

DIVERSIFICATION OF THE ABUSE OF THE TAX PAYER RIGHTS IN THE COMPARATIVE-LEGAL ASPECT

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ABSTRACT

The work shows that organizations, individuals with in order to provide financial support for the activities of the state and local governments are obliged to pay taxes. At the same time, the voluntariness of their payment is necessarily determined at the level of socio-economic justification and identifying the processes of their spending. In this symbiosis, there is a socio-legal opinion in order to form a stable understanding and determine the need for the tax system development. The author shows that the rights of the taxpayer form an opportunity for the development and further strengthening of public functions.

The purpose of the article is to study the comparative legal aspects of abuse of law in the relations of the taxpayer and the state itself.

Methodological work is provided by methods of analysis in the identification of current legal doctrines, comparison of international legal decisions for the purposes of filling the observance of the taxpayer's right to a fair decision and protecting his basic rights and savings, monitoring judicial decisions in relation to abuse of the right on the part of the taxpayer and the tax authority.

The main results of the work are the study of foreign legal doctrines on the abuse of taxpayer's rights, foreign legislation and judicial practice. The practical importance of the study is determined by the fact that the border of abuse and, accordingly, the structure of the formation of the equilibrium positioning of the tax legal system of the state from the structural understanding of the malicious and deliberate formation of the environment that does not involve integrity in balancing the interests of the state and the citizen is fully determined.

Keywords: Phenomenon of Abuse of Rights, Law Enforcement Practice, Legal Doctrine, Tax Optimization, Legal Constructions, State Interest, Structural Composition, Tax Revenues.

INTRODUCTION

Conscientiousness (*bona fides*) was known to Roman law, in which it was opposed to malicious intent (*dolus malus*). Theoretically, it means a subjective state of a person at the time of legal action, in which he realizes the need for fairness and honesty in the exercise of his rights and duties. At the same time, a person does not have grounds to consider the action illegal and also there are no grounds capable of forcing him to abandon the action.

In assessing the legal consequences of a person's actions, his subjective state is taken into account and significantly modifies the consequences of actions for a *bona fide* person, as compared to a *mala fide* one.

Conscientiousness of the taxpayer lies in the fact that he must adhere to the current legislation, both general and tax, only by his own will. This definition follows from the fact that the taxpayer does not have direct personal interest in paying taxes, since, having faithfully paid the tax; he does not receive additional subjective rights from the state. A sign of irreversibility of taxation testifies to the absence of an equivalent character in property relations governed by tax law (Samsin, 2013).

That is, conscientiousness as a principle is considered as the limit of voluntary performance of their duties.

In this case, as Kobzar-Frolova, Bogdanov think, the person acts voluntarily and only if there are no mercenary motives in his actions: then it can be recognized as conscientious (Kobzar-Frolova, 2016).

The purpose of this article is to investigate the impact of legislation's fair application by subjects of the tax procedure on the legal consequences of the appellate administrative harmonization of taxpayers' tax obligations.

The subject of consideration in this article is the actual deliberate use/non-use of the principle of good faith when optimizing tax deductions by the taxpayer.

As a fundamental principle of taxation in the Russian Federation, conscientiousness is not mentioned either in the system-forming Tax Code in particular, nor in tax legislation in general (Tax Code, 2017). In the legislation of the Russian Federation, the legal principle of conscientiousness is found, for example, in a number of conventions on the prevention of double taxation with regard to the non-application of preferential norms, which create obligations only for obtaining preferences in the form of lowering tax rates (Dimitriyenko, 2016).

At the same time, the absence of a legal definition and limits of application of the "good faith" category does not mean that taxpayers can optimize tax deductions, not taking into account the conscientiousness of their behaviour with regard to the state's interests.

Concerning the conscientiousness of intentions and according to them the legality or illegality of optimization (minimization) of tax deductions, then, as Ustinova underlies: "Investigating this issue makes it possible to assert that the legal category of "bona fide", as a general legal principle, being the rule of the most general nature, has a moral nature. It represents a state of honesty, conscience, decency, presupposes the conviction of the need to carefully fulfil social obligations, respect for others, inability to do poor things" (Ustinova, 2016).

Therefore, from the standpoint of current legislation in general and tax legislation in particular, the content of the concept of "bona fide" has so far an evaluative (moral) character and, in the event of a dispute, is specified by the fact that the court has applied certain norms of law.

The judicial system uses the principle of good faith when considering certain categories of tax cases. So, the Supreme Court made a conclusion about the abuse of law in the implementation of tax optimization of profit taxation through unprofitable sales. The court does not deny the possibility of forming gross expenses for unprofitable sales. But the court takes into account the fact of unprofitableness of trade operations when buying a product and selling it in one day with a significant price reduction. Therefore, for the qualification of a person's actions, it is important which economic goal the taxpayer pursued when buying and selling the goods. Therefore, in the opinion of the court, in the course of this operation, tax optimization (evasion, in fact) took place without faithfully observing the norms of the tax legislation.

In tax relations there is an assumption of innocence and conscientiousness of the taxpayer: "Bona fides semper praesumitur, nisi malam fidem adesse pro-betur if malice is not

proven, good faith is always assumed" (Ali, 2001). At the same time, law enforcement agencies should not interpret the notion of a "conscientious taxpayer" in the perspective of imposing additional duties on him, not provided for by law.

LITERATURE REVIEW

A detailed study of the principle of abuse was conducted by a number of authors (Lomakina, 2016; Bartashevich, 2016; Dimitriyenko, 2016). Individual elements were analysed by such authors as Galanov, Gorobets, Lazareva (2016); Fatullayeva (2016).

Pechenegina asserts that the presumption of taxpayer's good faith is not reduced only to the presumption of goodwill (Pechenegina, 2016). Taxes are one of the manifestations of the sovereignty of the state and, as the eminent French scientist Paul Marie Godme rightly believes, are established unilaterally and are collected using coercive measures. That is why taxes have always been at the forefront of the contradictions of private and public interests, the interests of the state and ordinary citizens who pay taxes. In this contradiction lies the deep essence of the tax evasion problem.

Such phenomenon as tax evasion without violation of the current legislation, which is sometimes called tax planning, is quite new for Russia. As Vasiliyeva, tax planning is an absolutely legal way to save your money, optimally combining the legal forms of relations and possible options for their interpretation (Vasiliyeva, 2016).

Tax authorities and taxpayers have diametrically opposite positions regarding the interpretation of such concepts, new enough for the scientific literature, like tax management and taxation optimization.

Taxmen combine them with the concept of "tax evasion" and taxpayers often understand them as actions aimed at reducing payments to the budget.

According to Iskenderova and Kusharov (2016) it is possible to establish the legality or illegality of minimizing tax payments in each specific case by the criterion of legality of taxpayers' actions; however such direct connection does not always exist.

The violator puts himself in a more advantageous position than other taxpayers; which distorts the effectiveness of the mechanism of market competition, negates the operation of the social justice principle and impedes the state in the performance of the functions assigned to it, undermines its authority among citizens and subjects of international relations.

Panochko notes that the current system of tax control does not ensure proper effectiveness and efficiency of the tax authorities. Despite the over fulfilment of plans to collect taxes to the budgets, the scale of tax evasion does not decrease, but grows (Panochko, 2017).

The freedom to choose an expedient way of taxation, to which every taxpayer in a market economy has the right, does not automatically protect the state budget from the abuse of this right. Market model of economic relations requires qualitatively new approaches to the taxes' administration and the implementation of full tax management from the state.

Evasion from taxation was spread primarily due to the absence of a clear concepts' grinding of optimizing the payment of taxes and the possibility of avoiding paying them at all in the tax legislation. Obviously, the definition of the economic content of the concept of complete avoidance of tax payments, the study of the basics of tax state regulation is an important and urgent task of the country's economic development.

MATERIALS AND METHODS

The duties of taxpayers include the payment of taxes and fees. Obligations and rights of the taxpayer in the field of tax control are interesting in that they reflect the limitations of the constitutional right of the individual to the inviolability of private life. The methods of analysis, taxonomy and accuracy were used for a detailed study of the issue. These methods allow synchronizing the situation and studying the issue.

The investigated problem is a system with a set of elements, their properties and connections with the purpose of their comprehensive study. And initially there is a general picture of the studied subject. Therefore, the subsequent study of the subject is connected with the specification of the general idea of it. Cognition gradually reveals the intrinsic essential features of the object, the connections of its elements and their interaction with each other. And with the help of synthesis, the properties, features, parts of the object are united in a single whole.

Also, the work used a generalization, which is a method of creating a single, holistic subject of research in a synergetic aspect. The generalization is carried out in close connection with abstraction. When thinking abstracts some property or relation of a number of objects, then the basis for their unification into a single class is created.

We agree with the opinion of the authors who believed that the principles represent the main ideas, the basic provisions that form the foundation of any branch of law (Rights and Obligations, 2016).

The generally recognized principles and norms of international law play an important role in regulating public relations and taxation in particular. The world community has worked out the principles since the League of Nations, which were subsequently enshrined in the UN Charter (Preamble, Articles 1, 2).

It is with the help of universally recognized principles that the foundations of modern systems of international law and international relations, including relations in the field of taxation, are consolidated and regulated (Devos, 2014).

The current tax legislation is based on certain principles, in particular, the principles ensuring the implementation and observance of the basic rights and freedoms of taxpayers. These include the principle of legal equality of taxpayers, the principle of the universality of taxation, the principle of equal distribution of tax pressure, the principle of legality and fairness of taxation.

It is true that the principle is the basic rule, the starting point which defines the nature of the relationship, the type of activity, etc., which are objective in nature and content. In this aspect, principles are a reflection of objective laws in a subjective form. At the same time, according to the form of reflection, they are the "fact of consciousness". In this sense, the principles not only reflect the patterns of certain relationships, in particular tax relations, but also should characterize this group of relations as a single system of interrelated elements. When resolving tax conflicts, the principles of law and the entire mechanism of legal regulation act as legal principles that characterize the content of norms and law enforcement acts, the main directions of their functional impact on this type of tax relations.

The effect of general principles of taxation is manifested in all institutes of tax law: in the system of taxes and fees, their implementation and acceptance, fulfilment of the tax obligation, the legal status of participants in tax relations, appeals, etc. This is the basic nature of each

principle to lay the legal foundation of a separate group of norms, not merging with them in content.

Contradictions and distortions of the taxpayers' consciousness in the system of tax relations creates the conditions for the further development of conflict situations and therefore the legal principles of legal support for the procedure for resolving tax conflicts should ensure the functioning of public relations in the field of taxation through the mechanism of the norms' of tax legislation implementation.

However, it is worth agreeing that not all legal principles have been properly reflected in the tax legislation. These are principles such as the principle of good faith and the principle of abuse of law.

The category of "conscientiousness" arose in Roman private law. Owing to the weakening of the formalistic tendencies of the prevailing legal regime, along with the old "strict law" treaties, "good conscience" agreements began to appear, the content of which was not determined by their condition, but by the true intentions of the parties or, if they are not understood, the customs of business turnover.

Given the achievements of the administrative and financial-legal science, it is difficult not to notice the penetration of the category of conscientiousness into certain branches of private law. When regulating tax relations, the positive natural law and the interests of a *bonafide* payer are the basis for the design of regulatory and legal acts. Conscientiousness involves the inclusion of moral criteria in the assessment of the payer's behaviour. Yet it does not complicate the understanding of the rules of law with respect to definition's clarity, the unity of interpretation with the unpredictability of possible tax legal relations having different legal awareness and the level of legal culture. The question at issue is what actions of taxpayer may indicate about his conscientiousness or bad faith. They are debatable and require further study. Conscientiousness must be enshrined in tax law, as a presumption of the payer's behaviour.

The above mentioned convinces us that securing the principle of conscientiousness in tax law will promote the introduction of public standards for fairness and honesty of payers, proper fulfilment of their obligations to pay taxes, fees, mandatory payments, which will certainly affect the reduction of conflict situations in the field of taxation.

Investigating the principle of abuse of subjective rights and its influence on the resolution of conflicts in the field of taxation, we can agree that the abuse of subjective rights arising from private law provisions will take place when the taxpayer, to the detriment of the state interests, abuses his civil law, for example, the right to make a deal. Accordingly, a taxpayer who at the expense of the treasury, abuses one of his rights, for example, the right to use tax benefits, can be accused of abuse of subjective tax rights.

RESULTS AND DISCUSSION

Tax evasion is ambiguously interpreted in scientific literature. Among economists and lawyers, there is no unity in the interpretation of the concept of "tax evasion" and such related concepts as "tax avoidance scheme", "tax evasion scheme". Despite the absence of theoretical substantiation and legislative consolidation of these concepts, they are widely used in practical activities.

This thesis seems fair, since the legislator clearly states that the price of goods determined by the parties of the contract is the usual one. Unless proven otherwise, it is considered that such a normal price corresponds to the level of fair market prices.

The question of the assumption of innocence of the taxpayer is described in detail in the Tax Code of the Russian Federation, in Part 1, Article 108.

Tax evasion is often due to the provision of transactions and procedures of this "appearance", which leads to a reduction or even exemption from tax liabilities. Therefore, a measure of good faith is also assessed when determining the nature of transactions concluded by the taxpayer, the nature of the taxpayer's business and the like.

That is, there is a close relationship between good faith and the principle of prevalence of the document's essence over its legal form.

The application of this principle makes it possible for the tax authorities to abuse their rights during the research and evaluation of contractual relations of payers. In order to limit such abuses, the law abolished the rights of the tax authorities regarding the undisputed procedure for writing off the money of payers.

As one of the bases of the legislation, conscientiousness was first fixed in the Civil Code (Civil Code, 2017). The Arbitration Procedure Code also refers the conscientiousness of power subjects' actions to one of the principles for evaluating their decisions, actions or inaction. (Arbitration Procedure Code, 2017). The basic condition for managing the Civil Code is fair competition.

In the legal systems of Western countries, the principle of conscientiousness (for example, in Anglo-Saxon law it is known as *Good faith*, in German as *Treu und Glauben*) is regarded as a certain deterrence of egoism in legal relations, a factor that allows one to struggle with behaviours that correspond to the letter of law, but violate its spirit and also prevent the use of norms and institutions of law for the purpose that the law pursues.

In the Russian Federation, the legal content of the principle of good faith is set out at the level of the judiciary. Thus, the Federal Arbitration Court of the North Caucasus District, in its judgment of 18.09.08 in case no. A53-21556/2008 admitted that since the inspection failed to provide evidence indicating that the company did not exercise due diligence and caution in choosing counterparties, the argument about the good faith of the taxpayer is unreasonable.

At the level of the judiciary, there are different points of view on the issue of conscientiousness. Thus, without pointing to the good faith of the taxpayer, but in fact recognizing it, the courts often draw conclusions that the failure of funds to the budget through a fault of the bank exempts the taxpayer from any liability, incl. the re-payment.

In the Russian Federation, this issue is covered at the level of the decision of the Constitutional Court. So, in the definition of No. 138-0 of July 25, 2001, it is stated that, due to errors of state bodies, re-writing of taxes cannot be applied.

The antonym of fair application of existing tax legal norms (the exercise of one's rights) is the abuse of law, namely distortion and circumvention of the law.

To prevent abuse of the law by the taxpayers, the Federal Tax Service implements continuous monitoring of legislation in order to avoid tax evasion by taxpayers. The most characteristic schemes of tax evasion are reported to all tax authorities.

So, for example, the most characteristic features in avoiding taxation, which are directly related to abuse of law, are:

- Minimization of the company's income due to artificial overstatement of gross expenses or reduction of tax liabilities for the value-added tax due to overstatement of credit obligations.
- The sale of commodity stocks and supplies at prices below the purchase price.
- Conducting the fictitious sale operations and pseudo-export operations.
- Use of forged documents.
- VAT evasion with forgery of accounting documents.

Analysing the abuse of rights by taxpayers, the tax service proposed to provide the tax authority the decryption of the tax credit and tax liabilities in the context of counterparties for the relevant reporting period in electronic form, together with the submission of tax reports for the relevant reporting period to taxpayers.

In connection with the foregoing, the issue of mandatory inspections of enterprises that minimize tax obligations for their conscientious use of gaps and other shortcomings of the law seems topical.

The difference between tax optimization and tax evasion is that in case of tax evasion, the payer violates the norms of the law in order to reduce the amount of tax deductions and in the situation of tax optimization, achieving the same goal is not accompanied by the violations of the legislation.

Consequently, an artificial, unfair reduction of tax deductions by taxpayers consists in the fact that they use the shortcomings of the law to achieve a result that can correspond to its "letter", but contradicts its "spirit".

Conditionally, the schemes for minimizing tax liabilities were divided into two categories.

- Payers' schemes based on gaps in legislation or using different taxation systems that exist in national legislation for different fiscal burdens.
- Schemes for minimizing tax liabilities related to direct violation of legislation (tax evasion) by forgery of documents, failure to comply with tax obligations in tax declarations, use of false ("fictitious") legal or natural persons.

At the same time, the Ministry of Finance notes that the first category of schemes for optimizing tax revenues to the budget can be limited (minimized) only by introducing changes in legislation and the second by improving the mechanisms, namely, by the administration of taxes. So, a sign that makes it impossible for the budgetary reimbursement of value-added tax is the systematic sale of goods at a price much lower than the purchase price. This is seen as deliberate performance of activities with the aim of withdrawing funds from the budget by unreasonable reimbursement of value added tax. This testifies to the abuse of the right to reimburse the value added tax.

Since the antonym of conscientiousness is abuse of the law (distortions, juggling of legal norms), the corresponding consequence of the abuse of law may be the refusal of the state to protect the rights and/or the application of the norms that the subject of law abuses. That is, if the operation of the business entity, pursues the sole purpose of tax optimization without respect for the principle of good faith.

The need to create an effective system for monitoring tax evasion, which would fully meet current conditions and needs, is obvious. Consequently, the problem of developing the

theoretical and methodological foundations of the activities of tax control bodies to identify and suppress tax evasion is extremely topical and a weighty component of reforming tax relations at the present stage of the country's economic development.

An effective solution to this complex problem is possible only on the basis of an integrated approach to its solution. This particularly applies to the conceptual apparatus, legal support and organization of control over tax evasion as an important component of the state tax administration. In our opinion, it is advisable to identify such important aspects of this problem's solution:

- Firstly, it is necessary to clearly define the concept of "tax evasion" and analyze the relationship with such related concepts as "tax minimization", "tax optimization", "tax planning", "tax avoidance scheme".
- Secondly, to determine the place of control of tax evasion in the system of state tax administration, tax management and tax control in general.
- Thirdly, to increase the efficiency of the functioning of controlling bodies, radically changing the approach to the selection of inspection objects.
- Fourthly, to legislatively fix these changes, which will make it possible to logically complete the construction of a tax control system aimed at counteracting tax evasion?

The legal design of a tax offense composition is of great importance for law enforcement activities and the qualification of tax legislation violations. Only revealing all the signs of the offense in the behaviour of a person makes it possible to qualify this behaviour as an offense and to apply appropriate measures to the person.

The most common ways to avoid tax are:

- Failure to submit documents related to the calculation and payment of mandatory payments to budgets or state trust funds (tax returns, calculations, accounting reports and balances and the like).
- Under declaration of the amount of taxes, fees, other mandatory payments.
- Concealment of objects of taxation.
- Under declaration of objects of taxation.
- Failure to enrol or transfer to the budget the amount of tax on income of individuals of citizens to whom they were paid.
- Concealment of loss of grounds for tax relief or non-notification of loss of grounds. Submission of false information certifying the taxpayer's right to a tax credit, etc.

The absence in the tax legislation of the norms defining the concept of "tax evasion" significantly complicates the control, one of the tasks of which is to identify and bring the unscrupulous taxpayers to justice. The objective need to separate the concepts of tax evasion and other various forms of tax minimization exists not only in Russian reality, but also in world practice.

Based on this, tax evasion is understood as a form of reduction in the tax liability, which is subject to tax control by the state and is carried out by the tax payer who has an obligation to pay a tax (taxes), by committing tax crimes, tax offenses, mainly using a variety of schemes.

Under the scheme of tax evasion we mean a detailed description of the forms and methods of extracting objects from the taxation sphere by taxpayers in order to avoid paying

taxes, the exposure of which will increase the effectiveness of control measures. That is, the scheme for avoiding taxation, in fact, is a separate manifestation of the scheme of tax evasion.

Semantic and economic analysis of these concepts allows us to conclude that, in essence, they all have signs of minimizing tax obligations, including illegal. The second important common feature of the concepts under study is the fact that taxpayers carry out this minimization, usually through tax violations or even tax crimes.

Under the tax offense, as Panochko notes, it is necessary to understand unlawful guilty actions of the subject of tax legal relations (taxable entity, control body, bank, etc.) and/or its official who do not fulfil their obligations, violate the tax laws and the rights of subjects of tax relations for which legal responsibility is established (Panochko, 2017).

A tax crime can be defined as a criminally punishable guilty socially dangerous act that encroaches on social values in the field of taxation and has the ability to inflict significant damage on these values.

In the legal literature, evasion from payment of taxes, fees, other mandatory payments is usually called tax crimes (Sultanov, 2016). The public danger of this type of acts must be seen not only in violation of the constitutional duty of everyone to pay legally established taxes and fees, which entails non-occurrence of monetary funds in the budget system, but also in violation of the *bonafide* principle of subjects of economic activity.

Another common feature of the concepts under study is the development and application of various schemes, which are a detailed description of the components' of a particular tax evasion method interaction or the withdrawal of a relevant object from the tax area by the payer. A critical analysis of the current tax evasion/minimization schemes allows us to note some common features inherent in them irrespective of industry in which they were acting. In particular: the creation of firms for an extremely short period of time and, as a rule, with affiliated entities, a fictitious nature of the decomposed transactions using prices that are not typical for the corresponding market, economically unreasonable expenses.

In addition to analysing the essence of the tax evasion concept, it is extremely important in each specific case of such actions to assess the degree of their public danger. For this, it is necessary to carry out an in-depth study of the economic feasibility of economic operations, the legitimacy of determining the tax base and the like. All of this in order to distinguish tax evasion within the legal field from similar actions by means of specially designed schemes and fictitious enterprises and transactions created for their implementation. In the first case, there is an encroachment on the right of the state to receive mandatory payments, in the second – to prevent the state from achieving financial goals, to encroach on tax relations in general. Of course, in both cases, the principle of integrity in the activities of business entities is violated and if in the first case economic entities has taken advantage of gaps in legislative acts, in the second, obvious extraordinary efforts to counteract the process of paying taxes as such. It is clear that the consequences of such different types of tax evasion for the state budget and citizens will be different and, consequently, the assessment of the severity of the committed offenses must differ substantially.

According to Mozgovaya, tax evasion thrives because of low morality, which manifests itself in the desire to receive high returns in any way. Inadequate payment of taxes automatically does not cause a reaction to the tax administration, therefore the payer has a choice regarding the degree of truthfulness on the information reported by him (Mozgovaya, 2016).

Control of tax evasion, as the central link of tax control, is aimed at revealing the economic entities whose actions (or inaction) are qualified as tax evasion and has the appropriate

legal consequences. Obviously, the improvement of the instrumentarium will be a permanent topical issue for improving the efficiency of the search for relevant economic entities and the degree of completeness of exposing tax legislation's violations.

The problem of assessing the effectiveness and efficiency of the activities of the bodies controlling tax evasion is of great importance and especially-improving the administration of large taxes. Thus, Tsvetkova believes that the number of inspections and the amount of fines imposed do not indicate the effectiveness of the tax administrations. Rather, it means that in conditions of "opaque" tax laws, someone can be taxed (Tsvetkova, 2016). In the author's opinion, it is necessary, for a practical solution, to clearly distinguish between the concepts of efficiency and effectiveness in controlling tax evasion.

Under the effectiveness of the tax authorities in controlling tax evasion should be understood, first of all, the completeness of the detection of tax legislation violations based on the results of the corresponding inspections in accordance with a certain system of indicators and not only the amount of additional mandatory payments.

The efficiency of tax evasion control should be understood as the ratio between the results obtained and the resources spent on achieving these results.

A comprehensive assessment of the effectiveness and efficiency of tax authorities' supervisory actions on tax evasion could serve as a basis for making informed management decisions at various levels of state tax management.

The level of professional training of taxation bodies' employees, the provision of their relevant material and technical and reference and legal means, as well as decent wages and the prestigious status of tax inspectors, are essential for achieving effective control of tax evasion.

The main principle, which, in our opinion, should be used when choosing the direction of improving the activities of tax authorities, is a significant reduction in the influence of the human factor in the process of both exposing economic entities evading taxes and establishing the degree of their responsibility for such actions. One of the possible options for implementing this principle is the formalization of the process of selecting potential violators of tax legislation before the on-site documentary checks on the basis of a system of certain characteristics and criteria. This approach will make it possible to better distinguish tax evasion from other legal forms of minimizing taxes by the payer.

It is important to note that among the priority criteria for this selection, in our opinion, we first of all should include the scale of business, taking into account the number of its counterparties and the specifics of the industry to which it belongs, as well as the financial condition of the enterprise and the tax burden. Attention of controlling tax authorities should also involve such enterprises that are repeatedly removed from the register and become registered with the tax authorities in connection with the change of location.

The key to the effectiveness of these features is the possibility of their objective representation, including in digital form, which creates the grounds for their formalization, as well as the possibilities for automating the selection process of relevant business entities for verification. In addition, it is advisable to apply these criteria, taking into account the type of taxation regime (general or special). Consequently, the planning of on-site inspections based on these rational criteria will allow concentrating efforts on those potential violations, the identification and elimination of which will be tangible for the country's budget.

The next group of criteria is designed to increase the effectiveness of inspections and to collect evidence of tax crimes. These include: the deviation of the tax burden and the level of profitability of taxpayer from the average level of these values for a particular type of economic

activity; significant amounts of tax deductions for the value-added tax, losses or very low incomes for several tax periods, payment of the average monthly salary per working person, below the average level, which manifests itself in a particular type of activity. Since all data on these criteria contains the payer's accounting records, the existence of such formal grounds will allow strengthening objectivity and evidence in establishing the fact of committing tax offenses (crimes) or their absence.

Analysis of scientific and legislative sources, as well as the study of tax schemes for foreign investors in the process of their own legal practice, in fact, the concept of tax evasion allows us to note:

- Close connection of this concept with the concepts of "tax evasion scheme", "tax avoidance scheme", which share common features such as fictitious nature of transactions and short-term firms.
- Understand all these concepts as various forms of illegal minimization of tax obligations carried out by the taxpayer for tax violations or tax crimes.

A clear definition and legislative consolidation of the concepts describing the schemes for minimizing taxes, as well as the typical characteristics of the entities that implement it, will improve the effectiveness of control measures on the part of tax authorities.

Since tax control is an important component of such a specific form of government as the state tax administration, as well as the mechanism for managing the tax process and tax administration, all elements of the state tax administration should be used to combat tax evasion.

In order to improve the effectiveness of the organization of tax evasion control (especially the implementation of on-site tax audits), it is advisable to reduce the number of inspections, carefully selecting each payer on the basis of certain criteria, the majority of which can be formalized and hence, automation. In the conditions of mass tax evasion and complication of concealment of the taxation objects by tax payers, application of these criteria would promote decrease in expenses for tax administration.

Improvement of the state tax management will make it possible to thoroughly monitor the processes of tax evasion control, significantly enhancing its objectivity and contributing to the efficiency of the tax system as a whole.

Principles of tax law cover the guidelines of law, the basic directions and the basic principles that determine the essence of the whole system, industry or institution of law. In addition, as a result of legal consolidation, the principles acquire general significance; they serve as a kind of reference point in the law development. The great importance of principles is especially represented in the formation of law enforcement practice.

Despite the importance of the law principles for legal science and tax law in particular, scientists differ in approaches to their understanding. Most legal scholars believe that legal principles should be legislated. Indeed, there are principles that are reflected in this or that legal norm (for example, the principle of separation of power into legislative, executive and judicial, the principle of the rule of law).

We believe that the abuse of rights in terms of constitutional and general legal principles should lead to negative tax consequences for payers.

The change in the orientations of socio-political development, the transformation of the legal sphere invariably gives rise to new ideas. And it is quite important to show flexibility here, to notice changes in time, to react quickly and adequately to them.

The principles of law direct the law-making activity in the necessary direction, subordinate it to universally recognized requirements and standards. They allow fully realizing the intentions of the legislator, encouraging the law enforcement to act not only in strict compliance with the law, but also in accordance with its spirit. They serve as a criterion for the conformity of positive legislation with law as a state will of society, providing legal regulation of public relations in case of gaps in the current legislation.

Given the importance of the principles of law, it would be desirable that bodies and officials applying the law, in the event of decision-making on specific cases, in particular on cases of violation of tax law norms, be actively guided by the principles of law and not only by specific legislative provisions.

Compliance with the requirements contained in legal principles makes it possible to increase the efficiency and effectiveness of legal regulation of the taxation sphere while ensuring an internal balance of legal norms. Being normatively fixed, the principles become a weighty argument in the resolution of tax disputes and, therefore, strengthen the guarantees of observance of the taxpayers' rights.

CONCLUSION

Conscientiousness as a legal principle is an obligatory characteristic in the qualification of economic transactions, such as those that have the character of tax evasion or legal reduction of tax deductions. This is especially important, since taxation optimization is one of the main determinants for the emergence of administrative and economic disputes.

The tax authorities have sufficiently broad powers to bring the tax legislation infringers to justice.

So, based on the results of audit materials review, the head of the tax service body is entitled to make a decision on bringing the taxpayer to legal responsibility for the committed tax offense.

At the stage of pre-trial consideration of conflict situations, the officials of the state tax service should also be empowered to make decisions on the release of taxpayers from liability for tax violations (subject to their insignificance), as well as on refusal to bring the payer to justice. Undoubtedly, such decisions should be made on the basis of full and comprehensive review of audit materials, taking into account the specific circumstances of the case, observance of the law principles.

The law enforcement activities of the bodies of the state tax service and its results must comply with the provisions of all legal norms through which regulation is carried out.

In practice, quite often, we can observe the opposite: federal tax authorities in the process of practical activity often appeal to the provisions of departmental acts, rather than to laws which causes the reason for non-observance of the principle of legality in resolving disputable tax issues. In our opinion, the main obstacle to the implementation of this principle in the sphere of law application is the low level of professional culture of officials of the state tax service. This can be seen on the example of inability and sometimes unwillingness of these subjects to correctly resolve the conflictual tax situation, including cases where there is inconsistency between legal acts, when a decision must be made in accordance with legal norms having the highest legal force.

Laws and normative acts issued by various authorized bodies of the state should be interpreted and applied in the same way in accordance with their letters and spirit throughout the country and for all subjects of public relations.

Therefore, in the context of the development of new social relations, the intensification of conflict situations between taxpayers and state tax authorities, scientists should draw attention to the fact that the process of law enforcement cannot take place without taking into account the principles of law.

Achieving harmony in society is possible if the existing order in the state and society is based on new initial ideas, internal beliefs that will change and fill the law, including tax, with new content.

The examples considered above are only separate illustrations of dishonesty of payers and state bodies in the tax procedure. To reduce the negative impact of tax evasion, it is necessary to apply a set of regulatory measures that will reduce the possibility of illegal unfair optimization of tax deductions (due to the reduction of gaps and collisions of tax legislation).

In addition, the conclusion suggests that the tax legislation requires improvement in terms of the inability of unfair use by the subjects of the tax legislation of their rights. A more detailed study of the legal concept of the principle of good faith in the tax law and its actual implementation in legislation can be a help in this.

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