moreover, in Russia, the criminal liability of officials of organizations for non-payment of taxes by these organizations²⁴ is also a kind of puncture of the "corporate veil".

From this point of view, the question that an organization is taxed differently in a certain situation, in comparison with an individual, can almost always be explained from the point of view of the discretion of the legislator. In any case, the opinion is expressed that the question of violation of the principle of equality of the Constitutional Court of the Russian Federation has gone away from a direct answer [4, p. 4].

This position of the Constitutional Court of the Russian Federation allows us to assert that, since the differences between organizations and individuals are so significant, it is quite possible to have a "superdifferentiated" (in the terms of taxation) attitude towards these categories of persons.

4. Conclusions

It can be argued that the highest judicial authorities take a balanced position, within which ideas such as "no taxes from a bankrupt" are not accepted. The issues, in general, boil down to the fact that a bankrupt organization that continues its activities (including those with "bankrupt" specifics, in particular, with the sale of collateral items) is taxed like ordinary organizations, unless otherwise explicitly follows from the law. The "bankrupt" component of the problems,

as a rule, boils down to the issue of determining the order of repayment of mandatory payments and to interrelated problems (compulsory collection, restoration of VAT, penalties, sanctions, etc.).

The constitutional and legal meaning of clause 6 of Article 138 of the Bankruptcy Law, revealed in the Resolution of the Constitutional Court of the Russian Federation dated 05/31/2023 No. 28-P, which determined that the income tax on the sale of the bankruptcy estate does not relate to current payments, but to the registration requirements of the third stage. As well as the prohibition on its satisfaction at the expense of the collateral and further interpretation in the Resolution dated 04/09/2024 No. 16-P in relation to property taxes, on the absence of tax obligations (payments) related to the sale of the bankruptcy estate, signs of current

²³ Resolution of the Constitutional Court of the Russian Federation dated 19.12.2019 N 41-P. Rossiyskaya Gazeta. 2019. 30 Dec.

²⁴ Article 199 of the Criminal Code of the Russian Federation, paragraph 7 of the Resolution of the Plenum of the Supreme Court of the Russian Federation dated 11/26/2019 No. 48. Rossiyskaya Gazeta. 2019. 6 Dec.

payments, is generally binding, which excludes any other interpretation of this norm in law enforcement practice.

At the same time, the legal problems of bankruptcy from the point of view of tax law have been and remain significant for business, since burdening a bankrupt with taxes, as well as determining the order of their satisfaction, essentially allow planning the economic consequences of specific actions of interested parties in this legal procedure. The relative prevalence of bankruptcy in domestic legal practice, as well as the more than "calm" view of bankruptcy in Russia by both ordinary people and businessmen, requires taking into account these features in commercial activities.

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