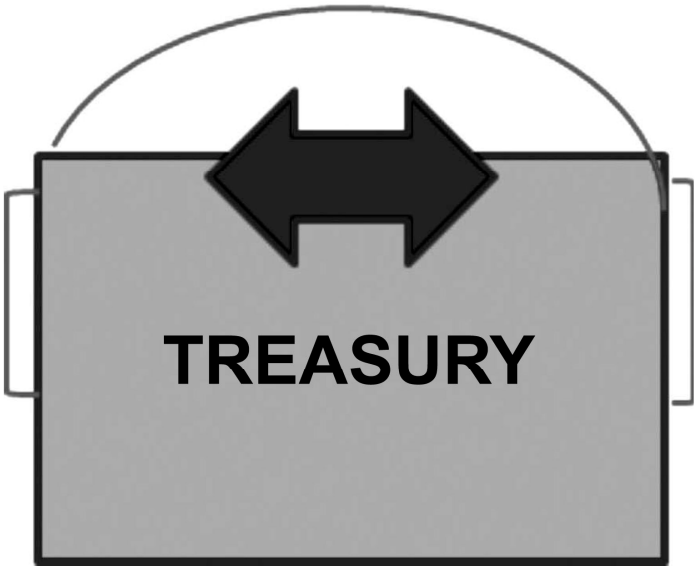
Yu. N. BELOSHAPKO

TAX LAW OF RUSSIA

The schoolbook



Yu. N. BELOSHAPKO

TAX LAW OF RUSSIA

Ministry of Education and Science of the Russian Federation

Vladivostok state university of economics and service

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B41 **Tax law of Russia** : the schoolbook / Yu.N. Beloshapko. – Vladivostok : Vladivostok State University of Economics and Service publishers, 2017. – 292 p.

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The schoolbook is original, is published for the first time and is not translation of any textbook into English. The author is PhD in law, associate professor of Vladivostok state university of economics and service. The author creates the schoolbook in English based on author's ideas by lexicographical sources. For the schoolbook correct translation, it is necessary to use work of the author in English: Beloshapko Yu.N. Juridical financial and tax English-Russian dictionary and glossary in English [Text]: the methods handbook / Yu.N. Beloshapko. – Vladivostok: Vladivostok State University of Economics and Service publishers, 2016. – 180 p. The author's concept of tax law is expounded in the new schoolbook. In the general part of the schoolbook are argued bases of theory of tax law, and in the especial part are discussed types of tax, dues, special tax regimes, as well as tax planning and international tax law.

For searching of legal acts, it is expedient to use Internet-sites – http://www.pravo.gov.ru; http://www.consultant.ru; http://www.garant.ru. For searching of monographs and other scientific and educational editions, it is expedient to use Internet-sites of the libraries – http://www.lib.vvsu.ru; http://www.rsl.ru; http://www.nlr.ru; http://elibrary.ru; http://ibooks.ru/; http://bookz.ru.The schoolbook corresponds to requirements of the federal state educational standard of higher education, and it intended for persons learning Russian law.

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Б43 **Налоговое право России** : учебник / Ю.Н. Белошапко. – Владивосток : Изд-во ВГУЭС, 2017. – 292 с.

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Учебник не имеет аналогов, публикуется впервые и не является переводом других учебников на английский язык. Автор учебника – кандидат юридических наук, доцент ВГУЭС. Его учебник создан на основе собственных авторских разработок с помощью лексикографических источников. Для правильного перевода учебника необходимо использовать работу автора на английском языке: Beloshapko Yu.N. Juridical financial and tax English-Russian dictionary and glossary in English [Text]: the methods handbook / Yu.N. Beloshapko. – Vladivostok: Vladivostok State University of Economics and Service publishers, 2016. – 180 p. В учебнике обосновывается авторская концепция налогового права. Общая часть посвящена основам теории налогового права, а особенная часть – анализу системы налогов, сборов, специальных налоговых режимов, налогового планирования и международного налогового права.

Для поиска правовых актов рекомендуется использовать Интернет-сайты справочных правовых систем – http://www.pravo.gov.ru; http://www.consultant.ru; http://www.garant.ru. Для поиска монографий и других научных, а также учебных изданий рекомендуется использовать Интернет-сайты библиотек – http://www.lib.vvsu.ru; http://www.rsl.ru; http://www.nlr.ru; http://elibrary.ru; http://ibooks.ru/; http://bookz.ru. Учебник соответствует требованиям федерального государственного образовательного стандарта высшего образования и предназначен для лиц, изучающих российское право.

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CONTENT

CANONICAL ABBREVIATIONS

APCR – Arbitration Procedure Code of the Russian Federation
BCR – Budgetary Code of the Russian Federation
CACPR – Code of Administrative Court Procedure of the Russian Federation
CBR – Central Bank of the Russian Federation, Bank of Russia
CCR – Civil Code of the Russian Federation
CPCR – Civil Procedure Code of the Russian Federation
CRoAV – Code of the Russian Federation on Administrative Violations
CCRF – Criminal Code of the Russian Federation
CCPR – Code of Criminal Procedure of the Russian Federation
IAA – Internal Affairs Agencies
FCL – Federal constitutional law of the Russian Federation
FL – Federal law of the Russian Federation
FCS – Federal Customs Service
FTS – Federal Tax Service
TIN – Taxpayer identification number
TRRC – Tax registration reason code
M – Moscow
RF, R – Russian Federation, Russia
TCR – Tax Code of the Russian Federation

EXPLANATION OF KEYWORDS

***law –** jurisprudence, general complex of legal norms
***financial law, tax law** and so on (according to the context) **–** concrete science branch, academic subject, complex of legal norms
***a law** – legislative act without concrete definition (according to the context)
***the law –** concrete legislative act (according to the context)
***laws** – plural of the word «law» or synonym of the word «legislation» (according to the context)

GENERAL PART

Chapter 1. THEORETICAL FRAMEWORK OF TAX LAW

1.1. Conception of tax law

The history of occurrence of tax law (law of taxation) begins with history of occurrence of taxes and dues, as well as necessity of the taxation for a society. It is described in detail by authors of many schoolbooks and scientific works[1].

Scientists (in particular, A.V. Dyomin) fairly, in our opinion, underline, what exactly the property as the social and economic institution is the historical precondition and a direct basis of the taxation. Instruments of labour, weapon, clothes and other products of individual labour were in an antiquity in the individual property, and a foodstuff, premises, territories – in various forms of the collective property. During the evolutions process of primitive communities the labour and consumption individualization increases. But at isolation of private interests in communities the general need and requirement for all members of a community remain – it is possible to guarantee only by collective efforts. There are the protection of territory, property, proceeds, life and health from external encroachments, as well as maintenance of stability and orderliness of intracommunal mutual relations. Expenses have public character and consequently for their financing it is required, that proprietors gave a part of the proceeds to the general centralized fund (i.e. budget). Expenses for administrative personnel are the main reason of occurrence of the taxation in its contemporary understanding. The tax duty during the process of historical development had traditional, morally-ethical and, as a result, legal character. The power has formalized developed order by the rules which complex has made tax law.

The basic stages of formation of tax systems are analyzed in the scientific and educational literature[2]:

I. Ancient world (IV millennium B.C. – V century of our era). A slave-owning system.

Taxes only appear. In the beginning they are unsystematic, have character of exactions and are collected basically in the natural form as necessary: i.e. wars

[1] Gavriljuk R.A. Transformation of philosophy of tax law in a postcrisis society: postsolidarity or postegalitarizm // The Financial Law (journal). – 2010. – № 4;

Demin A.V. Polemic notes about background of the taxes and taxation // The Financial Law (journal). – 2010. – № 5;

Zlobin N.N. Tax as the legal category: monograph. – M: RPA MU RF publishers, 2003;

Parygina V.A, Tedeev A.A. Tax law of the Russian Federation / Series «Schoolbooks, manuals». – Rostov N/D: PHOENIX publishers, 2002.

[2] Parygina V.A., Tedeev A.A. – The mentioned writing. – Pp. 6-10.

(Athens, Roman Empire), construction operations of irrigational constructions (Ancient Egypt) etc. The priests are taxation authorities.

II. Middle Ages (V century – XII–XVIII centuries). Feudal society.

In Europe tax systems are developed poorly, tax payments are irregular and thus there are tax privileges. The low rate of the tax to inheritance (relief) is fixed in Great Charter (England at John Lackland), and due on equipment royal armies (scutages) is supposed only under the decision of the general council of the kingdom consisting of large feudal lords. The indirect taxation appears (collection of excise taxes in Germany at city gate for importation and exportation of the goods). The agricultural population pays to the feudal lord the capitation – a capitation. Cities collect surtaxes from townspeople. The city pays to the vassal of the king a gild. The judicial duty is collected on the maintenance of royal judges. And so on. Finally, collection of taxes becomes a business type, i.e. there are tax-farmers – the rich bourgeoises who have redeemed at the state a right on sanction of taxes. The clergy and nobility from taxes are exempted. In provinces, for due of ground gilds the emir answers. Lands of mosques and Muslim schools are exempted from gilds. To the beginning of XVIII century, taxes become the main source of replenishment of the state treasury.

III. New time (XVII-XVIII centuries – the end of XIX century). A bourgeois society.

This time of bourgeois revolutions (Netherlands, England, etc.). Scottish economist Adam Smith in work «Research about the nature and the reasons of riches of the people» forms for the first time taxation principles in interrelation with a financial system gives to definition to tax payments, including as liberty indicator, instead of slavery. The tax ideology of generality of the taxation is formed in Europe. To the middle of XIX century the quantity of taxes decreases, becomes tougher legal procedure of the initiation and collection of taxes, financial science develops.

IV. Newest time (XX-XXI centuries). A capitalist and postcapitalist society.

Achievements of a financial science are approved in practice. Tax reforms are realized. Tax systems are formed. Direct taxes play first violin. The tax system of European Union is formed.

There are many concepts of tax law in the Russian science. The understanding of contemporary tax law is impossible without its correlation with financial law. Financial law and tax law correspond as whole and its part and are understood as the – science branches, academic subjects and complex of legal norms.

Financial law as a science branch (i.e. branch of knowledge) is the knowledge system on finances and rules of financial law. Financial legal doctrines well present A.A. Jalbulganov[1]. ***Tax law as a science branch*** is the knowledge system on tax and rules of tax law as type of rules of financial law. The analysis of financial law and tax law as the sciences contains in each schoolbook and consequently we will not repeat them[2].

Financial law and ***Tax law as the academic subjects*** are the subject matters of teaching also are the base academic subjects, and there are necessary for students choosing any legal and other professions.

[1] Jalbulganov A.A. Development of financial law doctrine (XIX – the beginning of XX century) // The Financial Law (journal). – 2010. – № 3.

[2] Look the schoolbooks recommended to chapter 1.

Officers of the criminal investigation department need to know, what exactly in financial and tax relations related to crimes and what proofs require collecting and fastening.

Investigators – at investigation of crimes in economics sphere should understand the terminology containing in structures of financial and tax crimes, namely: «credit, securities, taxes, dues, internal taxes, state off-budget funds» etc. The listed and other concepts containing in structures of financial and tax crimes in Criminal Code of Russia, are not interpreted by the criminal legislation. Therefore intensive study of the financial and tax legislation is necessary.

Workers of public prosecutor`s office – without knowledge of financial and tax law cannot reveal infringement of rules of financial and tax law during the legal practice, including by consideration in courts of cases on tax disputes.

Legal advisers of organizations – in a status properly to represent interests of organization on financial and tax disputes (including in courts) if well are guided in the financial and tax legislation.

Advocates – without knowledge of rules of financial and tax law are deprived possibility effectively to be had by human rights activity in sphere of financial and tax relations, including on administrative, criminal, civil cases.

Judges – not infrequently consider cases on financial and tax disputes and are thus obliged to be guided not only in tax, but also in all effective legislation. As they use rules of administrative, criminal, civil law if on them there are sendings in the financial and tax laws.

Any persons (natural, legal) are clients of financial organizations and taxpayers. Hence, they need to know methods of own protection in connection with the rendering of financial services and taxation of their proceeds, property, other objects.

Financial law as a complex of legal norms is considered differently in science. Many authors believe that financial law is an independent branch of law[1]. They use as a criterion of financial law the specific subject matter (i.e. financial relations) and method. Financial law method they understand as complex of the methods, borrowed from other branches of law. Such scientists do not take into consideration that the similar approach conducts to washing out of fundamental branches of law, their partition on complex of the isolated branches, to ignoring of those rules of financial law, which is contained in the administrative, criminal, civil, labor and other legislation. Such authors as V.M. Mandritsa, I.V. Rukavishnikov, D.N. Druzhinin and many others define financial law only by complex of rules of law, not undertaking attempts of their isolation in law branch[2]. We use doctrine on legal institutions for optimum definition of financial law. *Financial law as a complex of rules of law* is the inter-branch legal institution, i.e. it is the complex of rules of financial law, are fixed in differing branches of the legislation and regulating groups of uniform financial relations. Such approach allows considering all problems of the finances in complex, with use of knowledge of other branches of law.

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[1] Ivlieva M.F. Financial law as a science and subject matter in Moscow State University // The Financial Law (journal). – 2010. – № 2;

Zapol`skij S.V. On the issue of a role of financial law in legal system of Russia // The Financial Law (journal). – 2010. – № 8;

Karaseva M.V. Financial legal relation. – M.: NORM-INFRA*M publishers, 2001. – P. 13.

[2] Financial law. The series «Schoolbooks, manuals» / Under the V.M. Mandritsa`s editorship. – Rostov-on-Don: PHOENIX publishers, 1999. – Pp. 10–16.

Tax law as a complex of legal norms also is considered differently in science. Some authors do not discuss concept of tax law[1], others – define tax law as a sub-branch of financial law[2]. Less categorical authors join to the viewpoint cautiously. They believe that tax law is formed as a sub-branch of financial law[3]. According to G.V. Petrov`s, V.A. Parygin`s, A.A. Tedeev`s opinion and others, tax law is branch of system of Russian law. Thus it is cautiously noticed, that tax law can be viewed as independently formed law branch which is at a stage of allocation from financial law[4]. V.I. Dymchenko has put forward special opinion, that tax law is institution to undressed «public revenues» of Russian financial law[5]. Many authors discuss tax law simply as complex of the rules of law regulating tax relations. They do not consider a problem of reference of tax law to the sub-branch, branch, and institution etc.[6]. The concept of tax private law also is formulated[7]. There are authors, who «summaries» the various points of view by a comma. For example, on *V.V. Gritsenko's* «resume», tax law is, first, legal institution of branch of financial law; secondly, under-branch of financial law; thirdly, independent branch of Russian law[8]. At the author at such review of the various points of view in similar edition, it turned out, that the same complex of rules of law *simultaneously* represents itself as the legal institution, under-branch, and law branches.

We believe that tax law is the component of financial law, one of fundamental financial and legal institutions. ***Tax law*** is financial and legal institution, i.e. complex of rules of financial law in the form of the rules of tax law regulating public tax relations, i.e. relations in connection with calculation of taxes and dues, their deduction and direction in budgetary funds of money.

Features of tax-law regulation are in detail analyzed in jurisprudence[9]. It is necessary for us to allocate most *essential elements* of tax law.

Principles are at the heart of tax law, i.e. there are its basic beginnings – general (i.e. legality etc.) and special (i.e. justice of the taxation, etc.). Tax law principles are independent object of scientific researches[10].

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[1] Big encyclopedic dictionary. – M.: Big Russian Encyclopedia publishers, 1998.

[2] Big law dictionary / Under A.Y. Suharev`s, V.D. Zorkin`s, V.E. Krutskih`s editorship. – M.: INFRA-M publishers, 1999. – P. 392.

[3] Kustova M.V, Nogina O.A, Sheveleva N.A. Tax law of Russia. The general part: the schoolbook / The editor-in-chief N.A. Sheveleva. – M.: JURIST publishers, 2001. – P. 15

[4] Petrova G.V. Tax law. – M., 1999. – P. 7–8;

Parygina V.A, Tedeev A.A. Tax law of the Russian Federation / Series «Schoolbooks, manuals». – Rostov N/D: PHOENIX publishers, 2002. – P. 36.

[5] Dymchenko V.I. Russian tax law. The general part: the manual. – Vladivostok, 1994. – P. 3, 9.

[6] Financial law. A series «Schoolbooks, manuals» / Under the V.M. Mandritsa`s editorship. – Rostov N/D: PHOENIX publishers, 1999. – P. 169;

Eriashvili N.D. Financial law: the schoolbook for high schools. – M.: JUNITI-DANA publishers, 2001. – P. 227.

[7] Gavriljuk R.A. Transformation of philosophy of tax law in an postcrisis society: postsolidarity or postegalitarizm // The Financial Law (journal). – 2010. – № 4.

[8] GritsenkoV.V. On development of the Russian science of tax law // The Financial Law (journal). – 2009. – № 2.

[9] Demin A.V. Relative-fixed resources in system of tax-law regulation: tendencies and prospects // The Financial Law (journal). – 2012. – № 1.

[10] Falshina N.A. Revisiting the tax law principles // The Taxes (journal). – 2015. – № 5.

Proceeding from the tax law content as well as its basic source (i.e. Tax Code of Russia, TCR), it is possible to define ***system of tax law*** as complex and interrelation of the general and especial parts. The *general part* of tax law includes the theory of tax law coordinated to conventional concepts of general theory of law on the basis of effective legislation. The *especial part* of tax law fixes a legal regime of some taxes, dues, special tax regimes (tax treatments) and tax planning.

The ***subject of tax law*** is the any personable person (i.e. natural person, organization) which can be the participant of tax relations. Specificity of subjects of tax law is fixed by rules of tax law of the effective legislation.

The ***object of tax law*** is that, concerning that tax relations (i.e. proceeds, property, transactions) can accrue.

Objective laws of social development are fixed in certain ***principles***[1]. In the theory, the principles define as the basic ideas, supervising beginnings of tax relations. The system of principles of the taxation includes financial and economic (justice and financial and economic validity of the taxation etc.), organizational (integrity of tax system, taxation optimality etc.), legal (legality, generality, presumption of innocence etc.).

Now we will address to the content of tax law, i.e. to its rules of law.

1.2. Rules of tax law

In the legal doctrine and legal practice, a ***rule of law*** (i.e. ***legal norm***) is understood as the obligatory state binding over constant or temporality, calculated on repeated use[2].

As we believe, **rule of tax law** is fixed by tax law source an obligatory rule regulating tax relations.

Tax Code of the Russian Federation fixes in point 6 of item 3, that acts of the legislation on taxes and dues should be formulated so that everyone precisely knew, what taxes (dues), when and in what procedure he should pay.

Constitutional Court of the Russian Federation repeatedly underlined in the decisions, that infringement of the principle of formal definiteness of rules of law supposes the unlimited discretion of officials and inevitably conducts to arbitrariness[3]. The vagueness of rule of tax law can result to its discrimination use by state agencies and officials in their relations with taxpayers and by that – to infringement of the constitutional principle of legal equality and contextual it the requirement of equality of the taxation[4].

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[1] Demin A.V. Principles of tax law and practical jurisprudence // The Arbitration and Civil Process (journal). – 2012. – № 1.

Kucherov I.I. Structure of principles of the taxation and their legal fixing // The Financial Law (journal). – 2009. – № 3.

[2] On case of constitutionality test of point 1 of part 4 of item 2 of Federal constitutional law «On Supreme Court of the Russian Federation» and paragraph 3 of subparagraph 1 of point 1 of item 342 of Tax Code of the Russian Federation in connection with the complaint of Open joint-stock Company «Gazprom oil»: ruling of Constitutional Court of the Russian Federation from March 31, 2015 № 6 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Ibidem.

[4] On case of constitutionality test of point 1 of item 333.40 of Tax Code of the Russian Federation in connection with the complaint of the Limited responsibility society «Vstrecha»: ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 // Rossiiskaya Gazeta. – 2013. – On May 31.

The rule of tax law consists of ***following structural elements****:*

Hypothesis – is the stipulation of action of norm.

Disposition – is the concrete rule of behaviour.

Sanction – is the measure of responsibility for the violation.

Thus unessentially one rule contains all listed elements. For example, sanctions contain only in the rules of law fixing responsibility for a tax violation.

For example, ***types of rules of tax law are****:*

1. Rules of the RF Constitution, federal constitutional law, federal law and international treaties of the Russian Federation – if they regulate tax relations.

2. Rules of the special tax law. For example, there are legal norms of Tax Code of Russia.

3. Rules of the by-law (subordinate act), regulating tax relations. For example, there are legal norms of ruling of RF Government on realization of legal norms of Tax Code of the Russian Federation about fixing of some types of privileges.

Outwardly, rules of tax law are formalized by law sources.

TAX LAW SOURCES

Many works are devoted to tax law sources[1]. We will adhere to *our position*.

Tax law source (***source of law***) is form of rule of tax law.

There are *three types of law sources* in tax law:

1. Legal custom
2. Normative legal act
3. Normative agreement

The analysis of items 1-4 of Tax Code of Russia proves that to sources of tax law cannot be categorized individual acts of various departments, including Federal Tax Service letters under no circumstances. It was corroborated also Ministry of Finance of Russia which has underlined, that these letters have information-explanatory character concerning use of the legislation of the Russian Federation about taxes and dues[2].

I. LEGAL CUSTOM

Legal custom established by item 5 of CCR with name «Customs», which was earlier called as «Customs of trade». ***Custom*** is a rule developed and widely used in any area of the business or other activity. The rule does not provide by the legislation and does not depend on its fixing in any document.

Supreme Court of the Russian Federation in this connection summarized: the party which refers to custom should to prove custom existence[3].

The custom is provided by paragraph 4 of point 1 of item 252 of Tax Code of the Russian Federation, in its chapter 25 «Organization profits tax» which regulates expenses and groupings of expenses. According to the item, a taxpayer have the right to reduce his proceeds of the sum of made expenses and thus to reduce the profit tax

[1] Kobzar-Frolova M.N. Sources of tax law and sources of the legislation on taxes and dues: the legal-theoretic characteristic// The Financial Law (journal). – 2012. – № 7.

[2] On formation of uniform law enforcement practice: letter of Ministry of Finance of Russia from November 7, 2013 № 03-01-13/01/47571 [Electronic resources] // Http://www.consultant.ru/document/cons_doc_LAW_155600/

[3] On application by courts of some provisions of section of part I of Civil Code of the Russian Federation: ruling of Plenum of Supreme Court of the Russian Federation from June 26, 2015 № 25 [Electronic resources] // URL: http://www.vsrf.ru.

sum. The expenses should be documentary corroborated. Use of the documents formalized according to customs, used in the foreign state in which territory corresponding expenses have been made is thus supposed.

II. NORMATIVE LEGAL ACT

Legal acts are deeply investigates by law general theory[1]. Such type of the legal act as the normative legal act is the basic source of financial law. Definition of the normative legal act gives not only scientists, but also judges[2].

Normative legal act is the act of authority or officer, published in accordance with established procedure and containing legal norms (i.e. behavior rules, rules of conduct), obligatory for the uncertain circle of persons and regulating public relations.

Types of normative legal acts are:

1. Constitution of the Russian Federation (Russian Constitution, Constitution of Russia, RF Constitution) – is the basis and source of law. It accepted by the national voting on December 12, 1993. Items 57, 71, 72, 74, 75, 106, 132 of RF Constitution are concerned directly to tax law.

2. Law – is normative legal act, accepted by representative agency of State power, based on RF Constitution. Chapter 5 of RF Constitution regulates the procedure. Concerning regional laws chapter 3 of RF Constitution, which fixes jurisdiction of the Russian Federation and its Subjects, regulates the procedure.

Laws can be classifying as following:

*****FCL (federal constitutional law).

*****FL (federal law).

*Law of Subjects of the Russian Federation (regional laws).

Definition of law is contextual of items 105–108 of RF Constitution, and items 15 and 76 of RF Constitution fix their correlation with each other and with RF Constitution.

The basic federal law regulating tax relations is Tax Code of the Russian Federation (TCR, Tax Code of Russia).

TCR has confirmed supremacy Tax Code of Russia over other statutory acts (including laws) in that their part which regulates tax relations. Hence, in case of the antinomy between legal norms of TCR and other legal acts – TCR legal norms are used.

Operation of a tax law in time (i.e. duration of a tax law of its retroactivity) is object of independent scientific research[3]. TCR (item 5) is specific regulates this problem. By the general rule, the tax law comes into force not earlier than one month from the moment of official publication. However the legislator has the right to put acts of the legislation on taxes and dues from the date of their official publication, if they directly provide it.

The notion – *retroactive force of a tax law* – also is related to operation of a tax law in time.

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[1] Gajvoronsky Y.V. Problem of the theory of legal acts // The Jurisprudence (journal). – 2008. – № 4 (279). – Pp. 218-230.

[2] On practice of consideration by courts of cases about contest of normative legal acts completely or in a part: ruling of Plenum of Supreme Court of the Russian Federation from November 29, 2007 № 48 [Electronic resources] // URL: http://www.vsrf.ru.

[3] Kostjukov A.N., Maslov K.V. Operation of a tax law in time and the constitutional justice // Journal of Constitutional Justice. – 2012. – № 2.

The tax law worsening position of payers and other participants of tax relations have not retroactive forces, i.e. do not apply on the legal relations which have accrued before putting into effect of the new law. Alteration of the tax legislation which can entail deterioration of position of the taxpayer should be realized so that the principle of maintenance of trust of citizens to the law was observed[1]. If the tax law eliminates or softens a liability of infringement of rules of tax law or fixes additional guarantees of payers, tax agents and their representatives, such law has retroactive force.

If the tax law otherwise improves position of taxpayers, such law can have retroactive force if directly it provides. For example, Federal law of the Russian Federation № 71 from 6/30/2005 (it has come into force with 1/1/2006), not only has released veterans of Great Patriotic War from the tax to proceeds in the form of the help and gifts, but also has extended the law to the legal relations which have accrued since January 1, 2005.

Thus, rules of operation of a tax law in time are as much as possible coordinated with part 3 of items 15 (obligatory publication of statutory acts) and item 54 (retroactive force of the law) Constitution of the Russian Federation.

3. By-law – is legal act, based on a law and not contradicting a law.

The types depend on validity (i.e. legal effect), namely:

*Acts of the Russian President.

*Acts of Russian Government.

*Department acts (i.e. legal acts of ministries and services).

*Acts of Subjects of the Russian Federation and local governments.

*Other by-laws.

Tax Code of Russia and the federal, regional laws according to it, as well as normative legal acts of municipal bodies about concrete taxes and dues are called as the legislation on taxes and dues (item 1 of TCR), i.e. the **tax legislation**.

Tax **legislation principles** are based on legal norms of Constitution of the Russian Federation. The cores from them are principles of generality, equality, justice, proportionality, legality of the taxation and dues. They are in detail regulated by item 3 of TCR.

III. NORMATIVE AGREEMENT

Normative agreement (i.e. ***agreement of the normative content, law-making treaty***) is an agreement between subjects of law-creation, containing legal norms. In financial law of Russia, the normative agreement is used in the form of the international treaty of the Russian Federation.

International treaty of the Russian Federation is agreement between Russia and other subjects of international law, regulable by international law (On the international treaties of the Russian Federation: federal law from 7/15/1995 № 101). For example, there are intergovernmental treaties on the encouragement and mutual protection of investments.

Only the international treaties of the Russian Federation, which not conflicting the Russian Constitution and have come into force, have a binding force for Russia.

Besides, at ratification of international treaties of the Russian Federation the President has the right to use the veto in accordance with part 3 of item 107 of RF Constitution.

Law sources regulate tax relation, and so it changed into legal relation.

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[1] Determination of Constitutional Court of the Russian Federation from May 12, 2005 № 163 [Electronic resources] // URL: http://www.pravo.gov.ru.

1.3. Tax legal relations

Problems of tax legal relations are in detail expounded in the literature to chapter 1 and based on general theory of law. It allows shorter reflecting our understanding of the problem. Tax legal relations are tax relations, regulable by rules of financial law.

The basic attributes of tax legal relations are:

1. Economical character – is shown depending on an economic climate. The weak economics results in the big tax burden. At strong economics the tax burden of payers decreases;

2. Imperative: Constitutional Court of the Russian Federation notices in the decisions that tax legal relations are based on an imperious method of legal regulation, and realization of the constitutional duty to pay lawfully fixed taxes assumes the subordination, imperious submission of the taxpayer to state requirements[1]. Such method demands strict following to the text of the tax because completeness and timeliness of collection of taxes and dues from the obliged persons (and simultaneously – proper legal character of taxation authorities and officials) should be guaranteed.

Tax legal relations are depending from the juridical facts.

Juridical facts (legal facts) in tax law are legal vital circumstances (events and actions), causing, changing or stopping tax legal relations. The juridical facts are classified on events and actions depending on degree of participation of the person.

Events are not dependent on the person, but stipulated by it in law. For example – act of nature and other display of force majeure does not depend on the person.

Actions (they are classified on lawful and illegal) are growing out on strong-willed activity of the person. For example, occurrence of the tax period inevitably, but the period is statutory as result of activity of the person. Lawful actions are the actions based on the law (payment of the tax, due etc.). Wrongful actions are violations (evasion from tax payment etc.).

Juridical facts in tax legal relations are independent object of scientific researches[2].

Tax legal relations various, and therefore are classified on the various criteria.

Types of the tax legal relations on law branches (branches of law) are:

1. Constitutional tax legal relations.
2. Administrative tax legal relations.
3. Criminal tax legal relations.
4. Civil tax legal relations.
5. International tax legal relations.

A.E. Samsonova's scientific works are interesting thereupon. She fairly celebrates not only theoretical, but also the practical importance of theory of legal relations[3].

Subjects enter tax legal relations concerning objects.

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[1] On case of constitutionality test of provisions of points 6 and 7 of item168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with Limited responsibility society complaint «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Krasyukov A.V. Classification of the legal facts in tax law: the new approach // The Taxes (journal). – 2015. – № 5.

[3] Samsonova A.E. Complicated and complex legal relations in financial law // The Financial Law (journal). – 2010. – № 6.

Subjects come into the tax legal relations concerning *objects*.

SUBJECT of law and subject of relations are differed. *Subject of tax law* is a potential (i.e. possible) participant of tax relations. *Subject of the* tax *legal relations* is the concrete participant of the real tax relation.

Because of the variety, subjects are classified by various criteria.

Types of subjects under the relation to the power are:

1) Authorities

For example, Ministry of Finance of the Russian Federation (Minfin of Russia) is federal executive authority, realizing normative-law regulation and the state policy in sphere of the finance. Federal Tax Service is in the system of Ministry of Finance.

2) Persons, which do not relate to authorities

There are natural persons and organizations, who are not to authorities, but who come into relations with authorities concerning taxes. For example, there are citizens and various juridical persons.

Types of subjects on volume of rights and duties (sections 2 and 3 of TCR):

1. Taxpayers and payers of dues; Tax agents.

2. Taxation authorities; Law-enforcement bodies; Customs bodies.

Types of subjects on a legal status

1. Organizations.

2. Individual businesspersons.

3. Other natural persons.

Definitions and features of each of bodies are in detail regulated by item 11 of TCR.

Protection of subjects of the tax legal relations is used by following ***legal measures***:

1) Laying down in the legislative act of the righties and duties of subjects.

For example, to the right of a payer on acquaintance with the tax inspection act there corresponds the duty of a tax authority the act to give to the payer.

2) Laying down in the legislative act and real using of the measures of legal responsibility (i.e. sanctions) for tax and official violations.

OBJECT of law and object of relations are differed. *Object of tax law* is a potential (i.e. possible) object of tax relations. *Object of tax legal relations* is the concrete object of the real tax relation.

Types of objects of tax law or tax legal relations on their content are:

1. Material objects are **financial resources** as objects of taxation.

Financial resources (i.e. ***financial assets***) are – environmental resources, as well as money, securities and other property. The financial resources formed for business are ***capital*** (i.e. ***basic resources, fixed asset***). The capital is impossible without *net assets*, i.e. the difference between *assets* and *liabilities*. The *assets* are financial resources which are easy for realizing, i.e. money, basic resources, investments, stocks etc. The *liabilities* are payment obligations, i.e. insurance reserves, obligatory payments, loans etc. *Besides*, to material objects it is possible relate to the *taxes, dues, fines, penalties.*

2. Nonmaterial objects are transactions (operations) and other relations as objects of taxation. For example, there are banking transactions, operations on placement of securities etc. Besides, to material objects it is possible relate to the tax control, tax proceeding, administration problems, tax responsibility and other tax relations.

1.4. Tax law in legal system of Russia

We propose the interpretation of the question, making a start from definition of the legal system. The situation complicated by absence of unanimity in understanding of such categories as the «legal system» and «system of law».

According to *S.S. Alekseev*, the legal system is the system of the obligatory rules, considered in integrity with other active elements of the legal validity (there are law ideology as the active party of sense of justice and juridical practice)[1]. The system of law is the structure of law, its differentiation on branches and institutions[2]. On the other hand, *authors* of the Big juridical dictionary consider the legal system and system of law as synonyms[3]. It is possible to meet and other approaches.

We believe that concepts «legal system» and «system of law» need to be differentiate more accurately and clearly. At definition of the legal system, it is necessary to start with the analysis of item 15 of Russian Constitution, which includes in the legal system only different forms of rules of law.

Hence, the ***legal system*** is internal structure of law, its differentiation on branches, sub-branches and legal institutions. The category «***system of law***» is the complex and interrelation of the general and especial parts, only applicable to concrete jurisprudence. For example, there are – system of theory of state and law, system of constitutional law, system of administrative law, system of tax law etc.

Juridical sciences and academic subject formed by the legal system. Tax law in the legal system is the separate element, but it interacts with other elements of law.

For example:

THEORY OF STATE AND LAW is the basic law science and academic subject. It forms the basic concepts «law», «legal norm» etc., which are in base of financial legal concepts: «tax law», «tax legal norm» and others. In turn, tax law gives problems to theory of state and law, and there are become objects of the theoretical study.

CONSTITUTIONAL LAW is the basic branch of law. It interacts with tax law by Russian Constitution, containing rules of tax law of direct operation.

CIVIL LAW is the fundamental branch of law. The civil legislation is used to financial, tax and other administrative relations by item 2 of Civil Code of the Russian Federation. The tax relations are regulated by the civil legislation if the federal law provides it. In tax law are obligatory such containing in CCR concepts as: juridical and natural persons; juridical ability and competence; losses; property etc.

ADMINISTRATIVE LAW is the fundamental branch of law. It is interacts with tax law by institution of legal responsibility, and by administrative activity of tax executive powers. The laws provide formal components of tax violation and the sanction for their commission. There are – Tax Code of the Russian Federation, Code of the Russian Federation on Administrative Violations.

CRIMINAL LAW is the fundamental branch of law. It interacts with tax law by institution of the criminal responsibility for crimes in economy and tax spheres. The formal components of tax violation and the sanctions for their commission are only

[1] Alekseev S.S. The state and law. – M.: Legal Literature publishes, 1996. – P. 80

[2] Ibidem. – P. 90.

[3] Big law dictionary / Under the A.J. Suharev`s, V.D. Zor`kin`s, V.E. Krutskih`s editorship. – M.: INFRA-M publishes, 1999. – Pp. 277, 328.

containing in Criminal Code of the Russian Federation. The tax legislation contains the terms, which do not interpret in CCRF (there are – tax, dues etc.).

LABOUR LAW is the fundamental branch of law. It interacts with tax law by the taxation of workers the individual income tax, as well as by the taxation of transactions and profit of corresponding employers.

PROCESS (constitutional, administrative, criminal, civil) regulates in lawful cases the procedure of use of some rules of tax law, basically concerning attraction to legal responsibility for tax violations.

Tax law also interacts and with inter-branch legal institutions: financial law – as its component, financial institutions; entrepreneurial law – at the taxation of the general, medium-sized and small business; ecological law – at the wildlife management taxation, as well as in connection with preservation of the environment.

Besides, *tax law interacts with other financial institutions*: budgetary law – at formation of tax revenues of budgets of all levels; insurance law – at the taxation of proceeds (transactions) of insurers and other subjects of insurance; credit law, investment law and securities market law – at the taxation of proceeds (transactions) of subjects of the crediting, investing and securities market; currency law – at the taxation of the proceeds formalized in a foreign currency and currency valuables (transactions with them).

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Chapter 2. LEGAL BASES OF TAX SYSTEM

2.1. Conception of Russian tax system

Most in a complex problems of definition of tax system are expounded by E.D. Sokolova`s work[1]. As has fairly underlined E.D. Sokolova, the concept «tax system» is related to most challenges of legal and economical sciences.

* For the first time the category has received legislative consolidation in Russia in item 2 of Law of the Russian Federation from December 27, 1991 № 2118-1 «On bases of tax system in the Russian Federation» according to which complex of taxes, dues, duties and other legal payments forms tax system. Such definition has caused discussion in jurisprudence. The legislator, according to scientists, has included in tax system not only actually taxes, but also all payments having tax character.

* One of the first scientists, proposed to consider tax system as concept wider in comparison with its legal definition, was V.I. Gureev. He has included in tax system the – tax legislation consisting of laws and by-law acts; taxation authorities which are realizing the tax control; tax representatives who on behalf of taxpayers should calculate, keep and transfer into according to the law the budget taxes from proceeds; tax police guaranteeing economic security of the state; theoretical positions of scientists and experts in taxation sphere.

* V.I. Gureeva's position has been subjected criticism N.P. Kucherjavenko. He has noticed that V.I. Gureev understands tax system as the mechanism of elements difficult joined with each other.

* A.V. Bryzgalin has defined tax system as the interconnected complex of all public relations existing in the state developing in sphere of the taxation and having economic, political, organizational and legal character. Such characteristic of tax system (marks) E.D. Sokolova) demands the additional argument because of its excessive expansion.

* More constructive for E.D. Sokolovoj is the S.G. Pepeljaev`s definition according to which the tax system is a complex of the existing stipulations of the taxation fixed in the state. The concept «tax system» characterizes the tax legal order as a whole, and system of taxes – only a tax system element. In the definition S.G. Pepeljaev specifies in interrelation of tax system with system of taxation. In this connection the question on a correlation of concepts «tax system» and «system of taxation» accrues.

* System of taxation (according to N.P. Kucherjavenko) is complex of the – lawful taxes, dues, obligatory payments, principles, forms and methods of fixing, alteration or abrogation; maintenance method; actions guaranteeing payment and the control over timely and full receipt of resources from taxes and dues in the budget and trust funds. That is, the system of taxation is generic term in relation to system of taxes and dues, legislative and obligatory to payment in state territory.

[1] Sokolova E.D. On the issue of concept of taxation system // The Financial Law (journal). – 2011. – № 1.

* According to A.Yu. Ilyin`s opinion, the tax system of the Russian Federation is a system of the taxes and dues operating in Russian territory as well as a rule of a fixing and functioning of system of taxes dues. Legal value of concept «tax system» consists that with its help it is possible to outline a tax law legal field, i.e. to define all complex of relations on which action of rules of tax law extends. Value of the definition of tax system, according to E.D. Sokolova`s view, consists that in it the legal essence of the discussed category is underlined.

As a result E.D. Sokolova is proposed her definition. The state tax system is a legal form of the taxation conditioned by economic stipulations of development of a society, functioning in the conditions of action of market relations, i.e. the tax system mediates the taxation, system of taxation. Other authors also write about tax system, system of taxes and dues[1].

It is appears, that all listed authors try to define tax system as it is possible more difficult or more in an original way. We according to the content of chapter 2 of TCR join understanding the legislator of tax system, in narrow sense, i.e. without inclusion in it systems of taxation authorities, systems of bodies of the tax control and other structural formations, as well as obscure elements. Tax system may be to optimize only in this case.

The situation was considerably complicated by the Russian legislator who has included insurance contributions in tax system in 2016 as the separate type of payment. *So we propose following our definitions*.

Tax system is complex and interrelation of all lawfully fixed taxes, dues, insurance contributions and special tax regimes. ***System of taxation*** is complex of the elements guaranteeing tax system (i.e. there are – taxation essential elements, tax control, tax responsibility etc.). The Russian tax system is specific depending on features of the periods.

Basic features of the tax system:

1. Till 2005 the tax system was regulated by simultaneous action of the Law of the Russian Federation «On bases of tax system in the Russian Federation» and part 2 of TCR. With 1/1/2005 the tax system is regulated exclusively by Tax Code of the Russian Federation, and the Law of the Russian Federation «On bases of tax system in the Russian Federation», has been declared expired.

2. The total of taxes and dues with 1/1/2005 has been considerably reduced, however such reduction has formal character. So, the customs duties are excluded from tax system, but it continues to be collected according to the customs legislation. In tax system are not specified licence and admission dues, but they became State Duty types (it is the part of tax system). The uniform social tax is cancelled; however insurance contributions continue to be collected.

3. Sources of legal regulation of tax system have undergone numerous and considerable alterations (including the chapters of TCR). Therefore at the resolving of tax disputes it is necessary to start with the legislation operating at the moment of occurrence of corresponding legal relations, taking into account of TCR legal norms about retroactive force of the tax law.

President of the Russian Federation in the Message to Federal Assembly of the Russian Federation from November 12, 2009 has once again underlined necessity of

[1] Reut A.V. Concept and elements of system of taxes and dues // The Financial Law (journal). – 2012. – № 1.

perfection of tax system. In the Message to Federal Assembly of the Russian Federation from December 12, 2012 President of the Russian Federation has specified, that the tax system should be subordinated to problems of structural reorganization of economics. Therefore Russia will stimulate investments and development, transferring fiscal accent on consumption, including the excise goods and expensive real estate. He spoke about perfection of tax system and in next messages.

Economic development of Russia depends on an optimality of its tax system. In this connection A.A. Jalbulganov has fairly noticed, that the system of taxes and dues can change. However it should occur only with the purpose of increase of efficiency of the system, but not to the detriment of taxpayers (i.e. by unreasonable increase of tax burden). It is important not to grow out of the principles formulated still by A. Smith (i.e. the – principle of justice, principle of definiteness, economy and principle of convenience[1]. Therefore in Russia continuous time try to realize tax reform.

Tax reform is the transformation of tax system based on the law with the simultaneous solution of problems of legal, economic and political character. During tax reform it is necessary to observe the ***strategic priority*** – it is the rational fair taxation of natural resources as basic riches of Russia, as well as real property at consecutive decrease in the taxation not rent proceeds (i.e. not connected with business)[2].

Strategic target of tax reform is situation achievement at which level of a collecting of taxes grows the same rates, as growth of an internal gross product (cumulative cost of the final goods, works, and services in the Russian Federation in market prices). The situation is not optimum, at which gross domestic product grows higher rates in relation to level of a collecting of taxes[3].

During tax reform by its final analysis there should be not an abrogation of taxes (dues) and reduction of tax rates, but the – redistribution of tax loading, improvement of tax administration, increase of efficiency of use of tax revenues, transparency of expenses and the accountability of authorities[4].

The chairperson of the Russian Government in the statement on May 8, 2008 ascertained that the purposes of tax reform are not reached, the primary goals are not solved, and priorities are not considered. He has given an example, according to which in the budget is withdrawn by different methods with the help of the mineral extraction tax and customs import duties 75–80% of profit of the oil companies.

The ***basic directions of a tax policy*** are fixed by President of the Russian Federation in the budget messages, as well as by the Government of the Russian Federation.

In the budget message for 2014–2016 President of the Russian Federation has noticed, that is necessary the further simplification of the tax record-keeping and its rapprochement with the accounting, improvement of quality of tax administration,

[1] Jalbulganov A.A. On the issue of transformation of system of taxes and dues of the Russian Federation // The Financial Law (journal). – 2011. – № 7.

[2] President's Message of the Russian Federation to Federal Assembly of the Russian Federation // Rossiiskaya Gazeta. – 2001. – On April 4.

[3] ITAR-TASS. Backlog with taxation is inadmissible // Rossiiskaya Gazeta. – 2000. – On October 14.

[4] Gurvich E. Press not only taxes // Rossiiskaya Gazeta. – 2008. – On February 20. – P.5.

realization of measures on counteraction for evasion from the taxation, including with use of offshore jurisdictions[1].

Besides, Government of the Russian Federation and federal enforcement authorities are authorized to realize functions on state policy development in sphere of taxes and dues (item 4 of TCR). So, in accordance with to the Reference directions of a tax policy for 2015 and a planning period 2016 and 2017, tax policy primary intents are, on the one hand, preservation of budgetary stability, receiving of necessary volume of budgetary revenues, and on the other hand, support of the entrepreneurial and investment activity guaranteeing tax competitiveness of the country on a world scene. Thus any innovations should not result in to infringement of constitutional laws of citizens, worsen balance of rights of taxpayers and taxation authorities, negatively to influence on competitiveness of the Russian tax system[2].

Tax policy is independent object of scientific researches. Thus the tax policy is argued, in particular, as a basic element of the organization and law mechanism of the state administration in the field of taxes and dues[3].

2.2. Taxes, dues, insurance contributions

Taxes and due definitions are proposed by Tax Code of the Russian Federation (item 8).

Tax is the obligatory, individually gratuitous payment collected from organizations and natural persons in the form of alienation belonging them on the property right, economic jurisdiction or an operative management of money resources, with the purpose of financial provision of activity of the state and-or municipal unions.

Due is an obligatory contribution collected from organizations and natural persons, which payment is one of fulfilment stipulations concerning payers of dues by state agencies, local authorities, other authorized bodies and officials of legally significant actions, including rendering of certain rights or delivery of authorizations, licenses.

We believe these definitions of taxes and due unsuccessful as words «payment» and «contribution» do not have semantic loading, allow to accept them for other payments (for example, in housing and communal services sphere) and contributions (insurance, party etc.). Under some taxes and dues the law supposes payment not only money resources, but also resources (for example, natural resources etc.).

In this connection we propose following definitions. Tax is certainly obligatory lawful payment in the budgets, collected from natural persons and organizations. *Due* is conditionally obligatory lawful payment in the budgets, collected with natural persons and organizations. For bigger understanding we believe the most expedient to

[1] On the budgetary policy in 2014-2016: President's Message of the Russian Federation to Federal Assembly of the Russian Federation from June 13, 2013 [Electronic resources] // URL: http://www.president.ru.

[2] Tax policy reference directions for 2015 and the planning period 2016 and 2017: are approved by Government of the Russian Federation on July 1, 2014 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Gogolev A.M. Tax policy as a basic element of the organizational legal mechanism of the concept of state administration in the taxation and revenue area // The Financial Law (journal). – 2015. – № 10.

allocate with the general concept of taxes and due, then to specify features separately taxes and separately dues with the purpose of their accurate differentiation.

GENERAL BETWEEN TAXES AND DUE

Tax and (or) *due* is a part of property of natural persons and the organizations, collected by competent authorities and persons based on the law.

Constitutional Court of the Russian Federation has noticed, that by the constitutional and legal nature taxes are a necessary economic basis of existence and state activity, a stipulation of realization of its public problems, represent the form of alienation of the property with the purpose of maintenance of expenses of the public power. Thereby they allow realizing social and economic law-enforcement and other functions of the Russian Federation as democratic legal social state (part 1 of items 1, 7 of Constitutions of the Russian Federation). Hence, tax regulation urged to reach the fiscal purposes of the state, as well as to guarantee a state ownership effective use as material basis of realization of programs of economic, social, cultural development, maintenance of rights and liberties of the person and citizen (item 2, 7, 18 of item 71 of Constitution of the Russian Federation) taking into account all complex of social and economic and other factors of development of the Russian Federation[1].

Thus, legally the payer is obliged to give to the receiver a part of money belonging to him or other property which have money terms and related to financial resources, objects of civil rights.

GENERAL FEATURES

Obligation: the public duty to pay taxes and dues fixed by item 57 of Constitution of the Russian Federation. – Item 8 of TCR and does not depend on will of the payer.

Individuality: each taxes and due have the name and are collected from a concrete category of payers, have own essential elements of levy.

Identical classifications: taxes and dues are various and consequently can be classified on types by various criteria. We will address to the optimum criteria proposing to the full characteristic.

On features of elements, taxes and dues share on direct and indirect.

Direct are the taxes and dues which elements are coordinated to proceeds and (or) property (for example – individual income tax, land-tax, dues for use by objects of fauna, etc.).

Indirect are taxes and dues which are fixed in the form of the extra charge to the cost, price, tariff, or are imposed on activity (i.e. transactions on realizations of the goods, works, services, legally significant actions etc.). For example, there are excise taxes, State Duty.

On methods of replenishment of budgets, taxes and dues can be classified on constant (own) and regulating.

[1] On case of constitutionality test of point 4 of part 2 of item 250. – Item 321.1 of Tax Code of the Russian Federation and paragraph 2 of point 3 of item 41 of Budgetary Code of the Russian Federation in connection with complaints of Russian Chemical-technological University of D.I. Mendeleyev and Moscow Aviation Institute (State Technical University): ruling of Constitutional Court of the Russian Federations from June 22, 2009 № 10 // Rossiiskaya Gazeta. – 2009. – On July 10.

Constants (own) are taxes and dues which go to the budget as a constant source of replenishment of concrete fund of money (for example, transport tax is a constant source of replenishment of regional budgets).

Regulating are taxes and dues, on which are fixed by the law specifications of deductions in budgets of various levels. For example, organization profits tax is distributed in percentage terms in federal and regional budgets. Concrete percent of deductions are fixed by Budgetary Code of the Russian Federation and regularly change.

Here it is necessary to notice, that classification of taxes on own and regulating is relative as percentage deductions are fixed by the legislator in case of need under *any* taxes and due. Hence, it is possible to draw a conclusion, that all taxes and dues as a matter of fact the regulating.

On levels of tax system, taxes and dues according to TCR classified on federal, regional and local.

Federal taxes and dues are the taxes and dues fixed by Tax Code of the Russian Federation (i.e. the federal law) and obligatory to payment in all territory of Russia.

To federal taxes related to the – value-added tax, excise taxes, individual income tax, organization profits tax, mineral extraction tax, and water-tax.

To federal dues related to – dues for use by objects of fauna and for use by objects of water biological resources, State Duty.

Regional taxes and dues are the taxes and dues fixed by Tax Code of the Russian Federation and the laws of Subjects of the Russian Federation, installed by laws of subjects of the Russian Federation and obligatory to payment in territories of corresponding Subjects of the Russian Federation.

To regional taxes related to – corporate property tax, tax on gambling industry, transport tax. *Regional dues* yet are not fixed.

Local taxes and dues are taxes and dues which are fixed by Tax Code of the Russian Federation and normative legal acts of representative bodies of local self-government, are installed by normative legal acts of representative bodies of local self-government and are obligatory to payment in territories of corresponding municipal unions.

In local taxes are included – land-tax, individual property tax. An example of local due is sales due which has appeared only since 2015. There is only one *local due* – Sales Due.

According to item 57 of the Constitution of the Russian Federation, taxes and dues can be fixed only the law, and the law by part 1 of item 72 of Constitutions of the Russian Federation and part 2 of item 76 of Constitutions of the Russian Federation can be exclusively federal.

Hence, the any regional and local legal acts fixing the tax (due), preliminary not fixed by Tax Code of the Russian Federation, cannot be used as mismatching Constitutions of the Russian Federation. But thus some elements (for example, rates) can be fixed by the laws of Subjects of the Russian Federation under regional taxes and normative legal acts of local representative bodies under local taxes, but in the limits established by the federal law.

As tax regulation is directed on realization of the constitutional functions of the state as a whole, the federal legislator is authorized not only to differentiate taxes on federal, regional and local, but also to put into practice distribution of the proceeds arriving from taxes, between budgets of budgetary system of the Russian Federation.

The conclusion corresponds with the legal proposition of Constitutional Court of the Russian Federation according to which a budget of the Subject of the Russian Federation or a local budget do not exist separately – they are a component of a financial system of the Russian Federation. Insufficiency of own profitable sources at level of Subjects of the Russian Federation or municipal unions attracts necessity to realize budgetary regulation with the purpose of balance of corresponding budgets. Hence, the federal legislator has the right to use the taxation also with the purpose of budgetary regulation[1].

Specific type of tax is ***internal taxes*** – there are value-added tax and excise tax, collected at moving of the goods (production) through border of the Russian Federation. The taxes are regulated by TCR and customs legislation (Federal law from November 27, 2010 «On customs regulation in the Russian Federation»).

Now we will address to differentiation of taxes and dues.

DISTINCTIVE FEATURES OF THE TAX

1. Gratuitousness of the tax, i.e. it no profitableness (the taxpayer gives a part of the property gratuitously, irrevocably, without equivalent benefit).

2. Unconditional obligation of the tax (it is collected without will of the taxpayer).

DISTINCTIVE FEATURES OF DUE

1. Due is collected, if the interested person wishes, that in his advantage has been executed legally significant action (for example, consideration in court of the statement of claim).

2. Due payment in this case is a juridical fact, i.e. a ground of occurrence of a duty of authorized bodies and officials to execute legally significant actions concerning the payer of due (for example, State Duty payment obliges court to consider the claim etc.).

Thus payment of due does not signify that the purpose of the payer will be necessarily reached. For example, the payer has the right to claim the damages caused to him by illegal deed of tax authority, by giving in court of the statement of claim. However payment the State Duty does not signify that the court is obliged to satisfy the plea. The court is obliged to consider the statement of claim, but it has the right to at groundlessness (absence of proof) of claim requirements to disallow in the plea. By science, other distinctive features of taxes and due can be allocated, but all of them finally derivative from the cores.

In practice happens that obligatory public payments in the budget formally are not taxes and dues. It testifies to uncertainty of the legal nature of such payments and about legitimacy of their fixing and use with the purpose of financial provision of fulfilment by bodies of the public power of the functions[2].

[1] Ruling of Constitutional Court of the Russian Federation from June 22, 2009 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On case of constitutionality test of provisions of paragraph 14 of item 3 and point 3 of item 10 of Federal law «On protection of rights of juridical persons and individual businesspersons at carrying out of the state control (supervision)» in connection with the complaint of citizen V.V. Mihajlov: ruling of Constitutional Court of the Russian Federation from July 18, 2008 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

Insurance contributions (insurance premiums) are federal obligatory payments with the purpose of financial provision of realization of the right of citizens on obligatory pension, social and medical maintenance (insurance).

Is primary, insurance contributions were not included into tax system and were regulated only by the special insurance legislation[1]. However in 2016 legislator has included insurance contributions in tax system as the separate type of payment. In this connection, is formed the term «laws on taxes, dues, insurance contributions», and TCR has established principles of levy by insurance contributions, including essential elements[2].

Let's short consider essential elements:

Payers of insurance contributions are the persons who are insurants according to federal laws on concrete types of obligatory social insurance:

1) Persons realizing payments and other compensations to natural persons:

*Organizations;

*Individual businesspersons;

*Natural persons which are not individual businesspersons;

2) Persons who realize private practice (i.e. advocates, notaries etc.).

Object of levy by insurance contributions (except for lawful cases) are payments and other compensations in favour of the natural persons, liabling to obligatory social insurance according to the federal laws on concrete types of obligatory social insurance (except for lawful cases).

Base is the sum of payments and other compensations added separately concerning everyone payer of insurance contributions from beginning of the settling period by the accruing result.

Settling period is calendar year.

Accounting periods are the first quarter, half-year, nine months of calendar year.

Tariff of the insurance contribution is fixed by Section IV of TCR.

The payer *counts and pays* the insurance contributions independently, but under the control of tax authorities.

We will not analyze insurance contributions in the especial part of our schoolbook, as we believe that the legislator has chosen the wrong conception. Insurance contributions have all attributes of a tax. So, in our opinion, it was expedient – to classify insurance contributions as the type of tax.

2.3. Special tax regimes

For the first time the rule containing definition and types of special tax regimes, has been entered by Tax Code of the Russian Federation (item 18). In connection with tax reform and formation of part 2 of Tax Code the federal law № 33 from 3/24/2001

[1] On insurance contributions in the Pension Fund of the Russian Federation, Social Insurance Fund of the Russian Federation, Federal Fund of Compulsory Medical Insurance and territorial funds of compulsory medical insurance: federal law of the Russian Federation from July 24, 2009 № 212 // Rossiiskaya Gazeta. – 2009. – On July 24.

[2] On alteration in the part first and second of Tax Code of the Russian Federation in connection with transfer to tax authorities of powers on administration of insurance contributions on obligatory pension, social and medical insurance: federal law of the Russian Federation from July 3, 2016 № 243 [Electronic resources] // URL: http://www.pravo.gov.ru.

has established, that item 18 of TCR is installed from the date of abrogation of Law of the Russian Federation «On bases of tax system in the Russian Federation»[1].

Then the federal law from 12/29/2001 № 187 has entered new point 3 in item 18 of Law of the Russian Federation «On bases of tax system in the Russian Federation» according to which by acts of the legislation on taxes and dues can be provided the establishing of special tax regimes (systems of taxation) according to which entered the specific procedure of calculation and payment of taxes, including replacement of the complex of taxes and dues provided by the federal law by one tax[2].

Thus definition of special tax regimes to 1/1/2005 was given not in the item 18 of TCR, but item 18 of Law of the Russian Federation «On bases of tax system in the Russian Federation» in editorship of the federal law № 187 from 12/29/2001 (we observe casual coincidence of numbering of the items). In connection with abrogation with 1/1/2005 of Law of the Russian Federation «On bases of tax system in the Russian Federation» special tax regimes are regulated by TCR.

***It is written much about special tax regimes, however most compactly it was made by A.Yu. Il`yin***[3]. As has correctly noted A.Yu. Il`yin referring to V.V. Sokirko, a taxation method at which all types of the payments and control over small business are replaced with one type of a payment for a place or one in advance paid general tax («annual patent») on in advance certain («imputed») proceeds is a version of the main thing in Ancient Russia capitation. Necessity of use of special tax regimes is caused by that at collection of taxes and dues frequently it is necessary to consider distinctions in the economic status of taxpayers and their activity, as well as specificity of functioning of some administrative units in which territory specific stipulations of managing or protection regimes work. The special tax regime differs, first, narrower sphere of tax legal relations that allows viewing its content within the limits of the general regime of regulation of tax relations. Secondly, the fixing of a special tax and legal regime is based on special rules of tax law which have a priority in relations between the general and special (A.S. Matinov). Special tax regimes are the important element of tax system having stimulating influence on entrepreneurial activity of some groups of taxpayers. Having now enough difficult system of taxation at federal, regional and local levels, the state aspires to simplify for certain persons a procedure of payment of taxes by considerable reduction of number of the tax payments which are subject to payment by such persons. Having noticed, that Tax Code of the Russian Federation defines only types of special tax regimes and consequently various authors differently approach to this problem, A.Yu. Ilyin passes to their analysis.

* *A.B. Tolkushkin* proposes under a special tax regime to understand a specific procedure of calculation and payment of taxes and dues during a period of years, used in cases and in order, which are established by Tax Code of the Russian Federation and the federal laws enactedaccording to it.

* *O.A. Bondarenko* considers, that a special tax regime is the specific system of taxation, provided by TCR and installed by the tax legislation, providing a special procedure of calculation of taxes and dues, as well as replacement of some taxes and dues subject to payment with the uniform tax (due) where the specific system of taxation is understood as an especial order of use of operating taxes and dues by some categories of subjects of business.

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[1] Collection of Legislative Acts of the Russian Federation. – 2001. – № 13. – Item 1147.

[2] Rossiiskaya Gazeta. – 2001. – On December 30.

[3] Il`in A.Yu. Special tax regimes: legal mechanism of use, development and perfection // The Financial Law (journal). – 2011. – № 3.

* According to *I.V. Zinov`ev`s* opinion, special tax regimes are allocated in comparison with the general procedure of the taxation that they are the active, dynamical instrument of a tax policy, the employee mainly for realization of its stimulating problems.

As a result, A.Yu. Il`yin has drawn the following conclusion: from scientific viewpoint, special tax regimes are complex of the legal norms fixing such modification of the general procedure of occurrence, execution and stop by the person of the tax duties which results in to considerable simplification of a mentioned general procedure, including by replacement of complex of duties on payment of some taxes a duty on payment of uniform payment, to reduction of the sizes of tax withdrawals, as well as to full or partial liberation from payment of taxes and dues[1].

From the point of view of the legislator, special tax regimes are the specific procedure of determination of elements of the taxation, as well as liberation from a duty on payment of some taxes and dues.

We consider as the most universal our position according to which the ***special tax regime*** is a replacement of certain complex of taxes and dues with one payment, or other specific legal order of their calculation and payment.

Special tax regimes are various, and therefore they can be classified by various criteria (i.e. subject, object etc.). Classification by tax system levels on federal, regional, local is represented to the most convenient.

Federal special tax regimes (are established and installed by TCR)

*Simplified taxation system (simplified system of the taxation)

*Uniform agricultural tax

*System of taxation in the context of the performance of production sharing agreements

*System of taxation in special economic zones

Regional special tax regimes

*Patent system of taxation – the special tax regime is established by TCR, but installed by the law of the Subject of the Russian Federation in its territory.

Local special tax regimes

*Unified tax on imputed income of individual entrepreneurs. The special tax regime is established by TCR, but it is installed by the legal act of a local representative body of the power on municipal union territories.

Legislative (representative) public authorities of Subjects of the Russian Federation and representative bodies of municipal unions in lawful cases have the right to establish on special tax regimes:

*Business types, concerning which the corresponding special tax regime can be used

*Restrictions on transition on a special tax regime and on special tax regime use

*Tax rates depending on categories of taxpayers and business types

*Features of determination of tax base

*Tax privileges, as well as grounds and procedure of their use

[1] Il`in A.Yu. Special tax regimes: legal mechanism of use, development and perfection // The Financial Law (journal). – 2011. – № 3.

Various types of special tax regimes are in detail analyzed in corresponding themes of a course of tax law. Special tax regimes are constantly improved. Earlier operating inefficient special tax regimes have been liquidated, or are replaced by other regimes or taxes.

EXAMPLES

***** *System of taxation in restricted administrative and territorial entities (RATE).*

The special tax regimes differed great number of tax privileges that allowed to use BUT as tax haven on lawful grounds[1]. However, now tax privileges are not in RATE.

***** *System of taxation in free (special) economic zones.*

The system differed regulation of concrete zones only by the some federal laws[2]. On all such zones tax privileges have been suspended[3].

However, then legislators have come to a correct conclusion, that without special and free economic zones it is impossible to involve investments on some problem territories and that harm are not privileges, but absence of the effective financial control in zones and imperfection of legal regulation. Therefore the state has replaced a large quantity of laws with the base federal law about special economic zones at preservation of the special federal laws regulating the most unique territories (Kaliningrad oblast, Magadan oblast, Republic of Crimea, Sevastopol).

In the majority of special tax regimes (apart from lawful cases) the general rule operates – the taxpayer using a special tax regime does not pay:

*Organization profits tax or proceeds of natural persons

*Corporate property tax or natural persons

*Value-added tax

These taxes *are replaced* with one payment. *Other* taxes and dues are paid in accordance with general practice.

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[1] On restricted administrative and territorial entity: federal law of the Russian Federation from July 14, 1992 № 3297-I [Electronic resources] // URL: http://www.pravo.gov.ru.

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Chapter 3. LEGAL BASES OF TAX DUTY

3.1. Conception of tax duty

The legislative ground of a tax duty is the item 57 of Constitutions of the Russian Federation according to which everyone is obliged to pay lawfully fixed taxes and dues. The rule is concretized in items 19, 44 of TCR. Hence, a ***tax duty*** is a duty of the payer on payment of lawfully fixed taxes or dues.

The problem consists in justice of the taxation, observance of its principles[1]. Besides, in the literature attempts to identify concept «tax duty» and «tax obligation», – as continuation of theories of the economic obligation[2] and financial obligation[3] (which authors persistently try to introduce a category «obligation» in public law sphere). For example, *I.S. Bordjug (Polischuk)* defines the tax obligation as a legal relation accruing during an economic circulation at redistribution of material benefits between public and private subjects in which frameworks the obliged subject should execute a duty on transfer to the authorized subject of tax payment in established period, and the authorized subject has the right of the requirement of execution of this duty under the threat of use of measures of state compulsion[4]. *The illogicality of such approach is appreciable at once: the author defines the tax obligation by … a duty, i.e. to itself contradict.*

Foreign authors (who correlate corresponding national and Russian problems) also write about a correlation of tax «duties – obligations». So, *I.L. Samsin* (the honoured jurist of Ukraine) believes, that it is not necessary unequivocally to do a conclusion about impossibility of use of a category «obligation» in public law branches. In his opinion, the category of the tax obligation completely corresponds to the nature of relations between the payer and the state in the name of authorized bodies. The tax obligation should be considered as a complex category, as legal relations which, on the one hand, occur from unequivocal imperative command of the state, and with another – assume certain reciprocity of rights and state and taxpayer duties, when satisfaction from the payer assigns a duty to the state to use the collected resources for the designated purpose[5].

Regretfully it is necessary to ascertain, that the term «tax obligation» in 2001 has been literally introduced in legal practice by Constitutional Court of the Russian

[1] Demin A.V. Principle of definiteness of the taxation: the monograph. – M.: STATUTE publishers, 2015.

[2] Paul A.G. The obligations property relations guaranteeing formation of proceeds of budgets (budgetary-legal aspect) // The Financial Law (journal). – 2006. – № 9.

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[4] Petrova G.V. Tax law. – M., 1999. – P. 55; Polishchuk I.S. The tax obligation in Russian law: dissertation abstract of the Ph.D. thesis. – Omsk, 2009. – P. 11.

[5] Samsin I.L. Correlation of concepts of the tax duty and tax obligation // The Financial Law (journal). – 2012. – № 3.

Federation[1]. It has noticed that tax obligations of citizens are a direct consequence of their activity in economic sphere and consequently indissolubly with it are connected. The entries of the citizen in civil legal relations precede, as a rule to occurrence of tax obligations. That is, taxes obligations are based on civil-law relations or are close with them are connected[2]. Further Constitutional Court of the Russian Federation began to use a word-group «tax obligation» as the self-evident term[3], i.e. as a matter of fact, has acted in a role of the legislator though no has similar powers. As Constitutional Court of the Russian Federation have the right to test rules of law on their conformity to Constitution of the Russian Federation, but it is not authorized to change terminology, statutory and not contradicting Constitutions of the Russian Federation.

The position of Constitutional Court of the Russian Federation is represented to us doubtful from the point of view of legality, as well as categorical, inconsistent and unreasoned. First of all, Constitution of the Russian Federation uses a category «duty», from which cannot be a term «obligation». The legal effect of the rule of constitutional law above judicial rule even if it is a question about Constitutional Court of the Russian Federation.

The court refers to primacy of the civil legislation. However according to item 307 of Civil Code of Russia (CCR) owing to the obligation one person – the debtor, is obliged to commit certain actions in favor of other person – the creditor, and the creditor have the right to demand from the debtor execution of his duty. Obligations accrue – from contracts and other bargains, owing to a causing of harm, owing to superficial enrichment, as well as from other grounds specified in CCR. Supreme Court of the Russian Federation argues about objaztelstvah the same way[4].

But the payer in tax legal relations is not the debtor as he a must to pay by Tax Code of the Russian Federation (TCR), instead of owing to the bargain, and he does not repay someone a debt, and gives the property gratuitously to the budget. The duty to pay the tax or due accrues only on the grounds specified in TCR, but not in CCR. Unlike the obligation, a tax duty is always the unilateral. The payer a must to list in a type of tax in favour of the states a part of the property, and he nothing receives in exchange.

Items 1-2 of CCR fix equality of participants of relations regulated by them taking into account freedom of the civil-law contract. As has correctly noted Constitutional Court of the Russian Federation, owing to items 8, 19, 34 and 35 of Constitution of the Russian Federation and the legal propositions of Constitutional Court of the Russian Federation based on them, the freedom of civil-law agreements in its constitutional and law significance assumes observance of principles of legal equality and the

[1] Determination of Constitutional Court of the Russian Federation from December 6, 2001 № 257 // Rossiiskaya Gazeta. – 2002. – On February 7.

[2] On case of constitutionality test of some provisions subparagraphs 1 and 2 of item 220 of Tax Code of the Russian Federation in connection with complaints of citizens S.I. Anikina, N.V. Ivanovoj, A.V. Kozlova, V.P. Kozlova and T.N. Kozlovoj: ruling of Constitutional Court of the Russian Federation from March 13, 2008 № 5 // Rossiiskaya Gazeta. – 2008. – On March 26.

[3] On case of constitutionality test of point 1 of item 333.40 of Tax Codes of the Russian Federation in connection with the complaint of the limited responsibility society «Vstrecha»: ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 // Rossiiskaya Gazeta. – 2013. – On May 31.

[4] On several issues of applications of general provisions of Civil Code of the Russian Federation about obligations and their execution: ruling of Plenum of Supreme Court of the Russian Federation from November 22, 2016 № 54 [Electronic resources] // URL: http://www.vsrf.ru.

coordination of free will of the parties. Hence, contractual obligations regulated by the civil legislation should be based on equality of the parties, autonomy of their will and property independence. Subjects of civil law are free in an establishing of the rights and duties based on contract and in revelation of any clauses of contract not contradicting to the legislation (item 1 of CCR)[1]. *But with reference to a tax duty there is no equality of participants* in private and legal sense, but only in public law sense.

As has fairly specified Constitutional Court of the Russian Federation, the equality principle of all before the law guarantees identical rights and duties for the subjects who are related to one category, and does not exclude possibility of an establishing of various stipulations for various categories of subjects of law. In the taxation, equality is understood, first of all, as the uniformity, neutrality and justice of the taxation[2]. Then Constitutional Court again has underlined, that owing to items 19, 57 Constitution of the Russian Federation the taxation should be based on the constitutional principle of equality which excludes giving to taxes and dues of discrimination character and possibility of their various use, including depending on a form of ownership. In the taxation equality – it is first of all the uniformity, neutrality and justice of the taxation. It signifies, that identical economic results of activity of taxpayers should attract identical tax burden and that the principle of equality of tax burden is violated when certain category of taxpayers are given others in comparison with other taxpayers a stipulations, though between them there are no essential distinctions which would justify unequal legal regulation[3].

Hence, Constitutional Court of the Russian Federation actually denies own position concerning a tax duty when names its obligation, i.e. essentially distinguishes the duty in public law from obligation in private law. *Therefore we believe* that there are enough legal norms of TCR sending in necessary cases to private and legal.

As has correctly specified in this connection Constitutional Court of the Russian Federation, in item 11 of TCR it is fixed, that institutions, concepts and terms of civil, family and other branches of the legislation of the Russian Federation, used in TCR, are used in that significance in what they are used in corresponding branch of the legislation if other is not provided by TCR[4].

The concept of the tax obligation has subjected to slashing and fair criticism I.I. Kucherov (we recommend necessarily studying his article)[5]. *In our opinion, the tax obligation is an incorrect designation of a tax duty some civilists which cannot be used in a public tax law.*

There are also other viewpoints about concept of a tax duty. For example, the tax duty is defined as a duty of payers to carry out legal requirements of tax authorities[6].

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[1] Ruling of Constitutional Court of the Russian Federation from November 27, 2008. № 11 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Rulings of Constitutional Court of the Russian Federation – from April 27, 2001 № 7 and from March 13, 2008 № 5 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Ruling of Constitutional Court of the Russian Federation from June 22, 2009 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Ruling of Constitutional Court of the Russian Federation from March 13, 2008 № 5 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] Kucherov I.I. Legal features of monetary duties and their difference from financial obligations // The Financial Law (journal). – 2012. – № 1.

[6] Bryzgalin A, Zaripov V. Comments of substantive provisions of Tax Code of the Russian Federation // The Economy and Law (journal). – 1999. – № 12. – P. 16.

In this case, it appears, authors unreasonably believe, that the tax duty is generated by will of tax authorities.

In this connection the natural question on grounds of occurrence, alteration and termination of tax duty accrues, i.e. about juridical facts. Only TCR and acts of the legislation about taxes and dues corresponding to it are ground *of occurrence and (or)* duty *alterations* on tax or due payment (item 44 of TCR). Hence, coming into force of the law for the payer is event as a juridical fact type.

GROUNDS TERMINATION of a duty on tax or due payment can be grouped on types of juridical (legal) facts based on p. 3 of item 44 of TCR:

1. EVENTS:

* Coming into force of the law stopping payment of the concrete tax or due.

* Death of the payer or recognition his diedas specific civil proceeding. In this case the tax duty is terminated only for died, but it accrues concerning his successors if they have received the inheritance. Successors repay arrears, fines and penalties of ancestors within cost of hereditary property. Hence, the indebtedness of the person or the person announced died, is repaid by successors within cost of hereditary property in the procedure established by the civil legislation of the Russian Federation for payment by successors of ancestors debts (item 1175 of CCR).

2. LAWFUL ACTIONS:

* Payment of the tax or due by the payer.

* Liquidation of organization-payer after carrying out by the liquidating commission of all settlements with budgets of all levels (item 49 of TCR).

As has noted Constitutional Court of the Russian Federation, having wide arbitrary powers in taxation sphere, the legislator, nevertheless, cannot operate any way. The taxation mechanism should guarantee completeness and timeliness of collection of taxes and dues from the obliged persons and simultaneously – proper legal character of activity of authorized bodies and the officials connected with withdrawal of resources of the taxation. At the same time, as the duty to pay lawfully fixed taxes extends in an equal measure on all taxpayers, the legislator at making of normative-legal mechanism the taxation of economic objects should to also consider legally significant characteristics of the subjects included in sphere of the taxation so that features of their legal status did not serve as an obstacle for realization of the tax duty assigned to them. For example it related to the state educational institutions of tertiary-type A for which (owing to specificity of their legal status as budget-funded entities) payment of taxes and dues in the order fixed by the legislation on taxes and dues, simultaneously is execution of the financial commitment of fund receivers of the federal budget, that, in turn, is fixed by legal norms of the budgetary legislation[1].

3.2. Taxation essential elements

There are serious scientific works about legal structure (legal construction) of taxes and due, i.e. as a matter of fact, about taxation essential elements[2].

We will interpret the question within the limits of the understanding, not losing sight new scientific researches. For example, in *I.I. Kucherov's work*[3] are resulted following definitions of taxation essential elements of different authors:

[1] Ruling of Constitutional Court of the Russian Federation from June 22, 2009 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Zlobin N.N. The tax as a legal category: the monograph. – M., 2003.

[3] Kucherov I.I. On the issue of legal constructions of taxes and dues // The Financial Law (journal). – 2010. – № 1.

1) legislatively formalized, spatio-temporal, physical, cost, actual and other characteristics of circumstances and material world subjects, as well as a procedure of calculation, documentary fixing and entering by the person of the concrete sum of the tax (O.A. Nogina); 2) generic features reflecting social and economic essence of the tax (N.E. Zayats); 3) fundamental, intrinsic characteristics of the tax which form the basic conception about the content of the tax mechanism (N.P. Kucherjavenko); 4) internal initial functional units which in the complex also make legal designs(constructions) of corresponding tax payments (I.I. Kucherov). *In our opinion*, the definitions are artificial complicated. Therefore we propose more clearly.

Taxation essential elements are such elements without which tax duty occurrence is impossible. They form legal structure of the tax, due and signify that taxes and dues cannot be established by only one declaration.

As has underlined Constitutional Court of the Russian Federation, the federal legislation on taxes and dues should form proper stipulations of execution of a tax duty that assumes, in particular, at an establishing of federal taxes fixing of all elements of a tax duty, including the – object of taxation, tax base, procedure of calculation and tax payment ets.

Observance by the federal legislator of the constitutional requirements of formal definiteness and completeness of elements of a tax duty and the regarding of objective characteristics of the economic-legal content of the tax guarantee efficiency of the taxation and a reality of its purposes, as well as allow taxpayers to pay duly the tax, and to tax authorities – to realize the control over actions of taxpayers on payment of taxes in the budget[1].

Hence, taxes are considered lawfully established only in the event that exclusively federal law (TCR) fixes all ***essential elements (stipulations) of the taxation*** to which according to item 17 of TCR and legal propositions of Constitutional Court of the Russian Federation related to:

****Taxpayers***
****Object of taxation***
****Tax base***
****Tax rate***
****Tax period***
****Tax calculation procedure***
****Procedure and deadlines for the payment of tax***

Further last two elements with the purpose of optimization we will unite in one under the name – ***calculation and payment procedure.***

Absence in the federal law at least one of the listed elements or indistinct (i.e. supposing other interpretation attracting deterioration of position of the payer) interpretation is a ground for contest of the law in court by jurisdiction rules. Acts of the legislation on taxes and dues should be formulated so that everyone precisely knew what taxes (dues) when and in what procedure he should pay. All ineradicable doubts, antinomies and ambiguities of the acts are interpreted in favour of payers of taxes and dues (item 6 of TCR).

Following logic, all abovementioned rules should be used with reference to an establishing of dues. However the legislator has selected more indistinct formulation and has specified that *at an establishing of dues their payers and levy elements are*

[1] Ruling of Constitutional Court of the Russian Federation from June 22, 2009 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

fixed with reference to concrete dues. Such position that speaks, that all complex of essential elements has not been fixed in all normative legal acts about dues.

The indistinct formulation of the legislator concerning an establishing of dues and their elements has allowed by Constitutional Court of the Russian Federation to declare, that in the cases directly provided by the federal law, Government of the Russian Federation according to the constitutional powers can provide in statutory acts dues and their elements (rates etc.).

By examples of such dues have been named: duties – for patenting of inventions, useful models, production prototypes, registration of trademarks, service marks, appellations of places of an origin of the goods, a licence grant appellations of places of an origin of the goods; a payment and its limiting sizes – for environmental pollution, disposition, others of an adverse effect type; other dues collected in a public law procedure if they are not taxes (have no tax character) and are supposed on sense of the federal law assigning regulation of execution of duties fixed by it on Government of Russia. Such dues should be argued as lawfully establish in terms of items 57 of Constitutions of the Russian Federation[1].

It appears, such legal proposition of Constitutional Court of the Russian Federation allows to Government of the Russian Federation to provide at own discretion any dues and their rates, referring on blanket rules of the corresponding federal law, i.e. on the legal norms which are not containing the exhaustive list of dues and elements of concrete dues, not limiting activity of an executive branch of the power and promoting strengthening of tax burden.

From our point of view, the word-group "lawfully established" should be taken literally as it related to by item 57 of Constitutions of the Russian Federation not only to taxes, but also to dues.

With the purpose of optimization of tax system it is necessary for legislator to stop the practice, allowing delegating powers on fixing of dues and their elements to power executive powers. Not only taxes, but also dues should completely (i.e. with all elements) it to be provided by Tax Code of the Russian Federation. Such approach will not allow expanding the list of obligatory payments, which and so it is great. *Let's pass now to the analysis of each element of the taxation.*

TAXPAYERS, PAYERS OF DUES

Taxpayers, payers of dues will be designated by us further the uniform term "payers" or "subjects" at disclosing of the general for them questions. Thus we will agree that at tax legal relations the taxpayer has a legitimate interest[2].

All payers can be related to subjects of a tax duty as to one of types of subjects of tax law or tax legal relations. Subjects are non-uniform, and therefore can be classified by various criteria. Optimum criterion it is possible to declare as the legal status of the payer.

On a legal status of all payers of taxes and dues it is possible to classify on organization and natural persons. The legislator (item 19 of TCR) also adheres to similar classification.

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[1] Determinations of Constitutional Court of the Russian Federation – from December 10, 2002 № 283 and from December 10, 2002 № 284 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Tsvetkova E.A. Realization of a legitimate interest of the taxpayer in tax legal relations // The Financial Law (journal). – 2015. – № 2. – Pp. 27-33.

Organizations (item 11 of TCR) are the juridical (legal) persons formed according to the legislation of the Russian Federation (i.e. Russian organizations) as well as the – foreign juridical persons, companies and other corporate formations, having civil legal ability and formed according to the legislation of the foreign states, international organizations, filial agencies and representative offices of the foreign persons and the international organizations formed in territory of the Russian Federation (i.e. foreign organizations).

Hence, *organization* is the collective subject of a tax duty. The word «organization» has occurred from Latin «organize» – i.e. I inform a harmonous type, I arrange. As a matter of fact, organization is understood as association of the people is collective realizing the program or the purpose and operating of based on certain regulations.

Organizations (depending on the law, based on which they are formed) *can be* – Russian, foreign, residents, non-residents.

Natural person is the individual subject of a tax duty.

Types of natural persons and their definitions in accordance with Federal law «On citizenship of the Russian Federation» are:

*Citizen of the Russian Federation – is the person, having citizenship of the Russian Federation;

*Foreign citizen – is the person, having citizenship of the foreign state and not having citizenship of the Russian Federation;

*Person with a dual citizenship – is defined by the international treaty of the Russian Federation;

*Stateless person – is the person who is not belonging to citizenship of the Russian Federation and not having proofs of an accessory to citizenship of other state.

Types of natural persons in accordance with item 11 of TCR are:

*Individual businesspersons;

*Other natural persons

– Or –

*Residents (actually are in Russia not less than 183 days);

*Non-residents

The *age and competence* of natural persons have no significance as the law provides the mechanism of execution by them of a tax duty by legal representatives. Features of execution by different types of payers of a tax duty can be established only by TCR and the normative legal acts based on it[1] or the international treaty of the Russian Federation.

Features of some subjects of a tax duty are reflected by legal norms of TCR (item 11 and others). Owing to legal norms of law institutions, concepts and terms of civil, family and other legislation of the Russian Federation, used in TCR, are used in that significance in what they are used in these branches if other is not provided by TCR.

In this connection item 11 of TCR is added by new terms, namely:

*Foreign structure without formation of legal person – is the organizational form formed according to the legislation of the foreign state (territory) without formation of

[1] On the approval of rules of presentation by residents to tax authorities of reports on turnover of resources under accounts in banks outside of territory of the Russian Federation: decree of Government of the Russian Federation from December 28, 2005 № 819 // Collection of Legislative Acts of the Russian Federation. – 2006. – № 2. – Item 188.

legal person (in particular, fund, partnership, association, trust, other form of realization of collective investments and (or) fiduciary managements) which according to the personal law have the right to realize the activity directed on extraction of proceeds (profit) in interests of the participants (shareholders, principals or other persons) or other beneficiaries;

*Foreign financial intermediaries – is foreign stock exchanges and the foreign depositary clearing organizations included in the list, confirmed by Central bank of the Russian Federation in coordination with Ministry of Finance of the Russian Federation;

*Public companies – is the Russian and foreign organizations which are emitters of which (or depositary receipts on which) have undergone procedure of listing and (or) have been admitted to the circulation at one or several Russian stock exchanges having the corresponding licence, or the stock exchanges included in the list of foreign financial intermediaries.

Chapter 3.4 "Controlled foreign companies and controlling persons" included in TCR and contains following positions! The *controlled foreign company*, by the generalization, recognizes the foreign organization satisfying simultaneously all following stipulations: 1) organization is not recognized by the tax resident of the Russian Federation; 2) controlling person of organization is organization and (or) the natural person, recognized tax residents of the Russian Federation. The controlled foreign company also recognizes *foreign structure* without formation of legal person, the controlling which person is organization and (or) the natural person, recognized tax residents of the Russian Federation.

By the controlling person of foreign organization are recognized following persons: 1) natural or the juridical (legal) person which participatory share of participation in this organization makes more than 25 percent; 2) natural or the juridical (legal) person which participatory share of participation in this organization (for natural persons – together with spouses and minor children) makes more than 10 percent if the participatory share of participation of all persons recognized by tax residents of the Russian Federation, in this organization (for natural persons – together with spouses and minor children) makes more than 50 percent; 3) person, concerning which participatory shares of participation in organization are not observed lawful stipulations, but thus realizing the control over such organization in the interests or in interests of the spouse and minor children.

By the controlling person of foreign structure without formation of legal person is recognized: 1) founder (establisher) of such structure; 2) other person who is not its founder (establisher) if such person realizes the control over such structure.

Control over organization recognizes rendering or possibility to make determining influence on the decisions enacted by this organization concerning of distribution by received by organization profit after the taxation owing to direct or indirect participation in such organization, participations in the contract (agreement) which subject is administration of this organization or other features of relations between the person and this organization and (or) other persons.

Control over foreign structure without formation of legal person recognizes rendering or possibility to render determining influence on the decisions enacted by the person, exercising administration by actives of such structure, concerning distributions of the received profit (proceeds) after the taxation according to the personal law and (or) constituent documents of this structure.

At the same time TCR has put in practice the ***specific subjects of a tax duty***. For example, TCR put in practice the concept of interdependent persons.

Interdependent persons – are any persons, relations between which can influence stipulations or economic results of business (item 20 of TCR).

It is possible to allocate following *criteria of determination of interdependence:*

1. Direct or indirect participation of one organization in another at a rate of more lawful total participatory share of participation;

2. Official submission of one natural person to another;

3. A status in ancestry or connexion (i.e. spouses, adoptive fathers and adopted, curators and sponsored);

4. A judicial decision about recognition of persons interdependent if their relations can influence on results of bargains on realization of the goods, works, services;

5. Can be other criteria.

Interdependence attracts legal consequences. In case of recognition of persons interdependent tax authorities acquire a right to test correctness of use of the prices under bargains. If, for example, the prices are underestimated, the tax authority has the right by the motivated decision charge in addition taxes and fines (item 40 of TCR). ***Section V.I*** of TCR («Interdependent persons. General provisions on the prices and the taxation. Tax control in connection with fulfilment of bargains between interdependent persons. Agreement on pricing») proves significance of interdependent persons in pricing.

For realization of a tax duty, payers are allocated by corresponding rights and duties.

Taxpayers in lawful cases have the right (item 21 of TCR):

*To receive in a place of the record-keeping from tax authorities the gratuitous lawful information (including in writing), as well as forms of tax declarations (calculations) and an explanation about a procedure of their filling;

*to receive from Minfin of Russia and financial bodies of Subjects of the Russian Federation and municipal unions written explanations concerning tax legislation uses;

*to use lawful tax privileges;

*to receive legally the deferment, instalments or the investment tax credit;

*on timely offset or return of the sums of unduly paid or unduly collected the taxes, fines, penalties;

*on realization of collective with tax authorities of verification of calculations under taxes, dues, fines and penalties, as well as on receiving of the act of collective verification of calculations under the taxes, dues, fines and penalties;

*to represent the interests in the relations regulated by the legislation on taxes and dues, personally or through the representative;

*to represent to tax authorities and their officials of the explanatory on calculation and payment of taxes, and under acts of the tax inspections;

*to be present at carrying out of exit tax inspection;

*to receive copies of the act of tax inspection and decisions of tax authorities, as well as tax notices and requirements on payment of taxes;

*to demand from officials of tax authorities and other authorized bodies of observance of the legislation on taxes and dues at fulfilment of actions by them concerning taxpayers;

*not to carry out wrongful acts and requirements of tax authorities, other authorized bodies and their officials, mismatching to TCR or other federal laws;

*to appeal acts of tax authorities, other authorized persons and actions (failure, inactivity) of their officials;

*on observance and preservation of tax secret;

*on compensation in full volume of damages (i.e. complex of the real damage and loss of profit) by illegal acts of tax authorities or illegal actions (inactivity) their officials;

*on participation in the review process of materials of tax inspection or other acts of tax authorities in the cases, provided by TCR;

*and other rights, fixed by TCR and other acts of the legislation on taxes and dues.

Payers of dues have the same rights as taxpayers.

Taxpayers in lawful cases musts (item 23 of TCR):

General duties:

*to pay lawfully established taxes;

*to be registered in tax authorities;

*to realize in accordance with established procedure the accounting of the proceeds (expenses) and objects of taxation;

*to represent to tax authority in an accounting place tax declarations (calculations);

*to represent to tax authority on the residence of the individual businessperson, notary had by private practice, advocate who has founded an advocatory office, on demand of tax authority the book of the accounting of proceeds and expenses and economic transactions; to represent to tax authority on the organization location the annual accounting (financial) accountability;

*to represent to tax authorities and to their officials the documents necessary for calculation and payment of taxes;

*to carry out legal requirements of tax authority about elimination of detected violations of the legislation on taxes and dues, as well as not to interfere with lawful activity of officials of tax authorities at execution by them of the official duties;

*to perform other duties provided by the legislation on taxes and dues.

Additional duties:

Taxpayers – organizations and individual businesspersons besides the general duties are obliged to inform in tax authority accordingly on the organization location and (or) residence of the individual businessperson:

*about the participation in the Russian organizations (apart from cases of participation in economic partnerships and limited responsibility societies);

*about all separate subdivisions of the Russian organization formed in territory of the Russian Federation (apart from filial agencies and representative offices), and alterations in data earlier informed in tax authority on such separate subdivisions:

*about all separate subdivisions of the Russian organization in territory of the Russian Federation by which activity is stopped this organization (which is stopped by this organization):

Taxpayers – natural persons under the taxes paid based on of tax notices, besides the general duties, till December 31 of the year following the expired tax period, are obliged to inform on having at them objects of real property and (or) the transports declared as objects of taxation under corresponding taxes, in tax authority on a residence or on the location of objects of real property and (or) transports in case of non-receipt of tax notices and non-payment of taxes of concerning the objects of taxation during possession of them.

Taxpayers are obliged to notify tax authority accordingly on the organization location, natural person's residence:

*about the participation in foreign organizations;

*about founding of foreign structures without formation of legal person, as well as about the control over them or an actual right on the proceeds received by such structure (including cases when the taxpayer acts as the founder of such structure or the person having an actual right on proceeds (profit) of such structure in case of its distribution);

*about the controlled foreign companies, concerning which they are controlling persons.

Foreign organizations and also foreign structures without formation of legal person, having the property declared by object of taxation according to item 374 of TCR, are obliged to inform in tax authority on a site of object of real property of data on participants of this foreign organization (for foreign structure without formation of legal person – data on its founders, beneficiaries and managing directors).

At having at foreign organization (foreign structure without formation of legal person) the several objects of property specified above, the message is represented in tax authority on the location of one of objects of property for choice this person.

Payers of dues are obliged to pay lawfully established dues and to perform other duties fixed by the legislation of the Russian Federation about taxes and dues.

Additional rights and duties can be established by the customs legislation at moving of the goods through customs border.

OBJECT OF TAXATION

Definition of objects of taxation is proposed by a science and TCR.

Scientists define object differently, – as:

*Ground of sanction of the tax[1];

*Juridical (legal) facts generating a tax duty[2];

*Concrete matters of a material world[3].

The TCR proposes to other definition (item 38).

Object of taxation is all that has cost, quantitative or physical characteristics, and is connected with tax duty occurrence. Each tax has independent object of taxation. Objects are non-uniform, and therefore are classified by various criteria. Optimum and corresponding to TCR is represented to such criterion, as the object content.

Types of objects of taxation *under the content are* general, special. The *general object is a* ***property*** in understanding of item 36 of TCR and item 128 of CCR, namely: things, money, securities, and other property. Property rights excludes from concept of property by Tax Code of the Russian Federation.

Special objects include the goods, works, services and income.

1. **Goods** are the any property realized or intended for realization, as well as other property in understanding of the customs legislation.

2. **Work** is the activity, which results has material form and can be realized.

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[1] Tsypkin S.D. Proceeds of the state budget of USSR. – M., 1973. – P. 60.

[2] The big law dictionary. – Mentioned writing. – P. 437; Taxes and tax law. – M.: ANALYTICS-PRESS publishers, 1997

[3] Item 5 of Law of the Russian Federation «On bases of tax system in the Russian Federation» – now it does not operate, but it is used by scientists at definition of object of taxation.

3. **Service** is the activity, which results has no material form, but are realized and consumed.

The list of that is not recognized by realization of the goods, works, services, contains in TCR. For example, realization of the transactions connected with the circulation of the Russian or foreign currency, apart from numismatics (numismatics is a collecting of coins).

At realization of the goods, works or services for tax reasons the great value has correct determination of their *price*. The technique of such determination is expounded in item 40 of TCR.

Thus the price is enacted such what is specified by transaction parties.

Abnormality of the price should be proved by those who doubts in this correctness. If abnormality is not proved – the price is considered correct. At determination of market prices bargains between any persons are taken into consideration. If in the bargain interdependent persons participated, the tax authority have the right to test correctness of the price. An official source of the information in market prices for the goods, works and services are exchange quotations. Official source of the information in market prices for the goods, works and services are exchange quotations (item 40 of TCR).

Exchange quotation is a registration by exchange bodies of spontaneously developed prices of securities (shares, bonds) and the prices for some exchange goods of taking into account taken place stock-exchange deals; reflects a supply and demand correlation on the goods. The quotation is used by the quotation commission and published in exchange lists of wholesale prices of the goods. Court has the right at determination of results of the bargain to consider the any legally relevant circumstances influencing on the prices and objects of taxation (point 12 of item 40 of TCR).

Following special object of taxation is the income.

4. **Income** is any economic gain. Income forms are monetary or natural. The income is considered only at possibility of its estimation.

From here, are allocated such *principles of determination of income*, as:

*Economic expediency;

*Formal definiteness;

*Estimation possibility.

Income is non-uniform, and therefore is classified by various criteria.

Types of income on a receiving method (item 42 of TCR):

*Internal income – is the income received from sources in the Russian Federation;

*External income – is the income received from sources outside of the Russian Federation.

Types of income by the form activity: dividends and interests.

Dividends – are the any income received by the shareholder or the participant of organization according to the TCR, CCR, federal laws, as well as dividends in understanding of the legislation of the foreign state (item 43 of TCR).

Are not related to dividends:

*Payments at organization liquidation in favour of the shareholder or the participant, not exceeding their contributions in the organization capital;

*Payments in favour of shareholders or participants of organization in the form of transfer of stock of the same organization in the property;

*Payments from noncommercial organization to workers on realization of its basic authorized activity.

Interests – are the any in advance declared or established income (including in the form of discount), received under any type promissory note, irrespective of a method of its formalization.

Discount – is a margin between the price of acquisition of a security and its realization.

TAX BASE

Tax base – is the cost, physical or other characteristic of object of taxation (item 53 of TCR).

Actually, such definition of tax base coincides with definition of object of taxation (item 38 of TCR). Therefore there is a problem of differentiation of the concepts. The analysis of the content of rules of tax law of the effective legislation allows us to argue tax base in the broad and narrow senses.

Tax base in a broad sense – is a unit of object of taxation, or its characteristic. Let's give an example under the transport tax. The sail-plane which does not have the engine is object of taxation and simultaneously tax base. The car is only object of taxation. Tax base is power of the engine in horsepower. ***Tax base in the narrow sense*** – is a part of object of taxation which was formed in connection with lawful deductions or other privileges. For example, a margin between the total annual income of parents of the student and expenses on his education is the tax base of the individual income tax.

The tax base is established separately under each tax by part 2 of TCR, or in the laws on taxes which have not entered into part 2 of TCR. The payer estimates tax base based on data of the regarding and specificity of the category of the payer, following the results of the each tax period or period of accounts. Features of determination of tax base under some taxes are in detail regulated by corresponding chapters of an especial part of TCR.

TAX RATE

Tax rate – is value of tax charges on tax base unit (item 53 of TCR). Such definition by the legislator does not clear up sense of tax rate. Our definition of the tax rate is clearer. The *tax rate* is such value which after multiplication to tax base fixes the sum of the concrete tax which is subject to payment.

Tax rates can be established in the fixed quantity of money, or in percentage. The tax rate under *federal* taxes is established separately under each tax by part 2 of TCR. Tax rates under *regional and local* taxes are fixed as a rule approximately by TCR. Concrete rates are established and installed accordingly by normative legal acts of regional and local representative bodies of the power in the limits, fixed by TCR. For calculation of internal taxes are used the rates corresponding to the appellation and classification of the goods according to TCR, by custom duties of the Russian Federation, and Federal law «On customs regulation in the Russian Federation».

TAX PERIOD

Tax period is the lawful period of time after which termination is fixed the tax base and is estimated the sum of the tax which is subject to payment (item 55 a TCR).

The tax period can consist of one or several periods of accounts following the results of which advance payments are paid. Hence, it is possible to allocate following *features of the tax period:*

*It is statutory time period;

*It guarantees a regularity of tax revenues in budgets;

*It simultaneously can consist of the periods of accounts, allowing supervising timeliness of payment of taxes.

Generalizations of determination of the tax period are established by item 55 of TCR РФ. However for each tax part 2 of TCR fixes the concrete tax period. Hence, the general for all the tax period does not exist. It depends on specificity of the tax.

CALCULATION AND PAYMENT PROCEDURE

Taxes are estimated and transferred in budgets by payers or their tax agents.

Dues are estimated and transferred in budgets, as a rule, only by their payers.

The procedure of calculation and payment of taxes and dues, as well as corresponding terms are fixed by the rules of tax law regulating the concrete tax (due).

Features of calculation and payment of internal taxes in the cases directly specified by TCR are established by Federal law «On customs regulation in the Russian Federation».

3.3. Representation in tax legal relations

The representation institution has essential practical significance, as wrong formalization of powers of the representative is a ground for recognition of any actions with his participation illegal.

For correct understanding of institution of representation we will address to legal norms of TCR, CCR, as well as to their interpretation by Supreme Court of the Russian Federation[1].

Representation in tax legal relations – is the special legal institution allowing based on of TCR to guarantee realization of rights and duties of payers by actions of other persons –representatives (item 26 of TCR).

The payer has the right to operate by the representative, together with him or without him. Powers of representatives are formalized documentary according to the TCR and other federal laws. Sending by TCR to other laws allows using legal norms of the civil, civil procedure, arbitration procedure, criminal procedure and administrative legislation along with TCR. However in case of the antinomy between the legal norms is used TCR. The great value in practice has correctness of formalization of powers of the representative as the further legal estimation of their actions depends on it.

Features of formalization of powers of the representative:

As a rule, powers of the representative are corroborated by the proxy. For example, TCR is provided *the authorized representative of taxpayer* – it is the any lawful person operating exclusively based on of the proxy (item 29 of TCR).

Representatives cannot be:

*Officials of tax and customs bodies, bodies of the state off-budget funds;

*Judges, investigators, procurators;

*Other persons specified in the law.

Proxy – is the written authorization which is given out by one person to other person for representation before a third person (item 185 of CCR).

[1] On application by courts of some provisions of section I of part 1 of Civil Code of the Russian Federation: ruling of Plenum of Supreme Court of the Russian Federation from June 26, 2015 № 25 [Electronic resources] // URL: http://www.vsrf.ru.

The proxy can be formalized in the simple written form, or in the form of recording in the protocol of juridical session on an oral statement of the grantor, or in the notarial form. *Notarially* the proxy is formalized only in a case directly provided by the law. But it does not deprive the person of a right the any proxy to formalize notarially.

The proxy on behalf of the legal person stands out signed by his head or other person authorized on it by constituent documents. The common seal is applied on such proxy. The proxy on behalf of the legal person based on the state or municipal property, on receiving or disbursal or other property, should be signed, besides the head, by the chief accountant or senior accountant of the legal person.

At the same time, the law provides cases of formalization of representation not by proxy. For example, the advocate in the cases provided by the federal law should have the warrant on the execution of an order, given out by corresponding advocatory formation. The warrant form affirms federal judicial authority. Only in other cases, the advocate represents the grantor by proxy[1].

General conclusion! Owing to point 1 of item 182 of CCR powers of the representative can be based on the proxy, statutory reference or the act of the representative state or municipal body, as well as to appear from conditions in which the representative operate. The delegation of authority guidelines and their realization is established by chapter 10 of CCR.

The law separately allocates such category of representatives, as legal representatives of organizations and natural persons who are statutory agents.

Legal representatives of organizations can represent interests of organization without to the proxy, and only after a presentation of the identification card or constituent documents and passports. To them are related to the – heads, other authorized persons, and single executive bodies.

Examples:

*Single executive bodies of joint-stock companies and limited responsibility societies (item 69 of Federal law «On joint-stock companies»; item 40 of Federal law «On limited responsibility societies»);

*Participants of full partnership and partnership in commendam (items 72, 84 of CCR);

*Representatives of trade unions representing interests of own trade-union organizations;

*Other representatives (according to APCR and other federal laws).

The list of legal representatives of natural ***persons*** contains in the APCR, CPCR, CRoAV, CCPR, as well as is fixed based on TCR and CCR. The analysis of the listed laws allows allocating the ***general list of legal representatives of natural persons:***

*Parents – are for minor children;

*Trustees – are for legally incapable;

*Curators – are for impaired;

*Property administrators – are for missing person;

*Adoptive parents – are for minors adopted.

Their powers are verified by the law, passport, birth certificate, as well as documents of the special status (for example, the decision of municipal body about appointment of the trustee).

[1] On advocatory activity and advocacy of the Russian Federation: federal law of the Russian Federation from May 31, 2002 № 63 // Rossiiskaya Gazeta. – 2002. – On June 5.

3.4. Tax authorities

Tax authorities of the Russian Federation – are control unified centralized system for compliance of the legislation on taxes and dues, for correctness of calculation, completeness and timeliness of payment (transfer) in budgetary system of the Russian Federation of the taxes and dues, corresponding fine, penalties, percent, and in the cases provided by the legislation of the Russian Federation, – for correctness of calculation, completeness and timeliness of payment (transfer) in budgetary system of the Russian Federation of other obligatory payments established by the legislation of the Russian Federation[1].

Thus, tax authorities generalize data on income, on property and commitments of the property character, represented by the persons replacing the state posts of the Russian Federation, to tax authorities according to the federal constitutional law, and results of generalization in lawful term represent to President of the Russian Federation and to chambers of Federal Assembly of the Russian Federation. Besides, tax authorities according to normative legal acts of the Russian Federation about fight corruption represent data available for them on income, on property and commitments of property character by inquiries of heads and other officials of the federal state agencies which list is fixed by President of the Russian Federation, and supreme officials of Subjects of the Russian Federation (heads of the supreme executive powers of a state authority of subjects of the Russian Federation). We can deduce more convenient definition of tax authorities from the above-stated.

Tax authorities – are the authorities using rules of tax law and supervising their execution.

System of tax authorities of the Russian Federation

Federal Tax Service (FTS). It is subordinated to Minfin of Russia (till 2004 there was Ministry of the Russian Federation of taxes and dues, and even earlier – State Tax Service).

Territorial bodies of FTS:

*Regional bodies;

*Regional (city) bodies;

*Interterritorial bodies (inter-regional and interdistrict);

*Tax posts.

Standard statutes on territorial bodies of FTS confirm Minfin of Russia[2].

Customs bodies are equal to tax authorities (regarding sanction of internal taxes).

System of customs bodies of the Russian Federation[3]

* *Federal Customs Service* (FCS) – is subordinated to Minfin of Russia (since 2016) and controls within the limits of the powers, including applicable discharge of the tax legislation; operates based on Statute[4];

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[1] On tax authorities of the Russian Federation: law of the Russian Federation from March 21, 1991 № 943-1 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On the approval of Standard statutes about territorial bodies of Federal Tax Service: decree of Minfin of Russia from July 17, 2014 № 61 // Rossiiskaya Gazeta. – 2014. – On December 17.

[3] Ukase of President of the Russian Federation from May 11, 2006 № 473 // Rossiiskaya Gazeta. – 2006. – On May 12.

[4] On Federal Customs Service: decree of Government of the Russian Federation from September 16, 2013 № 809 [Electronic resources] // URL: http://www.pravo.gov.ru.

** Territorial bodies of FCS.*

Customs bodies collect internal taxes at moving of the goods through border of the Russian Federation, and therefore simultaneously are guided the tax and customs legislation[1]. Money resources (money) as maintenance of payment of customs duties, taxes (monetary deposit) are placed to Federal Treasury account on a corresponding code of budget classification of the Russian Federation.

Monetary deposit can be consigned by the natural persons moving through customs border the goods for a private use, in pay office of customs body. Monetary deposit consigning can be realized by electronic terminals, automatic cash terminals or вancomats (i.e. cash machines). Interests are not charged to the sum of monetary deposit.

Customs bodies as securing of payment of customs duties, taxes receive the banking guarantees paid by banks, other credit organizations or paid on behalf of banks, other credit organizations by filial agencies of these banks, other credit organizations, included in the Register of banks, other credit organizations, having the right of delivery of banking guarantees of payment of customs duties, taxes which realizes the federal enforcement authority authorized in the field of customs affair.

Customs bodies formalize the customs receipt for acknowledgement of acceptance of securing of payment of customs duties, taxes. Securing of payment of customs duties, taxes is considered the accepted by customs body from the date of formalization of the customs receipt in writing on the p-books or in the form of the electronic document signed by the strengthened qualified electronic signature of the authorized official of customs body. The form of the customs receipt, procedure of its filling and use and procedure of informing of payers of customs duties, taxes and (or) other persons who have rendered to securing of payment of customs duties, taxes, about formalization of the customs receipt are fixed by the federal enforcement authority authorized in the field of customs affair.

Activity of tax authorities is realized by compliance by them of legitimate rights and duties.

BASIC RIGHTS of TAX AUTHORITIES (item 31 of TCR)

*To demand the documents for tax reasons provided by the law from payers and tax agents;

*To realize tax inspections;

*To realize procedural actions with the purpose of collecting and fastening of proofs of fulfilment of tax violations;

*To examine and survey for tax reasons the any Premises and territories;

*To appoint inventory of property of payers;

*To make in courts actions: about levy of the sums of tax sanctions, about recognition of void state registration of the legal person or the individual businessperson, about organization liquidation etc. Thus causes about levy of tax sanctions under the application of tax authorities to organizations and individual businesspersons are considered by arbitration courts and Supreme Court of the

[1] On the approval of the form of the accountability about the foreign goods placed under a customs procedure of output for internal consumption with rendering of privileges on payment of customs duties, the taxes integrated to restrictions on use and (or) the direction by these goods, and a procedure of its presentation in customs bodies: decree of Minfin of Russia from July 24, 2015 № 1485 [Electronic resources] // URL: http://www.pravo.gov.ru.

Russian Federation according to the arbitration procedure legislation of the Russian Federation. Causes about levy of tax sanctions under the application of tax authorities to the natural persons which are not individual businesspersons, are considered by courts of the general jurisdiction and Supreme Court of the Russian Federation according to the civil procedure legislation of the Russian Federation (item 105 of TCR);

**Other legitimate rights.*

BASIC DUTIES of TAX AUTHORITIES (item 32 of TCR)

*To observe tax and other federal laws;

*To direct to payers and (or) tax agents – copies of acts of tax inspections and decisions of tax authorities, tax notices or payment requests of taxes;

*At revealing of crime attributes to direct corresponding materials to law enforcement authorities for the solution of the question on initiation of criminal case.

*Other lawful duties. We some of them believe not having the direct relation to tax law, i.e. derivatives. For example, it is rendering of the state service in rendering to interested persons of the data containing in the register of disqualified persons[1].

Relating to officials of tax authorities of their duty are supplemented with others. For example, it is correctly and to show consideration for payers, not to humiliate their honour and advantage. Otherwise there are consequences – criminal case of private charge about the insult and the civil case about the compensation of moral harm and.

The list of rights and duties of tax authorities is not exhaustive, i.e. it can be expanded or limited by the law.

Tax agents and collectors of taxes (dues)

Tax agents – are organizations and the individual businesspersons who are realizing payments to natural persons. *Tax agents* based by TCR to estimate, keep musts at taxpayers and to transfer in budgets lawful taxes. For example, for workers of university the tax agent is the university.

Tax agents have the same ***rights***, as payers.

Duties of tax agents have *specificity* (item 24 of TCR):

*Correctly and duly to realize statutory actions;

*In writing to inform in tax authority in a place of the accounting on impossibility to keep the tax and about the arrears sum;

*To keep account sums of taxes all withheld and listed in budgets, including personally on each payer;

*To represent to tax authority in a place of the accounting the documents necessary for the tax control.

The *legal status of tax agents is ambiguous.*In relation to payers the tax agent is tax authority. In relation to tax authority the agent is the obliged person equal under the status to the payer.

Collectors of taxes and dues – are public authorities and local self-government, and other lawful persons executing functions of tax authorities and bodies of the tax control *besides* tax and customs bodies. Rights and duties of collectors are fixed byTCR and other statutory acts, corresponding TCR.

[1] Administrative provision of rendering by Federal Tax Service of the state service in rendering to interested persons of the data containing in the register of disqualified persons: decree of Minfin of Russia from December 30, 2014 № 177 [Electronic resources] // URL: http://www.pravo.gov.ru.

Collectors work in places where owing to different circumstances there are no tax authorities. For example, there are rural administrations in remote taiga or mountain districts etc. Or they are collectors about force of direct orders on them in the law. For example, State Duty collects – courts, notaries, Registry Office bodies, licensing and registering bodies etc. All collectors are under control to tax authorities and bodies of the tax control.

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Chapter 4. LEGAL FUNDAMENTALS OF DISCHARGE OF TAX DUTY

4.1. Conception of discharge of tax duty

Discharge of tax duty – is its realization by legal measures. On methods of realization, discharge of tax duty can be classified on two stages – voluntary and compulsory.

VOLUNTARY STAGE (BASIC)

The payer must independently to discharge a duty on tax or due payment (item 45 of TCR).

Voluntary payment should be realized (item 58 of TCR):

*In lawful term or ahead of time;

*Single payment of all sums or in other lawful procedure;

*In cash (for natural persons) or non-cash (for organizations) forms;

*By banks or by other lawful organizations (for example, mail service branches);

The procedure of payment of taxes should precisely correspond to TCR.

According to the point 7 of item 10 of Federal law from 6/27/2011 № 161, for transfer of electronic money resources of the legal person and businesspersons, as well as private notaries and advocates (founded advocatory offices) should use the corporate electronic instrument of payment, allowing identifying the client.

Organizations and businesspersons, besides the message in inspection about initiation or about closing of bank accounts should in lawful term (under the threat of the administrative penalty by item 126 of TCR) to inform tax authority about occurrence or stop of right to use corporate electronic instruments of payment for transfers of electronic money resources (item 23 of TCR).

Interaction of tax authorities with banks is realized including based on orders FTS[1].

When the tax declaration is not formalized, the tax authority directs to the legislative payer the ***tax notice***. Thus, if the total sum of the taxes estimated in tax

[1] On the approval of Procedure of presentation in banks (to operators on transfer of money resources) the documents used by tax authorities at realization of the powers in relations, regulated by the legislation on taxes and dues, and presentations by banks (operators on transfer of money resources) information by inquiries of tax authorities in electronic form on telecommunication communication channels: decree of Minfin of Russia from July 25, 2012 № 7-2/520 // Rossiiskaya Gazeta. – 2012. – On September 19;

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authority, makes less than 100 rubles, the tax notice to the taxpayer does not go, apart from a case of a direction of the tax notice in calendar year after which expiration direction possibility is lost by tax authority of the tax notice.

The tax notice can be devolved to the head of organization (its lawful or to the authorized representative) or to natural persons (his lawful or authorized representative) personally on receipt or a different way corroborating the fact and date of its receiving. In case, if is impossible to hand over the tax notice the methods, this notice goes by mail the registered letter; the tax notice is considered received after six days from the date of a registered the letter direction (item 52 ofTCR). Hence, the federal legislator has established a presumption of receiving of the tax notice ин the addressee for the sixth day from the date of the direction.

Such legal regulation urged to guarantee balance of private and public interests in the tax legal relations and to guarantee execution by taxpayers of a constitutional and law duty on payment of lawfully fixed taxes and dues. Thus the fact of receiving of the tax notice (or the tax order) by mail can be denied by consideration of corresponding dispute in court[1].

FTS of Russia established the form of the tax notice. The tax notice is formed depending on having at natural persons of objects of taxation under one tax or the several taxes which are subject to payment based on of the tax notice, including for the previous tax periods at recalculation of the sums of taxes. At having at natural persons of objects of taxation under several taxes and a clash of dates of their payment, the tax authority has the right to form sections of the tax notice under each tax. In case of receiving by tax authority of the data, resulting to recalculation of the sum of the tax specified in tax notice earlier directed to the taxpayer, the section of the tax notice is formed only under the tax on which there were alterations.

Tax notices go to the payer not later than the term specified in the item 52 of TCR, ***simultaneously with payment documents*** on payment by natural persons of taxes to budgetary system of the Russian Federation. Procuratories of payers or tax agents on transfer of taxes or dues in budgets are obligatory for execution by banks under the threat of punishment by TCR and CRoAV. Bank of Russia establishes a direction procedure in bank of some documents of tax authorities and return process[2]. At occurrence at payers of problems with search, return and specification of the payments paid in budgetary system of the Russian Federation, it is necessary to address to the revenue administrator of the budget.

Payment dates of concrete taxes (dues) are established separately for each tax (due). But thus the law provides possibility of change of the dates.

Change of a payment date of the tax (due)

Change of a payment date of the tax (due) – is extension of a lawful payment date on later time (item 61 of TCR). The *change is realized in the form of the deferment, instalments, and investments tax credit.*

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[1] Determination of Constitutional Court of the Russian Federations from April 8, 2010 № 468 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On a direction procedure in bank of some documents of tax authorities, as well as directions by bank in tax authority of some documents of bank in the electronic form in the cases provided by the legislation of the Russian Federation about taxes and dues: statute of Bank of Russia from November 6, 2014 № 440 [Electronic resources] // http://www.pravo.gov.ru.

DEFERMENT and INSTALMENTS are noncontractual payment date change. Distinction between them in that at deferment sum payment happens at a time upon termination of a deferment date, but at instalments payment happens by stage during of instalments date (item 64 of TCR).

Deadline of rendering of deferments (instalments) is till one year. It is established, that a deferment (instalments) on payment of federal taxes in a part enlisted in the federal budget, on a term over 1 year (but no more than for 3 years) it can be rendered only under the decision of Government of the Russian Federation (point 1 of items 64 of TCR), excepting lawful cases.

TCR confirmed following procedure of consideration by Federal Tax Service of applications for rendering of the deferment, instalments, investments tax credit on payment of taxes and dues.

The deferment or instalments are rendered only in the presence of lawful grounds in their complex or in the presence of one.

Deferment or instalments grounds are:

*Causing of harm by action of force majeure which is not dependent on will of the person. For example there are acts of nature, technological accidents etc.;

*Delay of financing from the budget or payment of the executed state order;

*Bankruptcy threat in case of nonrecurrent payment of the tax;

*Property status of natural persons excluding possibility of nonrecurrent payment of the tax;

*Seasonality of character of production or realization of the goods, works, services (plant growing, field forwarding works, extraction of precious metals and stones etc.);

*Grounds provided by the customs law.

For deferment or instalments rendering are charged interests, except for cases of action of the force majeure or financing delay. The deferment or instalments are rendered under the motivated, documentary verified application of the payer which given in authorized body depending on a type of tax (due). Government of the Russian Federation establishes lists of objects of taxation on which is used the deferment or the instalments[1].

INVESTMENTS TAX CREDIT (item 66 of TCR) – is contractual change of a payment date of the tax, having following *attributes:*

*Only organization can be the *interested person*;

*It rendered for the term from one year till five years, and only under the profit tax, as well as regional and local taxes;

*Reduction of payments is realized to the stipulated sum at a rate of no more than 50 % on each tax for each period of accounts.

Grounds of rendering of the investments tax credit (item 67 of TCR):

*Carrying out of economically significant actions by the person interested in the credit;

*Carrying out of scientific research or experimental-design works or modernization of own production; innovative activity; realization of especially important order or rendering of especially important services of social character.

[1] On the approval of the list of types of imported foreign aircrafts and accessories to them, concerning which can be rendered the deferment or instalments of payment of taxes: decree of Government of the Russian Federation from February 6, 2012 № 101 // Collection of Legislative Acts of the Russian Federation. – 2012. – № 7. – Item 881.

With the purpose of maintenance of realization of the principle of federalism in tax relations by the laws of Subjects of the Russian Federation under the organization profits tax (regarding the sum of such tax which is to transfer in budgets of Subjects of the Russian Federation) and under regional taxes, by normative legal acts of representative bodies of municipal unions under local taxes can be established other grounds of rendering and stipulations of the investments tax credit including terms of its action and the rate of interests on the sum of the credit[1].

Actions of authorized bodies under all forms of change of dates can be appealed in an administrative or judicial procedure. For infringement of stipulations of change of a date the payer can be involved in a civil liability – i.e. to fine charge.

The law fixes the *circumstances excluding change of a payment date* of the tax (item 62 of TCR):

*Initiation of criminal case for fulfilment of a tax crime;

*Excitation of administrative procedure for fulfilment of tax fault;

*Having of sufficient grounds to believe, that the payer will use opportunity change of a date for concealment of the taxable property or is going to go abroad for a constant residence.

Having *at least one* of the grounds *attracts refusal* of change of a date *or* decision *abrogation* about such change, with the notice in writing of it the payer. The detailed procedure of consideration of statements for change of a payment date by tax authorities is provided by orders of FTS.

If the **arrears** are formed (i.e. the tax sum has been not paid in a lawful date), tax authority a must to formalize the taxes and due payment request – i.e. the notice in writing of tax authority to the payer about a duty to pay arrears and fines. In the requirement all necessary data should be specified: reference to the law, arrears and fine sum, payment date, measures on sanction etc. Hence, the requirement (unlike the tax notice) goes to the violator, but not to the legislative payer.

The tax payment request can be devolved to the head (its lawful or authorized representative) of organization or the natural person (his lawful or authorized representative) personally on receipt or a different way corroborating the fact and date of receiving of this requirement; if by such methods the tax payment request is impossible to hand over, it goes by mail by the registered letter and it is considered received after six days from the date of a registered letter direction (point 6 of item 69 of TCR).

Situation with arrears is disturbing. An indicative example: for January 1, 2005 safe from crises the total sum of arrears (i.e. without the fine and penalties) has made 782 mlrd rbl. The debt on not paid fines and penalties is more than 800 mlrd rbl[2]. For struggle against arrears, tax authorities in particular has the right (point 5 of item 78 of TCR) independently, i.e. without the corresponding application and consent of the taxpayer to realize offset of unduly paid sum of the tax on account arrears repayments under other taxes. In this connection, Constitutional Court of the Russian Federation has noticed that endowing of tax authorities with such powers cannot be argued as infringement of fair balance of public and private interests, as it allows operatively and

[1] Federal law of the Russian Federation from March 30, 2012 № 19 // Rossiiskaya Gazeta. – 2012. – On April 3.

[2] Efremenko T. Income by debt you will not spoil // Rossiiskaya Gazeta. – 2005. – № 222. – P. 4.

effectively to satisfy property claim of the state and promotes the prompt execution of the constitutional duty of the taxpayer on tax payment[1].

FORCED STAGE

It ensues in case of tax duty non-observance by voluntary procedure and consists in real use to the debtor of measures of state compulsion. Government of the Russian Federation fixes features of repayment by foreign citizens and stateless persons of indebtedness on payment of the tax or administrative penalty, or compensation of the expenses connected with administrative expulsion from the Russian Federation or deportation based on the TCR and legislation not contradicting to it.

Compensation by such persons of the expenses connected with administrative expulsion from the Russian Federation or deportation, is realized in currency of the Russian Federation by entering of the sum of money resources or their transfer into credit organization, including with attraction of the banking payment agent or the banking payment subagent, realizing activity according to Federal law «On national payment system», formation of a federal mail service or to the payment agent who realize activity according to Federal law «On activity on reception of payments of the natural persons, realized by payment agents». Such expenses are considered compensated from the date of reflexion in the State information system about the state and municipal payments of the information on payment of the expenses[2].

If finally *for the reasons* of economic, social or legal character *arrears to collect impossible,* it is recognized *hopeless* and is written off together with a debt on fines by item 59 of TCR.

Voluntary and forced stages of discharge of tax duty are guaranteed by special lawful methods.

4.2. Methods of securing of discharge of tax duty

Methods of securing of discharge of tax duty – are the lawful measures guaranteeing discharge of tax duty. By branch criterion, the methods can be classified on civil-law (are based on the contract with a public element – property pledge, guarantee, fine), public-law (are based only on rules of tax law, has exclusively imperious, public character – suspension of operations on bank accounts, imposition of arrest on property of the payer). Possibility of use of the listed methods can (let and not always) to guarantee voluntariness payment of taxes and dues.

Let's consider each of methods ad rem (item 72 of TCR).

CIVIL-LAW METHODS

PLEDGE (item 73 of TCR)

Pledge definition in TCR is absent. Hence, at pledge definition is possible to use, in our opinion, by item 334 of CCR, but taking into account tax specificity.

[1] Determination of Constitutional Court of the Russian Federation from February 8, 2007 № 381 [Electronic resources] //http: //www.pravo.gov.ru.

[2] On the approval of rules of repayment by foreign citizens and stateless persons of indebtedness on payment of the tax or the administrative penalty or compensation of the expenses connected with administrative expulsion from the Russian Federation or deportation: decree of Government of the Russian Federation from July 16, 2015 № 710 [Electronic resources] // URL: http://www.pravo.gov.ru.

In civil law, the creditor under the obligation guaranteed by pledge has the right in case of non-observance or improper discharge by the debtor of this obligation to receive redress from cost of pledged property (object of pledge) mainly before other creditors of the person to which belongs pledged property (pledger).

Pledge *in tax law* – is a method of securing of discharge of tax duty at the expense of pledged property costs.

Features of pledge in tax law:

1. Pledge is formalized by the contract between the payer – pledger and tax authority – pledgee. The pledger can be and a third person operating in favour of the payer.

2. Object of pledge can be only property (property). Hence, property rights and requirements cannot objects of pledge in tax law. Regarding the property (property) there are restrictions. There cannot be an object of pledge assets which have been withdrawn from circulation or in other lawful cases (item 336 of CCR). The same property (property) cannot be an object of pledge under different contracts of pledge.

3. Pledge is supposed only in case of change of dates of discharge of a tax duty.

4. Fulfilment of any bargains with pledged property is possible only in coordination with tax authority – pledgee.

5. Civil legislation on pledge can be used only provided that necessary legal norms are absent in the tax legislation. If legal norms of the civil legislation conflict to legal norms of the tax legislation, the tax law is used.

GUARANTEE (item 74 of TCR)

Guarantee – is the obligation of the guarantor before tax authority to discharge in corpore in a lawful date the tax duty of the payer at its non-observance.

Features of the guarantee in tax law are:

1. Guarantee can be used only at change of term of a tax duty.

2. Parties of the contract of the guarantee are tax authority and the guarantor. The procedure of formalization of the contract is regulated by the civil legislation.

3. At non-observance by the payer of a tax duty he and guarantor have a joint responsibility.

4. Forced collection from the guarantor of the any sums is realized by tax authority based on a TCR and other federal laws.

5. Guarantor, who has discharged a tax duty, has the right to demand from the payer paid by the guarantor sum, interest thereupon and losses in connection with discharge of tax duty of the payer.

6. Any persons (natural or legal) can be the guarantor. They can be little and simultaneously on one duty.

7. Civil legislation on the guarantee is used, if other is not provided by the tax legislation.

8. Registration of the contract of guarantee in tax authority is not obligatory.

BANK GUARANTEE (item 74.1 of TCR)

By virtue of a bank guarantee, the bank (warrantor) is obliged before tax authorities to discharge in corpore a duty of the taxpayer on payment of the tax, if the taxpayer does not pay when due hereunder the due sums of the tax, and corresponding a fine according to stipulations of the obligation, given by the warrantor, to pay a quantity of money under the payment request of this sum presented by tax authority in writing or the electronic form on telecommunication communication channels.

The bank guarantee should be given by the bank, included in the list of banks conforming to requirements, for acceptance of bank guarantees for tax reasons. The list is realized by Ministry of Finance of the Russian Federation based on the data received from Central bank of the Russian Federation, and liable to placing on an official site of Ministry of Finance of the Russian Federation in a data telecommunications network "Internet".

FINE (item 75 of TCR)

In civil law, fine is a forfeit type; fixed by the law or the contract a quantity of money which the debtor a must to pay to the creditor in case of non-observance or improper discharge of obligations (item 330 of CCR).

Fine in tax law – is a quantity of money collected for expiry of period of discharge of tax duty from payers or tax agents (item 75 of TCR).

Fine types in tax law:

1. A fine as a forfeit type.

For example, according to item 75 of TCR the fine is one of methods of securing of discharge of tax duty. In this case a fine – is a forfeit type since it has regenerative character and consequently it can be collected from organizations in an indisputable procedure.

2. The fine as the sanction – provided as punishment in concrete formal components of tax violation (for example, part 1 of item of 135 TCR fixes punishment for non-observance by bank decision about collecting of the tax, due, fine).

As has specified Constitutional Court of the Russian Federation, the fine in this case has not regenerative, but retaliatory, penal character, and therefore even from organizations it can be collected only by court[1].

Features of a fine as method of securing of discharge of tax duty:

*Fine is paid irrespective of payment of arrears and irrespective of use of other measures of responsibility and methods of securing of discharge of tax duty;

*Fine is estimated for each calendar day of expiry of period of discharge of tax duty and is equal to 1/300 from the rate of refinancing of Bank of Russia in force at this time;

*Fine is not charged at suspension of operations on bank accounts or at imposition of arrest on property of the payer;

*Fine from natural persons is collected only in a judicial procedure, whereas from organizations it can be collected in an indisputable procedure or by court.

PUBLIC-LAW METHODS

SUSPENSION OF OPERATIONS ON BANK ACCOUNTS

(Item 76 of TCR)

Suspension of operations on bank accounts – is stop by bank of all debit transactions to accounts of tax agents or payers based on decision of tax authority. In this case other banks are forbidden to open accounts to the listed persons.

Features of suspension of transactions to accounts are:

1. Suspension is supposed only concerning organizations or individual businesspersons.

[1] Determination of Constitutional Court of the Russian Federation from December 6, 2001 № 257 // Rossiiskaya Gazeta. – 2002. – On February 7.

2. Suspension is supposed only at having at least one of following grounds:

*Tax duty non-observance. In this case the decision on suspension is made simultaneously with rendering of decision about recovery of arrears;

*Failure to submit by the payer in tax authority of the tax declaration in a lawful date;

*Refusal of the payer to submit the tax declaration.

If *in last two cases* the payer submits the tax declaration, tax authority a must immediately to pass the decision about suspension abrogation (not later than one transaction day following day of submitting of the declaration.

Procedure of suspension of operations on bank accounts:

The tax authority has the right and must to give the motivated decision and to direct by registered mail to bank with the simultaneous notice of the payer. Bank a must to execute the received decision. Thus the bank does not have responsibility for damages, suffered by the payer as a result of execution decision of tax authority. Transactions to accounts are considered suspended from the moment of receiving by bank of the decision and before its abrogation. The payer not has the right to, and it is forbidden to banks to open new accounts payer for suspension of transactions to accounts. If simultaneously with the decision about suspension of transactions to accounts the bank receives the collection order about recovery of arrears and fines from the same person, bank a must at first to execute the collection order, since its legal effect above. For illegal suspension in favour of the taxpayer – organizations are charged percentages for each calendar day from the moment of receiving by bank decision about suspension of transactions to day of receiving of the cancelling decision (item 76 of TCR).

ARREST OF PROPERTY (item 77 of TCR)

Arrest of property – is lawful actions of tax authorities on restriction of the property right of organizations – payers or tax agents concerning their property.

Features of arrest in tax law are:

1. Arrest is supposed only in the procedure provided by TCR.

2. Arrest grounds are considered only in total, namely:

*Tax duty non-observance in a lawful date.

*Having at tax authorities of sufficient grounds to believe that the organization will take measures to disappear or hide the property.

On consequences, arrest is classified on full and partial.

At *full* arrest, the proprietor not has the right to give orders the arrested property, but can own and use it from the assenting and under the control of tax authority.

Partial arrest does not deprive of the proprietor of the arrested property of right to own it, use and give orders, but it is supposed only from the assenting and under the control of tax authority.

All property of organization can be an arrest *matter*, but thus to arrest liable only property which is necessary and enough for discharge of tax duty.

Arrest procedure:

The head of tax authority (or his assistant) gives the motivated regulations on arrest of property, authorizes it at the procurator, then on the location of property in the presence of the attesting witnesses is formed list. The payer have the right at that to be present: the regulations about arrest are handed over to him and are shown the certificate of employment. Experts can be used for correct drawing up of the list.

Rights and duties are explained to all participants of arrest under writing down in the record; all actions are fixed in the arrest record; the list is applied on the record and is its component. Participants of arrest sign the list and record. The record copy (and lists) should be handed over the payer. Then the person who has given the regulations fixes a place in which the arrested property will be stored. There are forbidden – alienation, squander, and concealment of the arrested property. Cancel the decision about arrest can person given his or court under the complaint of the proprietor of property. Concerning *internal taxes,* features of securing of their payment can be established by the customs legislation.

4.3. Discharge of tax duty by organizations

Discharge of tax duty by organizations can be classified on two stages – voluntary and forced.

VOLUNTARY STAGE (item 45 of TCR)

It includes following methods of discharge:

1. The organization directs to bank the payment order about transfer from the organization account in the budget of the concrete sums of taxes or dues. The tax duty is considered discharged from the moment of a presentation in payment order to bank at having at the payer of a sufficient cash balance.

The tax is not considered paid, if:

*Payer is recognized by the unconscientious. It is necessary to notice, that we speak about the unconscientious payer not by TCR, but based on the analysis of legal propositions of Constitutional Court of the Russian Federations[1] having big in relation to TCR a legal effect. Tax authorities do not use such word-group.

The unconscientious recognizes the payer if it will be proved, that he has deliberately selected the financially-unstable (i.e. problem) bank which does not have money on the correspondent accounts, and the bank in this connection has not transferred money to the budget, i.e. he has not execute the payment order. In this case, tax authority a must to prove unconscientiousness of the payer by the powers fixed by TCR and federal law «On tax authorities».

To prove in the future unconscientiousness of the payer, the tax authority should regularly inform the payer on financially unstable banks (for example, by publication of their list in an official press). Besides, the tax authority has the right to make to the payer the demand about a recall of the accounting documents on write-off of the sums of taxes from problem bank. If after that the payer all the same has used opportunity problem bank, and the bank has not transferred money to the budget, such payer is recognized unconscientious, and proofs are the above preventions to payers.

*If the payer has withdrawn the payment order from bank.

*If at the moment of a presentation by the payer of the procuratory he has other not discharged requirements which should be executed above all, and on the account there are no for this purpose sufficient resources.

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[1] Determination of Constitutional Court of the Russian Federation from July 25, 2001 № 136 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from May 14, 2002 № 106 [Electronic resources] // URL: http://www.pravo.gov.ru.

2. If the duty on calculation and deduction of the tax (due) assigned by the law to organization – tax agent, the tax duty is considered discharged from the moment of deduction the sum of the tax by tax agent.

3. The tax duty is considered discharged after removal by tax authority or by court the decision about offset undulythe paid or unduly collected sums of taxes.

In tax duty course of discharge it is possible to use rouble and currency accounts, but in the latter case currency it is recalculated in rubles on Bank of Russia rate as all calculations finally are realized only in rubles (item 140 of CCR).

There is specificity at discharge of tax duty in case of liquidation or reorganization of organizations.

DISCHARGE OF TAX DUTY

AT ORGANIZATION LIQUIDATION

(Item 49 of TCR; item 61 of CCR)

Organization liquidation – is its dissolution without transition of rights and duties as legal succession to other persons. At organization liquidation, the liquidating commission is formed which discharges tax duty of organization at expense its resources and at expense the resources received at realization of its property. If for discharge of tax duty there are not enough money resources, the arrears are repaid by founders and participants of organization.

The liquidating commission repays arrears as the sequence provided by item 855 of CCR. The demand balance comes back to the liquidating commission. In case of *bankruptcy*, liquidation is realized only based on the law on bankruptcy.

DISCHARGE OF TAX DUTY

BY REORGANIZATION OF THE LEGAL PERSON

(Item 50 of TCR; items 57-58 of CCR)

Reorganization of the legal person – is its merging, joining, partition, separation, transformation with devolution rights and duties to again forming juridical (legal) person. On civil-law features of legal succession at reorganization and its processual moments in detail spoke Constitutional Court of the Russian Federation[1].

Tax-law aspects of reorganization a little bit others. In case of reorganization, the tax duty is discharged by assignees irrespective, whether they knew about having of not discharged tax duty. The assignee must to pay the – arrears and fines on the devolved tax duty; penalty (if the penalty has been imposed on the legal person for a tax violation before end of its reorganization). The procedure of payment of the arrears, fine and penalties by the assignee the same, that is established for the any payer – organizations.

The basic problem is correct fixing of the assignee, and it depends on a reorganization method. At ***merging*** by the assignee the legal person who has is resulted merging. In case of ***joining*** the assignee – is the legal person who has attached to it the legal person which is undergoing re-organization. At ***partition***

[1] On case of constitutionality test of paragraph 2 of item 215 and paragraph 2 of item 217 of Civil Procedure Codes of the Russian Federation in connection with complaints of citizens D.V. Barabash and A.V. Iskhakov: ruling of Constitutional Court of the Russian Federation from March 1, 2012 № 5 [Electronic resources] // http://www.pravo.gov.ru.

assignees – are all again formed legal persons. If there are some assignees, their participatory share is fixed based on separation balance sheet.

In case of ***separation*** of tax legal succession does not form, that is the payer there is a juridical person from whom other persons were allocated. Here difference from separation in civil law on which legal norms at separation to each of the separated persons devolve rights and duties of the reorganized legal person according to separation balance sheet. If it will be proved, that reorganization by separation is directed on tax duty non-observance, and the payer has no possibility independently it to discharge, the tax authority have the right to address in court with the action about putting on of a solidary duty on payment of the taxes, dues, fines, penalties on the separated persons.

At ***transformation*** of one person to another the assignee is again formed legal person.

Demand balances after discharge of tax duty come back to the assignee. In case of reorganization *of foreign organization,* the assignee is fixed by on the same rules even if reorganization has occurred under the laws of foreign state. Feature is that since 2005 is observed the tendency to set forth in TCR of the detailed mechanism of discharge of tax duty under the taxes (taking into account every possible nuance) at carrying out of reorganization of legal persons. For example, such mechanism established by chapter 21 of TCR with reference to value-added tax (VAT) by initiation of the item 162.1 and respective alterations in other rules of tax law regulating collecting of VAT.

If the payer – organization voluntary does not discharge a tax duty ensues the forced stage of discharge.

FORCED STAGE OF DISCHARGE

The tax which has been not paid when due hereunder, as well as fines and penalties under the tax authority decision can be compulsorily collected from organization accounts in banks or at the expense ecash of the taxpayer or the tax agent (points 1-2 of items 46 of TCR).

At arrears, the tax authority gives the motivated decision about recovery of arrears and fines in a lawful date from the beginning of expiry of period. At infringement of the term the decision is considered illegal, and arrears and fines can be recovered only by court. If the decision is given duly, the tax authority directs to bank the collection order (direction) on write-off and transfer in budgets of the sums of arrears and fine from accounts of payers or tax agents. At that the decision is given by tax authority to data of the persons in writing.

Bank must to execute the received collection order, but as the sequence established by item 855 of CCR. At that it is necessary to consider, that paragraph 4 of point 2 of item 855 of CCR has been recognized unconstitutional by Constitutional Court of the Russian Federation[1]. The paragraph put in the third turn write-off in budgets and off-budget funds under payment documents.

However Constitutional Court of the Russian Federation has upheld the paragraph 5 of item 855 of CCR, and this paragraph says, that write-off in budgets and off-budget funds is realized after the second turn under the orders having indisputable

[1] Ruling of Constitutional Court of the Russian Federation from December 23, 1997 № 21 [Electronic resources] // http://www.pravo.gov.ru.

character. Hence, actually the sequence of execution of orders under item 855 of CCR remained former as the content of paragraphs 4 and 5 was analogous.

With the purpose of the cardinal solution of the problem **point 2 of item 855 of CCR** has been enacted in the new wording[1], namely – at insufficiency of money resources on the account, for redress of all requirements debiting of monetary resources is realized in the following sequence:

Primarily under the executive documents providing transfer or delivery of money resources from account for redress of requirements about compensation of harm, caused to the life and health, as well as requirements about collecting of the alimony;

In the second turn under the executive documents providing transfer or delivery of money resources for calculations on payment of severance pays and payment with persons, working under the labour contract, on payment of compensations to authors of results of intellectual activity;

In the third turn under the payment documents providing transfer or delivery of money resources for calculations on a payment with persons, working under the labour contract, orders *of tax authorities* on write-off and indebtedness transfer on payment of taxes and dues in budgets of budgetary system of the Russian Federation, as well as to orders of bodies of the control payment of insurance contributions on write-off and transfer of the sums of insurance contributions in budgets of the state off-budget funds;

In the fourth turn under the executive documents providing redress of other monetary claim;

In the fifth turn under other payment documents as calendar sequence.

Charge-off of resources from account under the requirements which are related to one turn, is realized as calendar sequence of receipt of documents.

If resources on accounts or ecash it is not enough or they are absent, or tax inspection has no the information on accounts or requisites of corporate electronic instrument of payment of the taxpayer (tax agent) inspection have the right to collect the tax at the expense other property of the taxpayer or the tax agent (item 46 of TCR).

At tax collecting at the expense electronic money resources, the tax authority directs to bank (where there is ecash of the taxpayer, tax agent), the order on transfer of these money resources into the bank account. In the order should be specified requisites of a corporate electronic instrument of payment of the taxpayer (tax agent), the sum subjecting to transfer and account requisites (item 46 of TCR).

If for recovery of arrears there are not enough ecash in rubles, it can be realized at the expense electronic resources in currency. In that case they are translated into the currency account of organization. Besides the order on transfer of the tax, inspection directs to bank the order on sale of a foreign currency of the taxpayer (tax agent). With the purpose of securing of execution of the decision of inspection about tax collecting (fine, penalty) transfers of electronic money resources can be suspended.

Suspension of transactions on reduction of the rest of electronic money resources is supposed within the sum specified in the decision of tax authority. According to the item 46 of TCR, tax collecting in a judicial procedure is realized from personal accounts of organizations if the collected sum exceeds five millions rubles. If the sum of the tax does not exceed five millions rubles, collecting is realized in the procedure established by the budgetary legislation of the Russian Federation, at the expense the

[1] Federal law of the Russian Federation from December 2, 2014 № 345 // Rossiiskaya Gazeta. – 2013. – On December 6.

money resources reflected in personal accounts of the taxpayer (tax agent) – organizations.

For collecting of the tax, tax authority directs the decision about, collecting on the p-books or in the electronic form to the body which is realizing opening and carrying out of personal accounts according to the budgetary legislation of the Russian Federation, in a place of opening of the personal account of the taxpayer (tax agent). The form, format and direction procedure in the bodies which are realizing opening and carrying out of personal accounts according to the budgetary legislation of the Russian Federation, the decision about tax collecting at the expense the money resources reflected in personal accounts of the taxpayer (tax agent) – organizations, ratified by FTS in coordination with Federal Treasury.

As it is fairly marked in mass-media, before organization which had the open personal account in Federal Treasury bodies, were on exclusive statute, and indebtedness, collecting under taxes, fine and penalties it was realized only by judicial procedure, unlike representatives of business. Thus, the procedure of sanction collecting from the companies remained former, and for budgetary organizations with the indebtedness sum under taxes to 5 million rbl. is put in the extrajudicial procedure and the judicial procedure of sanction collecting remains only at arrears over 5 million rbl[1].

In the presence of *the deposit agreement* (i.e. bailments for hire by bank of money and securities) money from the deposit account is transferred only after contract expiry of period.

If money resources on organization accounts are absent or it is not enough of them; if there is no information on accounts, then the tax authority has a right to recover the arrears and fine sum at the expense other property of the payer or tax agent (item 46 of TCR).

Other property – is the organization property (including cash liquidity), not being on bank accounts (item 47 of TCR). Collecting at the expense property is realized by the bailiff based on tax authority rulings on legal norms of *FL «On execution proceeding»*. If the ruling mismatches requirements of item 47 of TCR and Federal law «On execution proceeding», the bailiff have the right by the ruling to return it for proper formalization in accordance with FL «On execution proceeding». After renewal, is supposed repeated giving of executive documents to the bailiff.

In need of the bailiff have the right to in addition to demand TIN (i.e. Taxpayer Identification Number), numbers of any accounts of the debtor and location of organizations where these accounts are opened; data on financial and economic activity of the debtor.

Tax authority obliged the information to give in the lawful date. Primarily the bailiff recovers money resources. In last turn the bailiff recovers the property devolved to other persons without devolution of the property right, as well as to other property. In case of such collecting the tax duty is considered discharged from the moment of realization of property and full repayment of arrears of at the expense obtained sums. At that it is forbidden to tax authorities to buy the recovered property. *Besides*, the forced stage is realized by attraction of subjects of a tax duty to *tax responsibility*.

At the same time are long shall not to turn to eternal servitude. Therefore with the purpose of stimulation of repayment of arrears, uses re-structuring of debts under taxes and dues.

[1] Kolodina I. Office only for own // Rossiiskaya Gazeta. – 2015. – On January 13.

Re-structuring – is stage-by-stage redemption of indebtedness on arrears, penalties and fines based on decisions of tax authority and according to the schedule ratified by it.

The general procedure of re-structuring is provided by Government of the Russian Federation[1]. It is especially underlined, that the right on re-structuring is restored at payment of current payments and the sums of epy fine and penalties on accounts payable. Rules of re-structuring of debts *are concretized* with reference to *categories of payers.*

For example, the federal state unitary enterprises entering into correctional system, stage by stage repaid indebtedness under taxes and dues during the period with 2004 for 2013 with gradual increase in payments with 3 to 20%, with the subsequent repayment of the rest of the debt[2]. To agricultural organizations, concerning which is initiated procedure about bankruptcy, the right on indebtedness re-structuring can be given only at the conclusion by this organization of the amicable agreement with the bankruptcy creditor[3].

4.4. Discharge of tax duty by natural persons

Discharge of tax duty by natural persons can be classified on two stages – voluntary and forced.

VOLUNTARY STAGE OF DISCHARGE

It consists in independent, without compulsion, procedure of payment of the tax or due by payers.

Features of such discharge depend on a type of payers (item 51 of TCR).

Instead of *missing person* (item 52 of TCR), a tax duty discharges *estate administrator* of missing person. Instead of *legally incapable* (item 29 of CCR), a tax duty discharges the *trustee*. Discharge of tax duty of the persons is realized only at the expense money resources. If it is not enough money, the tax authority makes the decision on suspension of a tax duty which renews at abrogation of the decision of court about a recognition of the person missing person or legally incapable. In case of fulfilment by trustees or administrators of a tax violation, they are responsible for the account of own property.

In case of the announcement of the person *died* (item 45 of CCR) his tax duty is stopped by court. But simultaneously successors died *if they accept the inheritance*, have a duty to extinguish the arrears, fine and penalties under taxes at the expense hereditary property died and within its cost.

Payment of taxes and dues is realized by banks by natural persons or their tax agents. The duty on tax payment is considered discharged since the moment when the natural person has devolved to bank the order on transfer to the conforming account of

[1] Procedure of carrying out of re-structuring of creditor indebtedness of legal persons under taxes and dues, as well as indebtedness, on the added fines and penalties before the federal budget: decree of Government of the Russian Federation from September 3, 1999 № 1002 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Decree of Government of the Russian Federation from November 6, 2001 № 765 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Decree of Government of the Russian Federation from June 8, 2001 № 456 [Electronic resources] // URL: http://www.pravo.gov.ru.

Federal Treasury without opening of the bank account of the money resources, given by such natural persons to bank (item 45 of CCR). The resources given by the payer should be enough for transfer.

FORCED STAGE OF DISCHARGE

It ensues at non-observance or improper discharge by natural persons of a tax duty and depends on natural person's type. The tax which has been not paid when due hereunder, as well as fines and penalties under the tax authority decision can be compulsorily collected from accounts *of the individual businessperson* in banks or at the expense ecash of the taxpayer or the tax agent.

If into accounts or ecash it is not enough resources, or they are absent, or tax inspection has no the information on accounts or requisites of a corporate electronic instrument of payment of the taxpayer (tax agent), inspection have the right to collect the tax at the expense other property of the taxpayer or the tax agent (item 46 of CCR). Collecting of taxes (fine and penalties) from natural persons at the expense their ecash probably as item 48 of TCR, if while transferring of money is used personalized electronic instruments of payment (with possibility of identification of the client by operator).

With other natural persons, the sum of the arrears, fine and penalties for tax violations can be recovered only by general jurisdiction court according to legal norms of CPCR under the application of tax or customs body, *if the total sum liable to collecting from natural persons, exceeds 3 000 rubles*.

The application for collecting is given within six months from the date of an expiry of period of execution of the payment request of the tax, due, fine and penalties.

If within three years from the date of an expiry of period of execution of the earliest requirement the sum of a debt has not exceeded 3000 rubles, the tax authority (customs body) have the right to address in court with application for collecting of the sum of a debt within six months from the date of the expiration of the three-year term. The date of the filing of application about collecting missed on a good reason can be restored by court.

Collecting of the tax, due, fine and penalties at the expense of natural persons property by the judicial act which has based on entered validity, is realized according to Federal law «On execution proceeding» and has the *features*.

Collecting is realized sequentially concerning:

1) Money for bank accounts;

2) Cash;

3) Property devolved under the contract in possession, use or the disposal to other persons without devolution to them of the property right to this property, if such contracts are terminated with legal procedure;

4) Other property, except for property intended for a daily private use by natural person or members of his family, fixed according to the legislation of the Russian Federation.

From the date of arrest imposition on the property and to date of transfer of proceeds in budgetary system of the Russian Federation of a fine for untimely transfer of taxes, dues are not charged.

Charge-off of bad debts of natural persons has specificity as, besides base item 59 of TCR, can be provided by special federal laws.

For example, according to item 4 of FL-330 from 11/21/2011, are recognized hopeless to recovery and liable to charge-off – arrears under the taxes (dues), formed at natural persons as of January 1, 2009:

*indebtedness on the fines accrued on the arrears, and indebtedness under the penalties, registered to natural persons as of January 1, 2009, concerning which the tax authority has lost recovery possibility in connection with the expiration of a fixed date of direction of the payment request of the tax, due, fine, penalty, date of filing of application in court about recovery of arrear;

*indebtedness on fines and penalties at the expense of property of the taxpayer (payer of due) – natural persons, a date for presentation to execution of the executive document, but no more than rate of such arrears and indebtedness on fines and penalties as of day of decision-making on their charge-off.

The legal norms are not used concerning arrears under the taxes (dues) paid by natural persons in connection with realization by them of business or employment in established legislation of the Russian Federation the procedure by private practice, indebtedness on the fines added on the arrears, and indebtedness under the penalties which are registered to the natural persons.

Features of collecting of internal taxes are regulated by the customs legislation.

4.5. Business taxation

According to Constitution of the Russian Federation, in the Russian Federation is guaranteed the economic activities freedom (item 8). Item 34 of Russian Constitution fixes the right of everyone to free use of the abilities and property for business and other economic activities not forbidden by the law. Thus, the federal legislator protects life and health of citizens, property of natural or juridical persons, state or municipal property[1].

Such constitutional right is not absolute and consequently can be limited by the federal legislator, which fixes the procedure and stipulations of realization of business from specificity of various types of production as objects of civil rights and according to fixed by Constitution of the Russian Federation criteria, supposing possibility of restriction of rights and liberties of the person and citizen only by the federal law and only with the purpose of protection of bases of the constitutional system, morals, health, rights and legitimate interests of other persons, securing of defence of the country and security of the state (item 55), and possibility of restriction of moving of the goods and services – if it is necessary for maintenance of security, protection of the life and health of people, protection of the nature and cultural valuables (item 74)[2].

On sense of item 57 of Constitution of the Russian Federation in interrelation with its items 1, 2, 7, 71 and 75, the constitutional mission of taxes and dues, first of all, consists in formation of a financial basis of realization of the constitutional functions of the state authority. It, however, does not signify, that at their establishing should be pursued exclusively fiscal aims.

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[1] Ruling of Constitutional Court of the Russian Federation from July 18, 2008 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru;

Ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 [Electronic resources] // URL: http://www.pravo.gov.ru.

The federal legislator within the limits of the discretion has the right to use tax regulation as the influence instrument on procedure and conditions of realization of business, including for reduction of economic stimulus concerning a circulation of some types of the goods, works and services with the purpose of protection of the morals, life, health, rights and legitimate interests of other persons and others values protected by Constitution of the Russian Federation[1].

Business activity, i.e. business, has legal definition (item 2 of CCR). ***Business*** is the – lawful, registered, independent, and on the risk activity, directed on regular receiving of profit.

At that businessperson in any case (in the presence of objects of taxation) is obliged to pay taxes and fulfill other public duties, and thus has not the right to refer to absence of registration as on justifying circumstance (item 11 of TCR). All businesspersons should be ***managing subjects*** – i.e. the persons, which activity brings income.

Uniformity of business relations allows to group of rules regulating them in legislation and science branch – «*business law» («entrepreneurial law»)*. On an official scientific specialty, business law follows at once civil law.

Favorite and simultaneously inconsistent point of view is reference of business law to independent the branch of law. Therefore, T.A. Guseva unequivocally declares, that business law is the branch of law, regulating business relations, and relations on state regulation of managing for the purpose of support of interests of the state and a society. Further, the author continues to argue correctly, that business activity is regulates by not only civil law, but is regulates by constitutional, administrative, financial, tax, criminal law etc.[2]. Hence, business law is not exclusively private law, but it is complex of rules of public law and rules of private law. The other authors (A.G. Korchagin etc.[3]) argue also.

Realizing unsteadiness of the approach, several authors initially interpret business law simply as complex of the legal norms, regulating corresponding group of relations[4], i.e. did not try to carry business law to branch, under-branch etc. Other point of view can study in the literature, resulted in Yu.S. Tursunov`s practical work[5].

Let us argue. Business law primarily is based on public law, as business freedom limited by rules of public law in interests of persons, who are touched by economic activities of businesspersons[6]. Hence, business relations are regulated by public legal norms of constitutional, administrative, financial, and tax law. Each businessperson inevitably enters the tax relations as the payer. Businesspersons are obliged to participate by the taxation in formation of a profitable part of budgets, and by payment

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[1] Ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Guseva T.A. Business law: the teaching-and-methodical complex. – M.: Publishing house «Examination», 2006. – Pp. 13-15.

[3] Korchagin A.G., Kusnetsov V.M. Business law: concepts, schemes, tests, practical questions. – Vladivostok: Far Eastern University publishers, 2008. – P. 5.

[4] Martemjanov V.S. Economic law. T.1. General provisions: the course of lectures. – M.: BEK publishers, 1994. – P. 1.

[5] Tursunova Yu.S. Business law: the practical work. – Vladivostok: Far Eastern University publishers, 2010.

[6] Ruling of Constitutional Court of the Russian Federation from July 18, 2008 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

of insurance contributions are obliged in formation of budgets of the state off-budget funds.

However, business law contains much and legal norms of civil law, and therefore by item 2 of CCR it interacts with civil (i.e. private) law. Hence, business law has no the own method of the legal regulation and specific type of legal responsibility as display of the method and consequently cannot concern independent branch of law.

In our opinion, ***business law*** (***entrepreneurial law***) is the inter-branch legal institution, i.e. it is the complex of rules of law, fixed in various branches of the legislation and regulating the relations in sphere of business.

We continue to argue further. Rules of business law regulate relations with participation also public associations and noncommercial organizations, which business is not charter purposes. Therefore, in system of business law is allocated commercial (merchant) law, regulating (in our opinion) business only of businesspersons, which public associations and noncommercial organizations do not concern. Hence, *commercial (merchant) law* is legal institution in system of business law, i.e. it is the complex of legal norms regulating the relations between persons, which the charter purpose of activity is regular receiving of profit (that is impossible without trade).

Business can classify on the general and special legal regime.

In our opinion, **general business** is the business activity, which realized by any personable persons on the general legal fundamentals. Hence, *subjects of general business* are subjects of the biggest, big, medium-sized and small (i.e. micro) business.

Instead of the biggest business TCR uses concept «biggest taxpayer», – and there are not synonyms. Big business at all not reflected in the legislation.

Subjects of big business are the structures representing, as a rule, integration of the commercial organizations. For their designation is used also the concept «corporation» – i.e. it is the form of the management of big-scale business activity[1].

From here, we do the conclusion, that subjects of the biggest business are group of subjects of big business. Hence, big business is activity of subjects of big business (big businesspersons), and the biggest business is activity of group of big businesspersons. Hence, the commercial organizations, which are juridical persons, have the right to unite for achievement of the maximum profit. Subjects of the general business pay in accordance with general practice all types referring to them tax and dues, or use specific systems of taxation (uniform agricultural tax, system of taxation at realization of production-sharing agreements, system of taxation in special economic zones – we analyze these regimes in an especial part of our schoolbook). Special demands are not made to payers on number and other criteria, characteristic only to small or medium-sized businesspersons.

Among the general questions of business, the great value has the ***accounting of objects of taxation.*** Correctness of calculation of tax base of the any tax liable to payment by the any businessperson depends on the proper registration. Businesspersons estimate tax base following the results of each tax period based on the registers of the registration and (or) based on other documentary corroborated data about objects, liable to taxes or connected with it (item 54 of TCR).

[1] Ruchkina G.F. On the issue of legal regulation of relations with regard to formation and use of funds of monetary means by subjects of big entrepreneurship // The Financial Law (journal). – 2011. – № 7.

Registration registers are intended for ordering and accumulation of the information containing in basic documents accepted to the registration, for reflexion into accounts of the registration and in the registration statement. Registration registers are conducted in special books (magazines), as well as other lawful registration instruments[1]. Regard

Special business is a business activity, which is realized in the special legal procedure. Hence, subjects of special business are the small and medium-sized businesspersons, unitary enterprises, public associations (i.e. public associations) and non-commercial organizations, etc.

Let us *consider each type of the subjects.*

I. SMALL AND MEDIUM-SIZED BUSINESSPERSONS

In our opinion, ***small and medium-sized businesspersons*** carry out business activity by general or special tax legal regime. The federal law and TCR regulate it[2].

The special tax regime is concerned to the special legal regime (for example, Simplified system of the taxation), which big and biggest businesspersons cannot use. At disclosing of the theme, we will use the current legislation, including acts of Constitutional Court of the Russian Federation[3].

SMALL BUSINESSPERSONS ARE:

1. *Individual businessperson* is the natural person, who realizes business without formation of the juridical person;

2. *Small entity (small enterprise)* is the juridical person number to 100 persons;

3. *Micro-enterprise* is the juridical person number to 15 persons.

Medium-sized businessperson is juridical person number from 100 to 250 persons.

Small and medium-sized businesspersons have the right to pass to preferential system of the taxation, the account and reporting based on TCR.

Their support is made from budgets based on state and municipal programs with participation of corporation for development of small and medium-sized business (the corporation co-ordinates rendering of such support). Thus, subjects of small and medium-sized business annually represent the information on results of use of the received support. In this connection, the Russian President by decree has created Joint-stock company «Federal corporation for development of small and medium-sized business». The Corporation is obliged to realize financial and other support to subjects of small and medium-sized business[4].

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[1] On the accounting: federal law law of the Russian Federation from December 6, 2011 № 402 // Rossiiskaya Gazeta. – 2011. – On December 7, 9.

[2] On development of small and medium-sized business in the Russian Federation: federal law of the Russian Federation from July 24, 2007 № 209 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Determination of Constitutional Court of the Russian Federation from July 1, 1999 № 111 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from April 9, 2001 № 82 [Electronic resources] // URL: http://www.pravo.gov.ru;

On distribution and granting of subsidies from the federal budget to budgets of Subjects of the Russian Federation on the state support of small and medium-sized business, including country (farmer) economy: decree of Goverment of the Russian Federation from February 27, 2009 № 178 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] On measures for the further development of small and medium-sized business: ukase of President of the Russian Federation from June 5, 2015 № 287 // Rossiiskaya Gazeta. 2015. On June 9.

All businesspersons estimate tax base following the results of each tax period based on data of the accounting of income and expenses and economic transactions in the procedure fixed by TCR.

The *legal regime* of the taxation of small and medium-sized businesspersons depends on the type of special tax regime which they have chosen. *If they have choseed special tax regime* – receive essential privileges and advantages. *If they not choseed special tax regime* – use the general regime of the taxation, i.e. discharge a tax duty on the general legal grounds along with the largest and big businesspersons.

Besides, in TCR under each conforming tax it is especially noticed, that resources of financial support in the type of subsidies received according to Federal law «On development small and medium-sized business in the Russian Federation», are reflected as a part of income to proportionally expenses which have been actually realized at the expense of this source, but no more than two tax periods from the date of receiving.

If upon completion of the second tax period, the sum of the received resources of such financial support exceeds the sum of the recognized expenses which have been actually realized at the expense of this source, margin between the sums in corpore is reflected as the part of income of this tax period[1].

For the system solution of problems small and medium-sized business by Government of the Russian Federation in 2016 has been approved Strategy, which includes special section 5 «Perfection of a policy in the field of the taxation and nontax payments». According to the Strategy – measures concerning subjects of the small and medium-sized business enacted within the limits realization of a tax policy, should be directed, on the one hand, on formation of stipulations for business realization in a legal field, and on the other hand – on stimulation of entrepreneurial activity and increase of competitiveness of in force business entities[2].

4.6. Tax privileges

Tax privileges (***tax benefits, tax credits***) – are lawful advantages of some categories of payers in comparison with other payers of taxes or dues (item 56 of TCR).

Features of tax privileges:

*Privileges can be established only the law and only according to TCR. Privileges can be fixed by by-laws only in the cases directly provided by the law.

*Privileges are not related to taxation essential elements.

*Privileges cannot have individual (i.e. personal) character, i.e. it cannot be given by the law to the concrete payer. They can be given *categories* of payers (i.e. invalids, heroes of the Russian Federation etc.). At that, only the legislator has the right to fix (to narrow or expand) a circle of persons on which apply tax privileges.

*Payer has the right to be disallowed from use of a privilege or to suspend its use.

[1] Federal law of the Russian Federation from March 7, 2011 № 23 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Strategy of development small and medium-sized business in the Russian Federation for the period till 2030: it is approved by Government directive of the Russian Federation from June 2, 2016 № 1083 [Electronic resources] // URL: http://www.pravo.gov.ru.

*Privileges automatically are not used, but only under the motivated application of each payer with the attachment document appendix of corroborating documents or at a presentation of the conforming certificate.

About the importance of tax privileges says at least the fact, that Subjects of the Russian Federation publish on the official sites the information on results *of an annual* estimation of efficiency given tax privileges and rates of the taxes established by legislative (representative) authorities of Subjects of the Russian Federation.

For example, in ***Primorsky Krai*** in pre-sanctions 2010 *the ratio of budgetary efficiency* of tax privileges (correlation of a gain of corporate property taxes, transport tax to a gain of tax privileges under these taxes, in relation to 2009) has been 1.5 (including: under the tax on property – 1.3, under the transport tax – 3.7). *The ratio of social effectiveness* of tax privileges (a correlation of a gain of volume of the transport tax on natural persons to a gain of tax privileges under the transport tax) for natural persons has been 1. The general (integrated) index of effectiveness of the tax privileges given in Primorsky Krai in 2010 to organizations and natural persons under the tax on property and the transport tax has been 1.25[1].

Tax privileges are various, and therefore *are classified by various criteria.* For example, *V.I. Dymchenko* divides classifies privileges on *subjects and* objects of taxation on subjective and objective[2]. In this case the author has allowed, in our opinion, terminological inexactitude as the subjective is understood as that depends on will and consciousness of the person; under objective that and consciousness of the person does not depend on will. But privileges are always established by the legislator – person, and so depend on his will and consciousness. The privileges which are not dependent on will and consciousness of the person does not exist.

Privileges can be classified on types of tax. Examples: privileges under federal taxes, regional taxes, local taxes. Or there are – privileges under the transport tax; privileges under the value-added tax etc. Or there are – privileges under direct taxes, privileges on indirect taxes etc.

To optimum us appears to classification of privileges under their content on subject, object and specific.

Subject privileges depend basically on a type of payers.

Subject privileges can be classified on unconditional and conditional.

Unconditional privileges are used without any restrictions and conditions. For example: heroes of the USSR and Russian Federation have privileges certainly – they do not have necessity to be heroes twice or three times, or to have physical inability etc.

Conditional privileges are used only at the regard of lawful restrictions or conditions. For example, only the agricultural commodity producers having relative density of income of 70% also are more exempted from the land-tax.

Object privileges depend basically on a type of object of taxation. Object privileges can be classified on exceptions and deductions.

Exceptions – are quantities of money or other objects completely exempted from the taxation. For example, the alimony is not suffered by individual income tax (surtax); lands of reserves are not suffered by land-tax etc.

Do not subject to any taxation – *grants* (i.e. free aid) which are represented for maintenance of a science, education, cultures and arts from organizations of U.N.O.,

[1] [Electronic resources] // URL: http://www.primorsky.ru.

[2] Dymchenko V.I. Russian tax law. The general part. – Mentioned writing. – P. 24.

International fund of technologies and investments, American university in the city Washington etc.[1], as well as other grants[2].

Deductions – are quantities of money or other objects deducted from tax base and its reducing. For example, under the individual income tax from tax base of the liquidator of average on the Chernobyl atomic power station are monthly deducted 3000 rbl. (item 218 of TCR).

Specific privileges are established depending on specificity of the concrete tax or due. For example, there are: exemptions from discharge of duties of the payer – under the value-added tax; preferences – under the customs payments etc.

Besides, specific privileges are established during the process of international legal regulation of cooperation of the states in taxation sphere. The international agreements on tax questions by the nature are agreements on rendering of tax privileges. At that the occurring once taxation of the income received from the certain type of activity, as well as the property, provided in agreements on elimination of the double taxation, it is necessary to consider as a tax privilege. Methods of elimination of the double taxation (i.e. *tax deduction* and *tax exemption)* by the nature also are methods of rendering of privileges[3].The list of international treaties of the Russian Federation on elimination of the double taxation contains in the letter of FTS of Russia on the mutual administrative help on tax affairs and the international exchange of the tax information[4].

The state during the process of tax reform adheres to strategy of an establishing of privileges and categories of exempts to an optimum level stimulating development of economics without social shocks. At that *privileges are not related to obligatory elements of the taxation.* As repeatedly underlined Constitutional Court of the Russian Federation, exemption from payment of taxes by the nature – is the privilege, which is an exception from Constitutions of the Russian Federation (items 19 and 57) principles of generality and equality of the taxation[5].

Privileges always have address character, and their establishing related to an exclusive prerogative of the legislator. Only the legislator has the right to fix (i.e. to narrow or expand) a circle of persons on which apply tax privileges (rulings of

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[1] The list of the international and foreign organizations, which grants received by taxpayers given for maintenance of the science, education, cultures and arts in the Russian Federation, do not subject to the taxation: ratified by Decree of Government of the Russian Federation from March 5, 2001 № 165 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] The list of the international and foreign organizations, which grants received by taxpayers (free aid) do not subject to the taxation and are not considered for tax reasons in income of the Russian organizations – receivers of grants: ratified by Decree of Government of the Russian Federation from June 28, 2008 № 485 [Electronic resources] // URL: http://www.pravo.gov.ru;

The list of the Russian organizations, which the grants received by taxpayers (free aid) given for support of the science, education, culture and art in the Russian Federation, do not subject to the taxation: ratified by Decree of Government of the Russian Federation from July 15, 2009 № 602 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Labos`kin M.A. International legal regulation of cooperation of the states in taxation sphere: dissertation abstract on graduation of the PhD in jurisprudence. – St.-Petersburg, 2007. – Pp. 8, 18-20.

[4] On the mutual administrative help on tax affairs and international exchange of the tax information: letter of FTS of Russia from December 22, 2015 № OA-4-17/22482 [Electronic resources] // http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=191097

[5] Rulings of Constitutional Court of tht Russian Federation – from March 21, 1997 № 5 and from March 28, 2000 № 5.

Constitutional Court of the Russian Federation from March 21, 1997 № 5 and from March 28, 2000 № 5). Constitutional Court of the Russian Federation has specified in this connection, that tax privileges can be provided by the legislation only in necessary, according to the legislator, cases.

Therefore absence of such privileges for other categories of payers does not influence an estimation of legality of an establishing of the tax. The thesis considered on an example of privileges under VAT.

Exception of the organizations and individual businesspersons realizing the by-excise goods and by-excise mineral raw materials, from among the persons having the right to exemption from discharge of duties of payers of VAT, cannot be recognized mismatching Constitution of the Russian Federation since it would signify an estimation of expediency of the decision of the legislator (it is not included into the competence of Constitutional Court of the Russian Federation established by item 125 of Constitution of the Russian Federation). Thus, Constitutional Court of the Russian Federation has verified constitutionality of the item 145 of TCR which is not extending a right on exemption of organizations and individual businesspersons from discharge of duties of payers of VAT if the persons realize the by-excise goods and by-excise mineral raw materials[1].

Besides, Constitutional Court of the Russian Federation has underlined, that item 145 of TCR cannot form a ground for refusal to the person who is putting into practice simultaneously realization of the by-excise and not by-excise goods, in rendering of exemption from discharge of duties of the payer of VAT on transactions with not by-excise goods[2].

From features of an establishing and use of the tax privileges considered on an example of VAT, it is possible (taking into account legal propositions of Constitutional Court of the Russian Federation[3]) to draw the following ***conclusion***. By virtue of principles of the fair taxation, legal equality of the taxpayers, an equal financial encumbrance, generality of the taxation – establishing of specific stipulations of payment of obligatory payments for some categories of payers is the type of the state support. But such regulation cannot have discrimination character, put in unreasonable and unfair distinctions and put some categories of payers in the worst in relation to another statute, i.e. to break the constitutional principle of equality, contextual from items 1, 15, 19, 57 of Constitution of the Russian Federation and item 3 of Tax Code of the Russian Federation.

Serious problem for payers is *collecting of the documents* verifying the right on a privilege which it is necessary to present to tax authority. The list of such documents is established based on TCR. Absence of the document or non-observance of its form – is the ground for refusal in privilege realization.

However Constitutional Court of the Russian Federation on an example of privileges under VAT has specified, that the right on a privilege can be verified not only the obligatory document provided by rules of public law, but also other documents containing the needful information. Non-observance of formal requirements concerning documents cannot be the ground for deprivation of the payer of the right on a privilege[4].

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[1] Determination of Constitutional Court of the Russian Federation from February 7, 2002 № 37 // Rossiiskaya Gazeta. – 2002. – On May 22.

[2] Determination of Constitutional Court of the Russian Federation from November 10, 2002 № 313 // Rossiiskaya Gazeta. – 2003. – On February 4.

[3] Ibidem.

[4] Ruling of Constitutional Court of the Russian Federation from July 14, 2003 № 12 // Rossiiskaya Gazeta. – 2003. – On July 29.

Such the legal proposition of Constitutional Court of the Russian Federation allows to payers to prove complaints to the tax authorities which have disallowed in realization of a privilege on the ground that presented documents do not answer the fixed form or are not provided by any list. I.e. the main thing, that the document contained the concrete facts and has been certified by the signature and the seal.

THE LITERATURE LIST

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On case of constitutionality test of point 1 of item 333.40 of Tax Code of the Russian Federation in connection with the complaint of the limited responsibility society «Vstrecha»: ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 // Rossiiskaya Gazeta. – 2013. – On May 31.

Chapter 5. LEGAL FUNDAMENTALS OF THE TAX CONTROL AND TAX ACCOUNTABILITY

5.1. Conception of the tax control and tax accountability

The word «control» has originated from French «controle» – i.e. inspection, surveillance for the purpose of inspection. *In our opinion*, the any **control** is legal activity of competent authorities and persons on securing of applicable compliance of legal norms. It is possible to emphasize following ***types of the control****: state control, non-state control* (for example – municipal control, public control etc.), *state supervision* (as only state bodies realize supervision; for example, the procuracy supervision realizes public prosecutor's supervision). *Tax control is the type of the state control.* The tax control is invariable object of scientific researches. We will illustrate it taking into account own positions[1].

Constitutional Court of the Russian Federation has deeply interpreted bases of the state control in the legal propositions[2]. Control function of the state by the constitutional and law nature is derivative of it organizing and regulating influence on public relations, including in civil turnover sphere. The state has the right to and is obliged to realize control function in sphere of economic relations, as regulation and protection of economic rights, establishing of bases of a federal policy and legal bases of single market, federal programs in the field of economic development, financial, currency, credit, customs regulation, federal economic services, civil legislation, standards, standards, accounting – are categorized by Constitution of the Russian Federation to competence of the Russian Federation (items 71); and protection of human rights and freedoms, questions of the possession, use and disposal of land, water and other natural resources, wildlife management, environmental protection and ensuring of ecological safety, administrative, land, water, forestry legislation, subsoil legislation – to joint competence of the Russian Federation and Subjects of the Russian Federation (item 72).

Control function is inherent in all public authorities within the competence fixed them that assumes their independence at realization of this function and specific to each of them realization forms. The federal legislator, having a sufficient discretion in fixing – concrete types of the state control (supervision), grounds, forms, ways, methods, procedures, terms of its carrying out, contents of measures of the state compulsion used following the results of control actions, as well as concrete procedure of financial provision, – at the same time is connected by the general constitutional principles of organization of system of public authorities, and regulation realized by it should correspond to the legal nature and character of the public relations developing in sphere of the state control (supervision). Entered restrictions of rights and freedoms of the citizens occupied by business should be proportional to constitutional

[1] Beloshapko Yu.N. Russian tax law: the manual. – Vladivostok: Far Eastern University publishers, 2004.

[2] Ruling of Constitutional Court of the Russian Federation from July 18, 2008 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

significant purposes and not to form obstacles of their economic independence and the initiative.

Hence, all expounded to the full is related to the financial control. Definition of the financial control proposed in a science. According to some authors, the financial control is legality control in the finances field[1]. The deep analysis of the financial control concept results in N.D. Pogosjan's monograph[2]. He understands the financial control as check of financial activity. Several scientists analyze types of the financial control without discussion of the problem of concept[3].

The analysis of all points of view allows coming to the following conclusion. The ***financial control*** is legal activity of competent authorities and persons on securing of applicable compliance of rules of financial law. It regulated by the general federal legislation, and the special financial legislation.

New subjects will be connected. In a science are analyzed questions on a legal status of institution of the financial ombudsman, regulation of his activity, its purposes and principles are argued, foreign experience of his functioning, and his place and a role in financial and banking systems of the state[4].

At the base of the financial control is ***official accounting***. It regulated by FL «On accounting», FL «On the consolidated accountability» and other legal acts. The *accounting* is formation of the documentary systematized information on lawful objects according to legal requirements and drawing up on its basis of the accounting (financial) reporting[5].

The RF Constitutional Court has explained that *official accounting* in Russia is the instrument of financial regulation. Accounting is one of the constitutional guarantees of the single market, integrity of economic space as one of bases of the constitutional system of the Russian Federation. Hence, the federal legislator has the right to assign on participants of economic activities the recordkeeping functions. Moreover, the federal legislator has the right to assign on certain participants of the market the duty to give to authorities the information on accounting. The accounting should have such guarantees, which would allow providing authenticity of the accounting-and-registration information in the public purposes that is impossible without drawing up and granting of the accounting reporting, as well as without the corresponding control and check of its conducting[6].

The *accounting statement* is the lawful systematized information on the financial viewpoint of the subject and results of its activity[7]. The *consolidated accountability* is

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[1] Financial law: the schoolbook / Under the N.I. Himicheva`s editorship. – M.: JURIST publishers, 2002; Financial law: the schoolbook / Editor-in-chief E.Y. Gracheva, G.P. Tolstopjatenko. – M.: PROSPECTUS publishers, 2009.

[2] Pogosjan N.D. Audit Chamber of the Russian Federation. – M.: JURIST publishers, 1998. – Pp. 96-115.

[3] Karaseva M.V. The mentioned writing. – P. 163.

[4] Tikhomirov K.A. Place and Role of the Financial Ombudsman Institution in the State Financial and Banking System // Financial Law jurnal. – 2015. – № 12. – Pp. 46-48.

[5] On accounting: federal law of the Russian Federation from December 6, 2011 № 402 [Electronic resources] // URL: http://www.pravo.gov.ru.

[6] Ruling of Russian Constitutional Court from April 1, 2003 № 4 [Electronic resources] // URL: http://www.pravo.gov.ru; Ruling of Russian Constitutional Court from July 18, 2003 № 14 [Electronic resources] // URL: http://www.pravo.gov.ru.

[7] On accounting: federal law of the Russian Federation from December 6, 2011 № 402 [Electronic resources] // URL: http://www.pravo.gov.ru.

the systematized information, reflecting the financial results and financial standing of the organization[1].

According to program documents and recommendations, for drawing up of the financial accountability according to ISFR (i.e. International Accounting Standards) on a basis of the accounting, realized according to the Russian rules of accounting, the credit organizations (lending agencies) use the *transformation method*, that is rearrange items of accounting balance and the report on profits and losses, as well as use other database formed on a basis of primary documents, bring necessary updating and use professional judgments.

Tax control is the type of a financial control

According to item 57 of the Constitution of the Russian Federation, each must to pay lawfully established taxes and dues. By virtue of the constitutional binding prescribing, the mechanism of regulation of the taxation entered by the legislator should guarantee completeness and timeliness of payment of taxes and dues and simultaneously – lawful character of the activity of authorized bodies connected with their collection and officials.

As an element of the legal mechanism guaranteeing discharge of the constitutional duty on payment of taxes, acts system of measures of the tax control by which according to TCR is recognized activity of authorized bodies under the control of compliance by taxpayers, tax agents and payers of dues of the legislation on taxes and dues in the procedure established by TCR (item 82).

Tax authorities, in turn, form control of unified centralized system compliance of the legislation on taxes and dues, correctness of calculation, completeness and timeliness of payment (transfer) of taxes and dues in budgetary system of the Russian Federation (item 30 of TCR; items 1 and 2 of Law of the Russian Federation from March 21, 1991 № 943-1 «On tax authorities of the Russian Federation»). At that by centralized character of system of tax authorities predetermines the control of superior tax authority activity of the subordinate tax authorities, directed on ensuring of compliance of the legislation by them about taxes and dues according to a principle of the constitutional legality (item 15 of Constitution of the Russian Federation).

The theme urgency about the tax control and the tax accountability is corroborated by practice. According to Federal State Statistics Service, even in free from the western measures of economic compulsion 2000 the shadow economy participatory part in the Russian Federation was more than 20%. At that were considered income from the economic activities assented by the law which then took cover from the taxation. Only in commerce from the VAT taxation has been covered 61% of value added[2].

Definition of the tax control for the first time is proposed by TCR; but it, in our opinion, uses a tautology («control is an activity under the control»). We with the purpose of educational process will use our position under the tax control. It is at that expedient to notice, that some authors refer, as on the etalon, on any one opinion. For example, M.N. Kobzar`-Frolova[3] gives rise to base on item 82 of TCR A.A. Jalbulganova's defining the tax control as procedural action of tax authorities under the control of compliance of the legislation on taxes and dues position, correctness of calculation, timeliness and completeness of payment (transfer) of taxes

[1] Federal law of the Russian Federation from July 27, 2010 № 209 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Interfax. Every fifth remains in a shade // Rossiiskaya Gazeta. – 2000. – On October 13.

[3] Kobzar`-Frolova M.N. Role and significance of the tax control and accounting of taxpayers in the prevention of tax illegality // The Financial Law (journal). – 2010. – № 7.

(dues). And now we will compare this definition to item 82 of TCR. All is very similar – the same tautology « control – activity under the control». It is received, that an essence of the concept of the author that he has paraphrased legal norms of the law.

The analysis of the financial and tax legislation allows us to consider the tax control as a component of the financial control, i.e. as activity on ensuring, instead of actions under the control.

Tax control – is activity of competent authorities and persons *on ensuring* of applicable compliance of rules of tax law. The activity is regulated by TCR, other effective legislation which is not conflicting TCR. At that special laws and by-laws explain or concretize rules of the tax control in certain fields of activity. For example, FL-229 from July 27, 2010 and other federal laws are made alterations in TCR which not only in more details and accurately regulate statement rules on the registration, removals from the registration etc., but also provide ample opportunities for initiation of electronic forms of the control with use of telecommunication communication channels without obligatory duplication on p-books[1].

In a science, it is truly noticed that the tax control and the registration of taxpayers are the major methods of the prevention of infringements of the legislation on taxes and dues. Perfection of legal norms of TCR, their reduction in conformity with other normative legal acts will allow increasing collecting of taxes and will increase effectiveness of daily activity of tax authorities[2].

The tax control is realized by tax authorities, customs bodies, internal affairs agencies, investigatory bodies, and others.

Tax authorities

Tax authorities – *Federal Tax Service (FTS)* and its territorial subdivisions – are related to the basic bodies of the tax control since they are specially formed for monitoring of tax sphere.

The FTS of Russia are the federal enforcement authority which is realizing functions under the control and supervision of compliance of the legislation on taxes and dues, for correctness of calculation, completeness and timeliness of entering into the budget of taxes and dues, in the cases provided by the legislation of the Russian Federation, of correctness of calculation, completeness and timeliness of entering into the budget of other obligatory payments, of manufacture and turnover of tobacco production, as well as function of the agent of the currency control within the competence of tax authorities.

FTS carry out also other functions – i.e. it is the plenipotentiary federal enforcement authority which is putting into practice the state registration of legal persons, natural persons as individual businesspersons and country (farmer) economy, and also authorized federal enforcement authority ensuring presentation in causes about bankruptcy and in bankruptcy procedures of payment requests of obligatory payments and requirements of the Russian Federation under financial obligations.

Customs bodies

Customs bodies – *Federal Customs Service (FCS)* and its territorial subdivisions – realize the control of compliance of rules of tax law at collecting of internal taxes (i.e. excise taxes and VAT). FCS interacts with FTS by Minfin of Russia into which structure FCS and FTS are included.

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[1] Rossiiskaya Gazeta. – 2010. – On August 2.

[2] Kobzar`-Frolova M.N. Role and significance of the tax control and the registration of taxpayers in the prevention of tax illegality // The Financial Law (journal). – 2010. – № 7.

At realization of the tax control, customs bodies are guided by the tax and customs legislation, CRoAV, CCPR, FL of the Russian Federation «On operational investigations». The *customs legislation* contains the exhaustive list of control powers of customs bodies. At that TCR is used simultaneously with the customs legislation to which in Tax Code direct sendings – if the control of compliance of the legislation regulating collecting of customs payments contain has features.

In our opinion, optimum in connection with customs payments would be regulation exclusive by Tax Code of the Russian Federation of all relations as the tax system is uniform and it joins a part of customs payments. By the customs legislation should be regulated only that does not join in tax system.

President of the Russian Federation in the Message to Federal Assembly of the Russian Federation from May 25, 2005 has specified that inspection of execution of the tax and customs legislation, instead of realization of "plans" on taxation should become a priority in activity of tax and customs bodies. They should rhythmically work; duly react to the allowed infringements, the main attention to give to the current period, instead of repeatedly to come back to the same problems. Such approach, finally, will guarantee freedom of business and fair relation to it from the state[1].

Internal affairs agencies

Internal affairs agencies (IAA) have acquired the right on demand of tax authorities to participate together with tax authorities in realized by it field tax inspections (chapter 6 of TCR).

It is interesting, that such component of IAA as ***police***, has acquired the right to participate in tax inspections irrespective of a tax inspection type (i.e. not only in field inspections) and without the reservation «together with tax authorities»[2]. In it is not only a different interpretation to TCR, but also the corruptive factor: it is received, that police for participation in inspection is necessary only inquiry, and further they can operate independently, without presence of tax authorities. Thus the tax police earlier operated and was liquidate because of system abusing by the powers.

IAA musts in the lawful date to direct to tax authority materials about the circumstances which are within the competence of tax authorities, for acceptance on them decision. At that the *police* at revealing and suppression of tax crimes have the right – to request and receive from credit organizations information on transactions and accounts of legal persons and the citizens who are putting into practice business without formation of legal person; to receive the data forming tax secret with the purpose of prevention, revealing and disclosing of crimes according to the legislation of the Russian Federation[3].

IAA interacts interact with FTS by TCR, FL «On police», other federal laws, as well as collective orders[4] and agreements[5].

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[1] Rossiiskaya Gazeta. – 2005. – On April 26.

[2] On police: federal law of the Russian Federation from February 7, 2011 № 3. – Item 13 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Ibidem.

[4] On the approval of an order of interaction of Internal Affairs Agencies and tax authorities under the prevention, revealing and suppression of tax violations and crimes: decree of Minfin of Internal Affairs of Russia, FTS of Russia from June 30, 2009 № 495/MM-7-2-347 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] Agreement on interaction between Ministry of Internal Affairs of the Russian Federation and Federal Tax Service from October 13, 2010 [Electronic resources] // http://www.consultant.ru/

Basic forms of interaction are:

*planning and carrying out, both is collective, and is independent, the actions directed on ensuring of completeness of receipt of taxes and dues in budgetary system of the Russian Federation and prevention of infringements of the legislation of the Russian Federation;

*mutual exchange data, including in electronic form, of interest and directly connected with fulfilment of problems and the functions assigned to them by legislative and other normative legal acts of the Russian Federation;

*collective expert examinations and consultations concerning workings out of normative legal acts;

*exchange of experience with the purpose improvement of professional skill of staff, including by carrying out of collective seminars (conferences) and training;

*carrying out of collective researches of the problems connected with the revealing, prevention and suppression of tax violations and crimes in economic activities sphere.

For realization of actions of interaction in the listed forms and joint cooperation coordination at all levels can be formed working groups from among employees of internal affairs agencies and tax authorities.

Investigatory bodies

The investigatory bodies empowered to realize preliminary investigation on criminal cases about the crimes provided by items 198–199 (etc.) of Criminal Code of the Russian Federation. Investigatory bodies have been in addition included by the special federal law[1] in section III of TCR in connection with formation of Investigatory Committee of the Russian Federation and necessity of increase of its importance for counteraction to tax crimes.

Other persons also take part in the tax control, if it provided by the federal law (there are bodies of state off-budgetary funds; banks; other financial organizations, etc.). So, financial organizations enact the proved and accessible measures in the circumstances on revealing among the persons concluding (concluded) with financial organization the contract providing rendering of financial services, as well as persons on who extends the legislation of the foreign state on the taxation of foreign accounts[2].

It is necessary to underline! On tax authorities does not apply restrictions on inspections (except for the rules-principles which are not contradicting TCR), provided by FL «On protection of rights of legal persons and individual businesspersons at realization of the state control (supervision) and municipal control»[3].

Tax control outwardly can be formalized differently.

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[1] On alteration in some legislative acts of the Russian Federation in connection with perfection of activity of bodies of preliminary investigation: federal law of the Russian Federation from December 28, 2010 № 404 // Rossiiskaya Gazeta. – 2010. – On December 30.

[2] On features of realization of financial transactions with foreign citizens and legal persons, on alteration in the Code of the Russian Federation on administrative violations and recognition expired some legal norms of legislative acts of the Russian Federation: federal law of the Russian Federation from June 28, 2014 № 173 [Electronic resources] // Http://www.pravo.gov.ru.

[3] On protection of rights of legal persons and individual businesspersons at realization of the state control (supervision) and municipal control: federal law of the Russian Federation from December 26, 2008 № 294 // Collection of Legislative Acts of the Russian Federation. – 2008. – № 52. – Item 6249.

Forms of the tax control

I. Data accessing from the international organizations and bodies of the tax control of the foreign states – is possible only under condition of participation of the Russian Federation in the international organizations or on the basis of bilateral international treaties. *Russia is participant of the FATF, Group EGMONT and EAG.*

FATF (Financial Action Task Force on Money Laundering) is the international organization (group) under the control over financial transactions and struggle against money laundering. FATF founded in 1989 at the summit of «Group of Seven» in Paris (France)[1]. Russia officially entered to FATF in 2003 by Rusfinmonitoring. The general rating of Russia following the results of international estimation FATF in 2008 has made 70% that corresponds to level of Canada, Italy, and Switzerland. Full conformity of our activity to the international standards is noted[2]. In September 2009, Russia has successfully protected in the Council of Europe the report on progress in struggle against «black money»[3].

Group EGMONT is FATF analogue, named so in the place of the first meeting of heads of national financial investigations in palace Egmont in Brussels. It formed in 1995 and unites financial investigations of 106 countries of the world (for comparison, in FATF are 33 countries, including Russia). Russia by Rusfinmonitoring since 2008 officially participates in the Group and annually pay in a payment – 11.7 thousand dollars, i.e. is obliged to provide corresponding expenditures in the federal budget. Participation in Egmont expands possibilities of Russia on joint international financial investigation of the crimes connected with laundering of criminal income, including by alternative systems of money order and offshore zones[4].

Eurasian group on struggle against money launders and terrorism financing (**EAG**) – includes Russia, Belarus, Kazakhstan, Kirghizia, China, Tajikistan, and Uzbekistan. It formed at the initiative of Russia as regional analogue of FATF. The tendency to expansion of structure of the Eurasian group observed[5]. Its participants (i.e. Brazil, Russia, India, China, and South Africa) found New Bank for Development of the BRICS Countries. The corresponding Agreement concluded 7/15/2014 and ratified by Russia 3/8/2015. The Bank purpose is financing of infrastructural projects and sustainable development projects in the BRICS states and developing countries. The capital of Bank resolved to release – 100 billion USA dollars. It is distributed between the BRICS countries share and share alike – on 20%.

The mechanism of *information interaction* between financial organizations and authorized bodies establishes Government of the Russian Federation. For example, in case of revealing of persons on which the legislation of the foreign state on the taxation of foreign accounts extends, during the period for which it is necessary to give data in foreign tax authority according to the legislation of the foreign state on the taxation of foreign accounts, the organization directs to Federal Tax Service the

[1] Vasil`chenko E. In lists it is not significant // Rossiiskaya Gazeta. – 2002. – On October 12; Vasil`chenko E. To currency freedom a delay // Rossiiskaya Gazeta. – 2002. – On October 15.

[2] Zykova T. On a ruble trace // Rossiiskaya Gazeta. – 2009. – On February 25.

[3] Zykova T. Load money by trunks // Rossiiskaya Gazeta. – 2009. – On October 7.

[4] Zykova T. Rosfinmonitoring contacts // Rossiiskaya Gazeta. – 2008. – On April 16.

[5] Zykova T. There are articles // Rossiiskaya Gazeta. – 2004. – On February 10, on October 5, on October 6; Zykova T. On a rouble trace // Rossiiskaya Gazeta. – 2009. – On February 25; Zykova T. In Central Asia there will be financial investigations // Rossiiskaya Gazeta. – 2005. – On September 28.

conforming information from the date of receiving of the consent of the client – foreign taxpayer on an information transfer about him in foreign tax authority and simultaneously in authorized bodies[1].

Besides, FTS have published the circular on the international exchange of the tax information according to which 7/1/2015 for the Russian Federation has come into force Convention on the mutual administrative help on tax causes from 11/25/1988, – and at FTS of Russia there was possibility to communicate with competent authorities of the foreign states and dependent territories with which earlier there was no legal basis for administrative interaction. The list of such states (dependent territories) can vary in process of joining to the Convention of recent participants. The most actual version of the list is published to the address: http://www.oecd.org/ctp/exchange-of-tax-information/Status_of_convention.pdf.

In the list of the states (dependent territories) with which is possible the international exchange of the tax information, as of 12/10/2015 have entered: Anguilla, Aruba, Belize, Bermuda (Bermuda), the British Virgin Islands, Ghana, Guernsey, Gibraltar, Greenland, Jersey, Cayman Islands, Cameroon, Colombia, Costa Rica, Curacao, Mauritius, Montserrat, Nigeria, Isle of Man, San Marino, Seychelles, Turks and Caicos Islands, Tunis, Faeroes, Estonia and others.

FTS of Russia according to item 25 of TCR has approved *list of the states (territories) which are not ensuring information interchange* for the taxation with the Russian Federation. To them are related to the: *states* – Angola, Andorra, Antigua and Barbuda, Afghanistan, Bahamas, Nauru etc., in total 111 states; *territories* – Anguilla, Aruba, Bermuda, Virgin Islands, Gibraltar etc., in total 22 territories[2].

Cooperation also is realized on the bilateral basis, by conclusion of intergovernmental agreements[3].

II. State registration of organizations and natural persons

There realized absolutely correct and constructive idea of «one contact». Federal Tax Service has fixed by TCR as uniform body of registration. Such procedure for registration blocks many channels for bribery (since earlier registering bodies there was great number – registration chamber, pension fund, notariate, bank etc.) and allows to get rid of fictitious businesspersons[4].

According to Federal law of the Russian Federation from December 26, 2008 № 294 and item 84 of TCR, only one plenipotentiary federal enforcement authority – FTS – must to realize three uniform states registers: Uniform state register of legal persons, Uniform state register of individual businesspersons and Uniform state

[1] On information interaction between financial organizations and authorized bodies: decree of Government of the Russian Federation from November 26, 2015 № 1267 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On the approval of the list of the states (territories) which are not ensuring information interchange for the taxation with the Russian Federation: decree of Minfin of Russia from September 30, 2016 № MMB-7-17/527 [Electronic resources] // URL: http://www.nalog.ru.

[3] On cooperation and information interchange in the field of struggle against tax legislation violations: agreement between Government of the Russian Federation and Government of the Kirghiz Republic from August 26, 1999 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Semenova I. The person of financial nationality // Rossiiskaya Gazeta. – 2002. – On June 26.

register of taxpayers. The detailed procedure for registration establishes Minfin of Russia[1].

Uniform state register of taxpayers (Register) is realized by FTS and its territorial bodies according to item 84 of TCR based on the uniform methodological and program-technical principles and documentary information which are available for tax authorities[2].

In Register contain data on the organizations and natural persons which registration is realized in tax authorities on the grounds established by TCR. The register is realized on electronic media with use of information technologies by carrying out of the state databases. Documents on the p-books and electronic documents which are the ground for carrying out of Register are stored in tax authorities. At that documentary information, including on the electronic media, containing tax secret by item 102 of TCR, should be stored and processed in the places inaccessible to extraneous persons and employees of tax authorities, not having powers for work with such data. FTS of Russia regularly publish the disputes connected with the state registration of taxpayers[3].

Since July 6, 2005 *in FL-129 and legal practice has been entered the concept «inofficious legal person»* – i.e. the legal person, which within last twelve months previous the moment of acceptance by registering body of the conforming decision, did not represent lawful documents of the tax accountability and did not realize transactions at least under one banking account.

Such person is recognized actually stopped the activity, that is the inofficious legal person and in this connection it can be excluded by registering body from Uniform state register of legal persons. At that (by item 49 of CCR), legal ability of the legal person is stopped at the moment of making an entry about his exception of the register.

III. Test of data of the registration and accountability

The form of tax control and simultaneously one of the basic stipulations of effectiveness of the tax control is the formation of applicable financially-accounting, as well as the accountability of payers.

Organizations both individual businesspersons keep financial accounting and reporting based on FL «On the accounting», FL «On the consolidated financial accountability», Tax Code of the Russian Federation and the normative legal acts based on it[4]. *Natural persons – unbusinesspersons* keep account in any form if it is not established by the tax law.

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[1] On approval of Procedure of carrying out of Uniform state register of legal persons and Uniform state register of individual businesspersons, clerical mistake corrections in recordings of the state registers, submitting of data containing in them and documents to public authorities, other state agencies, bodies of the state off-budget funds, local governments and courts: decree of Minfin of Russia from February 18, 2015 № 25 [Electronic resources] // http://www.pravo.gov.ru.

[2] On the approval of Procedure of carrying out of Uniform state register of taxpayers: decree of Minfin of Russia from September 30, 2010 № 116 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On direction of Review of judiciary practice on disputes with participation of registering bodies № 2 (2015): letter of FTS of Russia from July 1, 2015 № CA-4-14/11453 [Electronic resources] // http://www.nalog.ru/

[4] On the approval of rules of presentation by residents to tax authorities of reports on turnover of resources on accounts (deposits) in banks outside of territory of the Russian Federation: decree of Government of the Russian Federation from December 28, 2005 № 819 // Collection of Legislative Acts of the Russian Federation. – 2006. – № 2. – Item 188.

Organizations and individual businesspersons in accordance with established procedure to inform musts in tax authority at the place of registration about openings or closing of accounts; about all separate subdivisions in territory of the Russian Federation; about any participation in any organization; about reorganization, liquidation, bankruptcy, about alteration of the location or residence.

Registration of taxpayers

Taxpayers liable to the registration in tax authorities *at the place of:*

*organization location;

*location of separate subdivision of organization;

*natural persons residence;

*location of the real estate and transports of all abovementioned persons;

*other lawful cases.

The application for the registration (deregistration) in tax authority, and notice on the choice of tax authority for organization registration at the place of locations of one of its separate subdivisions can be presented to tax authority personally or by the representative, either are directed by mail by the registered letter or are transmitted in electronic form on telecommunication communication channels.

If the application (notice) is transmitted in tax authority in electronic form, it should be certified the strengthened qualified electronic signature of the person representing this application (notice), or his representative[1].

Features of the registration of some categories of payers are established by TCR, and as well as based on TCR – Minfin of Russia[2].

Complexity at registration is correct fixing of the location of real estate. *Criterion of fixing of such place is the object of taxation, namely:*

*for sea, river and air transports – the place location or residence of proprietor of the resources;

*for other transports – the place or port of registry, or the place of the state registration. Only in the absence of those – the location or residence of the proprietor;

*for other real estate – the place of his actual location;

*other lawful cases.

Payers are obliged to rise independently on the tax registration only in the event that such duty is provided by TCR or the statutory acts based on TCR. For example – private notaries, private detectives, private security guards are obliged to apply form in tax authority at the place of their residence in the lawful date after the licensing, certificate or other document, based on which they operate (item 83 of TCR).

Tax authorities are obliged to take all lawful measures for registration of all without an exception of payers (with their notice in writing of registration). *The payer*, in turn, must to notify tax authority on all legally actions significant for tax reasons: about change of the location of the real estate; about residence change; about alteration

[1] Federal law of the Russian Federation from July 19, 2011 № 245 [Electronic resources] // http://www.pravo.gov.ru.

[2] On the approval of Features of the registration in tax authorities of the foreign organizations which are not investors under the production-sharing agreement or operators of the agreement: decree of Minfin of Russia from September 30, 2010 № 117 // Rossiiskaya Gazeta. – 2010. – On November 24;

On the approval of Features of the registration in tax authorities of the natural persons – foreign citizens who are not individual businesspersons: decree of Minfin of Russia from October 21, 2010 № 129 // Rossiiskaya Gazeta. – 2010. – On November 26.

of authorized or constituent documents etc. At change of the location or residence the payer must cross off the former register and anew register. If the tax authority registers the legal person at its formation, simultaneously it should supply to it on the tax registration.

At registration to each payer is bestowed the ***TIN – taxpayer identification number***. Hence, ***TIN*** – is number which is bestowed to each payer from the moment of registration. Since this moment TIN is uniform and invariable, is underlined in all notices of tax authority directed to payers. The payer, in turn, should designate his TIN in all documents given in tax authority. TIN assignment is formalized by the certificate and each payer has the right to it to receive. Having obtained data of the registration of payers, tax authority must to include them in the Uniform state register of taxpayers in the procedure established by Government of the Russian Federation.

For *tax agents*, the procedure of registration and removal from it is same as for payers.

Not only bodies of the tax control participate in the tax control. The any bodies registering the – organization or individual businesspersons, residence of natural persons, acts of civil status, property and bargains with it, as well as other registering or formalizing bodies musts in a lawful date to inform on legally significant actions in tax authority at the place of the location.

Banks also participate in the tax control. They have the right to open accounts to organizations or individual businesspersons only at presentation by them of the certificate on registration in tax authority. Banks musts – in writing to inform in tax authority in a lawful date on opening or closing of conforming accounts, to inform by motivated inquiry competent authorities on transactions and accounts of businesspersons, to give in lawful cases by inquiries of tax authorities necessary information and documents.

Ministry of Finance of the Russian Federation in accordance with item 83 of TCR can establish specific procedure of registration and administration of some categories of the largest taxpayers (joint-stock company «GAZPROM»[1], etc.). With the purpose of the accounting, FTS make the decision on formation of inter-regional or interdistrict inspections of FTS on the largest taxpayers; supervise their activity regarding the taxation by the inspections which it is possible to name interterritorial. The notice on the registration and Certificate on registration goes to the largest taxpayer by registered mail with the notice. The information on the largest taxpayers goes to interterritorial tax inspection (under its letter of inquiry) from tax inspections on places and is the ground for registration in interterritorial inspection. At that the TIN does not change, but is bestowed the new tax registration reason code (TRRC)

Tax accountability

Tax accountability – is documentary formalization of calculation and payment of taxes, including the report on financial results. The basic form of the tax accountability is tax declaration.

Tax declaration – is the written statement of the payer about the income and expenses, as well as other data connected with calculation and payment of taxes. The tax declaration, on a generalization, representeds by each payer under each tax, except for the cases, provided by TCR and the legislation based on it. For example, are not

[1] On the approval Features of registration of the largest taxpayers: decree of Minfin of Russia from July 11, 2005 [Electronic resources] // http://www.pravo.gov.ru

obliged to represent the declaration natural persons – under the land-tax, individual property taxes etc. In this case, the tax authority should direct to the payer the tax notice with instructions of the sum of payment and dates of its entering. Do not liable to presentation in tax authorities tax declarations under those taxes on which taxpayers are exempted from a duty on their payment in connection with use of special tax regimes.

The person recognized by the taxpayer under one or several taxes, not realizing transactions, as a result which there is a turnover of money resources into his accounts in banks (in organization pay office), and not having under these taxes of objects of taxation, represents on such taxes the uniform (simplified) tax declaration (it's the form and filling procedure are approved by Minfin of Russia).The tax declaration is represented in tax authority at the place of the registration of the taxpayer, payer of due, tax agent *under the established form.*

It is realized active using of electronic form[1] *of the accountability* that does not exclude use in lawful cases of forms on p-bookses. Forms of tax declarations free of charge are given by tax authorities. According to item 21 of TCR taxpayers have the right to receive at the place of the registration from tax authorities the forms of tax declarations and explanation about the procedure of their filling. FTS with the purpose of effectiveness of input and data processing of tax declarations use the contemporary technologies providing use of machine-oriented forms of tax declarations which after their approval take places on the Internet site of FTS of Russia in the format «TIF» as the etalon[2]. The tax authority not has the right to disallow in acceptance of the tax declaration

The payer has the right and must to correct errors or incompleteness of the tax declaration at any time. If the declaration is already given, errors or incompleteness piece out by the application. The *consolidated group of taxpayers* with features is exposed to the tax control[3].

IV. Tax monitoring (section V.2 of TCR)

Matter of tax monitoring is correctness of calculation, completeness and timeliness of payment of taxes and dues, the duty on payment to which by TCR is assigned to the taxpayer (payer of due, tax agent) – organization. Tax monitoring is passed by tax authority based on decisions about carrying out of tax monitoring.

V. Tax inspections (are viewed in the following paragraph).

VI. Other lawful forms (receiving of explanations of payers and tax agents etc.)

The legal protection of payers at carrying out of the tax control is realized by the methods similar to methods of protection of subjects of tax law and legal relations.

Besides, for formation of a legal mechanism of voluntary declaring of assets and accounts (deposits) in banks, ensuring of legal guarantees of safety of the capital and property of natural persons, protection of their property interests, including outside of the Russian Federation, in ***Russia is established voluntary declaring*** by natural persons of assets and accounts (deposits) in banks, *with their release from responsibility for tax violations* at the stipulation if these violations are connected with

[1] Federal law of the Russian Federation from June 29, 2012 № 97 // Rossiiskaya Gazeta. – 2012. – On July 4.

[2] Letter of FTS of Russia from April 8th, 2008 [Electronic resources] // http://www.nalog.ru/

[3] Federal law of the Russian Federation from November 16, 2011 № 321 [Electronic resources] // http://www.pravo.gov.ru.

acquisition (formation of sources of acquisition), use or the disposal property and (or) the controlled foreign companies, the information on which is contained in the declaration, and (or) with opening and (or) transfer of money resources into accounts (deposits), the information about which contains in the declaration. However at that the declarant must strictly to observe stipulations of giving of the declaration, as otherwise the tax authority has the right reasonably to disallow in declaration acceptance[1]. *Tax authorities are obliged to observe tax secret.*

Tax secret

Tax secret – is any data on the payer received by body of the tax control (item 102 of TCR). The data should have the special storage mode and access, regulated by the laws and by-laws based on them. Any illegal use of the data or their transfer to other person is considered the disclosure of tax secret attracting legal responsibility. Access to the data forming tax secret, in state body has the officials fixed by the head of this state body[2].

In order to avoid unnecessary disputes, by TCR is established the *list of the data which are doing not form tax secret namely:*

*Public data (including the data which have begun popular by approbation of the taxpayer);

*Data on TIN;

*Data on tax violations and responsibility for their fulfilment;

*Data which are represented by inquiries of competent authorities (judges, procurators etc.) based on the laws,

regulating activity of the bodies, as well as based on international treaties (item 102 of TCR; item 1 of Law of the Russian Federation «On the status of judges in the Russian Federation»; other laws);

*Other data listed by item 102 of TCR.

Legal sources of protection of tax secret are not only TCR, but also CCR, FL «On the information, information technologies and on information protection», FL «On electronic signature», FL «On personal data», FL «On credit histories», FL «On providing of access to the information on activity of state agencies and local governments» etc.

According to the Doctrine of information security of the Russian Federation, expansion of scopes of information technologies generates new information threats. First of all scales of computer criminality increase *in credit and financial sphere*. Methods, ways and means of fulfilment of such crimes become all more refined. The condition of information security *in economic sphere* is characterized by an insufficient level of development of competitive information technologies and their uses for production and rendering of services. Realization of national interests in information sphere is directed on formation of the safe sphere of a circulation of trustworthy information and a steady information infrastructure – with the purpose of maintenance of constitutional rights and freedoms of the person and citizen, stable

[1] On voluntary declaring by natural persons of assets and accounts (deposits) in banks and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from August 8, 2015 № 140 [Electronic resources] // http://www.pravo.gov.ru.

[2] Federal law of the Russian Federation from November 21, 2011 № 329 [Electronic resources] // http://www.pravo.gov.ru.

social and economic development of the country, as well as national security of the Russian Federation[1].

The information recognized by tax secret, is confidential. The inquiry about that rendering goes to tax authority so that it was possible to identify the fact of the address of the user in tax authority. Ground for inquiry consideration in tax authority is the reference to the federal law establishing the right on receiving of the confidential information. In addition department publishes the list of the officials using access right to data, forming tax secret[2]. The inquiry is formed with compliance of the form and specific goal instructions.

5.2. Tax inspections

Tax inspection (***tax audit***) – is the specific complex of analytical measures and (or) procedural actions concerning subjects of a tax duty. Tax inspections are regulated by Tax Code of the Russian Federation. Tax inspections – is invariable object of scientific researches[3]. Not infrequently such researches are accompanied by the analysis of legal practice[4]. Being based on the given researches, we at the same time propose *our variant*.

Tax inspections are various, and therefore are classified by various criteria.

TYPES OF TAX INSPECTIONS ON PERIODICITY DEGREE

1. Primary inspections – are tests which are realized for the first time.

2. Repeated inspections – are tests which are realized repeatedly at the same person under the same taxes for the same tax period. Repeated inspections contain the restrictions established by TCR, but from them there are many exceptions which not infrequently are used against the basic taxpayers not concordant with results of such inspections.

TCR supposes carrying out of repeated field tax inspection by means of superior tax authority as the control of activity of the tax authority which has realized primary field tax inspection. However such inspection should correspond to criteria *of necessity, validity and legality*[5], and cannot turn to a wrongful encumbrance for the taxpayer, in the instrument of suppression of economic independence and initiative, excessive restriction of a freedom of the business and property right[6]. At that the superior tax authority not has the right to decide on results of the repeated field tax if it based on other estimation of those legal relations, which already have been

[1] On the approval of the Doctrine of information security of the Russian Federation: ukase of the President of the Russian Federation from December 5, 2016 № 646 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Decree of Minfin of Internal Affairs of Russia from December 26, 2003 // Rossiiskaya Gazeta. – 2005. – On November 25.

[3] Lysenko E.A., Semkina E.I., Hachatrjan N.R. Rights of the taxpayer at additional actions of the tax control // The Nalogoved (journal). – 2009. – № 8.

[4] Nagornaja E.N. On essential violations of procedure of tax inspection // The Journal of Russian Law. – 2010. – № 11.

[5] Ruling of Constitutional Court of the Russian Federation from March 17, 2009 № 5 [Electronic resources] // http://www.pravo.gov.ru.

[6] Under the application of open joint-stock company «Mechanized column № 1» to Federal Tax Service Administration on Republic Komi on recognition illegal decision from 10/31/2012 № 09-20/1, given by results of repeated field tax inspection: determination of Supreme Court of the Russian Federation from September 16, 2014 [Electronic resources] // http://www.vsrf.ru.

investigated and evaluation by court by dispute consideration between the taxpayer and subordinate tax authority[1].

TYPES OF TAX INSPECTIONS UNDER THE CONTENT

1. Cameral inspections (***desk tax audit***) – are tests at the place of tax authority.

Basis of cameral inspections are tax declarations arriving in tax authorities and others of the document on activity of payers and tax agents. The special assenting is not required for carrying out of cameral inspections. There is enough initiative of the authorized official of tax authority. The payer is tested about correctness of calculations, compliance of forms of the accountability, indebtedness having. Cameral inspection is formalized by the conforming act.

At revealing of errors or antinomies, or in case of need in the additional information, the tax authority has the right to direct to the payer the conforming requirement. In case of revealing of errors in the tax declaration, as well as antinomies between the data containing in documents, tax authority must to inform on it to the taxpayer, in turn, it is necessary to present for them within five days explanatories or to make conforming corrections when due hereunder. At that the taxpayer has the right to present the any documents available for him corroborating reliability of data, consigned in the tax declaration.

Item 88 of TCR establishes the exhaustive list of cases when at the taxpayer forms the duty on rendering of additional documents:

*inspection of legitimacy of use of tax privileges;

*legitimacy of application of tax deductions;

*inspection of correctness of calculation of the taxes connected with use of natural resources.

As has correctly underlined Constitutional Court of the Russian Federation, cameral tax inspection is the form of the current documentary control of tax legislation compliance. It is aimed at timely revealing of errors in the tax accountability and operative reaction of tax authorities to detected infringements that allows softening for taxpayers of a consequence from wrong application by them of the tax law[2].

Hence, cameral inspection can be viewed as a static stage of detection of tax violations. At violation detection, inspecting must to take all lawful measures for attraction of guilty persons to responsibility.

2. Field inspections (***field tax audit***) – are tests out of the location of tax authority that is at the locations of payer of tax or object of taxation or source of object of taxation. Such inspections are invariable object of scientifically practical researches[3].

At the same time in case the taxpayer does not have possibility to give to a room for carrying out of field tax inspection, – it can be realized at the place of tax authority locations (item 89 of TCR). However it does not signify that in this case such tax inspection on the parametres and destination coincides with cameral tax inspection. Field tax inspections can be related to a dynamical stage of revealing of tax violations.

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[1] Determination of Constitutional Court of the Russian Federation from January 28, 2010 № 138 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Determination of Constitutional Court of the Russian Federation from April 8, 2010 № 441 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Avdeev V.V. Procedural actions in field tax inspection // The Taxes (newspaper). – 2015. – № 10.

Field tax inspection is focused on revealing of those infringements of the tax legislation which not always can be detected within the limits of cameral tax inspection. For their revealing, is required profound studying of documents of the accounting and tax registration, as well as is required carrying out of some special actions. As a rule, within the limits of field tax inspections are detected the infringements caused by abusing of the taxpayer in tax sphere, by aspiration to evade from the taxation.

Field tax inspections can be realized at compliance of following general stipulations:

1) is necessary the motivated decision of tax authority in the name of its head or the assistant;

2) is necessary having at the inspecting person certificate of employment;

3) is necessary strict observance by inspecting person not only tax, but also other effective legislation, including on terms of carrying out and quantity of inspections.

The quantity of inspections which the tax authority has the right to realize is limited (item 89 of TCR):

*under the same taxes for the same period – no more one;

*concerning one taxpayer within a calendar year – no more two.

The day of rendering of decision about inspection designation is beginning of trend of a term of field tax inspection. At that current year (in which is accepted the conforming decision) does not join in the verifiable period (item 89 of TCR).

Thus, is excluded possibility of increase in the verifiable period of activity of the taxpayer, for cases when the decision about inspection carrying out is enacted in the end of a calendar year, but is handed over to the taxpayer in the beginning of year following. Inspection cannot precede more than two months; at that it can be prolonged about four months, and in unusual cases – to six. Besides is provided possibility of suspension of inspection on a lawful date (item 89 of TCR).

At carrying out of field tax inspections tax authorities have the right to realize ***procedural actions*** – i.e. the any actions directed on lawful collecting and securing of proofs of fulfilment of tax violations.

Types of procedural actions

*Interrogation of witnesses with the prevention of responsibility for refusal or evasion from giving evidence and a summer residence obviously false testimonies. The item about responsibility provided by TCR;

*carrying out of views of territories, rooms, objects of taxation with participation of attesting witnesses an drawing up of the record of view;

*carrying out of seizures in the presence of the ruling about seizure, with participation of attesting witnesses, drawing up of the record and in need of the list of the withdrawn;

*fixing of expert examination or attraction of the specialist if are required special knowledge of any sphere (sciences, technicians, arts, crafts etc.).

The procedure of carrying out of each concrete procedural action in detail is regulated by chapter 14 of TCR.

As field inspections not only the most effective but also the most disputed, FTS are had by their planning[1]. *Planning of field tax inspections* – is the open process

[1] On the approval of the concept of system of planning of field tax inspections: decree of Minfin of Russia from October 14, 2008 № ММ-3-2/467 [Electronic resources] // URL: http://www.nalog.ru/

which has been formed on selection of taxpayers for carrying out of field tax inspections by criteria of risk of fulfilment of a tax violation.

Results of field inspection are formalized by the act. Documents, information, as well as other materials presented by internal affairs agencies can be attached to tax inspection materials. The inspected person has the right in lawful date to present their explanations, remarks, objections with appendix of proving documents. After that, the head or assistant to tax authority in a lawful date must to analyze the act of inspection with all appendices and then to operate according to tax procedure stages, taking into account jurisdiction rules.

3. Counter tax inspections – are the specific component of cameral or exit tax inspections. It consists in demand of the documentary information on the verifiable person at third persons with its subsequent comparison to the information received at the verifiable person. For example, if at the verifiable person is withdrawn the balance which content raises the doubts, – inspecting has the right to demand and obtain the copy of such balance at Federal State Statistics Service bodies. Then these balances are compared. With reference to *customs payments* of feature of inspections is fixed *by the customs legislation.*

Formally item 87 of TCR does not contain concept of counter tax inspection. However there is item 93.1 of TCR which allows tax authorities to demand and obtain documents at counterparts or at other persons having documents (information) concerning activity of the verifiable taxpayer (and payer of due, tax agent). Hence, in the scientific and educational purposes we can use the term «counter tax inspection».

5.3. Tax expenditure control of natural persons

Practice knows many cases when expenses of the person exceed rate of his income. The state (in the name of competent, including tax authorities) in the mentioned situation has, in our opinion, all grounds to believe, that there is concealment of a part of income and evasion of the person from payment of taxes. The state has the right to demand from the person documentary to prove, that his expenses are carried out at the expense lawful income, as payment of lawfully established taxes and dues – is the constitutional public duty of everyone. If proofs are not present, it is possible to collect arrears. However in Russia such scheme difficultly gets accustomed, as to it try unreasonably to use the principle of presumption of innocence (interested persons is not considered, that it is the question not of responsibility, and about discharge of the public tax duty).

Continuous time the expenditure control of natural persons at all was not realized.

However 7/20/1998 has been enacted *FL «On the state control of by conformity of large expenses on consumption to income actually received by natural persons»*. The law had not time to use in connection with acceptance of Tax Code of the Russian Federation. Items 86-1, 86-2, 86-3 have been included in TCR and have replaced FL from 7/20/1998.

But in practice, to realize items of TCR it has appeared difficult because of inconsistency of the legislator who not provided the effective mechanism of their realization and has allowed much serious loopholes in the law.

To the control liable to expenses only tax residents (i.e. non-residents did not fall under) and it is exclusive on acquisition of property under the exhaustive list with very convenient formulations for potential violators. For example, gold acquisition fell under the control in ingots. Hence, if gold is rolled in a roll, it is not object of the control. Expenses fell under the control, being large. But the law did not fix large rate. It

allowed the violator to declare medium-sized any rate. Under the law, on the requirement of tax authority the infringer must was to present the special tax declaration with instructions of sources of an origin of resources on expenses and appendix of the documents, but he did not bear responsibility of non-observance of the duty.

In 2001 from 400 000 citizens at whom expenses «was largely» have exceeded income, less half have answered on the tax authority requirement, and from them only 4 000 persons have been convicted of a violation and involved in legal responsibility. At that the resources spent for the control, in tens have exceeded rate of the received surtaxes[1].Therefore items 86-1, 86-2, 86-3 of part 1 of TCR have been cancelled by the federal law № 104 from July 7, 2003[2].

We hoped, that the legislator will return in due course the control over expenses of taxpayers, but at that will make such control effective both profitable for the state and easy for conscientious subjects of tax legal relations.

Therefore as the progress, it is possible to consider adoption ***of the law*** by the federal legislator in 2012[3] which has established legal and organizational bases of control of conformity of expenses of the person replacing the state post (other person), expenses of his wife (spouse) and minor children to the aggregate profit of the person and his wife (spouse), has fixed categories of persons, concerning which the expenditure control is realized, procedure of the expenditure control and the address mechanism in the income of the Russian Federation of property, concerning which it is not presented the data verifying its acquisition on lawful income. At that control put into practice *tax authorities*, but also other *bodies of the financial control* (CBR, FCS etc.), i.e. the control became complex and comprehensive and to evade from it not so simply as it was before.

The person replacing (having) one of posts, specified in the Law, is obliged to represent data on the expenses, as well as on the expenses of the spouse (spouse) and minor children under each bargain on acquisition of the ground of area, other object of the real estate, transport, securities, actions (shares), partnership shares, shares in authorized (reserve) capitals of organizations (if the sum of transaction exceeds the aggregate profit of the person (and his wife (spouse), and about sources of receiving of resources, at the expense which the bargain is realized.

The law also applies on deputies of federal, regional and local level. For failure to submit data in the lawful term was the lawful possibility ahead of time to deprive of such deputies of their powers. Data on sources, at the expense which the property is bought, services take places on official sites at the duty station. They are given for publication in mass-media.

If as the result of inspection are detected the circumstances testifying to discrepancy of expenses to the aggregate profit, – inspection materials go to public prosecutor`s office and if are at that detected crime attributes or other violation – in bodies on jurisdiction. For law infringement is established all types of legal responsibility.

Let's consider practice in the application of the law on an example of Primorsky Krai. Soviet District Court of Vladivostok on August 13, 2015 under the statement of

[1] Konishcheva T., Velichenkov A., Goncharov V. Has expensively bought? You will pay // Rossiiskaya Gazeta. – 2001. – On February 23.

[2] Rossiiskaya Gazeta. – 2003. – On July 9.

[3] On the control of conformity of expenses of the persons replacing the state posts, and other persons to their income: federal law of the Russian Federation from December 3, 2012 № 230 // Rossiiskaya Gazeta. – 2012. – On December 5.

the Public Prosecutor of Primorsky Krai has turned into the income of the state the car of the official K. which has not corroborated with her acquisition on lawful income[1].

K., holding office of the main specialist of 3 categories of department of property relations of administration of Nadezhdinsky municipal district, has bought the car. However K. has not presented data on expenses under the bargain to administration personnel department.

Initially K. as the reason of a failure to submit of the information about expenses designated on incorrect fixing of the period previous fulfilment of the bargain. Then she explained that the vehicle has received in gift from relatives. Subsequently she has declared that in gift she has received money but not the transport.

However K. has not afforded proofs of acquisition of property on lawful income. By results of the expenditure control, by he personnel department of Administration of Primorsky Krai had been drew conclusion on discrepancy of expenses K. her income that has been reflected in the report to the Governor of Primorsky Krai.

If the violation was formalized in not presentation of proofs of acquisition of property on lawful income in connection with control of expenses of the municipal official, that for its fulfilment can ensue responsibility in the form of the property forfeiture in the income of the Russian Federation (items 9, 16 of Federal laws № 230 from December 3, 2012).

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Chapter 6. RESPONSIBILITY IN TAX LAW

6.1. Conception of tax responsibility

Tax law is financial and legal institution. Hence, our concept of tax responsibility and violation inseparably linked with the concept of financial responsibility and violation on the basis of the overall theory of legal responsibility. It is necessary to analyze responsibility concepts in philosophy and jurisprudence – for correct understanding of legal responsibility and financial-law responsibility.

Jurists (*I.A. Galagan* etc.[1]) by analyze the philosophical literature on the question notice, that the responsibility category includes two aspects – active and retrospective. In *active* aspect responsibility signifies comprehension by the person of own debt to the society and the state. Such responsibility names active, positive, perspective. Responsibility in *retrospective* sense ensues for the last behavior, conflicting to social legal norms, and called as retrospective, negative, juridical, legal.

There are various concepts of juridical (legal) responsibility. Several authors (*S.S. Alekseev, V.K. Babayev, A.J. Suharev*, etc.) consider legal responsibility in «positive» sense, i.e. as the duty to bear responsibility[2]. The similar point of view is exposed, in our opinion, to the fair criticism by many authors (*O.E. Lejst, V.G. Golovkin, M.N. Marchenko*, etc.)[3]. The following group of scientists (*I.O. Samoshchenko, M.H. Farkushin*, authors of the big encyclopedic dictionary and others)[4] defines legal responsibility exclusively as use to the guilty person legal measures of the state compulsion, punishment, sanctions. There are also other viewpoints[5]. *We represent our conception.*

Legal responsibility (i.e. ***juridical responsibility***) is negative consequences for a violation. Administrative, criminal and civil responsibilities are independent basic

[1] Galagan I.A. The administrative responsibility in the USSR (the state and is material-legal research). – Voronezh, 1970.

[2] Alexeyv S.S. The state and the law. – M.: JURIDLIT publishers, 1996; Babayev V.K, Baranov V.M., Tolstik V. A. Theory of law and the state in schemes and definitions. – M.: JURIST publishers, 1999; Big law dictionary / under the A.Y. Suharev`s, V.D. Zor`kin`s, V.E. Krutskih`s editorship. – M.: INFRA-M publishers, 1999; Serkov P.P. On the notion of legal responsibility // The Journal of Russian Law. – 2010. – № 8.

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[4] Big encyclopedic dictionary. – M.: Big Russian encyclopedia publishers, 1998; Samoshchenko I.O., Farkushin M. H. Responsibility under the Soviet legislation. – M., 1971.

[5] Vitruk N.V. The general theory of juridical responsibility. – M.: NORM publishers, 2009; Dobrynin N.M. Federalism and juridical responsibility: interrelation and inter-conditionality, mathematical modeling // The Constitutional and Municipal Law (journal). – 2007. – № 1.

types of legal responsibility. It is a necessary to disclose essence of legal responsibility and violation. We have in detail, conceptually studied it essence[1].

There are number of authors (*M.V. Karaseva, Yu.A. Krokhina, Yu.N. Starilov, A. Kurbatov*, etc.) believes, that in financial law it is possible to choose an independent type of legal responsibility – financial legal responsibility[2]. The financial legal responsibility is in a formation stage.

There are also other viewpoints[3]. In *our opinion*, there is no financial responsibility as independent type of legal responsibility and there is no the specific sanction – the financial sanction.

Financial responsibility is the sciences category, characterizing specificity of using of administrative, criminal and civil juridical sanctions for infringement of rules of financial law.

Also there is no unanimity in understanding of tax responsibility

Supporters of positive responsibility insist, that the tax responsibility as a state retaliatory measure on fulfilment of a tax violation, is the complex guarding legal relation between the state and the infringer of the legislation on taxes and dues, where to the state (on behalf of tax authorities) possesses the right of collecting of tax sanctions for the realized tax violation, and to the infringer – their duty undergoing[4].

The scientists believing, that the tax law is independent branch of law, emphasize tax responsibility as an independent type of responsibility on behalf of the specific sanction – fines (authors of the item-by-item commentary to part 1 of TCR).

Other authors, identifying concept «tax responsibility» and «tax compulsion», notice, that tax compulsion is the administrative enforcement which is realized in the form of financial sanctions. At that the system of measures of tax compulsion is ensured by the administrative legislation as the general legal order and by the tax legislation as the special legal order (*G.V. Petrova, Yu.N. Starilov*, etc.) [5]. Thereby the authors groundless, *in our opinion*, have narrowed concept «tax responsibility» to concept «administrative responsibility», and the category «legislation» have wrongly equated to the term «legal order».

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[1] Beloshapko Yu.N. Violation and responsibility in financial and tax law of the Russian Federation // The Jurisprudence (journal). – 2001. – № 5 /238/. – Pp. 54–63; Beloshapko Yu.N. Problems of responsibility in financial and tax law of the Russian Federation. – Vladivostok: Far Eastern University publishers, 2003; Korchagin A.G., Beloshapko Yu.N. Problems of juridical responsibility in public and private law: the monograph. – Vladivostok: Far Eastern University publishers, 2008.

[2] Karaseva M.V. Financial law. The general part: the schoolbook. – M.: JURIST publishes, 2000; Krokhina Yu.A. Theoretical of a basis of financial law responsibility // The Journal of Russian Law. – 2004. – № 3. – Pp. 87–95; Starilov Yu.N. Violation of tax laws and juridical responsibility. – Voronezh, 1995; Kurbatov A. Questions of application of a financial responsibility of violation of tax laws: On materials of judicial-arbitration practice // The Economics and Law (journal). – 1995. – № 1.

[3] Pilipenko A.A. Financial law: the schoolbook. – Mn.: Book House publishers, 2007; Financial law. The series «Schoolbooks, manuals» / Under the V.M. Mandritsa`s editorship. – Rostov-on-Don: PHOENIX publishers, 1999.

[4] Tax law of Russia in questions and answers: the manual / Under the A.A. Jalbulganov`s editorship. – M.: JUSTITSINFORM publishers, 2007.

[5] Starilov Yu.N. Infringement of the tax legislation and legal responsibility. – Voronezh, 1995; Petrova G.V. Tax law: the schoolbook for high schools. – M.: NORM publishers, 1999.

However rules of tax law contain not only in the tax legislation, but also in the criminal legislation (for example: item 198 of CCRF – evasion of natural persons from tax payment), and in the financial legislation (for example: item 50 of BCR – tax revenues of the federal budget).

Yu.A. Krokhina, etc. understand tax responsibility as a type of financial and law responsibility[1].

A. Novikov and his supporters believe that for tax legislation infringement ensues the financial, administrative, criminal and disciplinary responsibility[2].

More cautious authors the term «tax responsibility» do not practice, using the term «legal responsibility of infringement of the tax legislation» (*S.G. Pepeljaev*, etc.)[3]. They speak about tax responsibility only as about the complex institution uniting legal norms of various branches of law, directed on protection of the tax legal relations.

At last, a number of scientists (*V.I. Dymchenko* and other) believe, that the tax responsibility is financial and law responsibility or simply financial sanctions. In their opinion, financial responsibility is an independent type of responsibility, and its type is tax responsibility[4].

There is allocated even the scientific field «tax delictology» which sees to the author as system development of general theoretical knowledge, assuming – problematic research, formation of new scientific concepts and theories which are based on the principles of research, scientific analysis, development of the general methods of research etc., for the purposes having applied meaning (for example, it is increase in volume of receipts from taxes and dues in the state income)[5].

Our position

Rule of tax law is one of types of financial legal norm. Hence, ***tax responsibility*** is the sciences category, characterizing specificity of using of administrative, criminal and civil juridical sanctions for infringement of rules of tax law.

The tax sanction is understood by Tax Code narrowly – i.e. in the form of penalties as monetary collecting (item 114 of TCR). Thus, the tax sanction is shown only to administrative punishment. At the same time such understanding of the tax sanction contradicts to the content of TCR and other (i.e. nontax) legislation. TCR also provides application of civil-law sanctions: fines as forfeit type; declaration of transaction as invalid; recovery of damages; organization liquidation. CCRF provides punishment for the tax crimes connected with evasion from payment of taxes and dues. The administrative penalty is provided not only by TCR, but also by CRoAV.

Thus, it is possible to consider the sanction tax only in the scientific purposes and to use the term «tax sanction» only for a designation of specificity of use of the – administrative (penalty), criminal (penalty or other sanctions by CCRF), civil-law

[1] Krokhina J.A. Theoretical bases of financial and law responsibility // The Journal of Russian Law. – 2004. – № 3. – Pp. 87–95; Krokhina Yu.A. Tax law: the schoolbook. – M.: Higher Education publishers, 2006.

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sanctions as measures of the state compulsion for infringement of rules of tax law of the effective legislation.

Hence, the ***types*** of tax responsibility and tax sanctions are:

1) Administrative tax responsibility and tax sanctions fixed by tax legislation (TCR) and CRaAV. Hence, the responsibility is consequences of negative character for infringement of the rules of tax law, fixed by Code of the Russian Federation on Administrative Violations. Various aspects of the responsibility analyzed in the special literature[1].

2) Criminal tax responsibility and tax sanctions only fixed by CCRF. Hence, the responsibility is consequences of negative character for infringement of the rules of tax law, fixed by Criminal Code of Russia. The tax sphere is especially attractive to criminal encroachments as the capital used in it.

3) Civil *tax responsibility and tax sanctions* fixed by tax legislation and CCR synchronously. Hence, the responsibility is consequences of negative character for infringement of the rules of tax law, fixed by Civil Code of Russia. To civil legal sanctions are related the indemnification, declaration of the transaction void, penalty, organization liquidation.

Administrative and criminal responsibility cannot simultaneously be applied for the same deed. The civil responsibility can simultaneously be used with administrative or criminal responsibility.

At that tax non-payment in the lawful date should be compensated repayment of arrears, the full indemnification of the damage suffered by the state as the result of untimely entering of the tax. Therefore to the sum of arrears the legislator has the right to add additional payment – fine as the compensation of losses of the state treasury as the result expiries of period of payment of the tax[2].

The *procedure of recovery* of the sums of tax sanctions can be *voluntary and forced.* The person agreeable with punishment has the right independently by bank to pay the sanction sum.

Forced collection of sanctions is realized on legal norms of the federal law, based on which is initiated and is considered tax case. For example, the penalty imposed based on TCR, can be recovered from organizations and individual businesspersons in an uncontested recovery (i.e. without recourse to the court) under the tax authority decision.

Forced collection of the penalty from the natural persons which are not individual businesspersons, is realized only based on decision of the court which given under the claim of tax authority and has come into force. Execution realize bailiffs based on FL «On execution proceeding».

The legislation provides exemption from responsibility and punishment grounds, as well as attenuating and aggravating circumstances.

EXEMPTION GROUNDS FROM TAX RESPONSIBILITY AND PUNISHMENT

Types of such grounds depend on character of cause about a tax violation, and from the law, its regulating. ***Tax Code*** does not differentiate an exemption from

[1] Demjanets M.V. Administrative responsibility of credit organizations for violation of the legislation on banks and banking activities: the monograph. – M.: JURKOMPANI publishers, 2011

[2] Ruling of Constitutional Court of the Russian Federation from December 17, 1996 № 20 [Electronic resources] // URL: http://www.pravo.gov.ru.

responsibility ground, from punishment, as well as cases when such responsibility cannot ensue by virtue of absence of the violation (item 109 of TCR).

The ***grounds listed by TCR*** can be grouped as follows (considering, that TCR contains only administrative faults):

*Absence of event of a violation.

*Absence of formal components of violation.

Within the limits of the ground the circumstances excluding guilt, are recognized: force majeure, disease state, fulfilment of written explanations of competent state agencies or their officials, not achievement by the person at the moment of fulfilment of fault of 16 years.

*Expiration of period of limitations (period of limitations is 3 years from the date of fulfilment of fault or since next day after the termination of the tax period).

Evidentiary facts of grounds of exemption from responsibility are specified in item 111 of TCR.

CRoAV distinguishes categories of exemption from responsibility and from punishment:

Exemption from responsibility grounds (CRoAV):

*Extreme necessity.

*Non-imputability.

*Insignificance of fault.

Exemption from responsibility grounds (CRoAV):

*Extreme necessity.

*Non-imputability.

*Insignificance of fault.

Exemption from punishment grounds (CRoAV):

*Limitation for bringing to administrative responsibility.

CCRF differentiates the – circumstances excluding criminality deed; grounds of exemption from responsibility and from punishment.

WITH REFERENCE TO TAX CRIMES

1. To the circumstances *excluding criminality of deed*, it is possible relate to:

*Physical or mental compulsion (item 40 of CCRF).

*Substantiated risk (item 41 of CCRF).

*Order or directive execution (item 102 of CCRF).

2. To exemption from responsibility fundamentals (grounds) are carried (related to):

*Amnesty (item 84 of CCRF).

*Active repentance (item 75 of CCRF).

*Change of conditions (item 77 of CCRF).

*Expiry of period of limitations (item 78 of CCRF).

3. To exemptions from punishment grounds are related to:

*Amnesty (item 84 of CCRF).

*Conditional early relief (item 79 of CCRF).

*Replacement of an unserved part punishment by softer type of punishment (item 80 of CCRF).

*Enduring the punishment deferment to pregnant women and the women having juvenile children (item 82 of CCRF).

*Expiry of period of limitations of the verdict of guilty of court (item 83 of CCRF).

CCR regarding from a civil responsibility for tax violations is not used, since TCR does not contain corresponding reference rules which are required according to item 2 of CCR.

ATTENUATING AND AGGRAVATING CIRCUMSTANCES

Types of the circumstances depend on character of cause about a tax violation, and from the law, its regulating. However there are the generalizations operating irrespective of cause or the legislation.

Generalizations:

On attenuating circumstances: listings of attenuating circumstances are uncomprehensive. The person, having the right to bring to responsibility or punish, have the right to recognize attenuating any circumstance.

On aggravating circumstances: listings of aggravating circumstances have all-inclusive character and broad interpretation does not liable. *In this connection, has vital importance character of cause and type of the law, its regulating, namely*:

TCR contains only one aggravating circumstance – fulfilment of fault by the person earlier made answerable for similar fault (item 112 of TCR).

CRoAV – includes six aggravating circumstances. For example – there are involving of minor fault in fulfilment, fulfilment of fault by a group of persons etc.

CCRF (item 63) contains thirteen aggravating circumstances. For example – there are repeatability or recidivism, especially active role in crime fulfilment etc.

Ground of the tax responsibility is the tax violation.

6.2. Tax violation

In understanding of a violation, also there is no unity.

According to lawful definition, *violation* is a crime or an administrative violation, i.e. illegal deed (action, inactivity), entailing criminal or administrative responsibility[1]. As we see, such definition is obviously incomplete.

The majority of jurists speak about a violation as on the socially dangerous, guilty, illegal deed[2].

Many authors exclude a feature from definition of a violation the sign of public danger (M.N. Marchenko, etc.)[3]. At last, the violation defined as the patrimonial notion meaning any deed, breaking any rules of the law[4]. For a definitive conclusion at first, we will list the basic features of any violation, and then we will deduce definition of the tax violation.

The basic features of any violation are:

*Illegality.

*Deed fulfilment.

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[1] On foundations of system of preventive maintenance of violations in the Russian Federation: federal law of the Russian Federation from June 23, 2016 № 182 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Babayev V.K., Baranov V.M, Tolstik V.A. Theory of law and the state in schemes and definitions. – M.: JURIST publishers, 1999.

[3] State and law theory. The course of lectures / Under the M.N. Marchenko`s editorship. – M.: ZERTSALO publishers, 1998.

[4] Big law dictionary / Under the A.Y. Suharev`s, V.D. Zorkin`s, V.E. Krutskih`s editorship. – M.: INFRA-M. publishers, 1999.

*Guilt.

*Public danger.

*Punishability.

The definition of a tax violation is given by TCR. *Tax violation* is guilty realized illegal (i.e. in infringement of the legislation on taxes and dues) deed (action or inactivity) of the taxpayer, tax agent and other persons for whom by TCR establishes responsibility (item 106 of TCR).

Thus, the definition of tax violation on TCR is rigidly coordinated not only to the legislation on taxes and dues, but also with TCR. Hence it is reduced only to the fault provided exclusively by TCR.

Many authors (i.e. *Yu.A. Krokhina, V.V. Korovkin* and others) actually agree with such approach of the legislator and do not enter to discussions in this occasion[1]. *E.D. Ashomko, O.M. Provalenko* and others[2] insist, that the tax violation – the new type of the violations which have received legislative consolidation exclusive in TCR. The responsibility for it ensues in the specific, special procedure provided only by TCR. In our opinion, these authors do not consider that character of a violation and procedure on it is not same.

Some authors (*E.Yu. Gracheva, S.G. Pepeljaev* and others)[3] believe, that for responsibility occurrence it is necessary to violate not the legal norm, but a tax duty, rights and legitimate interests of participants of tax relations. In other words, S.G. Pepeljaev and his supporters use instead of the word-group «tax violation» the term «infringement of the legislation on taxes and dues» – i.e. illegal, guilty action (inactivity) by which are not discharged or unduly are discharged duties, are violated rights and legitimate interests of participants of tax relations and for which is established the legal responsibility. At that (as we believe) is not considered, that duties, rights, interests are fixed by legal norms and only their infringement attracts statutory responsibility. At the same time authors of the viewpoint correctly notice, that to the tax violations are related to only those which concern directly tax system. The violations having indirect influence on tax relations, but covered by wider formal components (for example, official crimes), are not related to tax violations. There are attempts to delimit tax violations from administrative violations (*M.V. Kustova, O.A. Nogina, N.A. Sheveleva*, etc.) – by of election as criterion of such differentiation of the will, i.e. discretion of the legislator[4].

A number of scientists (*V.I. Gureev* and others) believe sufficient the fact of infringement of legal norms for qualification of deed as tax violation[5]. In this case (in our opinion) it is not considered, that for qualification of deed is necessary establishing not only target element, but also other elements of formal components of violation.

Problems of notion of a tax violation many authors quite do not excite (*G.V. Petrova, N.I. Himicheva, N.D. Eriashvili* and others)[6]. *V.A. Parygina and*

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[1] Krokhina Yu.A. Tax law: the schoolbook. – M.: HIGHER EDUCATION publishers, 2006. Korovkin V.V. The taxpayer and tax authorities. – M.: PRIOR publishers, 2000.

[2] Ashomko T.A., Provalenko O.M. Tax Code: violation and responsibility. – M.: Limited responsibility society NPO «Calculus mathematics and computer science» publishers, 2001.

[3] Gracheva E.J., Kufakova N.A., Pepeljaev S.G. Financial law of Russia. – M., 1995; Tax law: the schoolbook / Under the Pepeljaev`s editorship. – M.: FBK PRESS publishers, 2000.

[4] Kustova M.V, Nogina O.A., Sheveleva N.A. Tax law of Russia. The general part: the schoolbook. – M.: JURISTЪ publishers, 2001.

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A.A. Tedeev expounded the most complex concept of a tax violation[1]. These authors understand tax violation in wide and narrow sense, taking for a basis of general-theoretical notion of a violation. That is they try in a complex to approach to the problem. Tax violation in a *broad sense* is understood by them as any illegal guilty punishable deed in taxation sphere irrespective of whether – legal norms of what branch of the legislation establish concrete responsibility for fulfilment of such illegal deed. However at that they classify tax violations on administrative, criminal, as well as violations, the responsibility for which fulfilment is established by TCR. Thus, authors do not specify a civil responsibility. In the *narrow sense*, V.A. Parygina and A.A. Tedeev understand a tax violation on the definition proposed by the item 106 of TCR. It is received, what even in a broad sense these authors narrowly understand tax violations – they lose sight of *torts*. *We believe* more correct to co-ordinate definition of a tax violation to concept of a violation in the general theory of law.

Hence, ***tax violation*** is guilty, illegal, socially dangerous deed (i.e. action or inactivity), for which fulfilment ensues administrative or criminal, as well as civil responsibilities.

Tax violations can classify by various criteria.

TAX VIOLATIONS TYPES on level of community danger are:

*Tax crimes (i.e. type of crimes). The tax crime has the increased degree of public danger[2].

*Tax faults (i.e. type of administrative violations and (or) civil violations).

When in TCR it is a question of collecting of the fine and simultaneously – penalty, it is possible to speak about coincidence of administrative and civil faults.

If losses are recovered as criminal court procedure, means, the person is involved simultaneously to the criminal and civil responsibility.

If the tax authority is applied to court with the claim to the payer about recovery of the sums of arrears, penalties, fine in pursuance the powers, given by TCR in connection with infringement of legal norms of TCR, – the guilty will bear in this case a civil responsibility for the tax fault, provided by TCR.

The tax violation could be an independent type of a violation only in one case – at absence in TCR blanket and reference rules and at having in it real specific tax sanctions. Neither the one nor the other it is not observed.

TAX VIOLATIONS TYPES on the branches of law are:

*Administrative tax violations.

In case of the bringing to responsibility provided by the legal norms of TCR containing attributes of an administrative violation, procedure on cause should be realized in the order provided by CRoAV (about that – item 10 of TCR).

*Criminal tax violations[3].

*Civil tax violations.

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[1] Parygina V.A., Tedeev A.A. Tax law of the Russian Federation. – Rostov n/d: PHOENIX publishers, 2002.

[2] On practice in the application by courts of the legislation regulating peculiarities of the criminal responsibility for crimes in sphere of entrepreneurial and other economic activities: ruling of Plenum of Supreme Court of the Russian Federation from November 15, 2016 № 48 [Electronic resources] // URL: http://www.vsrf.ru.

[3] Ibidem.

Tax sanctions, in our opinion, are used in the presence of all elements of *formal components of tax violation*. It is the complex of legal elements, permitting to qualify the concrete tax deed as a tax violation.

Elements of formal components of tax violation are:

1. Subject

Subject of tax crime is the natural person with 16 years. The organization can become the subject of a crime if it directly to fix in CCRF. Subject of tax fault is the natural person with 16 years, as well as the juridical person.

2. Mental element of tax violation is the intention or imprudence. In detail the problems of guilt in tax law are analyzed in the special literature[1].

3. Target of tax violation is the tax relations.

4. Target element of tax violation is the deed (i.e. action and (or) inactivity).

The law (administrative, criminal, and civil) fixes the bases of liberation from tax responsibility and the punishments, softening both aggravating responsibility and circumstance punishment. There are regulated also by special tax laws, for example, by TCR (Tax Code of Russia).

6.3. Tax proceeding

Tax Code of the Russian Federation does not contain terms «tax proceeding», «tax process» and them does not define. There are different opinions in a science[2]. For correct understanding of tax proceeding it is necessary is primary to solve the scientific problem of a correlation of such concepts as «proceeding» and «process». The word «process» has occurred from Latin «processus» – advancement[3].

Process is understood by authors of the Big encyclopedic dictionary in three senses:

1. Process – is sequence of change of events and states in development something.

2. Process – is complex of sequential actions for achievement of any result.

3. Process – is an order of disposal of legal proceeding in court, court proceeding.

Proceeding is defined as process of formation something, i.e. understood by process[4].

Hence, process and proceeding are interrelated. As we study law, our main interest is legal process that is the normative form of regulating of legal activity.

Legal process is understood in the broad sense (administrative process) and in the narrow sense (jurisdictional process). But at that the correlation of categories «process» and «proceeding» is understood differently (process – activity, proceeding – lawful order of processual activity on the concrete juridical fact; proceeding – the concrete type of process; process and proceeding – synonyms and so on).

We have come to conclusion that proceeding – is the concrete type of process. To proceeding types it is possible relate to the – registration proceeding, disciplinary proceeding, proceeding under complaints, legal proceeding on administrative

[1] Musatkina A.A. On the issue of concept of guilt and its forms under Tax Code of the Russian Federation // The Financial Law (journal). – 2013. – № 8.

[2] Ozerova T.A. Concept of tax process: the contemporary conception // The Financial Law (journal). – 2010. – № 8; Jakushkina E.E. Interrelation of tax material and procedural law // The Financial Law (journal). – 2012. – № 1.

[3] Big encyclopedic dictionary. – M.: Big Russian encyclopedia publishers, 1998. – P. 971.

[4] Ibidem. – P. 965.

violations, tax proceeding, arbitration proceeding, civil proceeding, criminal proceeding etc.

Hence, *tax proceeding* – is one of types of legal process. The analysis of the effective legislation, practice of its application and special literature allows coming to conclusion, that tax proceeding, as well as process, can be understood in broad and narrow sense.

Tax proceeding *in a broad sense* – is state-administrative activity of competent authorities on lawful collecting and transfer in budgets of taxes and dues. For example, *I.S. Kobeleva* understands tax proceeding as the fixed in the legislation on taxes and dues an order of activity of law enforcement bodies on calculation of taxes, on recovery of taxes, on updating of payment date of the tax, under the control of calculation and payment of taxes, as well as of tax legislation compliance as a whole, on bringing to responsibility of the persons who have commited the tax violation, and also on consideration of complaints to decisions and actions of tax authorities and their officials and removal on them of decisions[1].

However we believe that such understanding of tax proceeding mismatches the content of TCR. It separately regulates the – discharge of tax duty, tax control, and tax responsibility. Rules of procedure are not allocated by TCR in the in separate section or chapter. Besides TCR, tax relations are regulated by BCR, as well as the administrative, criminal, civil legislation. TCR in this connection abounds reference (blanket) rules of law. The understanding of tax proceeding in a broad sense is conformable with understanding of administrative process as any state-administrative activity[2].

Tax proceeding *in the narrow sense* – is the lawful procedure of turnover of cause on tax violation from the stage to stage. Such proceeding called as *jurisdictional* since it is reduced only to a procedure of application of sanctions of material rules of law. Tax proceeding in narrow (jurisdictional) sense conformably with understanding of administrative, civil, criminal process[3].

Studying of CRoAV, CCPR convinces that the legislator connects proceeding exclusively with committed violation, i.e. he understands proceeding in narrow (jurisdictional) sense. Therefore ***we will understand tax proceeding only in narrow (jurisdictional) sense.***

Besides, essential theoretical and practical significance has revelation of character of tax proceeding. Tax law is the financial law component as inter-branch legal institution, and therefore it contains the rules of tax law established not only the special financial and tax legislation, but also administrative, criminal, civil (item 2 of CCR) legislation. Hence, and *causes on tax violations can be on the character administrative, criminal, civil*.

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[1] Kobelev I.S. Non-property relations in a tax law: abstract of thesis…. PhD in jurisprudence. – Voronezh, 2010. – Pp. 14–15.

[2] Bahrah D.D., Renov E.N. Legal proceedings on administrative violations. – M.: KNOWLEDGE publishers, 1989. – P. 5.

[3] Kashanina T.V., Kashanin A.V. Bases of Russian law: the schoolbook for high schools. – M.: NORM-INFRA'M publishers, 1998. – P. 506-616; Kozlov Yu.M. Administrative law. – M.: JURIST publishers, 1999. – P. 180; Civil process / under the V.A. Musin`s, N.A. Chechina`s, D.M. Chechota`s editorship. – M.: PROSPECTUS publishers, I998. – P. 5; Criminal and procedure law / under the P.A. Lupinskaja`s editorship. – M.: JURIST publishers, 1999. – P. 13.

Therefore tax proceeding cannot be related only to any one branch process, for example, to the administrative process[1]. It can be realized by TCR (special administrative proceeding), CRoAV (general administrative proceeding); CCPR (criminal proceeding); CPCR (civil proceeding) or APCR (arbitration proceeding) depending on character of cause.

Subjects of tax proceeding are executive and judicial public authorities, and its *participants* – the any persons participating in the process on concrete cause on tax violation.

Tax proceeding is various, therefore in it is possible to emphasize the general and special stages.

GENERAL STAGES

1. Stage of detection (revealing) of a tax violation

The stage can be classified on static and dynamical stages.

Static phase – is activity of bodies of the financial and tax control under the analysis of the arriving information. At detection of violation attributes, depending on degree of public danger all materials go on jurisdiction – to tax either customs bodies, or other competent authorities. Besides, tax authorities in necessary cases have the right to make claims in court on recovery of the arrears, fine, penalties or formalize the actions by administrative or criminal case.

Dynamical phase – is complex and interrelation of operational search actions (OSA) and tax inspections. The OSA with reference to tax violations put into practice by bodies of the Ministry of Internal Affairs and customs bodies. FTS realize tax inspections as the form of tax control.

2. Stage of excitation and legal investigation on a tax violation

The excitation and legal investigation procedure depends on character of forming legal relations. Tax *fault* cause is initiated and investigated by legal norms of TCR or CRoAV, with involvement of the customs and civil legislation. Tax *crime* cause is initiated and investigated based on CCPR in connection with infringement of legal norms of CCRF.

Now we will be applied to TCR. Ground for bringing of the person to a liability of infringement of the legislation on taxes and dues is the fixing of the fact of fulfilment of the infringement by the decision of the tax authority which has come into force.

If the taxpayer in the lawful date under the payment request of the tax (due) has not paid in corpore arrears (which scale allows to assume the fact of fulfilment of the tax crime), as well as the corresponding fine and penalties, – tax authorities musts within 10 days from the date of revealing of mentioned circumstances to direct materials to internal affairs agencies for the solution of question on initiation of criminal case.

In this case the head (deputy head) of tax authority must to decide about suspension of discharge of the decision about *natural persons* bringing to responsibility for fulfilment of the tax violation and the decision about recovery of the tax (due), fine, penalty. At that the running of the time periods of the recovery provided by TCR, is suspended for suspension of execution of the decision about recovery of the tax (due), fine, and penalty.

[1] Dymchenko V.I. Russian tax law. The general part. – Mentioned writing. – P. 68; Kashanina T.V., Kashanin A.V. – Mentioned writing. – Pp. 531–543.

Copies the tax authority decisions in a lawful term are handed over by tax authority to the person, concerning which the decision is passed, or to his representative on receipt or are devolved by a different way testifying to date of their receiving. In case of direction of copy of the decision of tax authority by mail the registered letter considers date of its receiving is considered the sixth day from the date of sending. The internal affairs agencies which have received mentioned materials from tax authorities are obliged to direct to tax authorities the notice on results of consideration of these materials not later than the day, following by day of making of the conforming decision. The internal affairs agencies which have received from tax authorities mentioned materials are obliged in the lawful term to direct to tax authorities notices on results of consideration of these materials.

Specificity is observed at investigation of tax crimes on base of CCRF and CCPR. The good analysis of it is realized in S.V. Bazhanov's article[1].

According to the facts expounded in the article, heads of territorial tax authorities consider possibility of initiation of criminal cases on tax crimes as «administrative resource». In other words, tax authorities consider admissible direction of materials on tax violations in investigatory bodies on which there are no of decisions which have entered validity of arbitration courts, aspiring such by comprehensively to guarantee receipts of taxes and (or) dues in the budget. Therefore with the purpose the most effective documenting of illegal activity of deliberate defaulters of taxes and (or) dues to heads of law-enforcement and controlling bodies, necessary more effectively to organize interaction of the investigators, authorities to operate subdivisions of economic security and fight corruption of internal affairs agencies and employees of tax authorities.

3. Legal investigation stage on a tax violation ad rem with decision-making

The procedure of a legal investigation and formalization of result of such consideration also depend on character of cause. Cause about *tax fault* is considered in the procedure provided by TCR or CRoAV, with involvement of the civil and customs legislation. The result of consideration of case is formalized accordingly by the *decision* of tax, customs or judicial body.

Cause about *tax crime* is considered as criminal proceeding based on CCPR. The result of consideration of criminal case is formalized by the *court sentence*, by which is possible application of rules of civil law on recovery of the damages, arrears, fines. The court, as well as the investigator (with the consent of the head of investigatory body) has the right to discontinue criminal prosecution concerning the person suspected or accused of fulfilment of the tax crime if before fixing of judicial session the damage caused to budgetary system of the Russian Federation as the result of crime, is compensated comprehensively.

If following the results of consideration of materials (in the absence of compensation of tax indebtedness) the order about refusal to institute criminal case or the order about termination of criminal case, as well as if on conforming criminal case is taken out the judgment of acquittal, – the head (deputy head) of tax authority in the lawful date decides about tax proceeding renewal concerning these natural persons, about his bringing to responsibility for fulfilment of the tax violation and about recovery of the arrears, fine, penalty.

[1] Bazhanov S.V. Peculiarities of detection, solution and investigation of tax crimes // The Taxes (journal). – 2015. – № 5.

If action (inactivity) of the taxpayer (payer of due, tax agent) – the natural person which has formed the ground for his bringing to responsibility for fulfilment of the tax violation, became the ground for removal of the judgement of guilt concerning the natural persons, – the tax authority cancels the decision regarding bringing of the taxpayer (payer of due, tax agent) – the natural person to responsibility for fulfilment of the tax violation.

If the civil suit by administrative or criminal proceeding is left without consideration, – it after order or sentence coming into force can be considered exclusively by civil (arbitration) judicial proceeding.

SPECIAL STAGES

1. Stage of revision of cause on a tax violation

For example, there are revisions under the – complaint of payers, protest (recommendation) of procurator, the initiative of superior bodies, as supervision, on newly-discovered evidences.

2. Stage of execution of the decision (sentence) received on cause

The stage ensues if the total document is connected with necessity of fulfilment of executive or other active actions (for example, with recoveries of the sums of arrears, fine, penalties, losses).

In this case execution of executive documents has bailiffs based by FL «On execution proceeding».

As has underlined Constitutional Court of the Russian Federation, execution of judgment should be viewed as the element of judicial protection. At that the recoverer has the right to receiving of the help execution of judgments from the state, (i.e. in use of measures of compulsion to the debtor)[1].

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Chapter 7. APPEAL OF ACTS AND DEEDS OF TAX AUTHORITIES AND THEIR OFFICIALS

7.1. Appeal conception in tax sphere

RF Constitution in item 46 guarantees to everyone protection of his rights and liberties, including by a judicial recourse, as well as in interstate bodies on protection of rights and freedoms of the person if are settled all available national means of legal defence. This constitutional legal norm corresponds similar on sense – in item 8 of Universal Declarations of Human Rights and in item 2 of United Nations Covenants on Civil and Political Rights.

We in this connection recommend reading *A.V. Kosolapova's* article[1]. As the author of the article has fairly underlined, appeal possibility exists at the any form of the state.

Initially the complaint forms as attempt to achieve justice by the recourse to the person, having the power, and only in due course, in process of complication and legal order development, the complaint receives formal-legal fixing – in the form of rules of giving and complaint consideration, later – in the form of so-called «complaint right». In a general view the complaint – is discontent request expression concerning any objective circumstances or third person actions.

The effective legislation analysis has allowed the author of the article to allocate following *peculiarities of the complaint in its legal sense:*

First, the complaint has legally certain content. In the complaint, it is necessarily should contain the concrete requirement to the person to whom it is requested. Others lovami, the *complaint* (in our opinion) is a request of the any person for reinstatement or protection of his violated rights, liberties or legitimate interests. Thus, the complaint should include as the information element (i.e. message on infringement of rights and liberties), and strong-willed element (request).

Secondly, the complaint has a specific matter. Only actions can serve as occasion to the complaint, but not events (for example, the complaint to consequences of act of nature or other extreme situation will not be considered as the complaint in strict juridical sense).

Thirdly, the complaint goes to the concrete addressee. The common quality of addressees of the complaint is that they should have power authorization in relation to those persons, whose actions will be appealed.

Effectiveness of any legally significant action depends on that, how well are chosen legal measures. That is it is necessary individualize a correct type of the complaint.

In the wording, the complaint are classified on oral (verbal) and written (letter). However the contemporary legal system prefers the written (documentary) form. In such complaint are more precisely fixed the facts and the arguments stated by the

[1] Kosolapov A.V. Complaintas as a legal instruent: concept and kinds // The Volgograd University Vestnik. – Series 5. Jurisprudence. – 2011. – № 2 (15)

applicant that facilitates their legal evaluation by authoritative body. The written complaint supposes keeping during the date necessary for decision-making that allows repeatedly to be applied to its text.

On level of legal regulation it is possible to distinguish national and international legal complaints. Peculiarity of international legal complaints consists that they can be given only in strictly certain cases, in the presence of a specific matter or grounds (is more detailed about that read in corresponding parts of our schoolbook). International legal means more often are provided for those cases when the applicant is not satisfied by the decision of state agencies or when is violated the reasonable term of proceedings. At that the fact of consideration of the complaint in the international organization cannot be considered as infringement of the state sovereignty and principle of non-interference in domestic affairs of the states, as a normative ground of such procedure is the international treaty ratified by the states.

Depending on the receiver, it is possible to allocate the following types of complaints:

1. ***Administrative complaint*** – is the request in enforcement authorities or local self-government. The basic peculiarity of the complaint is the minimality of a processual regulation of its giving and consideration. At that the administrative complaint cannot go to the same body or to the same official whose actions will be appealed.

Therefore are possible following variants:

а) complaint in a superior body which is competent to change or cancel the complained decision;

б) complaint in independent regulatory and supervisory authority which has the right to inspect upon the complaint and to make the definitive or recommendatory solution

2. ***Complaint in prosecution authorities***.

On the one hand, prosecution authorities are removed for frameworks of all branches of the power and allocated by independence that ensures relatively independent consideration of the complaint. On the other hand, the public prosecutor`s office has no powers to make the final decision ad rem of cause. Thus, the complaint in prosecution authorities has the result only public prosecutor's reaction (preventions, protest, etc.) or judicial recourse.

3. ***Judicial complaint.***

Consideration of the judicial complaint is the matter of most detailed processual regulation, and the judicial decision represents the state-imperious act, obligatory for execution.

Among applicants the taxpayer has a special place.

Protection of rights of taxpayers – is the independent object of scientific researches[1].

The conception of a procedure of the appeal of acts and deeds of tax authorities and their officials contain in section 7 of TCR which has numerous sendings to the federal legislation. By virtue of complexities of the section we will try to expound the declared theme in own way.

[1] Bogdanov D.V. Revisited international legal essence of institution of protection of rights and legitimate interests of the taxpayer // The Financial Law (journal). – 2013. – № 2. – Pp. 41–44; Shestakova E.V. Protection of taxpayers' rights in view of administrative procedure changes // The Taxes (journal). – 2015. – № 5

SUBJECTS (APPLICANTS)

Appeal right have:

*Each payer of taxes or dues.

*Each tax agent.

OBJECTS OF THE APPEAL

*Normative and not normative international legal acts of tax authorities.

*Decisions and deeds (actions or inactivity) of tax authorities and (or) them officials.

MOTIVE of the APPEAL – is opinion of the subject on infringement of his rights.

APPEAL FORM – is written.

APPEAL PROCEDURE – is extrajudicial and judicial.

In the *pre-judicial procedure* (it is now obligatory) in superior tax authority or to the superior official will be appealed any (even normative) acts of tax authorities, actions or inactivity of their officials.

At that the legislator has has entered in TCR (item 138 of TCR) such type of the complaint as the *appellate appeal* which matter is the appeal not come into force tax authority decision about bringing to responsibility for fulfilment of the tax violation, or decision about refusal in bringing to responsibility for fulfilment of the tax violation which have been taken out according to the item 101 of TCR, if (according to this person) the complained decision breaks his rights. The extrajudicial appeal allows to detect a legal proposition of tax authority and qualitatively to be prepared for the judicial appeal, or to be refused from the judicial appeal. If the request can be considered ad rem exclusively court, pre-judicial body must to explain it to the applicant.

In a judicial procedure will be appealed any acts, decisions and deeds of tax authorities and their officials. *By court* requests considers by rules of *jurisdiction and competence.*

The legislator in item 138 of TCR has specified what to be applied in court it is necessary according to the procedural legislation of RF. Hence, jurisdiction to arbitration courts or general jurisdiction courts is fixed by TCR and other federal legislation, including CRoAV, APCR, CPCR, and CCPR.

According to APCR, *arbitration court* are subordinated all causes on economic disputes, including the causes connected with realization of entrepreneurial and other economic activities, including forming from public legal relations. On them are filed applications which are considered on general action proceedings rules if other is not provided by the federal law.

In other cases such applications (complaint) are considered in general jurisdiction courts based on CACPR, regulating proceeding on the causes forming from public legal relations to which are related to including financial and tax legal relations.

However at that applications (complaint) on causes about tax violations are considered based on TCR or CRoAV depending on a type of such violation. Other owls, on causes about tax violations CACPR does not apply.

In any case the court recognizes – statutory acts inofficious, not normative – void, and decisions and deeds – illegal. At that the court obliges guilty to eliminate comprehensively infringement of rights and liberties of the citizen or obstacle to realization by the citizen of his rights and liberties.

As the applicant should independently fix the dispute type (economic or not), – in practice we observe numerous conflicts concerning jurisdiction. For elimination of contradictions between procedure laws are enacted the rulings of the supreme courts of RF. But it is system this problem it has started to be resolved only in 2013 by ***judicial reform***[1].

Essence of judicial reform: Supreme Arbitration Court of the Russian Federation is abrogated, and its functions are devolved to Supreme Court of the Russian Federation. The primary structure of new Supreme Court of the Russian Federation is generated by Special qualifying board. Place of permanent residence of the Supreme Court is St.-Petersburg. The representative office of the Supreme Court settles down in Moscow.

The general problem of TCR is absence of legal norms (even reference) about the procedure of appeal of acts and deeds in connection with *tax crimes*, as well as about the appeal of the normative legal acts regulating tax relations, in Constitutional Court of the Russian Federation based on item 125 of Constitution of the Russian Federation. TCR does not mention and European Court of Human Rights.

Despite it, Constitution of the Russian Federation as the normative legal act, having the highest legal effect, *allows* to protect rights and legitimate interests of taxpayers (and other persons) in Constitutional Court of the Russian Federation and European Court of Human Rights.

7.2. Extrajudicial appeal

Extrajudicial appeal is the appeal of acts and deeds of tax authorities and their officials without a judicial recourse.

Extrajudicial (pre-judicial) regulation of tax disputes (extrajudicial tax audit) – is constant object of scientific researches, including on an example of the foreign states. About that and many other things have in detail and interestingly written Kazachkova Z.M., Letavina E.A., Luparev E.B.[2] and others.

As tax legal relations are in many respects administrative, we will initially consider administrative and law aspect of the problem. The domestic system of extrajudicial contest of administrative acts (consideration of administrative-law disputes) is based on item 33 of Constitution of the Russian Federation, (which provides the right to be applied personally, as well as to direct individual and collective requestes) to state bodies and local governments), and on item 19 of Universal Declaration of Human Rights and United Nations Covenant on Civil and Political Rights.

In most general view, the procedure of the extrajudicial appeal is provided by FL-59 from 5/2/2006 «On the procedure of consideration of requests of citizens of the

[1] On Supreme Court of the Russian Federation and public prosecutor`s office of the Russian Federation: law of the Russian Federation from November 27, 2013 // Rossiiskaya Gazeta. – 2013. – On December 4; On Supreme Court of the Russian Federation: federal constitutional law of the Russian Federation from February 5, 2014 № 3 // Rossiiskaya Gazeta. – 2014. – On February 7.

[2] Kazachkova Z.M., Letavina E.A. Extrajudicial procedure of adjustment of tax disputes // The Administrative Law and Process (journal). – 2014. – № 5; Luparev E.B. Several problematic issues of extrajudicial contest of the state administrative acts // The Administrative Law and Process (journal). – 2015. – № 9.

Russian Federation». According to the FL, citizens have the right personally to be applied, as well as to direct individual and collective requests (including requests of associations of citizens, including legal persons), in state bodies, local governments and to their officials, in state both municipal authorities and other organizations, (to which is assigned realization of publicly significant functions), and to their officials.

It is supposed the request in the electronic form. The information on the procedure of direction of requests is placed on official sites of Ministry of Internal Affairs of the Russian Federation and General Prosecutor's Office of the Russian Federation to addresses – www.mvd.ru and www.genproc.gov.ru. For specifying of the Justice of the Peace and court, citizens of the Russian Federation can use the State automated system of the Russian Federation «Justice» to the address – www.sudrf.ru. If it is question monopoly actions, it is necessary to be applied in Federal Antitrust Service to the address – www.fas.gov.ru.

Request is directed to state body, local government or to the official (in writing or in the form of the electronic document) the offer, application or the complaint, as well as the oral request of the citizen in state body, local government. At that the ***complaint*** is the request of the citizen for reinstatement or protection of his violated rights, liberties or legitimate interests or rights, freedoms or legitimate interests of other persons.

Citizens realize the right on the request freely and voluntary. However at that right realization on the request should not break rights and liberties of other persons. Consideration of requests of citizens is realized free of charge. Prosecution of the citizen for such request is forbidden.

By request consideration, it is not supposed disclosure of the data containing in request, as well as the data, concerning the private life of the citizen, without his consent.

The citizen in the written request necessarily designates to the state body or local government appellation (to which directs this request), or the surname (i.e. family name), name, patronymic of the conforming official, or the official capacity of the conforming person, as well as own the surname (family name), name, patronymic, post address (on which should be directed the answer), notice on request readdressing. Besides, he – expounds to the essence of the offer, application or complaint, puts the personal signature and date. In case of need, with the purpose of acknowledgement of the arguments the citizen appends to the written request documents and materials or their copies.

The written request liable obligatory registration and consideration. The answer to the request subscribes the head of state body or local government, and the person official or representative for that.

Personal reception of citizens is realized in state bodies, local governments by their heads and representatives on that persons. At personal reception, the citizen shows the identity paper. The oral address content is brought in the card of personal reception of the citizen. The answer (depending on the request content) can be given orally during personal reception (about than is made entry in the card of personal reception of the citizen), or in writing. The written request received during personal reception, liable legally to registration and consideration.

If in the any lawful request contain the questions which solution is not included into the competence of the state body, local government or the official contain, – to the citizen should be proposed the explanation where and in what procedure he should be applied. In this connection, *if the taxpayer does not know,* to whom to be applied –

he can direct the request to any authority (official), which must to forward the address on jurisdiction.

Essential peculiarity of extrajudicial contest is possibility of contest of any actions and inactivity of the subjects allocated with publicly significant functions, except for those actions and inactivity for which consideration is established the specific processual procedure (for example, for judicial acts).

There are also special administrative procedures:

1) Item 139 of TCR establishes the general annual period of the appeal from the date of when the person has learnt or should learn about infringement of the rights. For the appellate appeal it is fixed the trimonthly term;

2) Item 49 of Federal law «On customs regulation» has fixed the minimum special date of consideration of administrative-law dispute for the simplified grievance procedure – i.e. 3 hours;

3) And so on.

In all cases there is a lawful possibility of motivated restoration of the missed time limit.

Now we will return to tax law. According to TCR:

Bodies of consideration of complaints are:

*Superior tax authority.

*Superior official of tax authority.

Periods for filing complaint:

*General – not later than three months from the date of when the payer has learnt or should learn about infringement of the rights.

*Special – other terms provided by some legal norms of TCR.

The term defaulted on a good reason, can be restored by body of consideration of the complaint under the motivated application of the payer.

The *complaint form* (unlike a judicial procedure) is a complaint, with the appendix of its copy and all proving it documents. The complaint is handed over to the receiver against signature on its duplicate copy, or goes by registered letter with the notice.

The applicant has the right in writing to withdraw the complaint, with preservation of the right repeatedly of its filing on the same grounds in the same body.

The complaint can be directed and in the *electronic form* on telecommunication communication channels or by a private office of the taxpayer. Such electronic appeal is provided by TCR, CRoAV or CACPR (depending on its jurisdiction), as well as by the decree of Supreme Court of the Russian Federation[1]

By results of complaint consideration is taken out one of following decisions:

*Abandonment of the complaint.

*Revocation of the complained act and fixing of additional inspection or consideration.

*Revocation of the complained act and termination of proceedings in case about the tax violation.

*Alteration of the complained act or removal of the new decision if status of the applicant at that does not worsen.

[1] Filing procedure in Supreme Court of the Russian Federation of documents in electronic form, including in the form of the electronic document: decree of the Chairperson of Supreme Court of the Russian Federation from November 29, 2016 № 46 [Electronic resources] // URL: http://www.vsrf.ru.

On a *general rule*, filing complaint in superior tax authority does not suspend execution of the complained act and (or) tax authority actions. However in case of the appeal of the coming into force decision on bringing to responsibility for fulfilment of a tax violation, or decision on refusal in bringing to responsibility for fulfilment of a tax violation before decision-making under the complaint – execution of the complained decision can be suspended under the application of the person made this complaint, with appendix to the application of a *bank guarantee.*

7.3. Appeal in court

Constitution of the Russian Federation (item 46) guarantees to everyone judicial protection of his rights and liberties. The right on judicial protection is related to basic rights and liberties of the person, it is recognized and guaranteed in the Russian Federation according to the conventional principles and international legal norms and according to Constitution of the Russian Federation, and does not liable to restriction (items 17, 56 of Constitution of the Russian Federation).

As repeatedly specified Constitutional Court of the Russian Federation[1], the right assumes having of such concrete legal guarantees which allow comprehensively to realize it and to ensure effective restoration of rights by of the justice, corresponding to justice and equality legal requirements.

According to item 118 of Constitution of the Russian Federation, justice in Russia is realized only by court by means of constitutional, civil, administrative and criminal proceeding. That is, the court possesses exclusive authority to enact final decisions in issue in law, *including on the causes forming from tax legal relations*, that, in turn, signifies inadmissibility of overcoming of the decision taken out by court by means of the jurisdictional act of administrative body.

The right on judicial protection is not only a right on judicial recourse, but also possibility of receiving of real judicial protection in the form of restoration of violated rights and liberties.

One of the important factors fixing effectiveness of restoration of violated rights is *timeliness of protection of rights* of persons participating in cause.

It signifies, that fixed by federal legislator institutional and procedural stipulations of realization of procedural rights should meet the requirements of processual effectiveness and economy in use of judicial remedies and by that to ensure justice of a judicial decision, – without what is unattainable the balance of public-law and private-law interests[2].

According to the legal proposition of Constitutional Court of the Russian Federation[3], possibility of overcoming of entered validity peremptory judicial acts assumes an establishing of such specific procedural stipulations of their revision,

[1] Rulings of Constitutional Court of the Russian Federation – from July 14, 2005 № 9; from December 26, 2005 № 14 and from March 25, 2008 № 6 [Electronic resources] // http://www.pravo.gov.ru.

[2] On case of constitutionality test of point 1 of part 4 of item 2 of Federal constitutional law «On Supreme Court of the Russian Federation» and paragraph 3 of subparagraph 1 of point 1 of item 342 of Tax Code of the Russian Federation in connection with the complaint of Open joint-stock society «Gazprom oil»: ruling of Constitutional Court of the Russian Federation from March 31, 2015 № 6 [Electronic resources] // http://www.pravo.gov.ru.

[3] Rulings of Constitutional Court of the Russian Federation – from May 11, 2005 № 5; from February 5, 2007 № 2 [Electronic resources] // http://www.pravo.gov.ru.

which would meet requirements of legal certainty, ensured by recognition of legal force judicial decisions and their cogency[1].

Tax Code of the Russian Federation contains blanket rule (item 142), according to which complaints (statements of claim) to acts of tax authorities, actions or inactivity of their officials, brought an action, are considered and concluded in the procedure established by the civil procedural and arbitration procedural legislation, legislation on administrative judicial proceeding and other federal laws. The item content has incorrect character. Sending to other federal laws is unsuccessful, as the complaints filed in Constitutional Court of the Russian Federation, considered and concluded based on the federal *constitutional* law. Activity of European Court of Human Rights is regulated by the *Convention*, instead of laws of the Russian Federation. In such situation, the taxpayer should refer to Constitution of the Russian Federation, which should be directly used.

From all above-stated follows, that ***judicial procedure of the appeal depends on the legal act regulating proceeding in the concrete type of court.*** At that to payer and to tax authority it is necessary for to consider, that process of the appeal of acts is not finished by consideration of a legal statement of the first instance.

Probably further appeal in superior judicial instances any objects of the appeal, including judicial acts of subordinate judicial instances concerning the objects, as well as the laws, based on which worked tax authorities and their officials. Operating thus, the interested person uses all complex of lawful methods (ways) of protection of the rights. Russian procedural legislation supposes in the *electronic form* the appeal and formalization of processual documents (i.e. the complaints, statements of claim, petitions, determinations, decisions etc.) – but it is with obligatory use of an *electronic signature*.

Now, we will consider concrete schemes of protection of rights and interests of the payer depending on a court type.

SCHEME OF PROTECTION OF RIGHTS OF PAYERS IN THE ARBITRATION COURTS SYSTEM

Arbitration courts consider applications of payers based on legal norms of TCR, CRoAV and APCR. Determinations and rulings of arbitration courts will be appealed by item 188 of APCR, as well as according to other items of APCR to which it is question rulings and determinations of a concrete type. We give the basic attention to the appeal of the acts adjudging ad rem, i.e. decisions.

At that the scheme of protection of rights of payers the following:

*Filing of a conforming matter in court of first instance. As a rule, it is arbitration court of the Subject of the Russian Federation. But court of first instance can be and the supreme court according to jurisdiction of dispute.

*Filing of the appellate appeal to the decision of arbitration court of first instance not entered legal force. The appellate appeal is filed by arbitration court made the decision in the first instance, which must to direct it together with cause to conforming arbitration court of cassation within three days from the date of complaint receipt in court.

In the appellate appeal cannot be declared new requirements which were not a consideration matter in the arbitration court of first instance. In appeals instance *cause*

[1] Ruling of Constitutional Court of the Russian Federation from March 17, 2009 № 5 [Electronic resources] // http://www.pravo.gov.ru.

is considered a new ad rem. Continuous time the appeals instance was at court of first instance. Now are formed arbitration appeals courts. For example, Fifth Arbitration Appeals Court settles down in Vladivostok and realizes test of the judicial acts enacted by arbitration courts of Kamchatka Krai, Primorsky Krai, and Sakhalin oblast.

*Cassation filing in arbitration courts of districts (arbitration courts of cassation) on the decision of arbitration court of the first instance which has entered legal force – if such decision was a consideration matter in arbitration court of appeals instance or if the appeals instance arbitration court has disallowed in restoration of the missed time limit of filing of the appellate appeal (except for decisions of Supreme Arbitration Court of the Russian Federation and rulings of arbitration court of appeals instance). As a rule, the location of court of cassation coincides with the centre of federal executive district. For example, the centre of Far Eastern federal district is the city Khabarovsk.

*Supervisory appeal filing on the judicial acts of arbitration courts in the Supreme Court of the Russian Federation which have entered legal force, under applications of the persons participating in a case, and other lawful persons, and on the causes designated in APCR – on recommendation of procurator.

In cassational and supervisory proceeding, matters of cause are investigated without the right of anew ad rem consideration.

SCHEMES OF PROTECTION OF RIGHTS OF PAYERS IN SYSTEM OF GENERAL JURISDICTION COURTS

Determinations and rulings of courts of the general jurisdiction will be appealed according to items of CRoAV, CACPR, and CCPR, in which it is question rulings and determinations of the concrete type. We give the basic attention to the appeal of the acts adjudging ad rem, i.e. solutions or sentences.

At that we pay attention to following circumstance – in appeals instance cause is considered anew, but ***without the right of alteration of the matter and causes of action*.** Such scheme has reduced the appeal in similarity of the cassational appeal, has distorted the idea of appeal judicial proceeding stated in the Message of President of the Russian Federation to Federal Assembly of the Russian Federation from November 12, 2009. In our opinion, such appeals instance is necessary to nobody.

Justices of the Peace

Justices of the Peace related to courts of Subjects of the Russian Federation and are judges of the general jurisdiction.

CACPR on Justices of the Peace does not extend. In TCR and CPCR there are no direct instructions on possibility of consideration *of tax* dispute by the Justice of the Peace. However in practice is used item 23 of CPCR according to which Justices of the Peace consider disputes if they have property character at the amount in value of suit no more than 50 000 rubles.

At that in the item is noticed, that by the federal laws to competence of Justices of the Peace can be related to and other matters. So, Justice of the Peace considers *applications for writ petition under requirements on recovery of obligatory payments and sanctions in the procedure established by chapter 11.1 of CACPR.* Supreme Court of the Russian Federation has in more details analyzed issues of use of CACPR. In particular, it has emphasized that the recoverer in this case is the person into which account liable to transfer to the recovered obligatory payments and sanctions according to budgetary and other legislation. It can be the Federal Treasury account.

At that do not liable to consideration by CACPR economic disputes and another matters which are connected with realization of entrepreneurial and other economic activities and are related by the law to the competence of arbitration courts[1]. At non-property character of claims (i.e. deed recognition illegal etc., compensation of moral harm) tax dispute discusses federal court.

If tax dispute within the jurisdiction to the Justice of the Peace, protection of rights of payers, irrespective of character of cause, is realized under the following general scheme:

*Filing of a conforming matter to the Justice of the Peace.

*Appellate appeal filing on not come into force act of the Justice of the Peace in regional federal court of the general jurisdiction (which is appeal for Justices of the Peace) – by the judicial site in which case was considered.

At that according to the *legal proposition the Constitutional Court of the Russian Federation*, appeals instance court is competent to cancel the decision of the Justice of the Peace which has considered case for lack of someone from a person's participating in a case both not notified on the time and place of judicial session, or has resolved a question on rights and on duties of the persons who have been not got to take part in cause, – and to direct cause to the Justice of the Peace on new trial[2].

*Cassation filing on the previous judicial acts comes into force, in presidium of krai (oblast, republican) court.

*Cassation filing in the Supreme Court of the Russian Federation.

*The supervisory appeal of acts of the Justice of the Peace is not provided by the Russian legislation.

Federal courts of the general jurisdiction

In federal courts of the general jurisdiction tax disputes are considered with participation of payers of the taxes (dues), not related to jurisdiction of arbitration courts, as well as criminal cases on the tax crimes, which subjects are any personable natural persons, including individual businesspersons.

The procedure of their consideration (depending on character of the formed legal relations) is fixed by CPCR or CACPR, or by CCPR. *In civil proceeding,* payers are applicants or respondents (if with the application was applied the tax authority). *In criminal judicial proceeding,* natural persons on tax criminal cases are the suspects, accused, defendants – to whom can be presented the civil suit about recovery of the arrears and fine on tax debts.

The sheer fact of bringing to the civil or criminal responsibility, as well as the acts connected with it and deeds of tax authorities, bodies of the Ministry of Internal Affairs of the Russian Federation, customs bodies, – the payer has the right to believe illegal and to appeal in the statutory procedure.

Protection of rights of the payer in civil proceeding has specificity and is realized based on CPCR (as concerns a tax violation) or by CACPR (as concerns consideration of other public dispute) under the scheme:

*Filing of the conforming matter in court of first instance.

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[1] On several issues of use by courts of Code of Administrative Court Procedure of the Russian Federation: ruling of Plenum of Supreme Court of the Russian Federation from September 27, 2016 № 36 [Electronic resources] // URL: http://www.vsrf.ru.

[2] Ruling of Constitutional Court of the Russian Federation from April 21, 2010 № 10 // Rossiiskaya Gazeta. – 2010. – On May 14.

*Filing (by court of first instance) the appellate appeal on the decisions of courts of first instance which have not entered legal force.

*Cassation filing on judicial rulings entered legal force.

*Filing directly in Supreme Court of the Russian Federation.

PROCEDURE OF APPEAL OF ACTS AND (OR) DEEDS, AS WELL AS JUDICIAL ACTS ON CRIMINAL CASES

We do not analyze the procedure of the appeal of the causes considered by a jury since such court is not considered causes on tax crimes.

Procedure of appeal of acts and (or) deeds, as well as judicial acts on criminal cases is fixed by ccpr and realized under the scheme:

*Filing of the conforming matter in court of first instance.

*Filing (by court of first instance) the appellate appeal on acts of courts of the first instance.

*Cassational appeal. At that is supposed revision of the sentence, determination, ruling of a court on the grounds attracting deterioration of situation of a condemned or justified person, as well as of a person concerning which criminal case is stopped, – in time, not exceeding one year from the date of their entry in legal force, if during judicial proceeding have been allowed violations of a law affected the outcome of the case, tampering an essence of justice and sense of a judicial decision as administered justice.

*Supervisory appeal filing in Presidium of Supreme Court of the Russian Federation. In legal concerns, Presidium of Supreme Court of the Russian Federation has the right to go beyond arguments of the supervisory appeal (recommendation of procurator) and to consider criminal case comprehensively, including concerning persons who have not appealed judicial decisions as supervision.

To any cassational and the supervisory appeal (on criminal or not criminal case) is necessary to append the authenticated copies of judicial acts of all previous judicial instances.

SCHEME OF THE APPEAL OF ACTS AND DEEDS OF BAILIFFS

If the court act, or the ruling of administrative body have entered legal force and are not suspended by supervisory instance, – they are executed by bailiffs according to FL of the Russian Federation «On execution proceeding». However in this case acts and deeds of tax authorities (their officials) will be appealed not directly, and mediately, i.e. by appeal of acts and deeds of the bailiffs executing the rulings of tax authorities and judicial acts, come into force and not suspended.

At filing of the conforming complaint it is necessary to observe the following rules of competence established by item 121 of FL «On execution proceeding»:

1. If execution of the act of arbitration court is appealed, – the complaint is filed in arbitration court at the place of locations of the judicial bailiff-executor.

2. Otherwise, the complaint to acts and deeds of bailiffs are filed in a court of the general jurisdiction at the place of executions of the executive document.

On the judicial act enacted ad rem of the complaint, are filed complaints in the subsequent judicial instances according to schemes of protection of rights of payers in system of arbitration courts or general jurisdiction courts.

Besides earlier expounded methods, payers (irrespective of character of cause) have a possibility of protection of the rights and interests by institution of revision of the judicial acts come into force in view of the new or again initiated facts.

SCHEME OF REVISION OF JUDICIAL ACTS ON CAUSES, NOT RELATED TO THE CRIMINAL

Revision on new circumstances of judicial acts on the causes which are not related to criminal is regulated by APCR, CACPR or CPCR[1] depending on character of cause.

In any case the scheme of such revision has the general points:

*Filing by the interested person of the application for revision of the judicial act in the court which has taken out the challenged judicial act.

*Application consideration in judicial session with the notice of all participants of process.

*Determination removal ad rem the applications.

Determination about refusal in revision of the judicial act, determination about redress of the application for revision, as well as any judicial acts in connection with revision can be appealed based on item 46 of RF Constitution under appeal schemes in system of arbitration courts or courts of the general jurisdiction, even if such appeal is not provided by the conforming procedural law. At that general jurisdiction courts have not the right to disallow in consideration of private complaints to determinations of courts of first instance about redress of applications for revision of judicial rulings on again initiated facts[2].

SCHEME OF REVISION OF JUDICIAL ACTS ON THE CRIMINAL TO CAUSES ABOUT TAX (AND OTHERS) CRIMES

Revision of the judicial acts on criminal cases comes into force in view of the new or again initiated facts are regulated by CCPR in the following *procedure*:

*Occasion to revision is messages of citizens and officials, as well as the data received during preliminary investigation and judicial consideration of other criminal cases.

*In the presence of again initiated or new facts, only the procurator has the right to initiate proceeding on revision. During such proceeding are realized the any necessary procedural actions, provided by CCPR.

*By results of proceeding the procurator formalizes a conclusion about necessity of renewal of proceeding on criminal case. The conclusion procurator directs to the court which has taken out the challenged judicial act.

*Court considers the conclusion ad rem in judicial session with participation of all participants of process. By results of consideration the court decides about abrogation of the sentence (other act) or about deviation of the conclusion of the procurator. The any decision of court on the conclusion of the procurator will be appealed under the appeal scheme in general jurisdiction courts.

In practice are possible situations, at which the application of the payer is considered in exact conformity with the law (the statutory act, not conflicting to the law), and acts and deeds of tax authorities or their officials also are based on the spirit

[1] On application of legal norms of Civil Procedure Code of the Russian Federation at consideration by courts of applications, recommendations about revision on again initiated or new facts of the judicial rulings which have entered legal force: ruling of Plenum of Supreme Court of the Russian Federation from December 11, 2012 № 31 // Rossiiskaya Gazeta. – 2012. – On December 21.

[2] Ruling of Constitutional Court of the Russian Federation from March 19? 2010 № 7 [Electronic resources] // http://www.pravo.gov.ru.

and letter of the law. In such situation protection of rights of payers as administrative, civil, arbitration, criminal proceeding is inefficient; the general schemes of the appeal finally will not result to desirable result. *Therefore the taxpayer (and not only he, and the any person) has the right to use the constitutional judicial proceeding.*

PROTECTION OF RIGHTS OF PAYERS IN CONSTITUTIONAL COURT OF THE RUSSIAN FEDERATION

Problems of the constitutional protection of taxpayers are invariable object of scientific researches[1]. We will adhere to own position. Let's underline: in Constitutional Court of the Russian Federation are appealed not acts and deeds of tax authorities (their officials) and courts and those legal acts, based on which tax authorities (officials) and judges enacted the acts, realized actions, and supposed inactivity. Thus, in this case it is a question of the *mediated appeal* of acts and deeds of tax authorities and their officials.

The constitutional judicial proceeding is regulated by Constitution of the Russian Federation (item 125) and FCL «On Constitutional Court of the Russian Federation».

Objects of the appeal in Constitutional Court of the Russian Federation are:

*Federal laws (in this term also enter FCL).

*Statutory acts of President of the Russian Federation, Federation Council, State Duma and Government of the Russian Federation.

*Constitutions or charters of Subjects of the Russian Federation.

*Laws and other statutory acts of subjects РФ if they are published concerning competence of the Russian Federation or joint competence of the Russian Federation and its Subjects.

*Agreements between Russian Federation and its Subjects or agreements between Subjects of the Russian Federation.

*International treaties of the Russian Federation which have not come into force.

At that (as has designated Constitutional Court of the Russian Federation in the ruling from 3/21/2007 № 3) from items 118, 120 and 125-128 of Constitution of the Russian Federation follow the requirement about the settlement as the constitutional judicial proceeding of all disputes which are the constitutional by the juridical nature and significance.

Ground to consideration of a case is uncertainty of in conformity to Constitution of the Russian Federation of the abovementioned legal acts. *Occasion to consideration of a case* in Constitutional Court of the Russian Federation is the request in the form of inquiry, petition or complaints, corresponding to legal requirements.

Inquiries file the state authority supreme bodies.

Petitions file other authorities.

Complaints file legal persons and citizens.

The *result* of consideration of the request is ad rem formalized by the ruling.

Otherwise, Constitutional Court of the Russian Federation takes out determinations in which sendings to already enacted rulings of Constitutional Court of the Russian Federation contain.

Acts the Constitutional Court of the Russian Federation and the legal proposition have obligatory character, are peremptory, do not subject to the appeal, come into

[1] Popov V.V. Protection of rights of the taxpayer by the constitutional judicial proceeding // The Financial Law (journal). – 2011. – № 10.

force immediately after declaration, directly operate, do not require acknowledgement by other bodies and persons.

Legal acts or its legal norms declared void (i.e. mismatching to Constitution of the Russian Federation) expire; international treaties not coming into force do not subject to putting into operation and execution. Decisions of the courts or other bodies and persons, based on unconstitutional legal norms, do not subject to execution and should be reconsidered in the cases fixed by federal laws.

Constitution of the Russian Federation is directly used, if the recognition of the legal act the unconstitutional has formed the loophole in international legal regulation. The loophole can be piece out the by Ukase of President of the Russian Federation as he is the warrantor of the Constitution of the Russian Federation and the head of the state.

In practice is possible to use one more possibility of the appeal – in the international judicial institutions.

PROTECTION OF RIGHTS OF PAYERS IN THE EUROPEAN COURT OF HUMAN RIGHTS IN STRASBOURG (FRANCE)

Use of European Court of Human Rights (ECHR) is an example of realization of part 4 of item 15 of Constitution of the Russian Federation. About ECHR activity are written many works[1].

At once we will make a reservation that judicial precedent is not a source of Russian law. Therefore the acts of European Court based on precedent, can be executed by Russia if they do not contradict to the Constitution of the Russian Federation, federal laws and national interests of Russia. European Court of Human Rights was form based on Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on November 4, 1950 and put into operation by protocol № 11 «On reorganization of the control mechanism formed according to the Convention». The protocol is the Convention integral part.

The official address of European Court of Human Rights is:

The Registrar
European Court of Human Rights
Council of Europe
F – 67075 Strasbourg-Cedex
Tel: 33 (0)3 88 41 20 18
Fax: 33 (0)3 88 41 27 30
Internet: Http://www.echr.coe.int

[1] Abdrashitova V.Z. Precedential character of decisions of European Court of Human Rights // The Journal of Russian Law. – 2007. – № 9;

Afanasev D.V. Filing complaint in European Court of Human Rights (book 1). – M.: STATUTE publishers, 2012;

Glotov S.A, Petrenko E.G. Human rights and their protection in the European Court. – Krasnodar: SOUTH publishers, 2002;

Kovler A.I. International law problems in decisions of ECHR (international legal personality of the individual and immunity of the state) // The Russian Year-book of International Law (journal). – 2003;

Churov V. E, Grishin of M.V, Ermakova E.L., Sitnikova A.V. On the legal personality and legal objectivity of European Court of Human Rights // The Journal of Russian Law. – 2011. – № 4.

The court can take up the case only after exhaustion of all internal protection frames corresponding to generally recognize international legal norms, and considers case within six months from the moment of final decision making by the national authorities.

Individual complaints have the right to file any natural persons, non-governmental organizations, or any groups of private persons which insist that they are victims of infringement of the conforming state.

With reference to tax disputes, the applicant can use following legal norms of the Convention:

*Each person has the right to a freedom and inviolability of person. Nobody can be deprived of freedom differently, as in the cases and in the procedure fixed by the Convention and the law.

*Nobody can be deprived the property, except as in interests of a society and on the stipulations provided by the law and general principles of international law.

The legal norms do not strike at the state right to ensure realization of the laws, necessary for control of property use according to common interests or for ensuring of payment of taxes or other dues or penalties (item 1 of Protocol № 1).

That is, taxpayers cannot challenge the right of the state – to put into operation lawful taxes and dues; to recover it (and penalties in connection with non-payment) by a lawful method; to limit the right on a freedom and inviolability of person from connection with fulfilment of a tax violation.

The taxpayer has the right to appeal deeds and acts of tax authorities and their officials, by which are illegally violated the rights and liberties of payers guaranteed by the Convention, as well as Constitution of the Russian Federation and the federal laws. *Examples of such illegal actions*: the payer has forced to pay the tax (due) which has been not provided by the law and he could not defend the rights in Russia; to the payer have disallowed in adoption by court of the complaint on acts and deeds of tax authorities (their officials) and he could not achieve judicial consideration of the complaint in Russian Federation; the payer illegally held in custody, and he could not to corroborate illegality of such actions in the period established by the Russian laws and to achieve the indemnification of losses, etc.

Hence, the *respondent in the European Court is* not the tax authority or his official, and the Russia as state, which was not able to guarantee rights and liberties of an individual and a citizen in Russian Federation in connection with his taxation.

The fixing by Court in its decision of the fact of infringement of items of the Convention obliges the state-respondent to take conforming measures on realization of the judicial decision, as well as induces the state to amend in legal acts or in judiciary practice.

If the European Court puts into practice not politically loaded and objective activity, – the states including Russia began more for compliance show to consideration of rights and liberties of the person and the citizen in Russian Federation and to improve in this connection the national legislation. In more details activity of European Court of Human Rights is studied in an International law course.

PROBLEMS OF PARTICIPATION OF RUSSIA IN WORK OF THE EUROPEAN COURT

In the contemporary history, ECHR even more often bases the decisions not on international legal norms and precedent (though it is the duty of ECHR), and

according to a political conjuncture, from ostentatiously antirussian positions[1]. Each decision of the European Court is not only juridical, but also the political act. When such decisions are enacted for the good of protection rights and liberties of citizens and development of our country, Russia always will strictly observe them. But when decisions of the Strasbourg Court are doubtful from the point of view of an essence of the European convention on human rights and in the direct image mention the national sovereignty, basic constitutional principles, Russia has the right to develop the protective mechanism from such decisions.

Constitutional Court of the Russian Federation has in this connection decided: the decision of the authorized interstate body, including the ruling of European Court of Human Rights, cannot be executed by the Russian Federation, if interpretation of rule on which this decision is based, violates conforming legal norms of Constitution of the Russian Federation[2]. In this connection FCL on Constitutional Court of the Russian Federation has been added by chapter XIII.1 (Disposal of legal proceeding about possibility of execution of decisions of interstate body on protection rights and liberties of the person), according to which the Constitutional Court of the Russian Federation has acquired the right to resolve the question on possibility of execution of the decision of an interstate body on protection rights and liberties of the person from the point of view of foundations of the constitutional system of the Russian Federation and the international legal regulation of rights and liberties of the person and the citizen established by the Constitution of the Russian Federation[3].

Hence, jurisdictional immunities of the foreign state and its property can be limited based on the reciprocity principle. So, the foreign state in lawful cases does not use in Russian Federation judicial immunity concerning disputes on right on property, on harm compensation, etc. [4]

Summing up, it is possible to come to a general conclusion, that both the taxpayer, and at tax authority (his official) formally has much possibilities to protect the rights and interests in court. On the one hand, having of such lawful possibilities increases security from arbitrariness, and with another – generates every possible abusings. The person even under condition of his full correctness, never can to consider tax (or other) dispute finished.

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[3] Federal constitutional law of the Russian Federation from December 14, 2015 № 7 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] On jurisdictional immunities of the foreign state and property of the foreign state in the Russian Federation: federal law of the Russian Federation from November 3, 2015 № 297 // Rossiiskaya Gazeta. – 2015. – On November 6.

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ESPECIAL PART

Section I. SYSTEM OF DIRECT TAXES

Chapter 8. TAXES ON INCOME

8.1. Conception of taxes on income

Explanatory dictionaries and encyclopedias define income differently. For example, there are the – money or material assets received from industrial, commercial or other activity[1].

Main sources of income

1. Natural resources (lands, woods, waters, and other minerals). The user pays for use by natural resources to the proprietor such form of the income as the *rent*.

2. Intellectual and physical labour. The income received from labour is formalized in the form of wages, fee, awards etc.

3. Capital – is basic (fixed) assets. If the capital is money the *loan interest* is capital from such income. If the capital has the property form, in this case there will be an income on the property.

4. Business; the income from it remains in disposal of the businessperson after necessary payments. This income is compensation for industrial engineering and transformation of the goods or services in production process.

Types of income in jurisprudence are established by CCR, BCR, and TCR.

The effective legislation allocates the state and municipal income, as well as income of organizations and natural persons.

The *state and municipal income – is* monetary receipts in the state and municipal budgets.

Income of natural persons – are income which were receiving in the form of – wages, grants, grants or pensions; income from sale of the goods and production from individual business; payment for services and works; fees; share dividends; interests on deposit; resources received from sale or lease of personal property.

Among income ***revenues of budgets*** has the special place. There are – money, incoming to the budget[2]. Such revenues are fixed by ***Budgetary Code*** of the Russian Federation. Revenues can be classifies by various criteria.

Types of revenues on a method of getting are:

1) Tax revenues (***revenue from taxes***) are taxes, dues, fine and penalties.

[1] New economical dictionary / Under A.N. Azrilijan`s editorship. – M.: Institut of New Economics publishers, 2006.

[2] Beloshapko Yu.N. Financial law of Russia: the schoolbook. – Vladivostok: Vladivostok State University of Economics and Service publishers, 2015. – Pp. 75–77.

2) Not-tax revenues (***nontax revenues***) are revenues by property use etc.

3) Irrevocable movements are interbudget transfers, namely – grants, subsidies, subventions and other interbudget transfers; patronage (disinterested aid and donations of various persons).

First three of the interbudget transfers are used especially often.

Grants are the interbudget transfers, given on a gratuitous and irrevocable basis without an establishment of directions and (or) conditions of their use.

For the best understanding of subventions and subsidies for a basis as an example, we take transfers from the federal budget.

Subventions are the interbudget transfers, given to budgets of Subjects of the Russian Federation from the federal budget for the purpose of financial provision of expenditure commitments of Subjects of the Russian Federation and (or) the municipal unions, arising at realization of powers of the Russian Federation, transferred to public authorities of Subjects of the Russian Federation and (or) to local governments when due hereunder complex of subventions to budgets of Subjects of the Russian Federation forms Federal fund of compensations of the federal budget.

Subsidies are the interbudget transfers, given to budgets of Subjects of the Russian Federation from the federal budget for the purpose of cofinancing of expenditure commitments, powers of public authorities of Subjects of the Russian Federation arising at performance in subjects of conducting Subjects of the Russian Federation and subjects of joint competence the Russian Federation and Subjects of the Russian Federation, and expenditure commitments on realization of powers of local governments concerning local value. Complex of subsidies to budgets of Subjects of the Russian Federation forms Federal fund of the federal budget cofinancing expenses.

Types of revenues on distribution methods in budgets are:

1) Own revenues (***owned revenues***) are revenues, fixed to corresponding budgets on a constant basis.

2) Regulating revenues are complex of taxes and dues, on which standards of deductions in budgets are specifies.

Types of revenues on levels of the budgetary system are:

1) Federal revenues.

2) Regional revenues.

3) Local revenues.

Revenues are entered into accounts of bodies of Federal Treasury for the purpose of their account and distribution by these bodies according to the established specifications between budgets of all levels. Money resources are considers arrived in revenues of the corresponding budget of budgetary system of the Russian Federation from the moment of their transfer into the uniform account of this budget.

In the *Budget message from June 29, 2010*,[1] the Russian President has fixed the basic directions of the tax policy and formation of revenues of budgetary system. In particular, he has noticed, that in intermediate term prospect the further expansion and strengthening of tax base of budgets of budgetary system of the Russian Federation is necessary. The circle of tax bearers should extend at the expense of occurrence of new active managing subjects. It is necessary to accelerate preparative of initiation of the

[1] On the budgetary policy in 2011-2013: Budget message of the Russian President to Federal Assembly of the Russian Federation from June 29, 2010 [Electronic resources] // URL: http://www.pravo.gov.ru.

tax to the real estate, including formation of corresponding cadasters, and to develop the system, allowing, raising the tax proceeding from market cost of assessed property with a free minimum for families with low income.

Dynamics of revenues of the federal budget: *2002* – 2.1 trillion rubles; *2012* – 12.6 trillion rubles; *2013* – 12.8 trillion rubles; *2014* – 12.5 trillion rubles; *2015* – 12.54 trillion rubles; *2016* – 15.79 trillion rubles; *2017* – 16.54 trillion rubles.

According to ***TCR***, ***income –*** is the any economic gain, an element of legal (juridical) structure of income taxes, as well as special tax regimes (uniform tax on the imputed income, simplified system of the taxation), in which income is object of taxation.

The specific form of income is the ***profit***. In the financial and economic theory, the profit is understood as an overall index of financial results of economic activities, as a surplus of the receipt of the goods over expenses for their production and realization[1].

In a tax law (TCR) ***profit*** – is an element of legal (juridical) structure of the organization profits tax, as well as special tax regimes (uniform agricultural tax, system of taxation in the context of the performance of production sharing agreements, simplified system of the taxation), in which instead of simply income profit is object of taxation.

Us in the chapter interest only taxes on income (special tax regimes – are not taxes, and specific systems of the taxation and consequently they are viewed in the some chapter).

In universal practice, taxes on income not infrequently unite by the uniform term – *income tax*. In other words, so it is possible to call the any tax, object of taxation in which is income. For the first time such tax has been put into operation: in the Great Britain – in 1842, in Japan – in 1887, in Germany – in 1891, in the USA – in 1913, in France – in 1916, in Russian Empire – in 1812. In USSR the income tax has been put into operation only relating to natural persons by the decree from 11/16/1922 under the overall appellation «income-property tax», with transformation to 1924 to income tax[2]. In Post-Soviet Russia it was regulated by Law of the Russian Federation from 12/7/1991 «On income tax from natural persons».

With 1/1/2001 such tax is regulated by chapter 23 of TCR and is called (with the purpose of its differentiation to profit tax) as the *individual income tax*.

The individual income tax – is the third on volume of receipts in the budget the tax after profit taxes and value-added tax. For example, in safe from crises 2005 natural persons have paid in treasury such tax the sum of more than 574 mlrd dollars[3].

8.2. Individual income tax

Scientists are constantly applied to the individual income tax analysis in correlation with the state tax policy[4]. We will adhere to own positions. Definition of

[1] New economical dictionary / Under A.N. Azrilijan`s editorship. – M.: Institut of New Economics publishers, 2006.

[2] Big encyclopedic dictionary. – M.: Big Russian encyclopedia publishers, 1998. – P. 926.

[3] Akimov I. Where you live – there and you pay // Rossiiskaya Gazeta. – 2006. – On April 5.

[4] Soloveva N.A. The taxation of incomes of natural persons: tax policy reference directions // The Financial Law (journal). –2012. – № 8.

the tax is not given by the legislation, and therefore we deduce it from the content of chapter 23 of TCR.

Individual income tax (IIT) (***personal income tax***) – is the direct federal tax collected in connection with receiving by natural persons of various types of income.

The tax can be classified by different criteria – i.e. to tax rates, subjects, objects etc. For example, on object there are the tax on donation and tax on services etc.

Peculiarities of IIT

1. It is collected from the real received income. Hence, it is impossible advance recovery of the tax.

2. Formally the tax has general character as it should be collected from each natural persons which have received income.

Actually the tax has no generality for following reasons:

*TCR has fixed great number of privileges and preferential categories of payers.

*Insufficiently effective tax control allows to conceal incomes and to reduce tax base or quite to avoid the taxation.

Therefore along with the individual income tax are collected other direct taxes (individual property tax, land-tax, transport tax etc.) which payers including are natural persons.

TAXPAYERS

Payers of IIT are natural persons – tax residents of the Russian Federation and non-residents.

Tax residents – are the natural persons which are actually being in Russian Federation not less of 183 calendar days within 12 months successively following.

The period of location of natural persons in Russian Federation does not interrupt for the periods of his departure outwards Russian Federation for short-term treatment or training (less than six months). Irrespective of actual time of location in the Russian Federation, the tax residents are recognized Russian military men serving abroad and also employees of the public authorities and local governments, sent for work outwards Russian Federation.

The age of natural persons does not influence his status of the taxpayer as the tax is collected from natural person's incomes, but not from the natural persons. Therefore his legal representative musts declare incomes and discharge tax duty for the child, if the juvenile child has conforming income (for example, from participation in advertising).

Specific legal status has taxpayers – some categories of foreign citizens.

If the legislation of the conforming foreign state or the international treaty of the Russian Federation establish a similar procedure, do not liable to the taxation income:

*Heads, as well as the staff of representative offices of the foreign state having the diplomatic and consular rank, members of their families living together with them if they are not citizens of the Russian Federation, except for income from sources in the Russian Federations which have been not connected with diplomatic and consular service of these natural persons;

*Administrative and technical staff of representative offices of the foreign state and members of their families living together with them if they are not citizens of the Russian Federation or do not constantly live in the Russian Federation, except for income from sources in the Russian Federations which have been not connected with work of the natural persons in these representative offices;

*Service staff of representative offices of the foreign state which are not citizens of the Russian Federation or constantly do not live in the Russian Federation, received by them on the service in representative office of the foreign state;

*International civil servants – according to charters of these organizations.

There are features of calculation of the sum of the tax and filing of the tax declaration by some categories of foreign citizens, realizing labour activity for hiring in Russian Federation based on the ***patent*** given according to FL «On legal status of foreign citizens in the Russian Federation» (item 227.1 of TCR).

In this case for such foreign citizens on IIT are established the ***fixed advance payments*** which are paid for the period of action of the patent at a rate of 1 200 rubles a month. The scale of the fixed advance payments liable to indexations on the deflator coefficient established for conforming calendar year, as well as on the factor reflecting regional peculiarities of a labour market, fixed for conforming calendar year by the law of the Subject of the Russian Federation. The fixed advance payment under the tax is paid by the taxpayer at the place of realization of activity before the day of the beginning of the time limit on which it is given (prolonged) and is renewed the patent. At that in the payment document by the taxpayer is underlined the payment appellation « Individual income tax in the form of the fixed advance payment».

OBJECT OF TAXATION

To object an IIT are related to all income of the taxpayer received by him in calendar year from sources in Russian Federation and foreign.

Income from sources in Russian Federation – are the income received by the person as a result of his activity in territory of Russia. ***Foreign sources income*** – are the income received by the person from his activity outside of Russia.

By IIT are imposed the income received in the property and incomes for which the person has acquired a right of disposition.

Forms of incomes*:*

1) ***Kind***: property, works, services.

Cases of receiving of the income in kind:

*Payment in kind (under clauses of contract or by virtue of shortages of cash liquidity);

*Fulfilment in interests of the payer of works or services, receiving of the goods by it – and all on a gratuitous basis;

*Payment in interests of the payer by organizations or individual businesspersons of the goods, works, services.

2) Material gain.

Material gain types:

*Gifts;

*Economy on interests on the borrowed funds received from organizations or individual businesspersons;

*Behalf from civil-law transactions between the interdependent persons, one of which – is the IIT payer;

*Behalf from acquisition of securities.

3) Money in any currency.

At that the foreign currency is recalculated in rubles on Bank of Russia rate for income taking date.

Income taking date considers:

*Pay day of money;

*Day of transfer of the income in kind;

*Material gain receipt day;

*Final day of month for which has been added the salary under the labour contract.

TAX BASE

Tax base of IIT – is money term of object of taxation taking into account lawful privileges.

In this connection Constitutional Court of the Russian Federation has explained, that the legislator should be – guided by the constitutional principles of equality and justice; not to suppose disparity of the taxation and to observe, first of all, at entering into the tax legislation of alterations; to observe the principle of maintenance of trust of citizens to a law and actions of the state, i.e. to keep reasonable stability of international legal regulation and inadmissibility of entering of any alterations in in force system of legal norms; to ensure an establishing of such transition period, which would allow to exclude inconsistent interpretation of new tax regulation by law enforcement bodies[1].

METHOD OF THE TAXATION AND TAX RATES

In world practice are used two basic methods of imposition by IIT – progressive and regressive.

Regressive method reduces the tax rate at income growth.

At *progressive method* the tax rate increases with income growth. Such method is doomed to use the countries with ailing economy which they try to strengthen at the expense the population.

Russia *to 1999* by virtue of ailing economy used the method of complex progression as the type of a progressive method. At use of the method of complex progression, the rate scale increases with growth of the income, вut the penalty rate is used not to all income, but only to the sum exceeding level fixed by the law. *Since 1999* in Russia began to be observed economics growth. At that the federal budget of 1999 became surplus. There were grounds for refusal of the progressive method of the taxation, because it interfered with development of business and steady growth of economics. However Russia was refused from regressive and progressive methods.

Since 1/1/2001 the rate of IIT depends on a type of income (item 224 of TCR).

1) Rate = 35% – are used concerning following incomes:

*Cost of any winnings and prizes from actions with the purpose of advertising of the goods, works, services (competitions, games etc.);

*Interest returns under deposits in banks regarding excess of the rate of refinancing of CBR under rouble deposits and 9 % on foreign currency deposits;

*Economies sums on interests at receiving of extra (credit) resource regarding excess of lawful scales.

2) Rate = 30% – are used concerning all income received by natural persons which are not tax residents of the Russian Federation, *except for the incomes received*:

*In the form of dividends from individual share in activity of the Russian organizations concerning which the tax rate is established at the rate of 15 percent;

[1] Ruling of Constitutional Court of the Russian Federation from December 25, 2012 № 33 [Electronic resources] // URL: http://www.pravo.gov.ru.

*From realization of the labour activity specified in item 227.1 of TCR, concerning which the tax rate is established at the rate of 13 percent;

*From realization of labour activity as the highly skilled specialist according to FL «On a legal status of foreign citizens in the Russian Federation», concerning which the tax rate is established at the rate of 13 percent;

*In other lawful cases.

3) Rate = 9% – are used:

*Concerning income in the form of interests under bonds with a mortgage collateral emitted to 1/1/2007;

*Under income of founders of fiduciary management by a mortgage collateral received based on of acquisition of mortgage participation certificates, given by administrator mortgage collateral to 1/1/2007.

4) Rate = 13% – are used to other types of income, concerning dividends; including on income of natural persons from realization of labour activity by foreign citizens or stateless persons, recognized refugee migrants or received a provisional asylum in territory of the Russian Federation according to FL «On refugee migrants».

In this case, the social justice rule is observed: the above the income, the above the tax sum at the invariable tax rate. But for needy levels of population (them in Russia millions persons) 13 % are too burdensome.

Especially in the conditions of constant and contradicting to the economic laws rise in prices for the foodstuffs (as well as on the goods, works, services), tariffs for payment of housing-and-municipal services, and regular and successful attempts of the state and various natural monopolies to put into practice reforms at the expense population resources.

Deputies of State Duma repeatedly but unsuccessfully tried to return an ascending scale of IIT[1]. In this connection is absolutely inadmissible sending of authors of an ascending scale to practice of the western countries. These countries (USA and other) have shown a full financial and economic inconsistency, have huge national debts.

Therefore, it appears, it is necessary minimum wage rate to subtract from tax base – and in such way to support the needy. Shortage of tax revenues it is expedient to compensate at the expense initiations of penalty rates of the tax on the magnificent real estate.

TAX PERIOD – is calendar year.

CALCULATION AND PAYMENT PROCEDURE

For applicable calculation of the tax it is necessary to observe *rules of fixing of tax base* (the item of item 210-212 of TCR):

1. If the person has received income on which are established different rates (for example – has received a salary + has won in a lottery + has received dividends), the tax base is fixed separately on each type of income.

2. If the income is received in kind, the tax base is fixed as cost of the income, including VAT and excise taxes.

3. If the income is received in the form of material gain, the tax base is fixed as a margin between the behalf prices – purchased and selling (i.e. market).

[1] Zykova T. In State Duma have introduced the law with the new version of an ascending scale of the taxation // Rossiiskaya Gazeta. – 2015. – On March 18.

Other peculiarities of fixing of tax base in detail are imposed in chapter 23 of TCR.

After fixing of tax base the tax is estimated under the formula: base *multiply* on the rate separately on different types of income with the subsequent summation.

The persons obliged to estimate and pay the tax:

1) Employers (organizations or individual businesspersons) – are tax agents in relation to the workers. Workers at that are not obliged to give a tax declaration.

2) Individual businesspersons, private notaries, private advocates and private detectives – under the income, with giving of the tax declaration.

3) Natural persons receiving income not from tax agents (for example, under civil-law contracts) – give to tax declarations.

4) Natural persons – tax residents of the Russian Federation receiving foreign sources income – give to tax declarations.

5) Natural persons – under other income at which receiving tax agents have not kept the tax – give to tax declarations.

6) Natural persons receiving winnings from organizers of lotteries and games based on risk – give to tax declarations.

The form of the tax declaration, procedure of filling of the form of the tax declaration is confirmed by decrees of Minfin of Russia. The accounting of income of natural persons is realized based on decrees of FTS of Russia.

The *foreign citizens* who are realizing labour activity for hire at natural persons based on of the patent, given according to FL «On a legal status of foreign citizens in the Russian Federation», estimate and pay the taxe on income, received from realization of such activity, by TCR. Tax payment is put into practice in the form of the fixed advance payments.

The scale of the fixed advance payments liable to indexations on a deflator coefficient, which annually is established each next calendar year and considers alteration of consumer prices of the goods (works, services) in the Russian Federation for last calendar year, as well as liable to indexations on on deflator coefficients which were used earlier. Deflator coefficient is fixed and liable to official publication in the procedure established by Government of the Russian Federation.

The fixed advance payment is paid by the taxpayer at the place of a residence (sojourn place) taxpayer before the day beginnings of the time limit on which the patent is granted, or day of a beginning of the time limit on which patent period of validity lasts.

The tax total sum, liabling to payment in the conforming budget, is estimated by the taxpayer taking into account of the fixed advance payments paid during the tax period. In a case if the sum of the payments exceeds the sum of the tax estimated following the results of the tax period preceding from income actually received by the taxpayer, – the sum of such excess is not the sum of unduly paid tax and does not liable to refund or offset to the taxpayer.

The taxpayer is exempted from profert in tax authorities of the tax declaration under the tax, except for cases, if the:

1) Tax total sum, liabling to payment in the conforming budget, estimated in the taxpayer legally, exceeds the sum of the paid fixed advance payments for the tax period;

2) Taxpayer leaves outwards Russian Federation before the termination of the tax period and the tax total sum liabling to payment in the conforming budget, exceeds the sum of the paid fixed advance payments;

3) Patent is cancelled according to FL «On a legal status of foreign citizens in the Russian Federation».

On IIT are established numerous privileges.

TAX PRIVILEGES

The analysis of the content of conforming items of TCR allows emphasizing on income tax ***with object privileges in the form of exceptions and deductions.***

1*) Exceptions* – are incomes, not taxable or exempted from the taxation (item 217 of TCR). Exceptions are classified on 32 groups which list contains in item 217 of TCR.

Examples: gifts received under transactions between members of a family and-or near relations, as well as received by veterans of Second World War and the persons equal to them (*FL-71 from 6/30/2005, FL-78 from 7/1/2005*); student's grants; state pensions; alimony; winnings under bonds of the state loans of the Russian Federation, etc. Item 217 of TCR even became a consideration matter in Constitutional Court of the Russian Federation[1].

2*) Deductions* – are the quantities of money deducted from tax base and its reducing. At issue consideration about realization by the taxpayer of the right on a tax deduction law enforcement bodies are obliged to establish, investigate and estimate all complex of facts important for the correct settlement of cause.

Types of deductions:

Standard deductions – depend on object of taxation (item 218 of TCR). For example, there are – 3000 rbl. monthly deducted from chernobylets incomes (chernobylets is Chernobyl cleanup veteran); from incomes of gentlemen of an award of Glory of three degrees, heroes of the USSR and Russian Federation – 50 rubles etc.

Social deductions – are the sums of expenses of payers on the lawful purposes (item 219 of TCR). To an example, from tax base is deducted the sum of expenses for training in educational institutions. Social deductions are conditional by special procedure of averment. So, as proofs of expenses on training of the child, suffered by the taxpayer – parent, can be considered receipt on the training payment, formalized addressed to trained, in aggregate with other proofs (for example, the contract of the parent with educational institution and the instruction to the child about entering of the money resources transmitted to him into payment of cost of training). For receiving of the social deduction in the form of cost of medical services, expensive types of treatment, medical products it is possible to use only special documents: the registration form of prescription blank; the information form about payment of medical services for presentation profert in tax authorities of the Russian Federation. On one prescription blank it is possible to write out no more than two medical products. The recipe leaves the attending physician in duplicate: one – for a drugstore at receiving of medicines; the second – for tax authority at filing of the tax declaration at the place of a residence of the taxpayer, with a stamp of the attending physician «for tax authorities of the Russian Federation, TIN of the taxpayer», assured by the signature and the personal press of entity of public health services. Such procedure of an averment essentially inhibits use of a social deduction by payers in practice.

[1] On case of constitutionality test of items 32, 34.2 and 217 of Tax Code of the Russian Federation, points 1 and 3 of Statute on Pension fund of the Russian Federation (Russia) and subparagraph 5.1.1 of Statute on Federal Tax Service in connection with inquiry of Leningrad District Martial Court: ruling of Constitutional Court of the Russian Federation from April 12, 2016 № 11 [Electronic resources] // URL: http://www.pravo.gov.ru.

Difficulties of organizational character are supplemented by absence of the fixed forms or their shortage.

Property deductions are the quantities of money depending on a type of income or expenses (item 220 of TCR). The deductions are interfaced to numerous disputes on their use that it is possible to illustrate by examples of the settlement of the disputes in Constitutional Court of the Russian Federation. At that, as has explained Constitutional Court of the Russian Federation[1], the property tax deduction is given on real estate unit, from what follows, that in case of sale of the object (for example, apartments), being in the general share property, it should be distributed between co-owners to proportionally their participatory shares.

Possibility of payment of a deduction comprehensively to each of co-owners of the sold real estate is not provided by the law. At buying of real estate unit for receiving of the property tax deduction the taxpayer should spend own money resources, and he should buy real estate unit in the property. But at that, if, for example, the parent buys at the expense own resources apartment in the general share property with minor children such parent has the right to receive the deduction according to actually realized expenses within the general scale of the legal deduction.

At the same time, solving problems on stimulation of citizens to improvement of the living conditions, the federal legislator has provided not conflicting to Constitution of the Russian Federation cases when the right on a property tax deduction is not used. To their number are related cases when improvement of living conditions of the taxpayer is realized at the expense resources of employers or other persons, the resources of the parent (family) capital directed on maintenance of realization of additional measures of the state support of families, having children, at the expense the payments given from resources of the federal budget, budgets of Subjects of the Russian Federation and local budgets, as well as cases when the transaction of purchase and sale of a dwelling house, apartments, rooms or share (parts) in them is realized between the natural persons which are interdependent according to item 20 of TCR[2].

Professional deductions – are the monetary sum, depending on a type of expenses, as well as from a trade of the payer or character of his activity (item 221 of TCR). So, if the person has agreed the civil-law contract on execution of work, – expenses of the person are deducted from tax base and not taxed.

3) Elimination of the double taxation (item 232 of TCR) – is related to a specific type of deductions. The **taxation should not be disproportionate** so that realization by citizens of constitutional laws has not appeared paralyzed[3]. Disparity of the taxation can be shown, in particular, in an establishing of the double taxation[4].

Actually paid by the natural person – tax resident of the Russian Federation outside of the Russian Federation according to the legislation of other states of the sum of the tax from the incomes received in the foreign state, are not set off at tax payment in Russian Federation if other is not provided by the conforming international treaty of the Russian Federation concerning the taxation.

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[1] Ruling of Constitutional Court of the Russian Federation from March 13, 2008 № 5 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Determination of Constitutional Court of the Russian Federation from June 17, 2010 № 904 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Ruling of Constitutional Court of the Russian Federation from April 4, 1996 № 9 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Ruling of Constitutional Court of the Russian Federation from November 11, 1997 № 16 [Electronic resources] // URL: http://www.pravo.gov.ru.

In a case if the international treaty of the Russian Federation concerning the taxation provides foreign tax credit in the Russian Federation the sums of the tax paid by the natural person – tax resident of the Russian Federation in the foreign state from incomes received by him, – such credit is realized by tax authority in the procedure established by TCR.

Tax privileges are not automatically used by tax authorities, i.e. their use has declarative character. The payer, wishing to use the privilege, obliged to give in tax authority at the place of the registration the application for use of the concrete privilege with the appendix of documentary proofs of having of the right on privilege (notarially ascertained copy of the: contract of purchase and sale of apartment, chernobylets`s certificate etc.). The tax authority under such application realizes the cameral tax inspection which act directs to the applicant. At disagreement with result of the inspection, the payer has the right to complain. If the payer has paid in the beginning all sum of the tax, and then he has proved own right on the privilege, he has the right to require returning of unduly paid sum or its credit of on account forthcoming payments.

Under the individual income tax, the state pursues a policy of their regulating, but not by reduction of privileges, and by process of elimination some categories of payers from the list of possessors of privileges. For example, from the preferential category are excluded – employees of IAA and customs bodies; judges; workers of public prosecutor`s office and other persons – based on Tax Code of the Russian Federation and federal laws on the federal budget for the fiscal year.

8.3. Organization profits tax

The tax established by TCR[1] and interacts with other legislation[2]. The law does not propose to the tax definition, and therefore we define it by the content of TCR legal norms.

Organization profits tax (OPT) is the direct federal tax collected in connection with profit received by organizations.

ELEMENTS

TAXPAYERS

Taxpayers are organizations, namely:

*Russian organizations.

*Foreign organizations operating in Russia by permanent missions and-or receiving income from sources in the Russian Federation.

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[1] Tax Code of the Russian Federation. Part second from August 5, 2000 № 117. Chapter 25 – is put into operation with 1/1/2002 by Federal law of the Russian Federation from 8/6/2001 № 110: now it operates in the new edition [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On the approval of the inventory, in expenses on production and-or which realization for tax base fixing at profit tax calculation cannot be included resources, spent for maintenance of social protection of invalids and-or activity of public organizations of invalids: decree of Government of the Russian Federation from December 29, 2001 № 920 // Rossiiskaya Gazeta. – 2002. – On January 9. The inventory includes yachts, securities and other property;

On the list of foreign and international organizations, which grants are not considered for tax reasons in incomes of the Russian organizations «receivers of grants»: decree of Government of the Russian Federation from December 24, 2002 № 923 // Rossiiskaya Gazeta. – 2002. – On December 31.

In the tax legislation it is returned (the truth, in the limited format) the category «***consolidated group of taxpayers***» – i.e. voluntary association of taxpayers based on TCR and contract, with the purpose of calculation and *organization profits tax* payment taking into account cumulative financial result of economic activities of the taxpayers. The participant of group is declared the organization which is the party of the contract, and the liable partner – the legal person to whom are assigned duties on calculation and tax payment taking into account cumulative financial result of all members of group. The group is formed by organizations if one of them it is direct and (or) indirectly participates in others organizations.

By TCR also is put into operation the term – ***controlled indebtedness*** – i.e. outstanding indebtedness of the taxpayer – Russian organization under following bonds of obligation of this taxpayer (except for lawful cases):

1) Under the bond of obligation before the foreign person who is the interdependent person of the taxpayer – Russian organization, such foreign person expressly or by implication participates in the taxpayer – Russian organization;

2) Under the bond of obligation in the face of, the declared interdependent person of the foreign person;

3) Under the bond of obligation on which as the foreign person and (or) his interdependent person are the guarantor (warrantor) or otherwise undertake to ensure discharge of this bond of obligation of the taxpayer – Russian organization.

OBJECT OF TAXATION – is profit of the taxpayer.

Profit – is the income minus expenses (i.e. it is incomes reduced by value of expenses).

Income – is proceeds by realization of the goods, works, services, as well as non-sale actions.

Expenses – are the any justified and documentary corroborated expenses or losses of taxpayers.

Justified expenses – are expenses economically justifiable and estimated in the monetary form. That is, expenses should be realized with the purpose of income receiving.

Documentary corroborated expenses – are expenses corroborated by lawful documents.

In this connection ***Constitutional Court of the Russian Federation has viewed the following dispute.*** Private noncommercial educational institution «Management Institute» believed, that in the effective legislation – are no definitions «economically justifiable expenses» and «justified costs (expenses)»; is impossible in the unequivocal image to fix a circle of admissible proofs, i.e. data on the facts, based on which probably to fix having or absence of conforming circumstances, namely economic validity of the expenses realized by the taxpayer, with the purpose of fixing of object of taxation (tax base) under the organization profits tax. Hence, tax authorities and arbitration courts can – arbitrarily not to recognize expenses with the purpose of, fixing of object of taxation under the organization profits tax as expenses actually realized by taxpayers; to consider them it is economically not justified, documentary not corroborated and not connected with the activity directed on receiving of income.

The legislator was defensible disallowed from the exhaustive list of concrete expenses of the taxpayer which can be considered at calculation of tax base, meaning variety of the content and forms of economic activities and types of possible expenses (that at their detailed and all-inclusive normative fixing would lead to restriction of rights of the taxpayer) also has given to taxpayers possibility independently to fix in each concrete case (proceeding from actual circumstances and peculiarities of their financial and economic activities), the expenses are related to expenses for tax reasons, or are not present.

Having in the law of the general estimated definitions in itself does not testify about their uncertainty.The general criteria of reference to the expenses designated in item 252 and other items of chapter 25 of TCR, should be used in system of force international legal regulation taking into account the purposes and the general principles of the taxation, as well as positions of Constitutional Court of the Russian Federation. Chapter 25 of TCR regulates the taxation of profit of organizations and establishes with this view fixed attributability of incomes and expenses and their communication with organization activity on deriving of profit.

Validity of the expenses considered at calculation of tax base, should be estimated taking into account circumstances, testifying to intentions of the taxpayer to receive economic benefit as a result of real entrepreneurial or other economic activities. At that it is a question of the intentions and purposes (orientation) of this activity, instead of about its result.

At the same time validity of receiving of tax interest cannot be subordinated in dependence on effectiveness of use of the capital. The tax legislation does not use term of economic feasibility and does not regulate a procedure and stipulations of conducting of financial and economic activities that is why validity of the expenses reducing for tax reasons received income, cannot be estimated from the point of view of their expediency, rationality, effectiveness or received result. By virtue of the principle of a freedom of economic activities (part 1 of items 8 of Constitution of the Russian Federation) the taxpayer independently realizes it on own risk and has the right independently and individually to estimate its effectiveness and expediency.

On a wave of innovative tendencies, with the purpose of stimulation of modernization of economics to the expenses liabling to deduction from income, have been categorized expenses on scientific researches and (or) experimental-design workings. From income also are deducted the – expenses connected with buying use of the computer programs and databases under contracts with the legal owner; expenses connected with initiation of «know-how», as well as industrial engineering and administration methods (item 264 of TCR); expenses on formation of reserves of forthcoming expenses on scientific researches and (or) experimental-design workings (item 267.2 of TCR) and so on.

TAX BASE – is money term of profit.

Peculiarities of fixing of tax base depend on a type of activity and are in detail regulated by chapter 25 of TCR.

TAX RATES – depend on object of taxation and a type of taxpayers (item 284 of TCR).

The *general rate* = 20 %; at that by TCR are established also *lower* rates. Besides, *laws of Subjects of the Russian Federation* tax rates can be lowered for some

categories of payers. Specific rates are established for some types of income (for example, dividends and interests).

TAX PERIOD – is calendar year.

There are simultaneously fixed periods of accounts by which on a general rule are declared the first quarter, half-year and nine months of calendar year. If taxpayers monthly estimate advance payments for them by periods of accounts are declared the month, two months etc. before the termination of calendar year.

CALCULATION and *PAYMENT PROCEDURE*

Following the results of each accounting and tax period taxpayers estimate the advance payment sum of the procedure provided by item 286 of TCR. If at that the sum is negative or equal to zero, advance payments in conforming quarter are not paid. Taxpayers have the right to devolve on calculation of monthly advance payments proceeding from actually received profit, having notified about that tax authority in a lawful period.

Peculiarities of calculation and tax payment are provided by items 286-287 of TCR. In any case taxpayers must after each accounting and tax period to introduce the tax declarations in tax authorities at the place of the location and to the location of each separate subdivision. Features of declaring are specified in item 289 of TCR.

TAX PRIVILEGES

Privileges under the profit tax terminologically are not emphasized, but actually are available in the form of subject, object (i.e. exceptions and deductions) and specific (items 251-269, 284 of TCR).

Vehicles *of subject privileges* is the controlled foreign company (item 25.13-1 of TCR) which profit is exempted from the taxation, if concerning such organization is carried out at least one of lawful stipulations: 1) it is noncommercial organization which according to the personal law does not distribute the received profit between shareholders or other persons; 2) it is formed according to the legislation of member-state of Eurasian Economic Union and has a constant location in this state etc.

To object exceptions are related to the income which are not considered at fixing of tax base (there are – property in the form of the pledge or deposit guaranteeing the obligations; deductions of advocates for the general needs of advocatory chambers etc.). *To object deductions* it is possible to relate the expenses deducted from profit and, hence, reducing tax base (there are – expenses on a payment, insurance contributions, court costs etc.).

Specific privileges are the – elimination of the double taxation; refund of unduly withheld tax; zero tax rates etc. For example, the tax rate = 0 % is used by the organizations which are realizing educational and (or) medical activity. At that the activity connected with sanatorium treatment, is not related to medical activity (item 284.1 of TCR).

According to data of Audit Chamber of the Russian Federation, the budgetary indebtedness under the profit tax has increased and for January 1, 2011 (free compulsion from the western economic measures from 2014 etc.) has made more than 268 billion rubles. From them of 46.7 % – are indebtedness with low probability of recovery. The reason is absence of effective instruments of the control of charge and tax payment. It in turn, provokes unconscientious taxpayers to tax violations, including by short-lived companies and by transfer pricing[1].

[1] Leonteva T. By the budget // Rossiiskaya Gazeta. – 2011. – On March 30.

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Chapter 9. TAXES ON PROPERTY

9.1. Conception of taxes on property

According to Constitution of the Russian Federation, in the Russian Federation are – recognized and protected similarly private, state, municipal and other forms of ownership (item 8); everyone has the right to free use of the abilities and property for entrepreneurial and other economic activities not forbidden by the law (item 34); the private property right is protected by the law; everyone has the right to have material resources in the property, to own, use and give orders it as individually, and together with other persons; nobody can be deprived the property differently as under the court decision; forced alienation of property for the state needs can be realized only under condition of preliminary and equivalent compensation (item 35).

As has underlined Constitutional Court of the Russian Federation[1], in the market state the property as a material basis and economic form of a freedom of the society and person, not only is a necessary stipulation of free realization of entrepreneurial and other economic activities not forbidden by the law, but also guarantees realization of other rights and liberties of the person and citizen, as well as discharge of duties caused by it, and the private property right as an element of the constitutional status of the person fixes the sense, content and use of laws, activity of legislative and executive authorities, local self-government also is ensured by justice.

At that state interference in property relations, including connected with realization of economic activities not forbidden by the law, should not be any and break balance between requirements of interests of a society and necessary stipulations of protection of basic rights, – that assumes reasonable proportionality between used resources and the purpose, so that was ensured the balance of constitutional protected values and the person was not exposed to an excessive encumbrance. Anyway legal regulation in this sphere should not encroach on the essence of law or freedoms and lead to loss of their real content.

At the same time, the private property right is not absolute (item 55 of Constitutions of the Russian Federation). Property right restrictions can be put into operation by the federal law, if they are necessary for protection of other constitutional significant values, including rights and legitimate interests of other persons, also meet the requirements of the justice, rationality and proportionality. At that the constitutional guarantees of protection of a private property apply both on sphere of civil-law relations, and on relations of the state and the person in public-law sphere. Proceeding from such constitutional guarantees, the property belonging to business

[1] On case of constitutionality test of point 5 of item 20 of Federal law «On state regulation of manufacture and circulation of ethyl spirit, alcoholic and spirit-based production and on restriction of drinking of alcoholic products» in connection with the complaint of Limited responsibility society «SGIV»: ruling of Constitutional Court of the Russian Federation from March 30, 2016 № 9 [Electronic resources] // URL: http://www.pravo.gov.ru.

entities on the property right, can be freely used by them for realization of business, including by celebration of various transactions of civil-law character (including lease contracts on which the property is given for a payment in temporary seizin and use or in temporary use as it is provided by item 606 of CCR).

At that CCR establishes (item 243) that in the cases provided by the law the property can be uncompensated is withdrawn from the proprietor under the decision of court in the form of the sanction for fulfilment of the crime or other violation. On the same understanding of confiscation of property (as the specific measure of public responsibility for deed which, on a general rule, it is realized by the proprietor of this property) focus rules of the criminal law and legal norms of criminal and procedure legislation (item of 104 CCRF; item 81 of CCPR).

The definition property in its constitutional-law sense covers both real rights and rights of claim. At that the principle of equality fixed in item 19 of Constitutions of the Russian Federation, does not interfere with a distinction establishing in legal regulation of property relations, if these distinctions are objectively defensible, justified and correspond to the constitutional significant purposes. From here – are distinctions in legal regulation of relations concerning things (i.e. material objects) and the relations connected with a circulation of cashless money resources (i.e. non-material objects), – that does not exclude necessity of protection of any property rights, as well as right of claim in the form of the non-cash money resources which are on the banking account, for maintenance ensuring of balance of rights and legitimate interests of all participants of a civil turnover – i.e. proprietors, creditors, debtors[1].

At the same time there are cases when the property can be withdrawn from possessors without the decision of court and compensations. *It is question situations when the property is object of taxation.* Ground for such withdrawal is item 57 of Constitution of the Russian Federation according to which each must to pay lawfully established taxes and dues.

Taxes on property – are complex of taxes of tax system of the Russian Federation collected in connection with having of material resources. According to point 2 of items 38 of TCR, under property are understood types of objects civil rights (except for property rights), related to property according to CCR. Objects civil rights are listed in item 128 of CCR.

Hence, *property* (*material resources*) – is the general object of taxation understood as item 38 of TCR and item 128 CCR, namely – things, money, securities, other property (natural resources, etc.).

On the character, tax property relations are public and based on imperious submission of one party to other party. Therefore they are regulated by the civil legislation if it is directly provided by the federal law, and in case of antinomies between the tax and civil law operates the tax law. But at that relations in connection with seizin by material resources are property relations. Organizations and natural persons can own property.

For correct understanding of specificity of the taxation of property Constitutional Court of the Russian Federation has put into operation the category «property legal

[1] Ruling of Constitutional Court of the Russian Federation from December 10, 2014 № 31 [Electronic resources] // URL: http://www.pravo.gov.ru.

title»[1]. The matter is that *organizations* (legal persons) have legally solitary property and consequently on it as a rule can be applied uncontested recovery.

Natural persons use their property not only for business, but also as personal property necessary for realization of the inalienable rights and liberties guaranteed by Constitution of Russia. That is, the natural person's property legally is not differentiated. Therefore as a rule uncontested recovery on all property of natural persons is not supposed by the law. Thus, organizations and natural persons have a various ***legal status***, and property – a different ***legal title***, i.e. ***degree of legal differentiation of property***.

Therefore TCR separately regulated the individual property tax, corporate property tax and others. The different legal title of property does not allow regulating its taxation by uniform law or one chapter of TCR. With the purpose of the applicable control, is formed the state cadastre of the real estate that will allow to optimize the property taxation.

Besides, taxpayers the – federal civil servants; citizens applying for replacement of the state official capacities of the Russian Federation (on replacement of official capacities of federal state service); persons replacing the state official capacities of the Russian Federation; citizens applying for replacement of supervising official capacities in state-owned corporations, funds and other organizations; persons replacing supervising official capacities in state-owned corporations, funds and other organizations – are obliged to give the data on property and obligations of property character[2].

The state cadastral appraisal of the real estate, as well as its state cadastral registration is realized based on the special legislation[3]. On features of a legal title of property, testifies also obligation of the state registration in the Uniform state register of rights for real estate and transactions with it in accordance with item 131 of CCR the – property right and other real rights on real things, restrictions of these rights, their occurrence, devolution and termination. Such state registration is a juridical act of a recognition and acknowledgement by the state of occurrence, restriction (encumbrance), devolution or stop of rights for real estate according to CCR – and the unique proof of existence of a recorded entitlement on real estate which can be challenged only in a judicial procedure (item 2 of FL «On state registration of rights for real estate and transactions»).

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[1] Ruling of Constitutional Court of the Russian Federation from December 17, 1996 № 31 [Electronic resources] // URL: http://www.pravo.gov.ru;

Ruling of Constitutional Court of the Russian Federation from December 13, 2001 № 16 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from January 18, 2001 № 6 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from December 6, 2001 № 257 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from February 7, 2002 № 13 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ukases of President of the Russian Federation from May 18, 2009 №№ – 557, 558, 559, 560 // Rossiiskaya Gazeta. – 2009. – On May 20.

[3] On estimated activity in the Russian Federation: federal law of the Russian Federation from July 29, 1998 № 135 [Electronic resources] // URL: http://www.pravo.gov.ru;

On the state registration of the real estate: federal law of the Russian Federation from July 13, 2015 № 218 // Rossiiskaya Gazeta. – 2015. – On July 17.

Hence, legislative consolidation of necessity of the state registration of the property right to real estate is the recognition by the state of public-law interest in an fixing of an accessory of real estate to the concrete person, – by which means ensured protection of rights of other persons, stability of a civil turnover and predictability of its development.

But simultaneously, state registration of transactions and other legally significant actions with the real estate is considered as a «public element», which inclusion in civil-law disputes concerning real estate items allows to equate these disputes to disputes of public-law character, – that excludes possibility of their settlement by arbitration proceedings.

Relations concerning the state registration cannot be considered as a substantial element of the disputable legal relation which essence remains private-law, and the «public effect» appears only after the certificate by the state of results of the transaction or other legally significant action.

Besides, as the same legal relations, but concerning objects of a movable property do not require (on a general rule) state registration, it cannot be considered as influencing on the dispute nature as a whole. It reflects only specific attention of the state to a turnover of real estate items, which does not remain exclusively in sphere of the control of participants of civil-law transactions, but gets also to sphere of the control from the state at each recent legally significant action.

As a formal stipulation of ensuring of state (including judicial) protection of rights of the person forming from contractual relations who object is the real estate, the state registration only ascertains a legal effect of corresponding constitutive documents. It does not touch the content of civil law and does not limit the – freedom of treaties, juridical equality, and autonomy of will and property independence of the parties.

Thus, state registration of rights for real estate and transactions (as the act of registering state body which is taking place after fulfilment of those or other legally significant actions with real estate items) – is not the factor changing the nature of civil-law relations concerning of this material resources; has for an object ensuring of their big transparency and authenticity; is an additional guarantee of applicable formalization of realized transactions; allows to realize the control of their legitimacy, which necessity is caused by the specific legal status of real estate and its significance as object of civil rights[1].

9.2. Individual property tax

Continuous time the individual property tax was regulated by the special federal law[2], because the legislator tried to form the conception of the uniform tax on real estate and only after that to cancel the law. However such idea has failed. Therefore the legislator has resolved to cancel the Law «On individual property taxes», and to include in part 2 of TCR chapter 32 «Individual property tax»[3]. Definition of the tax

[1] Ruling of Constitutional Court of the Russian Federation from May 26, 2011 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On individual property taxes: federal law of the Russian Federation from December 9, 1991 № 2003-1 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Federal law of the Russian Federation from October 4, 2014 № 284 // Rossiiskaya Gazeta. – 2014. – On October 8.

not proposed by the law and therefore it is deduced from the effective legislation content.

Individual property tax (IPT) is the direct local tax collected in connection with having at natural persons of various kinds of property as objects of taxation.

ELEMENTS

TAXPAYERS

Taxpayers are the natural persons – proprietors of the property recognized the object of taxation.

OBJECTS OF TAXATION

Objects of taxation are the property located within municipal union, namely:

1) Dwelling house;
2) Residential unit (apartment, room);
3) Garage, a car-place;
4) Uniform real complex;
5) Construction in progress project;
6) Others – building, structure, construction (construction operations), premise (room).

To dwelling houses also are related to the residential buildings located on the ground areas, given for carrying out of the personal subsidiary, suburban economy, truck farming, gardening, and individual housing construction. The property as part of the general material resources of an apartment house is not recognized as object of taxation.

Thus, the legislator was disallowed from the term «real estate».

TAX BASE

The tax base concerning objects of taxation is fixed by its *cadastral cost* (except for lawful cases). Such procedure of fixing of tax base can be established by normative legal acts of representative bodies of municipal unions – after the approval by the Subject of the Russian Federation in accordance with established procedure results of fixing of cadastral cost of real estate items. Otherwise tax base there is an *inventory cost* of property.

At that federal cities Moscow, St.-Petersburg and Sevastopol also are included in municipal unions. The legislative (representative) public authority of the Subject of the Russian Federation (except for federal cities Moscow, St.-Petersburg and Sevastopol) establishes till January 1, 2020 the uniform date started of use in territory of this Subject of the Russian Federation of the procedure of fixing of tax base proceeding from cadastral cost of objects of taxation. The procedure of fixing of tax base on each type of objects is fixed by items 403-404 of TCR.

Hence, unconditional one-stage refusal of inventory cost of property has not happened. However, since January 1, 2020 tax base fixing at inventory cost of objects of taxation is not realized. Disputes on a property cadastral appraisal are resolved based on federal laws and rulings of plenums of Supreme Court of the Russian Federation[1].

[1] On several issues forming at consideration by courts of causes about contest of results of fixing of cadastral cost of real estate items: ruling of Plenum of Supreme Court of the Russian Federation from June 30, 2015 № 28 [Electronic resources] // URL: http://www.vsrf.ru.

TAX RATES

Tax rates are established by normative legal acts of representative bodies of municipal unions taking into account lawful peculiarities.

In case of fixing of tax base proceeding from a cadastral project cost of the taxation tax rates are fixed in the scales which are not exceeding (item 406 of TCR):

I) 0.1 percent concerning:

*Dwelling houses, residential units;

*Constructions in progress project in case if projected designation of such objects is the dwelling house;

*Uniform real complexes which structure includes at least one residential unit (dwelling house);

*Garages and a car-place;

*Economic structures or constructions, the area of each of which does not exceed 50 square metres and which are located on the ground areas given for conducting of the personal subsidiary, suburban economy, and truck farming, gardening or individual housing construction.

At that listed tax rates can be reduced to zero or are increased, but no more than three times by normative legal acts of representative bodies of municipal unions.

II) 2 percent concerning the objects of taxation named in item 378.2 of TCR, as well as concerning objects of taxation, cadastral cost of each of which exceeds 300 million rubles;

III) 0.5 percent concerning other objects of taxation.

In case of fixing of tax base proceeding from inventory cost, tax rates are established based on increased by a deflator coefficient of total inventory cost of objects of taxation, belonging on the property right to the taxpayer (taking into account participatory shares of the taxpayer in a right of the general property on each of such objects), located within one municipal union – in following *limits:*

*To 300 000 rubles inclusive – to 0.1 percent inclusive;

*From above 300 000 to 500 000 rubles inclusive – from above 0.1 to 0.3 percent inclusive;

*Over 500 000 rubles – from above 0.3 to 2.0 percent inclusive.

TAX PERIOD – is calendar year.

CALCULATION and PAYMENT PROCEDURE

The tax was annually estimated based on last data about the inventory cost represented in accordance with established procedure in tax authorities till March 1, 2013 taking into account a deflator coefficient.

Tax authorities annually musts to direct to the taxpayer the tax notice not later than 30 days before maturity. If the real estate was in the general collective property, the tax is paid by one of proprietors under the agreement between them. At an agreement unattaining, each proprietor pays the tax share and share alike. In case of destruction or full disintegration of the real estate tax collection is stopped since the month of conforming event.

At devolution of the property right to the real estate from one proprietor to another proprietor within a calendar year the tax pays the primary proprietor since January 1 of year prior to the beginning of that month in which he has lost the property right. The recent proprietor pays the tax since a month in which at him has formed the property right.

The bodies which are realizing the cadastral registration, as well as conducting of the state cadastre of the real estate and conducting the state registration of rights for real estate and transactions, and also the bodies which are realizing the state technical registration, – annually musts in the lawful date to introduce in tax authority the data necessary for calculation of taxes, artificially of January 1 of current year.

Calculation of the sum of the tax concerning the material resources is realized taking into account coefficient fixed as the ratio of number of full months during which this property was in the property of the taxpayer, to number of calendar months in the tax period – *if ensue following events*:

*Occurrence (stop) at the taxpayer of the property right to material resources during the tax period;

*Alteration of a participatory share of the taxpayer in a right of the general property on object of taxation during the tax period.

If occurrence of the events has occurred to 15th day of conforming month inclusive, or if stop of the property right to material resources has occurred after 15th day of conforming month, – as full month is considered month of occurrence (stop) of such right.

If occurrence of the events has occurred after 15th day of conforming month or stop of the right has occurred to 15th day of conforming month inclusive, – month of occurrence (stop) of the right is not considered at fixing of the designated coefficient.

Concerning the material resources which have devolved by right of succession to natural person, the tax is estimated from the date of inheritance opening.

Tax calculation is realized under the *formula* (item 408 of TCR).

The taxpayer should pay the tax – in the lawful date at the place of location of object of taxation based on the tax notice directed to the taxpayer by tax authority

TAX PRIVILEGES

It is possible to choose subject and object privileges.

Subject privileges – depend on a type of taxpayers. For example, are completely exempted from tax payment: heroes of the USSR and Russian Federation, gentlemen of the Award of Glory of three degrees, invalids of 1 and 2 groups, invalids since the childhood etc.

Object privileges established in the form of deductions (item 407 of TCR). So, the – tax base of an apartment decreases for value of cadastral cost of 20 square metres of a total area of this apartment; tax base of a room decreases for value of cadastral cost of 10 square metres of the area of this room; tax base of a dwelling house decreases for value of cadastral cost of 50 square metres of a total area of this dwelling house; tax base of a uniform real complex which structure includes at least one residential unit (dwelling house), is fixed as its cadastral cost reduced by one million of rubles.

Representative bodies of municipal unions have the right to increase scales of the listed tax deductions.

In case at use of tax deductions the tax base receives negative value, with the purpose of tax calculation such tax base is accepted equal to zero.

9.3. Corporate property tax

The corporate property tax is regulated by TCR[1] and laws of Subjects of the Russian Federation[2]. Definition of the tax is not proposed by the law and therefore it is deduced from the content of chapter 30 of TCR.

Corporate property tax (CPT) is the direct regional tax collected in connection with having at organizations of objects of basic assets. The tax is installed by the law of the Subject of the Russian Federation and is obligatory in its territory.

ELEMENTS

TAXPAYERS

*Russian organizations.
*Foreign organizations.

OBJECT OF TAXATION

*Movable property.
*Real estate.
Objects should be related to basic (fixed) assets.

TAX BASE

Tax base on a general rule – is object average annual value.

At the same time, according to item 378.2 of TCR the tax base is fixed as the cadastral cost of property approved in accordance with established procedure, concerning following types of the real estate declared by object of taxation:

*Business-administration centres and trading centres (complexes) and premises in them;

*The non-living premises, which designation – according to cadastral passports of real estate items or documents of the technical registration (inventory) of real estate items – provides placing of offices, trading objects, objects of public catering and consumer services, or which are actually used for placing of offices, trading objects, objects of public catering and consumer services;

*Real estate items of the foreign organizations which are not realizing activity in the Russian Federation by permanent missions, as well as the real estate items of the foreign organizations which are not related to activity of the organizations in the Russian Federation through permanent missions;

*Dwelling houses and the residential units which are not considered on balance as of objects of basic (fixed) assets in a procedure established for accounting conducting.

It is good, if cadastral cost of property becomes uniform and unique tax base. However cadastral appraisal techniques are not fulfilled. In most cases cadastral cost exceeds the index justified by the market, in hundreds times. The cadastral registration is not optimum. So, uniform industrial complexes at the registration break into separate components and consequently join not in group «industrial objects» and in the most different groups of property. As a result the dining room is estimated in one

[1] Chapter 30: it is put into operation with 1/1/2004 by federal law of the Russian Federation from 11/11/2003 № 139 // Rossiiskaya Gazeta. – 2003. – On November 18.

[2] On the corporate property tax: law of Primorsky Kray from November 28, 2003 № 82: it is enacted by Legislative Assembly of Primorsky Kray on November 27, 2003 // Gazettes of Legislative Assembly of Primorsky Kray. – 2003. – № 40. – P.6.

group with restaurant, plant management – in one group with business centre. Such situation results to overestimate of taxes. Cost at a large scale appraisal directly depends on data, which contain in the state information resources about real estate item, – and they are not infrequently unreliable. Work of the appraiser is not always conscientious. At that the Subjects of the Russian Federation and municipal unions are interested in appraisal overestimate – they place an order an appraisal, they approve results. According to specialists, the main thing is – to make appraisal plan clear, authentic, transparent and inspected. Taxpayers should be notified already on the decision to realize the next appraisal. It is necessary that the organization could correct in advance any unreliable data in a cadastre or to give to the appraiser authentic data. For situation correction in Russia is put into operation the institution of the state cadastral appraisers. However it is necessary to train them. At that responsibility of appraisers is the low[1].

All peculiarities of fixing of tax base are regulated by TCR (items 375-378.2).

TAX RATE

The tax rate is no more than 2.2%.

TAX PERIOD

There are tax and periods of accounts.

The tax period is calendar year.

Periods of accounts are the first quarter, half-year, 9 months.

The representative body of the Subject of the Russian Federation has the right not to establish periods of accounts.

CALCULATION and PAYMENT PROCEDURE

Following the results of each period of accounts the taxpayer estimates and pays advance payments with final settlement following the results of the tax period.

After each accounting and tax period taxpayers are obliged to represent to tax authority tax calculations on advance payments and tax declarations.

Peculiarities calculation and tax payments are fixed by TCR (items 382-386).

TAX PRIVILEGES

Tax privileges are provided in the form of object exceptions.

For example, are exempted from the taxation the – objects of wildlife management; property of religious organizations used for religious activity etc. (items 374, 381 of TCR).

THE LITERATURE LIST

Include basic sources (look chapter 1)**, and:**

Legal acts

On operation under the real estate taxation in cities Great Novgorod and Tver: federal law of the Russian Federation from July 20, 1997 № 110 // Collection of Legislative Acts of the Russian Federation. – 1997. – № 30. – Item 3582.

[1] Zhandarova I. The factory has masked under office // Rossiiskaya Gazeta. – 2016. – On May 9.

On estimated activity in the Russian Federation: federal law of the Russian Federation from July 29, 1998 № 135 [Electronic resources] // URL: http://www.pravo.gov.ru.

On activity state regulation on formation and carrying out of gambling games and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from December 29, 2006 № 244 // Rossiiskaya Gazeta. – 2006. – On December 31.

On the state cadastre of the real estate: federal law of the Russian Federation from July 24, 2007 № 221 // Collection of Legislative Acts of the Russian Federation. – 2007. – № 31. – Item 4017.

On the state registration of the real estate: federal law of the Russian Federation from July 13, 2015 № 218 // Rossiiskaya Gazeta. – 2015. – On July 17.

On the corporate property tax: law of Primorsky Kray from November 28, 2003 № 82: it is enacted by Legislative Assembly of Primorsky Kray on November 27, 2003 // Gazettes of Legislative Assembly of Primorsky Kray. – 2003. – № 40. – P.6.

Juridical practice

On case of constitutionality test of provisions of point 1 of item 11 of Civil Code of the Russian Federation, point 2 of item 1 of Federal law «On arbitration tribunals in the Russian Federation». – Item 28 of Federal law «On state registration of rights for real estate and transactions», point 1 of item 33 and item 51 of Federal law «On the hypothec (real estate pledge)» in connection with inquiry of Supreme Arbitration Court of the Russian Federation: ruling of Constitutional Court of the Russian Federation from May 26, 2011 № 10 // Rossiiskaya Gazeta. – 2011. – On June 8.

On case of constitutionality test of point 5 of item 20 of Federal law «On state regulation of manufacture and circulation of ethyl spirit, alcoholic and spirit-based production and on restriction of drinking of alcoholic products» in connection with the complaint of Limited responsibility society «SGIV»: ruling of Constitutional Court of the Russian Federation from March 30, 2016 № 9 [Electronic resources] // URL: http://www.pravo.gov.ru.

Under Ignaticheva M.V's complaint to infringement of his constitutional rights by provisions of items 2, 4 and 5 of Federal law «On the tax on gambling industry», Law of Nizhniy Novgorod oblast «On tax on gambling industry rates» and Law of Ivanovskaya Oblast' «On tax on gambling industry rates: determination of Constitutional Court of the Russian Federation from April 9, 2002 № 69 // Rossiiskaya Gazeta. – 2002. – On July 24.

On several issues forming at consideration by courts of causes about contest of results of fixing of cadastral cost of real estate items: ruling of Plenum of Supreme Court of the Russian Federation from June 30, 2015 № 28 [Electronic resources] // URL: http://www.vsrf.ru.

Chapter 10. TARGET TAXES

10.1. Conception of target taxes

As a rule, payments were considered target as they were enlisted not in budgets, and in target off-budget funds. Russia of last decade of the XX-th century went on this way, forming at the expense target taxes road funds, available housing funds, ecological funds and so on.

However now, the state tries to leave from target off-budget funds, as they were not infrequently used not on a special-purpose designation, and used on other purposes (including mercenary). More reliable is the direction of taxes and dues in budgets, and from them money already can go on strictly fixed purposes by Federal Treasury, – which is obliged to finish the resources to receivers. Hence, concept «target payments» it is impossible to define by their direction in target off-budget funds, and it is necessary to start with literal sense of the word «target».

Target payments – are the complex of taxes and dues collected and directed to budgets for the subsequent use on the concrete specific purposes. *The payments are direct and are not related to the indirect taxation as their elements are rigidly coordinated to specific types of property.*

Criteria of classification of target taxes are various. We *on importance degree* choose and discuss following *types of target payments:*

*Payments in nature management sphere;

*Road payments.

The legal norms regulating listed taxes (dues) not constantly infrequently essential are varying. At that the tax burden on one types are amplifies, and on another – decreases. The state tries – to optimize tax system, to emphasize in it the most significant taxes and dues, to increase their collecting and receipts in budgets. But such instability of target payments guards taxpayers and frightens off investors. Therefore in the long term it is necessary to be refused from alteration in the legislation for strictly certain and enough continuous period.

If tax reform it will be real it is finished, – special-purpose financing problems will be solved, in our opinion, not by initiation of new target taxes and dues, and redistribution of tax revenues of budgets within the limits uniform tax system of the Russian Federation.

TAXES IN NATURE MANAGEMENT SPHERE

Theme of taxes in sphere of nature management inseparably linked with problems of rational nature management and environmental protection to which is devoted the whole layer of jurisprudence[1]. Financing problems in ecological sphere taking into

[1] Beloshapko Yu.N. Territorial complex schemes of protection of the nature: concept and legal characteristic // Vestnik Moskovskogo Universiteta. – Seriya 11. – Pravo. – 1986. – № 2. – Pp. 28-33;

Beloshapko Yu.N. Territorial complex schemes of protection of the nature (organizational and law issues): dis … PhD in jurisprudence: 12.00.06. – M., 1986;

Jalbulganov A.A. On the issue of ecological functions of fiscal and tax payments // The Financial Law (journal). – 2013. – № 10.

account tax aspects also are invariable objects of scientific researches[1]. Definition of taxes in nature management sphere is not proposed by the legislation[2], and therefore it is deduced from the content of TCR and other effective legislation.

Taxes in nature management sphere are complex of the payments collected in connection with nature management and preservation of the environment. The taxes in a science are related to target as they should go on financing of actions for rational nature management and compensation of harm to environment.

FL «On environmental protection» (items 16-16.5) obliges to everyone to pay for nature management and negative impact on the environment[3].

Government of the Russian Federation fixes peculiarities of such payment[4].

As has explained ***Constitutional Court of the Russian Federation***[5]: according to Constitution of the Russian Federation the land and other natural resources are used and protected in the Russian Federation as a basis of a life and activity of the people living in conforming territory (part 1 of item 9). Seizin, use and disposal by land and other natural resources are realized by their proprietors freely, if it does not put damage to environment and does not break rights and legitimate interests of other persons (part 2 of item 36).

As exploitation of natural resources, their drawing into economic circulation do harm to environment, – subjects of the economic and other activity rendering negative impact on the environment should compensate all costs on realization by the state of actions for its restoration. At the same time, the public power carries the *constitutional responsibility* for nature and environment preservation and consequently also is obliged to take the measures directed on the restraint of environmental pollution, prevention and minimization of ecological risks.

According to Declaration for Environment and Development enacted by Conference of U.N.O.. for environment and development (Rio de Janeiro, on June 3-14, 1992), – the right on development should be observed thus, that has been guaranteed the fair satisfaction of requirements of the present and future generations in the field of development and environment (principle 3).

Let's consider concrete taxes in nature management sphere.

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[1] Marin E.V. Financing of environmental protection and rational nature management: budgetary-law and tax mechanisms // The Financial Law (journal). – 2012. – № 6.

[2] On environmental protection: federal law of the Russian Federation from January 10, 2002 № 7 // Collection of Legislative Acts of the Russian Federation. – 2002. – № 2. – Item 133.

[3] Ibidem.

[4] On rates of charges for negative impact on the environment and additional coefficients: decree of Government of the Russian Federation from September 13, 2016 № 913 [Electronic resources] // URL: http://www.pravo.gov.ru;

On assessment and charges for negative impact on the environment collection: decree of Government of the Russian Federation from March 3, 2017 № 255 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] On case of constitutionality test of part 2 of item 99, part 2 of item 100 of Forest Code of the Russian Federation and provisions of Decree of Government of the Russian Federation «On calculation of scale of the harm caused to forests by infringement of the forestry legislation» in connection with the complaint of Limited responsibility society «Zapoljarneft»: ruling of Constitutional Court of the Russian Federation from June 2, 2015 № 12 [Electronic resources] // URL: http://www.pravo.gov.ru.

10.2. Mineral extraction tax

The tax is established by TCR[1] in interaction with other legislation[2]. Definition of the tax is not proposed by the law, and therefore it is deduced from the content of chapter 26 of TCR.

Mineral extraction tax (MET) is the direct federal tax collected in connection with mining operations. MET becomes target, if it completely or partially goes on recultivation and other needs of a rational subsoil use.

ELEMENTS

TAXPAYERS

Payers of the tax are subsoil users, namely:

*Organizations

*Individual businesspersons.

OBJECT OF TAXATION

Object of taxation is the minerals extracted from subsoil or from waste of extractive production. Hence, object of taxation are the *extracted* minerals.

Minerals in TCR are understood as production of the mining industry and working out of open-cast mines (i.e. oil, gas, coal etc.), containing in actually extracted (taken) from subsoil (waste, losses) mineral raw materials (i.e. rock, liquid and other mix). In other words, *minerals* are the components of subsoil, as well as complex of such components conforming to TCR requirements. Production received at the further processing (enrichment, technological repartition) of a mineral being manufacturing industry production – cannot be recognized a mineral. The *mining operations* are their extraction from subsoil or from waste of extractive production.

At fixing of concrete type of the extracted mineral, it is necessary for taxpayer to be applied to the – conforming standards; technical project of working out of the deposit fixing as an end-product the concrete type of mineral; flowsheets on extraction and ore processing[3].

TAX BASE

Tax base is cost of the extracted minerals, except for lawful cases.

Tax base at the coal mining, oil dewatered, desalted and stabilized, associated gas, gas of fuel natural from all types of deposits of hydrocarbon material and gas condensate from all types of deposits of hydrocarbon material – is fixed as *amount* of the extracted minerals in kind form.

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[1] Chapter 26 of TCR – is put into operation since 1/1/2002 by federal law of the Russian Federation from 8/8/2001 № 126 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Rules of the approval of specifications of losses of minerals at the extraction technologically connected with the enacted scheme and technology of working out of deposits: confirmed by ruling of Government of the Russian Federation from December 29, 2001 № 921 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Determination of Constitutional Court of the Russian Federation from March 1, 2010 № 430 [Electronic resources] // URL: http://www.pravo.gov.ru.

TAX RATE

Tax rates depend on the type of objects of taxation and are established in percentage and fixed on the special scale (item 342 of TCR). To the basic problems are related to – correlation of tax rate with the world prices for oil (the more the price, the above the rate); disregard of peculiarities of mineral deposits etc. All it promotes inflation growth.

Therefore the Chairperson of Government of the Russian Federation has given to conforming ministers the instructions to prepare the suggestions considering: refusal of correlation of MET rates with the world prices for oil; initiation of the correction indexes considering specific features of in force deposits and working out of new deposits etc.[1]

TAX PERIOD

The tax period is equal to one calendar month.

CALCULATION and PAYMENT PROCEDURE

The tax sum is estimated as multiplication of the tax rate and tax base following the results of each tax period on each extracted mineral, proceeding from a participatory share of the mineral extracted on each subsoil plot, in total of the extracted mineral of the conforming type.

Tax payment depends on an extraction place. Persons, extractive minerals in Russia, pay the tax at the place of locations of each subsoil plot. Persons, who realize mining operations outside of the Russian Federation, pay the tax at the place of locations of organization or residence of individual businessperson. In any case taxpayers introduce to the tax declaration in tax authorities at the place of locations or residence of payer.

TAX PRIVILEGES

The tax privileges terminologically are not emphasized but actually are contained in TCR.

For example, – item 342 of TCR has established numerous object exceptions in the form of the zero rate of interest rate on some objects (i.e. at associated gas extraction, at mining operations regarding their normative losses, etc.). Item 343.1 of TCR has established the procedure *of reduction of the sum of the tax* estimated at a coal mining, on the expenses connected with ensuring of safe of the conditions of work and labour protection.

10.3. Water-tax

The water-tax is established by TCR[2], interacting with other legislation[3]. Definition of the tax is not proposed by the legislation, and therefore it is deduced from the content of chapter 25.2 of TCR.

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[1] Domcheva E, Panin T. Business took odd // Rossiiskaya Gazeta. – 2005. – № 227. – P. 1, 5.

[2] Chapter 25.2 of TCR is put into operation by federal law of the Russian Federation from 7/28/2004 № 83 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Water Code of the Russian Federation: federal law of the Russian Federation from June 3, 2006 № 74 // Collection of Legislative Acts of the Russian Federation. – 2006. – № 23. – Item 2381; On the procedure of the approval of the technique of calculation of scale of the harm caused to water bodies by infringement of the water legislation: decree of Government of the Russian Federation from November 4, 2006 № 639 // Collection of Legislative Acts of the Russian Federation. – 2006. – № 46. – Item 4791.

Water-tax (WT) is the direct federal tax imposed on special and (or) specific water use.

Special and (or) specific water use is realized according to Water Code of the Russian Federation. It has fixed, that the water users which are putting into practice use of water bodies based on decisions of Government of the Russian Federation or decisions of enforcement authorities of Subjects of the Russian Federation or based on licences on water use and contracts of use of bodies of water enacted, given and covenanted before putting into effect of Water Code of the Russian Federation, – keep rights of long-term or short-term use of bodies of water based on licences on water use and contracts of use of bodies of water.

The tax is target if it completely or partially goes on ensuring of rational water use.

ELEMENTS

TAXPAYERS

Payers of the tax are the organizations and natural persons which are realizing special and (or) specific water use.

OBJECTS OF TAXATION

Objects of taxation are recognized following types of water use (except for lawful cases): water intake from water bodies; use of water area of water bodies, except for rafting in rafts and round boom rafts; use of water bodies without a water intake for water-power engineering; use of water bodies for a raft in rafts and round boom rafts.

TAX BASE

Tax base is the *characteristic* of object of taxation.

At *a water intake* the tax base is fixed as *volume* of the water which has been taken away from water body for the tax period.

At *use of water area* of water bodies (except for a raft in rafts and round boom rafts), the tax base is fixed as the *area* of the given water space.

At use of water bodies *without a water intake* for water-power engineering, the tax base is fixed as *quantity* of the electric power made for the tax period.

At use of water bodies *for a raft in rafts* and round boom rafts, the tax base is fixed as *multiplication* of cubic capacity alloyed in rafts and round boom rafts for the tax period signified in thousand cubic metres, *and the raft distance* signified in kilometers, cleavage on 100.

TAX RATES

Tax rates are established on basins of the rivers, lakes, seas and economic region in the scales specified in special tables (item 333.12 of TCR).

At a water intake over the fixed quarter (annual) limits of water use, tax rates regarding such excess are established in fivefold scale from the fixed tax rates.

In case of absence at the taxpayer of the approved quarter limits, the limits are fixed as one fourth the approved annual limit.

At a water intake from water bodies for population water supply, the water-tax rate is fixed at a rate of 70 rubles for one thousand cubic metres of the water which have been taken away from water body.

TAX PERIOD

The tax period is quarter.

CALCULATION and PAYMENT PROCEDURE

The taxpayer independently estimates the tax sum according to items 333.12-333.13 of TCR.

The tax liable to payment in the lawful date, with giving of the tax declaration at the place of locations of object of taxation in time established for tax payment.

At that taxpayers (item 83 of TCR) related to the category of largest, introduce tax declarations (accounts) to tax authority at the place of the registration as the largest taxpayers.

Taxpayers – foreign persons also introduce the copy of the tax declaration to tax authority on the location of the body which has given the licence on water use, in time established for tax payment.

TAX PRIVILEGES

Privileges terminologically are not emphasized, but actually are available in the form of object exceptions.

So, are not declared by objects of taxation: intake from underground water bodies of the water containing minerals and (or) natural curative resources, and thermal waters; use of water area of water bodies for fishery and hunting etc. (item 333.9 of TCR).

10.4. Land-tax

The land-tax is established by TCR[1], interacting with other legislation[2]. It is installed by the legal act of a representative body of municipal union[3]. Definition of the tax is not proposed by the law, and therefore it is deduced from the content of chapter 31 of TCR.

Land-tax (LT) is the direct local tax collected in connection with having of land. It is the target tax, if it in full or in part goes on financing of actions for the land tenure, cadastre administration, expansion of territory, land protection etc.

ELEMENTS

TAXPAYERS

*Proprietors of land.

*Land possessors on a right of constant (termless) use.

*Land possessors on a lifetime inheritable possession right.

There are not subjects of the land-tax the land possessors on a fixed-term use without consideration right, as well as lessees.

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[1] Chapter 31of TCR is put into operation 1/1/2006 by federal law of the Russian Federation from 11/29/2004 № 141 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Land Code of the Russian Federation: federal law of the Russian Federation from October 25, 2001 № 136 // Collection of Legislative Acts of the Russian Federation. – 2001. – № 44. – Item 4147;

On the state cadastre of the real estate: federal law of the Russian Federation from July 24, 2007 № 221 // Collection of Legislative Acts of the Russian Federation. – 2007. – № 31. – Item 4017.

[3] On the land-tax in Vladivostok city: decision of Duma of Vladivostok city from October 28, 2005 № 108 // Vestnik of Duma of Vladivostok city. – 2005. – № 15. – P. 3.

OBJECTS OF TAXATION

Objects of taxation are the *ground areas.*

According to item 11.1 of Land Code of the Russian Federation, the ground area is the proportion of the earth's surface which borders are fixed according to the federal laws.

TAX BASE

Tax base is *cadastral cost* of land.

Land cadastre – is the systematized complex of documentary data on quantitative and qualitative characteristics of lands. Cadastral cost of the ground area (artificially of on January 1 of the calendar year) should be free of charge rendered to the payer of the tax.

At that land-tax legal regulation has complex character and consists of acts both the tax and land legislation, which is used for the taxation.

Such legal regulation should be realized with compliance of guarantees of rights of taxpayers.

Accordingly, normative legal acts of enforcement authorities of Subjects of the Russian Federation on the approval of cadastral cost of the ground areas generate legal consequences for citizens and their associations as taxpayers – and they operate in time in that procedure what is certain by the federal legislator for coming into force of acts of the legislation on taxes and dues in TCR[1].

According to item 66 of Land Code of the Russian Federation, – for a fixing of cadastral cost of the ground areas is realized the state cadastral appraisal of lands according to the legislation on estimated activity[2]. The basic problem – is authentically to fix the cost of each ground area.

The state cadastral appraisal is realized under the decision of an executive body of a state authority of the Subject of the Russian Federation or (in lawful cases) under the local government decision.

The *form of the document* containing data on the ground areas and payers is approved by the decree of Minfin of Russia (item 396 of TCR).

Disputes on a property cadastral appraisal are concluded based on the federal laws, legal propositions of Constitutional Court of the Russian Federation[3] and rulings of plenums of Supreme Court of the Russian Federation[4].

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[1] Ruling of Constitutional Court of the Russian Federation from July 2, 2013 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru;

Determination of Constitutional Court of the Russian Federation from February 3, 2010 № 165 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On estimated activity in the Russian Federation: federal law of the Russian Federation from July 29, 1998 № 135 // Collection of Legislative Acts of the Russian Federation. – 1998. – № 31. – Item 3813.

[3] On case of constitutionality test of provision of part 1 of item 24.18 of Federal law «On estimated activity in the Russian Federation» in connection with the complaint of administration of municipal union of Bratsk city: ruling of Constitutional Court of the Russian Federation from July 5, 2016 № 15 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] On several issues, forming at consideration by courts of causes about contest of results of fixing of cadastral cost of real estate items: ruling of Plenum of Supreme Court of the Russian Federation from June 30, 2015 № 28 [Electronic resources] // URL: http://www.vsrf.ru.

TAX RATE

We can emphasize the general and special rates.

The *general* rate is *1.5 %* from tax base.

The *special* rate *is 0.3 %.* It is established for some types of the ground areas (i.e. for the –agricultural production, housing construction etc.).

TAX PERIOD

TCR has established tax and accounting periods. The *tax period* general for all subjects is calendar year.

Accounting periods (i.e. first quarter, half-year and 9 months of year) established only for organizations and individual businesspersons with the purpose of recovery from them advance payments.

CALCULATION and PAYMENT PROCEDURE

Organizations and individual businesspersons should pay the tax in advance payment after each accounting period with giving of the tax declaration.

Natural persons pay the tax in the lawful date under tax notices of tax authorities without formalization of tax declarations. The tax authority also can direct tax notices to individual businesspersons.

Peculiarities of payment of the land-tax
(Item 396 of TCR)

In case of occurrence (stop) at the taxpayer of the legitimate right concerning the ground area, tax calculation is realized taking into account the factor fixed as the ratio of number of full months of realization of such right to number of calendar months in the tax (accounting) period.

The ground area on which is located the apartment house and other real estate items as the part of such house – free of charge devolves in the general share property of proprietors of premises (rooms) in the house (Housing Code of the Russian Federation).

Proprietors of premises (rooms) of an apartment house are payers of the land-tax proportionally to their participatory shares of the property – since the moment of formation of the ground area and assignment to it of cadastral number.

If the apartment house completely belongs to municipal union on the property right – the conforming ground area does not liable to levy by the land-tax.

If on the ground area which is in the municipal property, is located the apartment house which is in the property of municipal union and in the private property of citizens and legal persons – the land-tax is paid by citizens and legal persons proportionally to their participatory shares in the general share property.

If the ground area is in the general property – the tax base pays off: at the general share property – proportionally to shares; at the general collective property – share and share alike.

So, if the dwelling house with the part of the ground area which has been had by this house and necessary for its use is in the property of several owners – the tax base for each of them is fixed proportionally to its share in the general property.

At that absence of constitutive documents at actual use by the person of the ground areas and nonacceptance by the person of measures to formalization of right

on these areas cannot be fundamental for his release from tax payment – if the person is not the tenant of land or the uncompensated fixed-term user.

TAX PRIVILEGES

Privileges can be classified on *subject and object.*

Example *of a subject* privilege: from the land-tax are exempted organizations having the ground areas which have been had by the state highways of the general use.

From *object privileges* it is possible to emphasize *exceptions and deductions.*

Example *of exceptions*: by the tax are not assessed the – ground areas withdrawn from a circulation; ground areas which are a part of the general property (material resources) of an apartment house etc. Example *of deductions*: from tax base are deducted 10 000 rubles counting on the – one subject-hero of the Russian Federation, invalid since the childhood, etc.

10.5. Road taxes

Road taxes are complex of taxes, at the expense which are formed road funds. Road funds are regulated by not separate FL, and by Budgetary Code of the Russian Federation (it contains item 179.4 «Road funds»).

Road fund is the part of budgetary funds which is subject to use with the purpose of financial provision of road activity concerning of highways of the general use. *There are* – Federal road fund, road funds of Subjects of the Russian Federation[1], and municipal road funds.

Concerning **Federal road fund**, every year in the federal budget is fixed the base volume of budgetary appropriations, including at the expense of the ***excise taxes*** liabling to transfer in the federal budget. The fare is established by techniques which are approved by governmental decrees[2].

Road fund of the Subject of the Russian Federation is formed by the law of the Subject of the Russian Federation (except for the law of the Subject of the Russian Federation on the budget of the Subject of the Russian Federation).

The *volume of budgetary appropriations* of road fund of the Subject of the Russian Federation is approved by the law of the Subject of the Russian Federation on its budget for the next fiscal year (next fiscal year and planning period) – at a rate of not less predicted volume of incomes of the budget of the Subject of the Russian Federation, *including from*:

***Excise taxes** on the – automobile gasoline, directly distilled gasoline, diesel oil, engine oils for diesel and carburettor (injection) engines – made in territory of the Russian Federation and transferred to the budget of the Subject of the Russian Federation;

***Transport tax**.

Municipal road fund, as well as procedure of its formation and use is formed by the decision of a representative body of municipal union.

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[1] On road fund of Primorsky Kray: law of Primorsky Kray from October 6, 2011 № 819: it is enacted by Legislative Assembly of Primorsky Kray on September 30, 2011 [Electronic resources] // URL: http://www.primorsky.ru.

[2] On a fare of transports on federal paid highways of the general use, paid sites of such highways (including if a paid site of a highway is the separat) artificial road construction): decree of Government of the Russian Federation from January 30, 2016 № 47 [Electronic resources] // URL: http://www.pravo.gov.ru.

The resources of the *any road funds* which have been not used in current financial year remain in the funds.

Thus, only one tax – transport tax – finally has kept in the appellation a direct accessory to roads. Therefore we also will consider it in detail.

TRANSPORT TAX

The transport tax is established by TCR[1]. The tax is installed by the law of the Subject of the Russian Federation[2] and is obligatory to payment in its territory. Definition of the tax is not proposed by the legislation and therefore it is deduced from the content of chapter 28 of TCR.

Transport tax (TT) is the direct regional tax collected in connection with having of transports. The tax is target, if it completely or partially directions on road building and (or) on development of roads.

ELEMENTS

TAXPAYERS

Taxpayers – are the natural persons and (or) organizations on which are lawfully registered conforming transports. Exceptions of the rule can be provided only by TCR.

OBJECT OF TAXATION

The object of taxation (it should be legally registered) is classified on following *groups*:

*Self-propelled cars (machines) and mechanisms on pneumatic and caterpillar course. There are the – cars, motorcycles, motor scooters, buses and so on;

*Water and air transports. There are – planes, helicopters, steam-ships, yachts, sailing ships (sails), etc.

TAX BASE

The tax base depends on a type and features of a transport, namely:

*Engine power in horsepowers – concerning the means of transport having engines;

*Jet thrust in kilogramme-force – for aircrafts with the jet-propulsion engine;

*Gross tonnage in register tons – concerning water not self-propelled (towed) transports;

*Transport unit (for example, *one* sail-plane) – concerning other water and air transports.

TAX RATES

Tax rates depend on a tax base type. Examples: cars with engine power to 100 h.p. – 2.5 rbl; tows – 20 rbl. Concerning cars in average value from 3 million rubles (i.e. for luxury) are fixed improving index to the transport tax sum.

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[1] Chapter 28 – is put into operation since 1/1/2003 by federal law of the Russian Federation from 7/24/2002 № 110: since the moment, transports are not assessed by the individual property tax [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On the transport tax: law of Primorsky Kray from November 28, 2002 № 24 // Gazettes of Legislative Assembly of Primorsky Kray. – 2002. – № 9. – P. 14.

Regional representative bodies fix the tax rate in the limits established by TCR. At that Subjects of the Russian Federation have the right to increase tax rates no more than ten times.

TAX PERIOD

The tax period – is calendar year.

For payers – organizations are put into operation accounting periods (i.e. first quarter, second quarter, third quarter), allowing recovering advance payments. But at that the representative body of the Subject of the Russian Federation has the right accounting periods not to establish.

CALCULATION and PAYMENT PROCEDURE

The payment procedure depends on a type of payers.

Organizations estimate and pay the tax independently, with submitting of the tax declaration (form and filling procedure is established by orders of Ministry of Finance of the Russian Federation). The tax for *natural persons* estimates tax authority, with direction to the person of the conforming payment notice.

The necessary information to tax authority is submitted by bodies of the state registration of transports. The tax is paid at the place of transport locations.

TAX PRIVILEGES

Tax privileges terminologically are not emphasized by chapter 28 of TCR, but actually are available in the form of object exceptions. So – Item 358 of TCR eliminates as objects of taxation eight groups of transports (i.e. the veselnye boat, invalid cars, combines etc.).

Government of the Russian Federation establishes the list of objects of taxation on which are used the deferment or instalments of payment of the tax[1]. Besides, Subjects of the Russian Federation by the laws on tax initiation can provide (at the expense the regional budget) tax privileges and grounds for their use by the taxpayer.

Some deputies repeatedly introduced bills of transport tax abrogation in State Duma. However the majority of deputies are against such abrogation, as it can lead to occurrence of dropping out incomes from federal and regional budgets[2].

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[2] Barshev V. Pay for haul // Rossiiskaya Gazeta. – 2015. – On March 2;

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Section II. SYSTEM OF INDIRECT TAXES

Chapter 11. TAXES ON ACTIVITY

11.1. Conception of taxes on activity

We define *activity* as juridical (legal) facts in the form of actions (i.e. purchase, consumption, sale, transfer, moving, use, other transactions, circulations and business in concrete sphere of economics) realized by subjects of financial legal relations with the purpose of satisfaction of the interests.

At first sight, the activity cannot be object of taxation or levy by dues, as subjects of a tax duty have already paid direct taxes. However the any states and municipal unions always required and require in additional tax revenues for formation of a profitable part of budgets. Therefore legislators of all countries have found convenient object – activity in its various forms, which great number and which have no all-inclusive listing. Besides, by virtue of presentation activity is easier for checking, than incomes.

Ideological substantiation of such taxation the following: the taxation part is shifted from businesspersons (which and so considerable direct taxes pay) on consumers which have actual ability to pay the tax from the personal resources and for which his payment will be not so burdensome; if the problem of filling of budgets to solve only at the expense the capital of businesspersons – it will run low, and they will lose stimulus for business continuation.

The tax in this case undertakes from the price, cost, tariff, or other aspects of activity. It is the *indirect taxation*. If the person in can to pay – he will not grow poor, when the part of the money will transmit in treasury. If the person cannot pay, it has the right not to realize an activity (though the businessperson, being simultaneously the inevitable consumer, is not infrequently compelled to realize transactions necessary for his business).

At that the indirect taxation tries to disguise under the direct. So, the turnover tax is understood as the fixed part of the net profit of the businessperson, directed to budgets. However, actually object of taxation is not the income, but activity of the businessperson.

Examples of taxes on activity are the – tax on road users (it cancelled since 1/1/2003), tax on buying of foreign monetary symbols (it cancelled since 1/1/2003), sales-tax (it cancelled since 1/1/2004). There were remained the – excise taxes, VAT, tax on gambling industry, sales due.

After years after sales-tax abrogation some experts and deputies of State Duma (especially in 2014) have started to propose again to put into operation the sales-tax. As believed Minfin of Russia, sales-tax initiation could bring in regional budgets in 2015 – 195 billion rubles, in 2016 – 211 billion rubles, and in 2017 – 230 billion rubles. However experts of the Center of Macroeconomic Researches of Savings Bank

of Russia have formulated other predictions: sales-tax initiation by all Russian regions will increase inflation by 2.1%. Advisory Council of Committee of State Duma of the Russian Federation under the Budget and Taxes has reminded, that the sales-tax it is heavy to administer – thus, that earlier it brought 60 billion rubles all over the country at the rate of 5%[1]. Besides, the sales-tax has not justified itself in world practice[2]. In this connection the legislator was not resolved to put into operation the sales-tax. But he has resolved to fill up budgets in another way – to make tax base of the individual property tax not inventory, but cadastral cost of the real estate. Besides, sales due have been put into operation, though it a few differs from the sales-tax. *In our opinion*, sales-tax initiation is inadmissible, as it conflicts to Constitution of the Russian Federation and Tax Code of the Russian Federation, which do not suppose the double taxation. Because the consumer which has paid all lawful taxes on the incomes, will be again to pay the sales-tax compelled at the expense the same incomes. Comprehension of such injustice will obviously constrain consumer demand and, as consequence, will not increase, and will reduce receipt of tax revenues in budgets.

Inconvenience of taxes on activity is in that, that they are compelled to pay conforming subjects *without dependence from results* of financial and economic activities. Such situation seriously constrains development of national economy, as it does unprofitable expansion of production also interferes with income of investments and development of hi-tech productions[3]. Therefore the President of Russia in 2001 has fixed one of priorities of tax reform – peremptory liquidation of the taxes estimated from a circulation[4].

However world financial and economic crisis of 2008 and 2014-2016 has shown that is inexpedient completely to liquidate taxes on activity.

11.2. Excise taxes

The excise tax is established by TCR[5] in interrelation with other legislation[6]. Definition of the tax is not proposed by the legislation and therefore it is deduced from the content of chapter 22 of TCR.

Excise tax (ET) is the indirect federal tax on transactions with the by-excise goods and production. Besides, excise taxes on customs classification are related to

[1] Markelov R. We buy it for the budget // Rossiiskaya Gazeta. – 2014. – On April 8.

[2] Lashkina E. Tax alarm // Rossiiskaya Gazeta. – 2008. – On March 26. – Pp. 1, 3.

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internal taxes, and therefore are regulated not only tax, but also the customs legislation.

ELEMENTS

TAXPAYERS

Taxpayers can be classified on juridical and actual.
Subjects de jure are – organizations; natural persons (item 179 of TCR).
Subjects de facto are – persons who actually at own expense pay excise taxes.

OBJECT OF TAXATION

Object of taxation is transactions with the by-excise goods and production (i.e. sale, transfer, importation on customs territory of the Russian Federation and etc. – item 182 of TCR).

TAX BASE

Tax base are (depending on the type of object of taxation):
*Volume of the realized or devolved goods (production).
*Cost of the realized either devolved goods and (production).

TAX RATES

Tax rates depend on the tax base type, are specified in the special table (item 193 of TCR) and are uniform in all territory of Russia.

If tax base is *volume* (for example: one litre of waterless ethyl spirit; one kg of tobacco, one ton of automobile gasoline etc.), or *pieces* (for example, cigars – one piece) or *engine power* – the tax rate is established in a fixed quantity of money (i.e. in rubles).

If the tax base is *cost* (for example, for natural gas), the rate is fixed in percentage.

TAX PERIOD

The tax period is calendar month.

CALCULATION and PAYMENT PROCEDURE

The scale of the concrete excise tax is estimated as tax base multiplication on each type of the goods (production) on the conforming tax rate with the subsequent addition of all got sums, with giving of the tax declaration. Calculation of the sum of excise taxes is realized by the juridical payer of the excise tax, and the actual payer pays.

At moving by natural persons of the by-excise goods intended for personal, family, house and other needs not connected with business – the procedure of payment of the excise tax in connection with moving of the goods through territory of the Russian Federation and other territories which are under its jurisdiction, is regulated by the *customs legislation*.

TAX PRIVILEGES

The tax legislation analysis allows emphasizing *object* privileges in the form of exceptions and deductions (items 183, 200-201 of TCR). Example of *exceptions*: do not liable to the taxation – gas cap repressuring in underground storage; realization in Russian Federation natural gas for personal consumption to natural persons etc. Example of *deductions*: are deducted from tax base and it is reduced by the advance

sums paid at acquisition of excise marks on the by-excise goods, liabling to obligatory marks.

11.3. Value-added tax

The tax is established by TCR[1]. Besides, VAT on customs classification is related to the internal taxes, and therefore are regulated not only tax legislation, but also the customs legislation. Definition of the tax is not proposed by the legislation and therefore it is deduced from the content of chapter 21 of TCR.

Value-added tax (VAT) is the indirect federal tax charged on the added cost.

Constitutional Court of the Russian Federation[2] has defined VAT as the margin between cost of the realized goods, works and services and cost of the material inputs which have been related to production costs and the circulations. At that the Court has underlined, that the tax, being the withdrawal form in the budget of a part of the value added formed on all phases of production, is an indirect tax (i.e. tax on consumption), because – realization of the goods (works, services) is realized under the prices (tariffs) increased the sum of tax on value added, and the burden of its payment, accordingly, lays down on the purchaser of the goods (works, services).

To the purchaser, in turn, is given the right to reduce own obligation on payment of the tax by tax deductions at a rate of the sum of the tax presented to him by the seller to payment at realization of the goods (works, services). At that to payment in the budget following the results of the tax period liable negative margin between the sum of tax deductions and the sum of this tax estimated by the taxpayer on transactions declared by object of taxation. As to a positive margin – it is compensated from the budget to the taxpayer.

VAT is enlisted in the federal budget that reduces business solvency of other subjects. In this connection, O.N. Gorbunova believes, that the local self-government cannot live only at the expense of central financing, as the state is not capable to consider all expenses of subordinate links of budgetary system and completely to ensure their by financial resources. Therefore the author justly (in our opinion) proposes to enlist VAT in budgets of different levels[3].

ELEMENTS

TAXPAYERS

Taxpayers can be classified on juridical and actual.

Subjects de jure are – organizations; natural persons (item 143 of TCR).

Subjects de facto are – persons who actually pay VAT at acquisition of the goods, works, and services or at importation of the goods on territory of the Russian Federation and other territories which are under its jurisdiction.

OBJECT OF TAXATION

Object of taxation is transactions with the goods, works and services.

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[1] Chapter 21 – is put into operation since 1/1/2001 by federal law of the Russian Federation from 8/5/2000 № 117 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Gorbunova O.N. Revisiting the efficiency of using VAT (Value Added Tax) // The Financial Law (journal). – 2015. – № 12. – Pp. 9–11.

TAX BASE

Tax base of VAT (if to analyze the appellation of the tax and conforming rules of tax law) is the value added. Its definition in is absent in TCR and is deduced from the content of the items regulating tax base.

Value added (VA) – is cost of the goods, works and services taking into account of excise taxes (for the by-excise goods) without VAT inclusion.

For example, goods *cost* taking into account excise taxes = 1000 rbl.

In this case VA = 1000 ***x*** VAT rate.

Hence, if the VAT rate = 18%, the value added = 180 rbl.

However we have proposed an ideal variant when cost is encumbered by nothing (for example, the previous transactions with the goods in which cost VAT was already put). In other words, there are peculiarities of fixing of tax base on some transactions – and they are regulated by items 154–162 of TCR, as well as the decrees of Government of the Russian Federation[1] based on TCR.

The disputes connected with correctness of fixing of tax base, are not infrequently transferred to Constitutional Court of the Russian Federation. For example, Constitutional Court has declared as provision of subparagraph 4 of point 1 of item 162 of TCR mismatching Constitution of the Russian Federation[2].

Therefore *we come to conclusion* that because of having of every possible feature, to count value added expediently by qualified and having experience accountants, instead by lawyers.

TAX RATES

Tax rates depend on object of taxation (items 164-165 of TCR).

The rate of 10% – is used at realization of the foodstuffs, goods for children etc.

Concerning other transactions the rate = 18%.

TAX PERIOD

The tax period is one quarter.

CALCULATION and PAYMENT PROCEDURE

The duty of calculation of VAT is assigned to the juridical payers who are realizing concrete transaction. The juridical payer must to give to tax authority the tax declaration under the form fixed by the conforming decree of the Ministry of Finance of the Russian Federation.

Actually, VAT is paid by the consumer of the goods, works and services. *De jure* and *de facto* subjects can be in one person – at importation of the goods on territory of the Russian Federation and other territories which are under its jurisdiction.

TAX PRIVILEGES

(Items 149-150, 165, 170-172 of TCR)

The analysis of the legal norms of TCR allows emphasizing object privileges in the form of exceptions and deductions.

[1] Rossiiskaya Gazeta. – 2001. – On August 29.

[2] Ruling of Constitutional Court of the Russian Federation from July 1, 2015 № 19 // Rossiiskaya Gazeta. – 2015. – On July 10.

Exceptions

TCR provides the *list of the transactions* which are not assessed by VAT, which is concretized by Government of the Russian Federation[1].

To the transactions is realization:

*Funeral accessories – i.e. funeral nimbus, coffin, wreath, cliche on a tomb etc.[2]

*Things of religious designation – i.e. religious literature etc.[3]

*Lenses and spectacle frames[4].

*Means for invalids – i.e. canes, crutches, hearing aids, armchairs-carriages etc.[5]

*Medical services to the population on diagnostics, preventive maintenance and treatment, irrespective of the form and source of their payment[6].

By VAT also are not assessed consumable materials for scientific researches (laboratory animals, spirit butilovyj etc.) which analogues are not made in the Russian Federation[7].

Deductions

From tax base are deducted and it reduce:

*Sums of VAT withheld at foreign taxpayers, not consisting on the registration in tax authorities of the Russian Federation, which have realized the goods, works and services – provided that all sum of VAT from them in full volume is paid by tax agents – buyers (items 161, 171 of TCR).

*Sums of taxes estimated by the payer from the sums of advance or other payments, received on account oncoming deliveries of the goods (item 171 of TCR).

[1] On customs regulation in the Russian Federation: federal law of the Russian Federation from November 27, 2010 № 311 // Collection of Legislative Acts of the Russian Federation. – 2010. – № 48. – Item 6252;

On the approval of the list of the medical goods, which realization on territories of the Russian Federation and which importation on territory of the Russian Federation and other territories which are under its jurisdiction, do not liable to levy (are exempted from levy) by the tax on value added: order of Government of the Russian Federation from September 30, 2015 № 1042 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Order of Government of the Russian Federation from July 31, 2001 № 567 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Order of Government of the Russian Federation from March 31, 2001 № 251 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Order of Government of the Russian Federation from March 26, 2001 № 240 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] Order of Government of the Russian Federation from December 21, 2000 № 996 [Electronic resources] // URL: http://www.pravo.gov.ru.

[6] Order of Government of the Russian Federation from December 21, 2000 № 996 [Electronic resources] // URL: http://www.pravo.gov.ru.

[7] On the list of consumable materials for the scientific researches which analogues are not made(realized) in the Russian Federation which importation on territory of the Russian Federation and other territories which are under its jurisdiction, does not liable to taxation on value added: order of Government of the Russian Federation from October 24, 2014 № 1096 [Electronic resources] // URL: http://www.pravo.gov.ru.

Zero rate of VAT (item 165 of TCR)

For example, the zero rates are used at realization of the goods (works, services) for official use by international organizations and their representative offices, realizing activity in territory of the Russian Federation[1].

Disputes on zero rates not infrequently are considered by Constitutional Court of the Russian Federation. So, it has fixed, that provision of paragraph 5 of subparagraph 2 of point 1 of item 165 of TCR supposes excessive interference of the state in sphere of economic activities and does not be responsible to principles of justice, equalities and proportionality[2].

11.4. Tax on gambling industry

The tax is established by TCR[3], interacting with other legislation[4]. It is enacted by the law of the Subject of the Russian Federation[5]. The organizers of gambling games are can be exclusively juridical persons, registered in territory of the Russian Federation. Cost of pure actives of the organizer of gambling games during all period of realization of activity on the organization and realizing of gambling games cannot be level less established by the law. The actives provide financial stability of a gambling institution. Thus for the purpose of protection of the rights and legitimate interests of participants of gambling games activity on the organization and realizing of gambling games in bookmaker office or a totalizator is supposed only at presence at their organizer of a *bank guarantee* of execution of obligations to participants of the gambling games[6].

Under the law, gambling institutions (*except for bookmaker offices and totalizator*) can be open exclusively in gambling zones in territories of following Subjects of the Russian Federation: Altay Kray, Primorsky Krai, Kaliningrad Oblast, Krasnodar Kray, Sochi and the Republic Crimea. Really, works on the organization of a gambling zone have begun in lawful term only in the Krasnodar Kray. It is «Azov-city» zone. According to experts, realization of the project for formation of «Azov-city» gambling zone provides by 2022 receipt in budgets of different levels of procedure of 198 billion rubles of tax payments[7]. Only after many years have been constructed gambling zones «Siberian Coin» in Altay Kray[8], «Tiger de Cristal» in

[1] Order of Government of the Russian Federation from July 22, 2006 № 455 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ruling of Constitutional Court of the Russian Federation from December 23, 2009 № 20 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Chapter 29 – is enacted 1/1/2004 by federal law of the Russian Federation from 12/27/2002 № 182 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] On activity state regulation on the organization and realizing of gambling games and on alteration of some acts of the Russian Federation: federal law of the Russian Federation from December 29, 2006 № 244 // Rossiiskaya Gazeta. – 2006. – On December 31.

[5] On tax on gambling industry: law of Primorsky Kray from November 6, 2003 № 75: it enacted by Legislative Assembly of Primorsky Kray on October 22, 2003 [Electronic resources] // URL: http://www.primorsky.ru/

[6] The paragraph operates in editorship of Federal law of the Russian Federation from October 16, 2012 № 168 // Rossiiskaya Gazeta. – 2012. – On October 19.

[7] Karasev I. Rates are made // Rossiiskaya Gazeta. – 2010. – On January 20.

[8] Kuznetsova T. Ring of «Siberian coin» // Rossiiskaya Gazeta. – 2014. – On November 18.

Primorsky Krai[1] and others. Tax on Gambling Industry fills up budgetary funds (this tax we consider in especial part of our schoolbook).

On the logic (as it is question business) – incomes from a gambling business should be object of taxation. But in the tax system already is available taxes on income (i.e. organization profits tax, individual income tax). Besides, true incomes from a gaming cannot be controlled.

Hence, the tax on gambling industry is a tax on the *latent income* and for it does not approach the direct taxation. To underline *roundaboutness* of the tax, its object in the appellation is specified as business, i.e. activity. At that in the TCR text are *uniquely fixed* objects of taxation and tax base.

Definition of the tax is not proposed by the law and therefore is deduced from the content of chapter 29 of TCR.

Tax on gambling industry (TGI) is the indirect regional tax on business in gaming sphere. The *gambling industry* is understood as the business connected with extraction by businesspersons of incomes in the form of winnings and (or) payment for carrying out of the gambling and (or) bet, not being realization of the goods (property rights), works or services. Functions on development of a state policy and normative-legal regulation in gambling industry sphere realize Minfin of Russia[2]. Federal Tax Service is had by gambling industry licensing.

ELEMENTS

TAXPAYERS

Taxpayers – are the organizations which are putting into practice business in sphere of a gambling industry.

OBJECTS OF TAXATION

Objects of taxation – are the *concrete places* of realization of a gambling industry, namely:

*Gambling-table

*Game machine

*Totalizator processing centre

*Processing centre of bookmaker office

*Receiving centre of rates of totalizator

*Receiving centre of rates of bookmaker office

Definitions of the listed objects were proposed earlier in item 364 of TCR, however then the FL-319 from 11/16/2011 has left only definitions of the gambling industry and game field. Definitions of other objects is primary it was interpreted any way (to pleasure of violators), but then have appeared in the FL-244.

The FTS test a technical condition of gaming equipment according to the administrative provision[3].

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[1] Drobysheva I. Dzhekpot on-primorski // Rossiiskaya Gazeta. – 2015. – On January13.

[2] Order of Government of the Russian Federation from December 21, 2005 № 793 // Rossiiskaya Gazeta. – 2005. – On December 27.

[3] Administrative provision of discharge by Federal Tax Service of the state function on inspection of the technical condition of gaming equipment: it is confirmed by the decree of Minfin of Russia from October 11, 2011 № 128н // Bulletin of statutory acts of federal enforcement authorities. – 2012. – № 24.

Feature of the object of taxation is that for the violations connected with it the tax responsibility is established in chapter 29 of TCR, but is not established by part first of TCR.

TAX BASE

Tax base is the total of conforming objects of taxation on each type of object.

For example, tax base – is quantity (amount) of game fields on one gambling-table.

TAX RATES

Tax rates depend on the type of object of taxation and are established in the fixed quantity of money for object unit. Limiting scales of tax rates are fixed by item 369 of TCR (for example, for one receiving centre of rates of a totalizator is from 5 000 to 7 000 rubles). The concrete rate is established by the regional law.

TAX PERIOD

The tax period is calendar month.

CALCULATION and PAYMENT PROCEDURE

The payer independently estimates sum of tax, multiplying tax base on each object of taxation on the rate for each object.

The tax declaration represented in a lawful date taking into account to change of quantity of objects of taxation for expired tax period.

Tax payment is realized following the results of the tax period in the lawful date.

Peculiarities of calculation and tax payment, dates are specified in items 370–371 of TCR.

TAX PRIVILEGES

Tax privileges are not provided by the legislation.

THE LITERATURE LIST

Include basic sources (look chapter 1)**, and:**

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On activity state regulation on the organization and realizing of gambling games and on alteration of some acts of the Russian Federation: federal law of the Russian Federation from December 29, 2006 № 244 // Rossiiskaya Gazeta. – 2006. – On December 31.

On customs regulation in the Russian Federation: federal law of the Russian Federation from November 27, 2010 № 311 // Collection of Legislative Acts of the Russian Federation. – 2010. – № 48. – Item 6252.

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On excise marks for alcoholic products marks: order of Government of the Russian Federation from July 27, 2012 № 775 // Collection of Legislative Acts of the Russian Federation. – 2012. – № 32. – Item 4562;

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On features of marks of some types of alcoholic products by federal special marks and on alteration in some acts of Government of the Russian Federation: order of Government of the Russian Federation from June 16, 2015 № 593 [Electronic resources] // URL: http://www.pravo.gov.ru.

On the approval of the list of the medical goods, which realization on territories of the Russian Federation and which importation on territory of the Russian Federation and other territories which are under its jurisdiction, do not liable to levy (are exempted from levy) by the tax on value added: order of Government of the Russian Federation from September 30, 2015 № 1042 [Electronic resources] // URL: http://www.pravo.gov.ru.

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Juridical practice

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On case of constitutionality test of point 1 of item 333.40 of Tax Code of the Russian Federation in connection with the complaint of Limited responsibility society «Vstrecha»: ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 // Rossiiskaya Gazeta. – 2013. – On May 31.

On case of constitutionality test of provisions of points 6 and 7 of item 168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with the complaint of Limited responsibility society «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

On case of constitutionality test of provisions of subparagraph 4 of point 1 of item 162 of Tax Code of the Russian Federation in connection with the complaint of Limited responsibility society «Sony Mobile Communications Rus»: ruling of Constitutional Court of the Russian Federation // Ruling of Constitutional Court of the Russian Federation from July 1, 2015 № 19 // Rossiiskaya Gazeta. – 2015. – On July 10.

Section III. SYSTEM OF DUES

Chapter 12. DUES AS THE TAX SYSTEM PART

12.1. Dues for use by objects of fauna and for use by objects of water biological resources.

12.2. State Duty.

12.3. Sales due.

12.1. Dues for use by objects of fauna and for use by objects of water biological resources

These dues are established by TCR[1], interacting with other legislation[2]. Definition of the dues is not proposed by the legislation and therefore it is deduced by the content of chapter 25.1 of TCR.

Dues for use by objects of fauna and for use by objects of water biological resources are direct federal dues for use by objects of fauna. ***Use*** is extraction and (or) catching.

ELEMENTS

PAYERS

Payers – are organizations and natural persons receiving in accordance with established procedure the *permit* on use by objects of fauna in territory of the Russian Federation, as well as on use by objects of water biological resources in the – internal waters, territorial sea, continental shelf of the Russian Federation, exclusive economic zone of the Russian Federation, Azov, Caspian, Barents Seas and around archipelago Spitsbergen.

The care of environmental protection and ecological safety (as it requires Constitution of the Russian Federation) does not signify full refusal of use of natural resources at employment by the entrepreneurial and other economic activities not forbidden by the law. Hence, the legislator should fix an optimum legal regime of hunting, considering objective peculiarities of realization of various types of this activity and simultaneously excluding unfair competition possibility. Convention of

[1] Chapter 25.1 is put into operation by federal law of the Russian Federation from 11/11/2003 № 148 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On fishery and preservation of water biological resources: federal law of the Russian Federation from December 20, 2004 № 166 [Electronic resources] // URL: http://www.pravo.gov.ru;

On hunting and preservation of the hunting resources and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from July 24, 2009 № 209 [Electronic resources] // URL: http://www.pravo.gov.ru;

On measures on ensuring of realization of commitments of the Russian Federation, contextual Convention on international trade in types of the wild fauna and flora, being under the threat of disappearance, from March 3, 1973, concerning sturgeon fishes: order of Government of the Russian Federation from September 26, 2005 № 584 [Electronic resources] // URL: http://www.pravo.gov.ru.

U.N.O. on a Biological Variety speaks about the same (Rio de Janeiro, on June 5, 1992). Hence, legal regulation in the field of hunting and preservation of the hunting resources should guarantee compliance of balance of interests of subjects of hunting-economic activity (since it is connected with influence on fauna and other natural resources) and interests of the person and a society as a whole in ensuring of ecological well-being[1].

OBJECTS

Objects of levy are the objects of fauna and objects of water biological resources according to the lists established by item 333.2 of TCR.

BASE

The base is not separately emphasized by TCR and therefore it defined by us.

Base of levy is the *type of object of levy*.

RATES

Due rates depend on the type of object and *are fixed in rubles for each object* in special tables (item 333.3 of TCR).

Examples:

*Kosulja, wild boar, kabarga, lynx, glutton – 450 for a piece

*Sable, otter – 120 for a piece

*Pollack of Sea of Okhotsk – 3 500 for ton

*Halibut – 3500 for ton

PERIOD

The due period is from the moment of the demand for use.

CALCULATION and PAYMENT PROCEDURE

(Items 333.4-333.7 of TCR)

Payers:

1) Due sum for use by objects of fauna pay at permit receiving on use by objects of fauna;

2) Due sum for use by objects of water biological resources pay in the form of single and regular inpayments.

Payment of due for use by objects of fauna is realized by payers at the place of locations of the body which has given the permit on use by objects of fauna.

Payment of due for use by objects of water biological resources is realized:

*By payers – physical persons (except for individual businesspersons) – at the place of locations of the body which has given the permit on use by objects of water biological resources;

*By payers – organizations and individual businesspersons – at the place of the registration.

The sums of dues for use by objects of water biological resources are enlisted into accounts of bodies of Federal Treasury – for their subsequent distribution according to the budgetary legislation of the Russian Federation.

[1] Ruling of Constitutional Court of the Russian Federation from June 25, 2015 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

The bodies giving the permit on use by objects of fauna and water biological resources, in the lawful date adduce in tax authorities at the place of the registration of data about the – paid permits, due sum under each permit, and due payment dates.

Organizations and individual businesspersons who are realizing use by objects of fauna and objects of water biological resources under the permit, in the lawful date adduce in tax authority at the place of locations of the body which has given the permit, data about the – received permits, sums of due, and sums of actually paid dues.

PRIVILEGES

Privileges terminologically are not emphasized, but actually are available in the form of subject conditional privileges (item 333.2 of TCR).

So, objects of fauna and objects of water biological resources, use with which are not objects of levy are realized:

*By representatives of the radical small people of the North, Siberia and Far East Russian Federation for supply of personal needs (under the list approved by Government of the Russian Federation);

*By persons who are not related to the radical small people, but constantly live in places of their traditional residing and traditional economic activities – for which hunting and fishery are the subsistence basis.

12.2. State Duty

CONCEPTION OF DUTIES

The overall definition of the duty is not proposed by the law and therefore it is deduced from the effective legislation content.

Duty is the type of dues for fulfilment of legally significant actions. Thus, duties it is possible to refer to *dues on activity, i.e. to indirect payments.* Duties are classified by various criteria.

Types of duties on levy bodies:

*Duties levied by notarial bodies.

*Duties levied by bodies of the REGISTRY OFFICE.

*Duties levied by judicial bodies.

*Duties levied by customs bodies.

*Other lawful duties.

Types of duties on use sphere:

*State Duty.

*Customs duty.

*Other duties.

Only State Duty is included into tax system.

General features of duties:

*Duty is individual due since it is levied from the concrete person.

*Duty is levied in connection with services of public-law character and is conditional by realization of the functions by any state body.

*Purpose of levy of the duty and its content do not coincide. The purpose of levy of any duty is the compensation of costs of the conforming recoverer. Actually the duty scale exceeds the expenses connected with concrete service.

*Rates of duties do not depend on solvency of the payer. TCR provides cases of release from the duty, and deferments or instalments of payment of the duty.

Therefore even the insolvent person can protect in lawful cases the rights without duty payment.

*Other features.

STATE DUTY

It is established by TCR[1], interacting with other legislation[2]. Definition of the duty is not proposed by the legislation and therefore it is deduced by the content of chapter 25.3 of TCR.

State Duty (SD) is indirect federal due for fulfilment by lawful persons of legally significant actions.

State Duty is unique and sufficient payment for fulfilment of conforming legally significant actions by authorized body, and (unlike the tax) has feature of *individual onerousness* (ruling of Constitutional Court of the Russian Federation from February 28, 2006 № 2, determinations of Constitutional Court of the Russian Federation – from March 1, 2007 № 326, from December 16, 2008 № 1079, etc.).

At the same time State Duty is the specific kind of public financial payments, which scale not necessarily should be equivalent to expenses.

State Duty is fixed by the federal legislator based on principles of justice and proportionality, for the purpose of ensuring of the public orderliness in concrete sphere of public relations, as well as proceeding from character of the rights which realization contacts necessity of payment of State Duty. At that the issue about in what cases State Duty liable to refund, also is solved by the federal legislator – within the limits his discretions and with compliance of the constitutional requirements to lawful establishing of taxes and dues[3].

ELEMENTS

PAYERS

Payers of State Duty are any interested organizations and natural persons.

COLLECTORS

Collectors of State Duty are the bodies authorized by the law:

*Courts.

*Registering bodies.

*Licensing bodies.

*Bodies formalizing and giving the documents.

*Other lawful bodies and officials.

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[1] Chapter 25.3 – is put into operation since 1/1/2005 by federal law of the Russian Federation from 11/2/2004 № 127 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Arbitral Procedure Code of the Russian Federation: federal law of the Russian Federation from July 24, 2002 № 95// Collection of Legislative Acts of the Russian Federation. – 2002. – № 30. – Item 3012;

Code of Civil Procedure of the Russian Federation: federal law of the Russian Federation from November 14, 2002 № 138 // Collection of Legislative Acts of the Russian Federation. – 2002. – № 46. – Item 4532;

The legal acts specified in № 127-FL from 11/2/2004 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 [Electronic resources] // URL: http://www.pravo.gov.ru

OBJECTS

Objects of levy are legally significant actions:
*Applications, complaints, addresses in courts.
*Notarial actions.
*Registration actions.
*License actions.
*Other lawful actions.

BASE

Base of levy is the type of legally significant action.

Examples are: statement of claim in court of property character or non-property character; registration of the real estate or civil registration etc.

RATES

State Duty rates depend on base of levy.

Rates are established in the fixed quantity of money and in percentage of its excess over the base price. Besides, the rate scale can depend on the type of the addressee (i.e. arbitration court or general jurisdiction court, notariate etc.).

PERIOD

The due period is from the moment of the demand for legally significant action.

PROCEDURE and PAYMENT DATES

Duty calculation is realized by the payer.

SD on a general rule is paid in non-cash (for organizations) and cash (for natural persons) the form, as a rule, before fulfilment of legally significant actions, but at the place of their fulfilment. Exceptions of the rule can be established only by TCR.

At that SD payment dates are established by TCR depending on the type of legally significant actions. The control of payment of SD is realized by tax authorities.

TCR provides cases *of refund* of SD (for example, at the – overpayment, refusal in acceptance of the statement of claim etc.).

Refund of SD is put into practice under applications (they are given in tax body) with the appendix of the original of the payment document and the document which is the ground for refund of SD (for example, court determination on State Duty refund).

For non-payment or inadequate payment of SD sanctions are not established, since at the addressee of SD in this case is a possibility not to realize legally significant actions, i.e. the interested person punishes itself.

PRIVILEGES

Privileges under SD can be classified on the subject, object and specific.

Example of subject privileges is: exemption from SD of consumers under claims on protection of rights of consumers. In this case the main thing, that the claimant is the *consumer*.

Example of object privileges is: exemption from SD under requirements, contextual labour relations. Here the main thing is object of dispute (i.e. *labour relations*), instead of the type of the applicant.

Example of specific privileges is: declarative privileges, i.e. the privileges received under the application of the person in connection with his property status. Their peculiarity consists that giving of privileges depends actually not on legal norms, and from *will of the addressee* of State Duty.

12.3. Sales due

Sales Due is established by TCR[1]. Definition of the due is not proposed by the law, and therefore it is deduced from the effective legislation content.

Sales due (TD) is indirect local due for trading activity realization. The due is enacted and stops to operate according to TCR by normative legal acts of representative bodies of municipal unions, and it is obligatory to payment in territories of these municipal unions. Moscow, St.-Petersburg and Sevastopol are equal to municipal unions with the purpose of Sales Due. The cities put into operation the due by the laws. These cities have begun use Sales Due by the first.

ELEMENTS

PAYERS

Payers are the organizations and individual businesspersons who are putting into practice the types of business in territory of municipal union. The registrations of payers are realized based on notices of the payer of due to the tax authority.

OBJECT

Object of levy is use of the object of movable or real estate for realization by the payer of the due of the type of business, concerning which is established the due, at least once within a quarter.

Commerce types as well as activity on formation of the retail markets are related to the business types, concerning which due is established.

BASE

The term «base of levy» is absent in chapter 33 of TCR, but actually *base* is (in our opinion) that on what is multiplied the rate of due – i.e. it is actual significances of the physical characteristic of conforming object of realization of commerce.

PERIOD

Levy period is quarter.

RATES

The due rates are established by normative legal acts of municipal unions in rubles for a quarter counting on object of realization of commerce or on its area.

At that on a general rule, the rate of due cannot exceed the computed sum of the tax, liabling to payment in the conforming municipal union in connection with use of patent system of the taxation based on the patent on the conforming type of activity given for three months.

At that the rate of due cannot exceed 550 rubles on 1 square metre of the area of the retail market. This rate liable annual indexation on the deflator coefficient established for conforming calendar year. Normative legal acts of municipal unions can establish the differentiated rates of due depending on the – territories of realization of concrete type of trading activity, category of the payer of due, features of realization of some types of commerce, as well as features of objects of realization of commerce. At that the rate of due can be lowered up to zero.

[1] Chapter 33 – is put into operation since 1/1/2015 by federal law of the Russian Federation from 11/29/2014 № 382 [Electronic resources] // URL: http://www.pravo.gov.ru.

CALCULATION AND PAYMENT PROCEDURE

On a general rule, the due sum independently is fixed by the payer for each object of levy – as multiplication of the rate of due concerning to the type of business and the actual value of the physical characteristic of the object of realization of commerce.

Due payment is realized in the lawful date.

PRIVILEGES

From due payment on business types are exempted the individual businesspersons practicing patent system of the taxation and the taxpayers practicing the uniform agricultural tax with use of the conforming objects of movable or real estate.

THE LITERATURE LIST

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Gureev V.I. Concept and distinctive attributes of the tax, due, duty // The State and law (journal). – 2005. – Pp. 49-54.

Legal acts

Arbitral Procedure Code of the Russian Federation: federal law of the Russian Federation from July 24, 2002 № 95// Collection of Legislative Acts of the Russian Federation. – 2002. – № 30. – Item 3012.

Code of Civil Procedure of the Russian Federation: federal law of the Russian Federation from November 14, 2002 № 138 // Collection of Legislative Acts of the Russian Federation. – 2002. – № 46. – Item 4532.

On fishery and preservation of water biological resources: federal law of the Russian Federation from December 20, 2004 № 166 [Electronic resources] // URL: http://www.pravo.gov.ru.

On hunting and preservation of the hunting resources and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from July 24, 2009 № 209 [Electronic resources] // URL: http://www.pravo.gov.ru.

On measures on ensuring of realization of commitments of the Russian Federation, contextual Convention on international trade in types of the wild fauna and flora, being under the threat of disappearance, from March 3, 1973, concerning sturgeon fishes: order of Government of the Russian Federation from September 26, 2005 № 584 [Electronic resources] // URL: http://www.pravo.gov.ru.

Juridical practice

On case of constitutionality test of point 1 of item 333.40 of Tax Codes of the Russian Federation in connection with the complaint of Limited responsibility society «Vstrecha»: Ruling of Constitutional Court of the Russian Federation from May 23, 2013 № 11 // Rossiiskaya Gazeta. – 2013. – On May 31.

On case of constitutionality test of parts 3 of item 71 of Federal law «On hunting and on preservation of the hunting resources and on alteration in some legislative acts of the Russian Federation» in connection with inquiry of Supreme Court of the Russian Federation: ruling of Constitutional Court of the Russian Federation from June 25, 2015 № 17 // Rossiiskaya Gazeta. – 2015. – On July 10.

Chapter 13. DUES WHICH ARE NOT ENTERING INTO TAX SYSTEM

13.1. Conception of specific dues

Specific dues are complex of dues and other obligatory payments which are not included in tax system of the Russian Federation, but it can be objects of taxation as types of income, or it can be used with the purpose of formation of tax privileges, or are fiscal incomes of the budget. Sometimes it is named – «quasi-taxes»[1]. In our opinion, similar terms are unsuccessful because of their artificiality and inconvenience of perception.

Let's result one indicative example: in 2014 specific dues have exceeded 700 billion rubles. It almost five times more than the scale of anti-recessionary fund in the budget-2016 and more than twice is more than the sum intended in it on crediting of regions. At the same time these payments become burden for the enterprises. Experts say that it can grow to one percent of the gross domestic product. In this connection correctly (in our opinion) it is offered to form the register of nontax payments, as well as to pass the base law on such payments[2].

Let's consider specific dues on sphere of their use.

EXECUTION FEE (EXECUTION DUE)

Execution fee is money, raised from the debtor. The rate of the due is seven percent from the debtor property. If execution proceeding is stopped on exonerative causes (for example, at cancellation of the judicial act as illegal), Federal Bailiff Service is obliges to return to the former debtor the execution fee and all expenses. Execution fee in full volume is pay in the federal budget[3].

DUES AND PAYMENTS IN SPHERE OF RENDERING OF HOUSING-AND-MUNICIPAL SERVICES

(Payments for the gas, water, warmly, electric power etc.)

There are established by suppliers of the services (as a rule, there are monopolists). Monopolists regularly increase the tariffs which scale often mismatch to laws of economics and quality of services.

INPAYMENTS ON MAJOR REPAIRS OF THE GENERAL PROPERTY IN AN APARTMENT HOUSE

The proprietor of the premise (room) in an apartment house must to bear expenses on the maintenance of the premise (room) belonging to it, as well as to participate in expenses on the maintenance of the general property in an apartment house in proportion to the participatory share in the right of the general property on this

[1] Fat`kina L.P. Tax law. Course of lectures: the manual. – M.: Book World publishers, 2010 [Electronic resources] // URL: www.kmbook.ru.

[2] Panina T. Dues on centesimal // Rossiiskaya Gazeta. – 2015. – On December 20.

[3] On execution proceeding: federal law of the Russian Federation from October 2, 2007 № 229 // Collection of Legislative Acts of the Russian Federation. – 2007. – № 41. – Item 4849.

property – *by entering of the payment* for the maintenance of a residential unit and *inpayments on major repairs* (item 158 of Housing Code of the Russian Federation). According to item 179 of Housing Code of the Russian Federation, the resources received by the regional operator from proprietors one at home, *can be used on returnable basis for financing of major repairs of the general property in other apartment houses*. Unfortunately, Constitutional Court of the Russian Federation has declared such provision of item 179 (in our opinion, it is absolutely unconstitutional) not conflicting to Constitution of the Russian Federation[1].

HEAT-RECOVERY DUE

Heat-recovery due is *nontax income* of a federal budget (item 51 of Budgetary Code of the Russian Federation) and it is intended for ensuring of recycling of transports. It is put into operation by the federal law[2]; however concrete requirements are established by Government of the Russian Federation[3]. Though the due is not included into tax system – its administration is assigned to FTS of Russia. Heat-recovery due is object of scientific researches[4].

Payers of heat-recovery due are persons, which:

*Put into practice importation of transports (chassis) in Russian Federation;

*Realize production, manufacturing of transports (chassis) in territory of the Russian Federation;

*Have bought transports (chassis) in territory of the Russian Federation at the persons who not paying or have not paid heat-recovery due.

ROAD DUES

Road dues – are complex of payments (except for taxes) with the purpose of formation of road funds. Road funds are regulated by Budgetary Code of the Russian Federation which has been added by item 179.4 «Road funds»[5].

There are:

Dues for journey of the vehicles registered in territories of the foreign states – on highways in territory of the Russian Federation. To such states are related to Germany, Poland, Latvia, Lithuania, etc[6];

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[1] On case of constitutionality test of provisions of part 1 of item 169, parts 4 and 7 of items170 and part 4 of item 179 of Housing Code of the Russian Federation in connection with inquiries of groups of deputies of State Duma: ruling of Constitutional Court of the Russian Federation from April 12, 2016 № 10 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Collection of Legislative Acts of the Russian Federation. – 1998. – № 26. – Item 3009.

[3] On heat-recovery due concerning the wheel transports and chassis and on alteration in some acts of Government of the Russian Federation: decree of Government of the Russian Federation from December 26, 2013 № 1291 // Collection of Legislative Acts of the Russian Federation. – 2014. – № 2. – Item 115;

On heat-recovery due concerning self-propelled cars and (or) trailers to them and on alteration in some acts of Government of the Russian Federation: decree of Government of the Russian Federation from February 6, 2016 № 81 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Reut A.V. Fiscal and regulating(adjusting) functions of heat-recovery due // The Financial Law (journal). –2013. – № 3.

[5] Federal law of the Russian Federation from April 6, 2011 № 68 // Rossiiskaya Gazeta. – 2011. – On April 8.

[6] On due for journey of the vehicles registered in territory of the foreign states, on highways of the Russian Federation: decree of Government of the Russian Federation from December 24, 2008 № 1007 // Collection of Legislative Acts of the Russian Federation. – 2009. – № 2. – Item 216.

Pay on account compensation of the harm caused to highways of federal significance by the means of transport, transporting heavy and (or) large-sized cargoes;

Pay on account compensation of the harm caused to highways of the general use of federal significance by the means of transport having the assented maximum weight over 12 tons;

Pay for rendering of services on joining of objects of road service to highways of the general use of federal significance.

In this connection *Constitutional Court of the Russian Federation has noticed*, that the maintenance of highways of general use of federal significance at the expense the resources charging in the federal budget in the type of tax, dues and other public-law payments – does not exclude possibility of putting on of the duty on additional financing of road activity on subjects, which most intensively maintain highways, receive the direct economic gain from their development and at the same time it essential accelerate deterioration of a road cloth. Thus, the pay on account harm compensation should be qualified not as the tax or due, and as obligatory public individually-compensated payment of compensatory fiscal character[1].

DUES AND PAYMENTS ON A TRANSPORT (i.e. water, railway, air, automobile etc.) **–** are regulated by some normative legal acts and are not discussed in our schoolbook.

OTHER SPECIFIC DUES **–** are discussed in following paragraphs of the theme.

From all above-stated it is possible to draw the conclusion that in Russia actually are two tax systems:

*Tax system by TCR;

*Tax system which is camouflaged under private, insurance, customs etc. and renders at that still big than tax, oppression on the population without effective legal measures of protection against such system.

In the subsequent paragraphs of our schoolbook we place for consideration most specific dues – special duties, ecological inpayments, dues and payments in the merchant shipping and on internal water transport.

13.2. Special duties

The overall definition of special duties is not proposed by the law, and therefore it is deduced by our from the effective legislation content.

Special duties are the type of specific dues for fulfilment of legally significant actions, not entering into tax system.

Types of special duties are*:*

1. Customs duty.
2. Author's duties.

[1] On case of constitutionality test of provisions of item 31.1 of Federal law «On highways and on road activity in the Russian Federation and on alteration in some legislative acts of the Russian Federation», Decree of Government of the Russian Federation «On pay collection on account compensation of the harm caused to highways of the general use of federal significance by transports, having the assented maximum weight over 12 tons» and item 12.21.3 of Code of the Russian Federation on administrative violations in connection with inquiry of group of deputies of the State Duma: ruling of Constitutional Court of the Russian Federation from May 31, 2016 № 14 [Electronic resources] // URL: http://www.pravo.gov.ru.

CUSTOMS DUTY

The customs duty since 1/1/2005 is only the type of customs payment and does not enter into tax system of Russia; it is regulated by the customs legislation[1] (but at that FCS of Russia is included into system of Minfin of Russia along with FTS of Russia).

Customs duty is obligatory payment in the federal budget levied by customs bodies in connection with moving of the goods through border and in other cases fixed by international treaties of the Russian Federation[2]. We proposed own definition of the customs duty

Customs duty (CD) is the obligatory customs payment which is a stipulation of moving of the goods (production) through Russian Federation frontier and (or) through customs border of Eurasian Economic Union.

The customs duty differs from State Duty on following attributes:

1. CD is the specific type of customs payments which is regulated only by the customs legislation and does not enter into tax system.

State Duty is included into tax system.

2. Concrete rates of CD are fixed by acts of Government of the Russian Federation. Such practice allows changing operatively duties depending on circumstances.

Concrete rates of State Duty are fixed by TCR.

3. There are established all types of legal responsibility for evasion from payment of CD – i.e. administrative, criminal, civil-law.

Punishment is not established for evasion from payment of State Duty. At worst concerning the payer will not be executed legally significant actions.

Types of customs duties

1) ***Seasonal duties*** – are established by Government of the Russian Federation for operative regulation of exportation of the goods. At that the rates of customs duties provided by customs tariff, are not used. The rates of seasonal duties established at exportation of the goods, cannot exceed statutory scales. Period of validity of seasonal duties cannot exceed six months in a year.

2) ***Specific duties*** – are established in specific cases.

There are:

*Special duties – are used as the protective measure for damage prevention to the domestic manufacturer.

*Antidumping duties – are established at importation of the goods under the price below the nominal.

*Countervailing duties – are established, if subsidies are used at production or exportation of the goods.

Before use of specific duties is made the state investigation by which results is realized the decision on use of the specific duty. The rate of the specific duty is fixed

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[1] On customs regulation in the Russian Federation: federal law of the Russian Federation from November 27, 2010 № 311 // Rossiiskaya Gazeta. – 2010. – On November 24;

On special protective, antidumping and compensatory measures at import of the goods: federal law of the Russian Federation from December 8, 2003 № 165 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On the customs tariff: law of the Russian Federation from May 21, 1993 № 5003-1 // Gazettes of Congress of People's Deputies of the Russian Federation and Supreme Soviet of the Russian Federation. – 1993. – № 23. – Item 821; Collection of Legislative Acts of the Russian Federation. – 1999. – № 7. – Item 879.

by Government of the Russian Federation following the results of investigation of each concrete case.

CUSTOMS DUTY ELEMENTS

PAYERS are the any persons moving the goods through border.

COLLECTORS are the customs bodies.

OBJECT is the legally significant action in the form of the assenting on goods moving through border.

BASE is customs cost of the moved goods.

RATE – depends on base.

Rates of customs duties can be classified on following types:

**Ad valorem* duties – are charged in percentage to customs cost of the assessed goods.

**Specific tariffs* – are charged in the established scale on unit of the assessed goods.

**Combined* duties – are combine both above-named types.

The complex of rates of customs duties is called as the ***customs tariff.*** The rates establish Government of the Russian Federation, except for the cases provided by federal laws and international treaties of the Russian Federation.

CALCULATION and PAYMENT PROCEDURE

Calculation, payment and collection of customs duties is realized based on customs cost of the goods according to legal norms of the customs legislation.

TARIFF PRIVILEGES

Tariff privileges concerning the goods imported into Russia, are rendered according to RF international treaties. Tariff privileges concerning the goods which are taken out from Russia (there are privileges in the form of release from payment of the customs duty or decrease in the rate of the customs duty) – are established by FL «On the customs tariff»; are rendered on the terms of reciprocity or unilaterally at realization of the commercial policy of the Russian Federation; cannot have individual character.

TARIFF PREFERENCES AND TARIFF QUOTAS

Tariff preference – is release from payment of import customs duties concerning the goods from the countries, forming together with Russian free trade area; or signed the agreements having for an object formation of such zone, or decrease in rates of import customs duties concerning the goods, from developing or least developed countries using uniform system of tariff preferences of EEU. Russia renders the tariff preferences according to international treaties.

Tariff quota – is the measure of regulation of importation to Russia of some types of the agricultural goods originating from the third countries. It provides use of lower rate of the import customs duty at importation of certain quantity of the goods (in kind or cost form) in comparison with the rate of the import customs duty used according to Uniform Customs Tariff of EEU. To the goods imported into Russia over fixed quantity (quota), is used the rate of the import customs duty according to the Uniform customs tariff of EEU.

Tariff quota concerning the goods which are taken out from Russia is measure of regulation of exportation from Russia of the goods which are originating from Russia. It provides use of lower rate of the import customs duty at importation of certain

quantity of the goods (in kind or cost form) in comparison with the rate of the export customs duty established by Government of the Russian Federation. The Government establishes tariff quotas on exportation of the goods.

Constitutional Court of the Russian Federation in ruling № 15 from 7/13/2010 has resolved the problem of an appraisal of the goods at its importation by natural persons. In this case should be fixed customs cost of the goods, instead of its market cost in territory of Russia[1].

FCS of Russia regularly publishes *judiciary practice reviews* on disputes, connected with refund (credit) of unduly paid or unduly recovered customs duties, taxes, as well as on disputes connected with payment of the percent added on such payments in connection with infringement by customs bodies of the date of their refund[2].

Supreme Court of the Russian Federation generalizes practice of consideration of customs disputes by courts[3].

AUTHOR'S DUTIES

Statute of Government of the Russian Federation separately regulates the patent and other duties for realization of legally significant actions connected with the – patent for the invention, useful model, production prototype; state registration of the trade mark and service mark and (or) devolution of exclusive rights to other persons and contracts about the disposal these rights. The same statute fixes the list of legally significant actions and duty scales[4].

13.3. Ecological inpayments

Federal law «On environmental protection» (items 16-16.5)[5] obliges everyone to pay for nature management and negative impact on the environment. This problem also is investigated by a science[6].

The pollution charge is levied for its following types:

*Pollutant emissions in atmospheric air by stationary sources;

*Pollutants discharges as the part of sewage in water bodies;

*Disposal of industrial and consumer waste.

Government of the Russian Federation approves rates of charges for negative impact on the environment and additional coefficients[1].

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[1] Rossiiskaya Gazeta. – 2010. – On July 23. – P. 13.

[2] Example: Judiciary practice review on the disputes connected with refund (credit) of unduly paid or unduly recovered customs duties, taxes, as well as with payment of the percent added on such payments in connection with infringement by customs bodies of the date of their refund for the first quarter of 2015: information of FCS of Russia [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On several issues of uses by courts of the customs legislation: ruling of Plenum of Supreme Court of the Russian Federation from May 12, 2016 № 18 [Electronic resources] // URL: http://www.vsrf.ru.

[4] It is approved by Order of Government of the Russian Federation from December 10, 2008 № 941 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] On environmental protection: federal law of the Russian Federation from January 10, 2002 № 7 // Collection of Legislative Acts of the Russian Federation. – 2002. – № 2. – Item 133.

[6] Mar`in E.V. Financing of environmental protection and rational nature management: budgetary-law and tax mechanisms // The Financial Law (journal). – 2012. – № 6.

Entering of charges for negative impact on the environment does not exempt payers from – realization of measures on negative impact on the environment decrease; duties on compensation of the harm caused to environment as the result of realization by them economic and (or) other activity; responsibility of infringement of the legislation in the field of environmental protection.

The pollution charge is transferred to the budgets of budgetary system according to the budgetary legislation of the Russian Federation.

As has explained ***Constitutional Court of the Russian Federation***, one of environmental protection principles is the principle «pollutant pays»[2]. Pollution charge also are obliged to pay legal persons and individual businesspersons, which realize in territory of the Russian Federation, continental shelf and in exclusive economic zone of the Russian Federation economic and (or) other activity rendering negative impact on the environment.

Cash basis for charges for negative impact on the environment calculation is the – *volume or weight* of emissions (dumps) of pollutants, either volume or weight placed in the accounting period production wastes and consumption.The pollution charge independently is estimated by payers. The rules of calculation and collection of such payment establish Government of the Russian Federation.

The payment of interest for use by concrete natural resources is proclaimed by the special ecological laws (i.e. Land Code, Water Code, Forest Code, subsoil legislation etc.). About necessity to pay lawfully established payments it is spoken in the legislation on the exclusive economic zone of Russia and continental shelf of the Russian Federation; other legislation regulating sphere of nature management. However the payments specified in the listed laws, Constitutional Court of the Russian Federation understands as nontax[3]. Therefore it are not included in tax system of the Russian Federation and not regulated by Tax Code of the Russian Federation.

And now we will be applied to concrete examples of such payments:

PAYMENTS AT SUBSOIL USE

The analysis of the mountain legislation shows, that at subsoil use following payments are paid:

1. Single payments for subsoil use at occurrence of the certain events stipulated in the licence – are enlisted in the federal budget and budgets of

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[1] On rates of charges for negative impact on the environment and additional coefficients: decree of Government of the Russian Federation from September 13, 2016 № 913 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On case of constitutionality test of parts 2 of item 99, parts 2 of item 100 of Forest Code of the Russian Federation and provisions of Decree of Government of the Russian Federation «On calculation of scale of the harm caused to forests by infringement) of the forestry legislation» in connection with Limited responsibility society complaint «Zapoljarneft`»: ruling of Constitutional Court of the Russian Federation from June 2, 2015 № 12 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On case of constitutionality test of provision of subparagraph «б» of point 4 of decree of Governments of the Russian Federation «On the approval of the procedure of fixing of a pay and its limiting scales for pollution of surrounding environment, disposal of waste, other types of adverse effect» in connection with inquiry of Supreme Court of Republic Tatarstan: ruling of Constitutional Court of the Russian Federation from May 14, 2009 № 8 [Electronic resources] // URL: http://www.pravo.gov.ru.

Subjects of the Russian Federation according to the budgetary legislation of the Russian Federation.

2. Regular payments for subsoil use – are levied for rendering of exclusive rights to subsoil users in subsoil use sphere.

3. Payment for the geological information on subsoil – charges in the income of the federal budget. Government of the Russian Federation approves rules of use of the geological information on subsoil[1].

4. Due for participation in competition (auction) – charges in the income of budgets of the Subjects of the Russian Federation regulating process of subsoil use on the plots.

5. Due for delivery of licences – charges in the income of the federal budget.

At the same time, the due sum for delivery of licences on use by the subsoil plots, containing deposits of widespread minerals or subsoil plots of local significance – charges in the income of budgets of Subjects of the Russian Federation regulating process of subsoil use on the plots.

ECOLOGICAL DUE

Ecological due (ED) is due on each group of the goods which are subject to recycling after loss by them of consumer characteristics, paid by manufacturers, importers of the goods who do not guarantee with independent recycling of a waste from use of the goods. The due is provided by item 5 of FL «On production wastes and consumption»[2] and is detailed in acts of Government of the Russian Federation[3].

Federal Service for Supervision of Nature Resources levies the due, as well as puts into practice the control for correctness of calculation, completeness and timeliness of its payment. Payment of ecological due is realized by the payer by transfer of money resources in currency of the Russian Federation into the account of territorial body of Federal Service for Supervision of Nature Resources in Federal Treasury.

Availability of ecological due in Russia really actually, since level of recycling and neutralisation of all types of waste in Russia is obviously insufficient. It is necessary to draw practically in 20 times more investments into processing sphere[4]. It is only not clearly, why this due is not included into tax system of the Russian Federation.

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[1] On the approval of rules of use of the geological information on the subsoils which possessor is the Russian Federation: decree of Government of the Russian Federation from June 2, 2016 № 492 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On production wastes and consumption: federal law of the Russian Federation from June 24, 1998 № 89 // Collection of Legislative Acts of the Russian Federation. – 1998. – № 26. – Item 4556.

[3] On the procedure of collection of ecological due: order of Government of the Russian Federation from October8, 2015 № 1073 [Electronic resources] // URL: http://www.pravo.gov.ru;

On establishing of rates of ecological due on each group of the goods liabling to recyclings after loss by them of consumer characteristics, paid by manufacturers, importers of the goods who do not ensure independent recycling of the waste from use of the goods: order of Government of the Russian Federation from April 9, 2016 № 284 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Petrov V. To save up cleanliness // Rossiiskaya Gazeta. – 2016. – On May 25.

13.4. Dues and payments in merchant shipping and on internal water transport

The dues are provided by conforming Codes (i.e. MCR, IWTCR)[1], interacting with tax, customs and other legislation[2].

Distinction between terms « pay» and «payment» is not looked through in the merchant shipping and on inland water transport.

Besides, similar pays, payments, dues exist and on the railway, automobile, air transport. Conserning to tax law, there are types of income liable to taxes, if there are not listed in budgets. The proprietors – organizations or individual businesspersons should be taxpayers from such incomes, which they have received in the form of pay, payments, and dues for execution of work or rendering of services.

DUES IN MERCHANT SHIPPING AND ON INLAND WATER TRANSPORT

***Dues in merchant shipping and on inland* water transport** – are the lawful quantities of money levied for realization of legally significant actions on sea and water bodies.

Terminologically and ad rem, such dues completely fall under concept of due in accordance with item 8 of TCR, however are not included in tax system of Russia. Hence, the dues can be considered in tax law only as object of taxation in a type of income (profit) of the receiver of due.

Merchant Shipping Code of the Russian Federation (MCR) *provides following specific dues:*

*Pilotage due.

*Due for average adjustment.

*Port dues and other similar dues.

PILOTAGE – is levied from the ships using pilots (items 85-87 of MCR).

Sea pilots – are the citizens of the Russian Federation who are workers of pilotage service. Each pilot should have the *pilotage certificate* of the right of piloting of ships in certain districts (it is given by the captain of seaport).

Pilotage services, as a rule, are the state organizations. However Government of the Russian Federation has the right to form private organizations on piloting of ships, and to fix the list of ports in which it is supposed activity of private organizations on piloting of ships.

In this connection Constitutional Court of the Russian Federation has noticed, that the federal legislator wrongfully has not fixed criteria and reference points of establishing of peculiarities of private organizations on piloting of ships, and has left all it to the discretion of Government of the Russian Federation. Besides, the legislator wrongfully has not specified the purpose and ground of necessity of establishing of the

[1] Merchant Shipping Code of the Russian Federation. Items 106, 307; Inland Water Transport Code of the Russian Federation. – Items 58, 157.

[2] On seaports in the Russian Federation and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from November 8, 2007 № 261 // Collection of Legislative Acts of the Russian Federation. – 2007. – № 46. – Item 5557;

On approval of the List of the dues levied from ships in river ports (port dues), and the List of the dues levied for services in use of an infrastructure of inland waterways: decree of Ministry of transport of Russia from June 4, 2009 № 90 [Electronic resources] // URL: http://www.president.ru.

list of seaports, in which it is supposed (or is not supposed) activity of private organizations on piloting of ships. Hence, probably any interpretation of the volume and content (so – restriction of rights and liberties) by the act of Government of the Russian Federation[1].

Piloting is put into practice with the purpose of ensuring of security of navigation and prevention of incidents with ships, as well as with the purpose of protection of the sea environment – on approaches to seaports; within water area of seaports; between seaports; in the high sea.

Receivers of due are pilots. However the profit tax from the received dues should be recovered not from the pilot, but from pilotage service – if dues are not listed in budgets.

DUE FOR AVERAGE ADJUSTMENT

(Items 284, 305-307 of MCR)

Average statement – is calculation on general average distribution.

General average – are losses intended and reasonably suffered with the purpose of preservation from the common peril of the property using in the joint marine adventure (i.e. – ship, freight, cargo). The average statement is formed by *average adjusters (dispacheurs)* – i.e. the persons having knowledge and experience in maritime law sphere.

The party requiring distribution of general average, is obliged to prove, that the declared losses really should be recognized the general average.

For average adjustment is levied due, which joins in an average statement and is distributed between all interested persons – proportionally to participatory shares of their participation in general average.

The dispacheur is the receiver of due.

If the dispacheur is not the worker of organization and if due is not listed in budgets – the payer of the tax from the received income in the form of due is the dispacheur.

If the dispacheur is the worker of organization – the organization should be the payer of the tax from the received income in the form of due, if it is not listed in budgets.

PORT AND OTHER CONFORMING DUES

MSC simply mentions these dues. By name port dues are listed in *item 19* of FL «On seaports in the Russian Federation and on alteration in some legislative acts of the Russian Federation»[2]. Port dues are paid by the Russian and foreign ship-owners or the persons authorized by them for – ship calling in port; exit of a ship from port; transit pass of harborage by a ship.

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[1] On case of constitutionality test of provisions of point 2 of item 87 of Merchant Shipping Code of the Russian Federation and Decree of Government of the Russian Federation from July 17, 2001 № 538 «On activity of private organizations on piloting of ships,vessels» in connection with the complaint of International public organization «Sea Pilots Association of Russia» and Independent noncommercial organization «Society of Sea Pilots of St.-Petersburg»: ruling of Constitutional Court of the Russian Federation from April 6, 2004 № 7 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On seaports in the Russian Federation and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from November 8, 2007 № 257 // Collection of Legislative Acts of the Russian Federation. – 2007. – № 46. – Item 5557.

In sea port can be established following ***port dues (harbour dues):***

1) Tonnage due – is levied for port call and exit of a ship from port;

2) Channel due – is levied for a ship passage on the channel at port call and port exit, and for transit pass of harborage;

3) Ice-breaker due – is levied for port call and an exit of a ship from port or transit pass of harborage;

4) Pilotage due – is the independent type of due in accordance with MCR (about that we spoke earlier). However in accordance with FL-257 pilotage due – is one of types of port dues, because it also is levied for each *pilotage operation* (i.e. – anchoring or on mooring buoy; unanchoring or from mooring buoy; all fast; de-berthing; input of a ship into dock and conclusion of the ship from dock);

5) Light due (beaconage) – is levied for port call and exit of a ship from port or for transit pass of harborage;

6) Navigating due – is levied for a port call and exit of a ship from port;

7) Dock due (wharfage) – is levie by wharfinger for use of a mooring for loading on a ship of the goods or unloading goods from a ship;

8) Ecological due – is levied in the ports having technique for reception of the ship waste (i.e. – dust, petrocontaining and sewage, except for ballast waters);

9) Due of transport security of water area of seaport – is levied for port call and exit of a ship from port or transit pass of harborage.

The list of the port dues levied in the concrete sea port is established by Ministry of Transport of Russia. Rates of port dues and the rules of their use are established according to the legislation of the Russian Federation on natural monopolies[1].

Inland Water Transport Code of the Russian Federation (IWTCR)

Specific dues on an inland water transport on-essence coincide with dues in merchant shipping. So, IWTCR has established due for the average adjustment, similar to the same due in merchant shipping (items 140, 157 of IWTCR). Port dues also have established IWTCR. Government of the Russian Federation fixes types; rates and rules of use the port dues. However the structure of IWTCR differs from structure of MSC, i.e. between them is insufficient correlation. For example, by IWTCR is provided piloting of ships on the reimbursable basis. However at that IWTCR not use the term «due» (item 41 of IWTCR).

[1] On natural monopolies: federal law of the Russian Federation from August 17, 1995 № 147 // Collection of Legislative Acts of the Russian Federation. – 1995. – № 34. – Item 3426;

On state regulation of the prices (tariffs, dues) on services of subjects of natural monopolies in the transport terminals, ports, airports and services in use of an infrastructure of inland waterways: decree of Government of the Russian Federation from April 23, 2008 № 293 // Collection of Legislative Acts of the Russian Federation. – 2008. – № 17. – Item 1887;

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PAYMENTS IN MERCHANT SHIPPING AND ON THE INLAND WATER TRANSPORT

The payments are established by conforming Codes (i.e. MCR, IWTCR)[1], interacting with tax, customs and other legislation.

Payments in merchant shipping and on an internal water transport are lawful sums of money as payment for spent on sea both water objects of work and rendered services. These payments only terminologically coincide with the word «payment», which is used at tax fixing by item 8 of TCR. Actually and legally payments in merchant shipping and on an inland water transport are not related to taxes or dues, and therefore it can are only as objects of taxation in the form of income of their receivers – if these payments do charge in budgets.

MSC provides following payments (items 132, 160, 163, 352):

*Pay for demurrage days.

*Payments at cargo delivery.

*Payments at cargo carriages (transportations).

*Intermediate payments.

PAY FOR DEMURRAGE DAYS

Lay-days (laytime) – is contractual time of loading of the ship.

Demurrage days – are an additional waiting time of the ship which the carrier should adduce for cargo loading and holds under loading without additional payments (item 131 of MCR). Thus, the demurrage days are an idle time of the ship. For such demurrage days the guilty must to consign a pay which size is called «demurrage» (i.e. demurrage is board size for demurrage days). Demurrage is fixed by the agreement of the parties. In the absence of such agreement, the demurrage is fixed under the rates usually enacted in conforming port. If there is no agreement of the parties or usual rates – the board size is fixed by expenses of the ship and its crew (item 132 of MCR).

PAYMENTS AT CARGO DELIVERY
(Item 160 of MCR)

Payer is the receiver of cargo.

The *receiver of cargo at delivery to him must:*

*To refund the expenses realized by the carrier at the expense of cargo.

*To consign the pay for demurrage days in unloading port.

*To pay the freight (i.e. the pay for cargo).

*To consign the pay for demurrage days in the port of loading – if it is provided by the consignment or other transportation document.

*To consign the emergency inpayment or to render the applicable maintenance in case of the general average.

Carrier – has the right to keep cargo before payment of the sums or before giving of applicable ensuring. After delivery of cargo to the receiver the carrier loses the right to require from the sender or charterer the sums which have been not paid by the receiver – if only the carrier could not keep cargo on circumstances independent of him. If the carrier has used the general lien – carrier requirements are supplied at the expense cargo costs based on CCR.

[1] Merchant Shipping Code of the Russian Federation. – Items 132, 160, 163, 352.
Inland Water Transport Code of the Russian Federation. – Items 75, 138.

PAYMENTS AT CARGO CARRIAGES
(Item 163 of MCR)

There are *all payments to the carrier*. They are paid by the sender or charterer. If between the carrier (on the one hand) and the sender or charterer (on the other hand) reaches the agreement and data about it are included in the consignment – in this case is supposed transfer of payments to the receiver.

INTERMEDIATE PAYMENTS
(Item 352 of MCR)

There are established at rescuing of ships and cargo on the sea. Rescue operations give the right to compensation of rescuers. Concerning the rate of commission or duty to pay compensation, there is can to accrue the dispute. Such dispute is delivered to court. The court has the right to pass the *intermediate decision* on payment to the rescuer by the advance of such sum, which considered as fair and reasonable – proceeding from concrete facts of cause.

Inland Water Transport Code of the Russian Federation (IWTCR)

Payments on an inland water transport – are in detail regulated by IWTCR (items 6, 75, 138).

The Code has established that – carriage of cargoes, passengers and their luggage; towage of ships and other floating objects; loading and unloading of cargoes, rendering of services in river ports (i.e. river harbours); rendering of services on use of an infrastructure of inland waterways and other services of an inland water transport – *are paid*.

The fare (i.e. pay for carriages of cargoes, passengers and their luggage) – is established by carriers. The towage of ships and other floating objects – is established by towers.

In case of granting of subsidies by public authorities of the Subject of the Russian Federation and (or) local governments (with the purpose of compensation of expenses or the half-received incomes in connection with rendering of services on carriages of passengers and their luggage on transit, suburban and local routes of carriages of passengers) – the fare size is fixed by carriers in coordination with these bodies.

Board size for services in use of an infrastructure of inland waterways and for services in river ports, not related to sphere of natural monopolies – is fixed based on contracts.

Dues (tariffs) from ships for services in the river port, rendered by subjects of natural monopolies; list of such dues (tariffs) and rules of their use; dues (tariffs) from ships for services in use of an infrastructure of inland waterways; list of such dues (tariffs) and rules of their use – are established according to the legislation on natural monopolies.

Intermediate payment coincides with similar payment in merchant shipping (item 136 of IWTCR).

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Section IV. SYSTEM OF SPECIFIC LEGAL REGIMES OF THE TAXATION

Chapter 14. SPECIFIC SYSTEMS OF THE TAXATION

14.1. Federal system of the taxation.
14.2. Regional system of the taxation.
14.3. Local system of the taxation.
14.4. Combined system of the taxation.

CONCEPTION OF SPECIFIC SYSTEMS OF THE TAXATION

Specific systems of the taxation (*in our opinion*) – are complex of the tax legal regimes which purpose is promotion to development of economics, finances and business in certain territories of Russia. There are federal, regional, local and combined systems of the taxation. Let's consider them in course.

14.1. Federal system of the taxation

The system is established and is enacted by Tax Code of the Russian Federation. It is possible to include the following elements in this system – uniform agricultural tax, system of taxation in the context of the performance of production sharing agreements, taxation system in special economic zones, and simplified system of the taxation. Thus, we see that *all elements of federal system of the taxation – are special tax regimes*.

UNIFORM AGRICULTURAL TAX

The regime is completely regulated by TCR[1]. Definition of the regime is not proposed by the law and therefore it is deduced from the content of chapter 26 of TCR.

Uniform agricultural tax (UAT) is the federal special tax regime for agricultural commodity producers. It is established and puts into operation only by TCR and operates in all territory of the Russian Federation. Hence, an arbitrariness of the Subject of the Russian Federation is excluded.

Devolution to UAT or return to general regime of the taxation is voluntary by the notifying procedure in the lawful date.

Devolution to UAT provides replacement with uniform payment of following taxes:

*Individual income tax or organization profits tax;

*Individual property tax or corporate property tax;

At that *individual businesspersons* are exempted from such taxes only under condition of direct correlation of objects of taxation (i.e. incomes, property) with business. Concerning organizations, such stipulation are not present.

*VAT (except for VAT at importation of the goods to Russia).

[1] Chapter 26.1 – is put into operation since 1/29/2002 by federal law of the Russian Federation from 12/29/2001 № 187 [Electronic resources] // URL: http://www.pravo.gov.ru.

Other taxes and dues subjects pay on a universal basis. Besides, subjects pay insurance contributions.

ELEMENTS

TAXPAYERS

Taxpayers – are agricultural commodity producers, namely:

*Organizations.

*Individual businesspersons.

*Agricultural consumer co-operative societies.

*Other lawful persons.

For devolution to UAT subjects should correspond to following stipulations:

1. They should produce, remanufacture and realize agricultural production.

2. The participatory share of the income from realization of the production should be not less than 70 % from the aggregate profit from realization following the results of previous calendar year.

3. They cannot be producing the by-excise goods.

4. They cannot realize a gambling industry.

5. They cannot be budget-funded entities.

6. Other lawful stipulations.

If following the results of the tax period the payer does not answer corresponds at least to one of stipulations – he loses the right on use UAT and must for the tax period in the lawful date to pay all taxes from which he has been exempted on the regime of UAT, but without levy of the fine and penalties.

OBJECT OF TAXATION

Object – is the incomes reduced by value of expenses (i.e. profit).

Procedure and features of the fixing and recognition of incomes and expenses are established by TCR.

TAX BASE

Tax base – is money term of object of taxation.

Features of fixing of tax base are established by TCR.

TAX RATE

Tax rate – is 6 % from tax base.

TAX PERIOD

There are the tax and accounting periods. *Accounting period* – is half-year. *Tax period* – is calendar year.

CALCULATION and PAYMENT PROCEDURE

Taxpayers consider and pay an UAT in advance payment after each accounting period with final settlement following the results of the tax period and with filing of the tax declaration.

The paid sums of UAT are enlisted into accounts of Federal Treasury and only by this body the sums are distributed under budgets of all levels in the scales established by 48 of BCR.

At the same time it is noticed, that UAT is insufficiently flexible and does not consider peculiarity of some branches of agriculture (for example – dairy animal industries)[1].

TAX PRIVILEGES

Tax privileges on UAT terminologically are not established. Actually to privileges it is possible relate to the deductions from tax base of expenses, listed in items 346.5-346.6 of TCR (there are – expenses on acquisition of fixed assets; expenses on acquisition of non-material actives; losses following the results of the previous tax periods etc.).

TAXATION SYSTEM AT REALIZATION OF PRODUCTION-SHARING AGREEMENTS

The regime is established by TCR[2], interacting with other legislation[3].

Production-sharing agreement (PSA) – is the contract according to which Russia authorizes to the investor-businessman on lawful basis the exclusive rights to search, prospecting, extraction of mineral raw materials on the contractual subsoil plot, and on conducting of works connected with it – and the investor undertakes to realize carrying out of the works at own expense and on own risk. PSA – is the example of interaction of all fundamental financial and legal institutions: budgetary law, tax law, investment law, and law of a securities market, credit law, currency law, and insurance law. The mechanism of their interaction is interpreted in financial law course[4].

From the listed institutions, our interest is tax law regulating system of the taxation at realization of PSA.

System of taxation at realization of production-sharing agreements is the federal special tax regime according to which payment of a part of taxes and dues of tax system of Russia is replaced with production section.

Representative bodies of Subjects of the Russian Federation and municipal unions have the right to exempt investors from payment of regional and local taxes and dues.

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[1] Rozov I. About what threshold has stumbled agricultural tax // Rossiiskaya Gazeta. – 2004. – On January16.

[2] Chapter 26.4 – is put into operation since 6/10/2003 by federal law of the Russian Federation from 6/6/2003 № 65 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On production-sharing agreements: federal law of the Russian Federation from December 30, 1995 № 225 // Collection of Legislative Acts of the Russian Federation. – 1996. – № 1. – item 18;

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[4] Beloshapko Yu.N. Financial law of Russia: the schoolbook / Yu.N. Beloshapko. – Vladivostok: Vladivostok State University of Economics and Service publishers, 2015. – 264 p.

Otherwise, expenses of investors on payment of the taxes and dues liable to compensation to the investor of at the expense conforming reduction of the participatory share of production devolved to the state.

Taxation essential elements are not fixed, ***if payment of taxes and dues is replaced with production section.***

If such replacement is not present – in this case are considered elements of each tax and due which are paid by the investor. At that the list of the taxes and dues liabling to payment by the investor, and peculiarities of their essential elements of levy are regulated only by chapter 26-4 of Tax Code of the Russian Federation – but they depend on stipulations of production-sharing provided by the item 8 of FL «On production-sharing agreements».

At realization of PSA, providing favourable stipulations of the production-sharing in accordance with item 8 of the Law, the investor pays: VAT, organization profits tax, mineral extraction tax, payments for use by natural resources, charges for negative impact on the environment, pay for use of bodies of water, State Duty, customs fees, land-tax, excise taxes. *But all of them are compensated to the investor.* In other words, the investor pays for favourable stipulations of PSA many taxes and dues, but also it is a lot of cases of their compensation at the expense of Russia.

At realization PSA on less favourable stipulations provided by point 2 of item 8 of the Law, the investor pays less: State Duty, customs fees, VAT, pay for negative influence for surrounding to harm. However in this case, *only regional and local taxes are compensated at the expense of Russia.*

Investors direct to tax authorities at the place of locations of the contractual subsoil plot tax declarations – separately on each the tax and on everyone PSA.

If legal norms of chapter 26.4 of TCR are included into the antinomy with legal norms of other chapters of TCR – is used chapter 26.4 of TCR.

SIMPLIFIED SYSTEM OF THE TAXATION

The regime is established by TCR[1]. Some terms are absent in chapter 26.2 of TCR, and therefore they are defined by us based on the analysis of the content of TCR and legislation corresponding to it.

Simplified taxation system (STS) is the federal special tax regime for special subjects. Devolution to STS or return to general regime of the taxation is voluntary by the notifying procedure, but in the lawful dates.

ELEMENTS

TAXPAYERS

*Individual businesspersons.

*Organizations – subjects of the medium-sized and small business, corresponding the requirements of TCR.

Item 346.12 of TCR contains the *all-inclusive listing (numerus clausus) of subjects which have not the right use STS, namely:*

*Private notaries.

*Advocates who have founded advocatory formations (i.e. offices, etc.)

[1] Chapter 26.2 – put into operation since 1/1/2003 by federal law of the Russian Federation from 7/24/2002 № 104 [Electronic resources] // URL: http://www.pravo.gov.ru.

*Organizations and individual businesspersons who have devolved on the uniform tax on imputed income for some types of activity or on uniform agricultural tax.

* And others.

At the same time, works the rule according to which organizations and individual businesspersons that have devolved on the unified tax on imputed income of individual entrepreneurs – has the right to use simplified system of the taxation concerning other types of business. Besides, and other lawful persons has the right to devolve on STS.

Devolution to STS attracts the legal consequences depending on the category of payers.

STS for organizations is replacement of payment of the organization profits tax, corporate property tax – by payment of the uniform tax estimated by results of economic activities of organizations for the tax period.

STS for individual businesspersons is replacement of payment of the individual income tax, tax by property – by payment of the uniform tax estimated by results of economic activities of the person for the tax period.

Besides, organizations and individual businesspersons practicing STS are not recognized by payers of VAT (except for lawful cases).

The subjects pay all other taxes according to the general regime of the taxation, and insurance contributions – pay according to the legislation of the Russian Federation.

OBJECTS OF TAXATION AND TAX RATES

There are two objects – and rates on them different.

1) *Object* is –incomes. The *tax rate* on the object is – 6 %.

2) *Object* is – incomes reduced by value of expenses. The *tax rate* on the object is – 15 %.

The payer independently (except for lawful cases) chooses object of taxation – and at that he can annually change it in the procedure established by TCR (item 346.15).

Subject of the Russian Federation has the right by the law to adjust the tax rate in limits from 5 to 15 %.

There is *interesting the dispute connected with the taxation of alimony and concluded by Constitutional Court of the Russian Federation.* According to the legal proposition of Constitutional Court of the Russian Federation: Tax Code of the Russian Federation does not interfere with the individual businesspersons who has devolved on simplified system of the taxation – to show documentary proofs of the any expenses suffered by them (i.e. including alimony) for fixing of the rights and duties in others legal relations., besides tax. Accordingly, the law enforcement bodies which are realizing calculation and levy of the alimony – at fixing of scale of incomes of such individual businessperson are obliged to consider suffered by him in connection with realization of business expenses in case of their acknowledgement[1].

[1] On case of constitutionality test of subparagraph «з» of point 2 of the List of types of wages and other income from which deduction is realized of the alimony on minor children, in connection with the complaint of citizen L.R. Amajakjana: ruling of Constitutional Court of the Russian Federation from July 20, 2010 № 17 // Rossiiskaya Gazeta. – 2010. – On July 28.

TAX BASE

Tax base – is money term of object of taxation. Peculiarities of fixing of the tax base are expounded in item 346.18 of TCR.

TAX PERIOD

The tax period – is calendar year.

CALCULATION and PAYMENT PROCEDURE

The payer following the results of the tax period independently fixes the sum of the tax and adduces the tax declaration. With the purpose of the financial and tax control, organizations and individual businesspersons practising simplified system of the taxation – are obliged keeps the Book of incomes and expenses, in which are legally reflected all business transactions for the tax period.

TAX PRIVILEGES

Tax privileges terminologically are not emphasized, but actually are available in the form of object exceptions and deductions. Example *of exceptions* – is the incomes provided by item 251 of TCR for profit tax (item 346.15). Example *of deductions* – is the expenses deducted from incomes and reducing in this connection tax base (i.e. – expense on a payment, rent payments for rented property etc. under item 346.16 of TCR).

The comparative analysis shows that the businesspersons using STS are in more preferential status in relation to subjects of others special tax to regimes – because they have many lawful possibilities for lawful reduction of tax base by a deduction of expenses. And at that anybody, except the federal legislator, has not the right to increase him tax rates and to establish such rates.

14.2. Regional system of the taxation

The system is established by Tax Code of the Russian Federation, but it is enacted by regional law. Now only element of regional system of the taxation is – *patent system of the taxation* (PST), replaced simplified system of the taxation based on the patent.

PATENT SYSTEM OF THE TAXATION

PST is object of scientific researches[1]. Definition of PST is not proposed by the law, and therefore it is deduced from the content of chapter 26.5 of TCR[2].

Patent system of taxation (PST) is the regional special tax regime for individual businesspersons. PST is established by TCR, but by it is enacted by the law of the Subject of the Russian Federation on its territory[3].

[1] Il`yin A.Yu. Legal fundamentals of use of patent system of the taxation // The Financial Law (journal). – 2013. – № 7.

[2] Chapter 26.5 – put into operation by federal law of the Russian Federation from June 25, 2012 № 94 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On patent system of the taxation in territory of Primorsky Kray: law of Primorsky Kray from November 13, 2012 № 122: it is enacted by Legislative Assembly of Primorsky Kray on October 31, 2012 [Electronic resources] // URL: http://www.primorsky.ru.

Devolution to the regime or return to general regime of the taxation is voluntary by the notifying procedure, but in the lawful dates.

ELEMENTS

TAXPAYERS

Taxpayers are the individual businesspersons who have devolved on PST in the procedure established by TCR.

PST is used, if its subject wishes to be had at least one of the types of business listed by item 346.43 of TCR (there are: repair and tailoring of sewing, fur and leather products; rendering of motor transportation services in carriage of passengers by motor transport; realization of private detective activity by the person having the licence etc. – only 47 appellations). Subject of the Russian Federation can add this list.

At that the legislator has proposed the definitions of various terms with the purpose of their uniform interpretation (in total are –16 definitions).

Examples:

**Shop* – is the specially equipped building (its part) intended for sale of the goods and rendering of services to buyers and ensured by trading, subsidiary, and administrative-household premises, as well as by premises for reception, storage of the goods and their preparative to sale;

**Booth* – is the structure which has no trading hall and is calculated on one workplace of the seller;

**Tent* – is the collapsible construction equipped with a counter, not having a trade hall.

At use of patent system of the taxation, the individual businessperson has the right to involve *hired workers*, but no more than 15 persons.

Regional laws fix scales of potentially probable annual income, the minimum and maximum scales of it liable to indexations on the deflator coefficient established for conforming calendar year.

Use of PST provides exemption of the subject from the duty on payment of dues:

1) Individual income tax (except for lawful cases);

2) Individual property tax (except for lawful cases).

3) VAT (except for lawful cases).

Other taxes payers pay on a universal basis. The individual businessperson loses the right on PST in the cases fixed by TCR.

The document ascertaining the right on use of PST is a ***patent*** for realization of one of the established types of business. The patent gives the tax authority at the place of statements of the individual businessperson on the registration – for the period from one to twelve months inclusive under the application and choice of the individual businessperson. If the taxpayer simultaneously uses PST and STS – at fixing of value of incomes from realization are considered incomes on both the special tax regimes.

OBJECT OF TAXATION

Object of taxation is potentially probable annual income of the individual businessperson on the type of business, established by the regional law.

TAX BASE

Tax base is money term of potentially probable annual income of the individual businessperson on the type of business.

TAX RATE

Tax rate is 6 percent.

TAX PERIOD

Tax period is calendar year (except for lawful cases).

CALCULATION and PAYMENT PROCEDURE

The individual businessperson keeps the Book of incomes separately under each received patent.

The tax is estimated as the percentage of tax base corresponding to the tax rate.

The tax is paid at the place of registrations in tax authority – without submitting of the tax declaration.

TCR fixes peculiarities of calculation and payment of the tax.

We pay attention, that the tax sums are completely enlisted in the municipal budget.

TAX PRIVILEGES

Tax privileges terminologically are not established, but actually are available in the form of specific rights of Subjects of the Russian Federation on mitigation of the regime, on deduction of insurance contributions etc. (item 346.43 of TCR).

14.3. Local system of the taxation

The system is established by Tax Code of the Russian Federation, but it is enacted by the normative legal act of representative body of municipal union. Now only element of local system of the taxation is the *unified tax on imputed income*.

UNIFIED TAX ON IMPUTED INCOME

Definition of the system is not proposed by the law and therefore it is deduced from the content of chapter 26.3 of TCR.

Unified tax on imputed income (UTII) is the local special tax regime for some kinds of business. The regime is established by Tax Code of the Russian Federation[1], but it is enacted local government[2].

Devolution to UTII since 1/1/2013 is voluntary (earlier it was obligatory); has notifying character, but in lawful dates. The subject has the right devolve to UTII, if he in territory of the municipal union which has put into operation the regime, is had at least by *one of types of activity* listed by item 346.29 of TCR:

*Rendering of services (i.e. household, veterinary, motor transportation and other services);

*Retail trade;

*Distribution and placing of outdoor advertising;

*Other lawful services

On other types of activity, the taxation is realized by the general rules of tax law.

[1] Chapter 26.3 – is put into operation since 1/1/2003 by federal law of the Russian Federation from 7/24/2002 № 104 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On system of the taxation in the form of unified tax on imputed income of individual entrepreneurs in the Vladivostok city: decision of Duma of Vladivostok city from October 28, 2005 № 109 [Electronic resources] // URL: http:// www.vlc.ru.

ELEMENTS

TAXPAYERS

Taxpayers are – organizations and individual businesspersons.

Devolution to UTII attracts the *juridical consequences* depending on the type of payers, namely:

**Organizations* do not pay the organization profits tax and corporate property tax.

**Individual businesspersons* do not pay the individual income tax, individual property tax.

*Besides, *organizations and individual businesspersons* do not pay VAT (for lawful cases).

Subjects pay other taxes and dues according to a general regime of the taxation, and insurance contributions on obligatory pension insurance pay according to the legislation of the Russian Federation.

As has noted in this connection ***Constitutional Court of the Russian Federation***, validity of use of unified tax on imputed income of individual entrepreneurs depends on compliance by taxpayers of lawful restrictions and requirements. At that in force legal regulation excludes possibility of the double taxation[1].

OBJECT OF TAXATION

Object of taxation – is the *imputed income* of the taxpayer.

Imputed income – is potentially probable income, which value is fixed on *base profitableness* (it is conditional monthly profitableness in the cost form fixed based on *adjusting factors* – there are the criteria showing degree of influence of any stipulation on result of business).

Levels of base profitableness are fixed in the firm quantity of money depending on the type of business, but they can be adjusted by municipal unions by multiplication to the coefficients depending on the cadastral cost of land and cost appraisalof other factors. At the same time there is the *restriction*: factor criterion is fixed for a calendar year in limits from 0.01 to 1.00, and its alteration probably only from beginning of following tax period.

TAX BASE

Tax base – is value of the imputed income, i.e. it is multiplication of base profitableness and value of the physical characteristic of the type of business. *Physical characteristic examples are*: number of personnel, floor space, trading place etc.

TAX RATE

Tax rate is 15% of tax base.

TAX PERIOD

Tax period is one quarter.

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[1] On case of constitutionality test of provisions of points 6 and 7 of item 168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with complaint of Limited responsibility society «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

CALCULATION and PAYMENT PROCEDURE

The legislator was disallowed from an advance method of payment of the tax. Taxpayers estimate and pay the tax following the results of the tax period – with filing of the tax declaration.

The sum of the tax is enlisted into Federal Treasury accounts – for the subsequent distribution to budgets of all levels and budgets of state off-budgetary funds.

TAX PRIVILEGES

Tax privileges terminologically are not established. At the same time it is specified, that the sum of UTII decreases by payers on the sum of insurance contributions etc. (item 346.32 of TCR).

On UTII, form various disputes which become a consideration matter in Constitutional Court of the Russian Federation. For example, Constitutional Court of the Russian Federation has resolved the issue, how to fix the level of income of the businessperson using UTII – for compensation to him of these sums at health damage. For acknowledgement of the income actually received by such victim, besides data from the declaration, can be used and other authentic data properly recorded in documents, provided by the legislation (i.e. primary bill of lading etc.)[1].

14.4. Combined system of the taxation

Combined system of the taxation (in our opinion) – is combinations of tax legal regimes for various specific territories: special economic zones, free economic zones, zones for territorial development, territories for advancing social and economic development, free ports, innovative centres etc. These tax legal regimes are not special tax regimes in accordance with TCR.

TAX LEGAL REGIME FOR SPECIAL ECONOMIC ZONES

Special economic zones of Russia have the history. From the middle of 1990th, they existed in the form of free economic zones and the centers of the international business[2].

Now, ***special economic zone (SEZ)*** is the part of territory of Russia with the special regime for business. Therefore, SEZ are regulated by the special legisla-

[1] On case of constitutionality test of provision of point 2 of item 1086 of Civil Code of the Russian Federation in connection with the complaint of citizen J.G. Timashov: ruling of Constitutional Court of the Russian Federation from June 5, 2012 № 13 [Electronic resources]//URL: http://www.pravo.gov.ru.

[2] Regulations on free economic zone around of the Nakhodka of the Primorsky Kray: it is confirmed ruling of Ministerial council of RSFSR from November 23, 1990 № 540 [Electronic resources] // URL: http://www.pravo.gov.ru;

On zone of economic preference in territory of the Ingush Republic: decree of Government of the Russian Federations from June 19, 1994 № 740; On Center of the international business «Ingushetia»: federal law of the Russian Federation from January 30, 1996 № 16 [Electronic resources] // URL: http://www.pravo.gov.ru;

On measures of the state support in overcoming of the depressive phenomena in economy of Altay Kray: decree of Government of the Russian Federation from October 21, 1996 № 1256 [Electronic resources] // URL: http://www.pravo.gov.ru.

tion[1]. Pay attention – SEZ in the Kaliningrad and Magadan areas in view of their uniqueness regulated by several special federal laws.

Main objective of SEZ is development of the finances and several branches of economy. For realization of the purpose in SEZ are originated ***preferential tax treatment***, as well as ***free customs area*** and ***free warehouse*** – i.e. customs regimes for operations on favorable terms.

The ***features of SEZ are:***

***** SEZ forms only Russian Government and only on the state and municipal earths.

***** SEZ can be forms only on the ground areas, which are in the state and (or) municipal property.

***** Other lawful features.

*SEZ are classified on various **types:***

Industrial and production SEZ is a zone for manufacture, processing and realization of the goods and production. Concrete ZONE forms Russian Government[2].

Technical and initiation SEZ is a zone for creation and realization of scientific and technical production with its finishing before industrial application. Concrete ZONE forms Russian Government[3].

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[1] On special economic zones in the Russian Federation: federal law of the Russian Federation from July 22, 2005 № 116 // Collection of Legislative Acts of the Russian Federation. – 2005. – № 30. – Item 3127;

On special economic zone in Kaliningrad Oblast and on alteration of some acts of the Russian Federation: federal law of the Russian Federation from January 10, 2006 № 16 [Electronic resources] // URL: http://www.pravo.gov.ru;

On special economic zone in Magadan Oblast: federal law of the Russian Federation from May 31, 1999 № 104 // Collection of Legislative Acts of the Russian Federation. – 1999. – № 23. – Item 2807;

Issues of Ministry for Economic Development of the Russian Federation: ukase of the Russian President from October 5, 2009 № 1107 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On formation in territory of Grjazinsky district of the Lipetsk Oblast of the special economic zone of industrial and production type: decree of Government of the Russian Federation from December 21, 2005 № 782 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of the Elabuzhsky district of the Republic Tatarstan of the special economic zone of industrial and production type: decree of Government of the Russian Federation from December 21, 2005 № 784 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On formation in territory of Moscow of the special economic zone of technical and initiation type: decree of Government of the Russian Federation from December 21, 2005 № 779 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of St.-Petersburg of the special economic zone of technical and initiation type: decree of Government of the Russian Federation from December 21, 2005 № 780 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of Dubna (Moscow Oblast) special economic zone of technical and initiation type: decree of Government of the Russian Federation from December 21, 2005 № 781 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of Tomsk of the special economic zone of technical and initiation type: decree of Government of the Russian Federation from December 21, 2005 № 783 [Electronic resources] // URL: http://www.pravo.gov.ru.

Tourism and recreational SEZ is a zone for development of tourism and population rest. Concrete ZONE forms Russian Government[1]. For example, Krasnodar Kray and Republic Adygei has formed whole tourist cluster[2].

Port SEZ is a zone for development of *port activity* (i.e. exchange and wholesale trade and other lawful kinds of activity). The resident of SEZ -port has the right to realize in the special economic zone only port activity, and in the cases provided by. Concrete SEZ forms Russian Government[3].

Any SEZ functions within the limits of the general ***financial system*** with lawful features of several financial institutions. For example, budgetary law – is used at transfer in the budget of obligatory payments for the state and municipal realty in SEZ.

Demands for formation of SEZ actively arrive from many territories of Russia. Only one zone allows to originate to 14 thousand workplaces and to make production on 6 billion rubles a year.

Primary intent of formation of SEZ – is development of finances and individual branches of economics. For effective realisation of the purpose, free *customs area* is formed in SEZ (i.e. customs regime for fulfilment of transactions on favourable terms in limits of SEZ), as well as ***TAX LEGAL REGIME.***

The regime is established by TCR (items 151, 164, 165, 185, 241, 262, 283, 381, 395 and others), interacting with other legislation[4]. The regime is not considered by Tax Code of the Russian Federation as a special tax regime.

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[1] On formation in territory of Stavropol Kray of the special economic zone of tourism and recreational type: decree of Government of the Russian Federation from February 3, 2007 № 71 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of Irkutsk regional municipal union of the Irkutsk Oblast of the special economic zone of tourism and recreational type: decree of Government of the Russian Federation from February 3, 2007 № 72 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of Zelenograd district of Kaliningrad Oblast of the special economic zone of tourism and recreational type: decree of Government of the Russian Federation from February 3, 2007 № 73 [Electronic resources] // URL: http://www.pravo.gov.ru.

On formation in territory of Russian Island of Vladivostok city district of Primorsky Kray of the tourism and recreational special economic zone: decree of Government of the Russian Federation from March 31, 2010 № 201 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] On formation tourist`s cluster in North Caucasian federal district, Krasnodar Kray and Republic Adygei: decree of Government of the Russian Federation from October 14, 2010 № 833 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] On formation in territory of Ulyanovsk Oblast of the port special economic zone: decree of Government of the Russian Federation from December 30, 2009 № 1163 [Electronic resources] // URL: http://www.pravo.gov.ru;

On formation in territory of Khabarovsk Kray of the port special economic zone: decree of Government of the Russian Federation from December 31, 2009 № 1185 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] On special economic zones in the Russian Federation: federal law of the Russian Federation from July 22, 2005 № 116;

On special economic zone in Kaliningrad Oblast and about alteration of some acts of the Russian Federation: federal law of the Russian Federation from January 10, 2006 № 16;

On special economic zone in Magadan Oblast: federal law of the Russian Federation from May 31, 1999 № 104;

On development of Crimean federal district and free economic zone in territories of Republic of Crimea and federal city Sevastopol: federal law of the Russian Federation from November 29, 2014 № 377 // Collection of Legislative Acts of the Russian Federation. – 2014. – № 48. – Item 6658.

Peculiarities of the tax legal regime of SEZ:

*It does not replace payment of group of taxes and dues by one payment, and renders essential privileges to residents of SEZ under individual taxes. Non-residents discharge a tax duty on a universal basis.

*SEZ in Kaliningrad and Magadan oblasts are regulated by individual federal laws[1].

*Other lawful features.

WE INDEPENDENTLY DEDUCE TAXATION ESSENTIAL ELEMENTS (UNDER THE SAME SCHEME IT IS NECESSARY TO DEDUCE TAXATION ESSENTIAL ELEMENTS OF ALL OTHER SPECIFIC TERRITORIES)

ELEMENTS

TAXPAYERS

Taxpayers – are individual businesspersons and commercial organizations (except for the unitary enterprises), which are ***residents of SEZ***, that is corresponding to legal requirements and have entered into the agreement with agency of administration of SEZ (i.e. Ministry for economic development of the Russian Federation).

OBJECT OF TAXATION, TAX BASE, TAX RATES, TAX PERIODS, PROCEDURE AND PAYMENT DATES

The listed elements depend on the type of the subject and are established by the conforming legal norms of TCR regulating the – value-added tax, excise taxes, organization profits tax, corporate property tax, and land-tax.

TAX PRIVILEGES

General privilege: novel rules of tax law (except for the legal norms regulating the by-excise goods), worsening situation of residents of the SEZ, are not used to them during period of validity of the conforming agreement (FL-116 from 7/22/2005).

Privileges under VAT (items 149, 151, 164, 165 of TCR):

*VAT is not paid at allocation of the goods under the customs regime of free customs area.

*VAT is levied under the 0 % tax rate at realization of the goods placed under the customs regime of free customs area.

*From VAT is exempted work (rendering of services) by residents of the port special economic zone in the port special economic zone.

Privileges under excise taxes (items 183, 184, 185 of TCR):

*From the excise is exempted tax importation of the by-excise goods in the port special economic zone from other part of territory of the Russian Federation, as well

[1] On special economic zones in the Russian Federation: federal law of the Russian Federation from July 22, 2005 № 116;

On special economic zone in Kaliningrad Oblast and about alteration of some acts of the Russian Federation: federal law of the Russian Federation from January 10, 2006 № 16;

On special economic zone in Magadan Oblast: federal law of the Russian Federation from May 31, 1999 № 104;

On development of Crimean federal district and free economic zone in territories of Republic of Crimea and federal city Sevastopol: federal law of the Russian Federation from November 29, 2014 № 377.

as is exempted importation on customs territory of the Russian Federation of the by-excise goods which are placed in the port special economic zone.

*Excise tax is not paid at moving of the by-excise goods under the customs regime of a free warehouse and the customs regime of a free customs area.

Privileges under organization profits tax (item 262 of TCR):

*Expenses on scientific researches and experimental-design workings out realized by residents of the SEZ are deducted from incomes of residents-organizations and thus reduce their tax base.

*Lowered tax rate liabling to transfer in regional budgets, can be established for residents-organizations by the laws of Subjects of the Russian Federation (item 284 of TCR).

Privileges under corporate property tax (item 381 of TCR): concerning their balance property within 5 years

from the moment of registration of the property.

Privileges under land-tax (item 395 of TCR): residents-organizations are exempted from the tax for the period

of 5 years from the moment of occurrence of the property right to each ground area located in the SEZ.

TAX LEGAL REGIME FOR FREE ECONOMIC ZONES

Rigid requirements to special economic zones not always correspond to individual Russian realities. In other words, unique territories cannot be regulated by the legislation on special economic zones.

It is question on Crimea and Sevastopol in which territories is formed the free economic zone[1]. We see that the legislator had to recollect the appellation which was used in the Russian Federation before special economic zones.

Free economic zone (FEZ) – is territories of Republic of Crimea and federal city Sevastopol, on which operates the specific regime for realization of entrepreneurial and other activity, as well as is used the customs procedure of a free customs area.

The specific regime of realization of entrepreneurial and other activity includes, in particular:

*Specific taxation regime according to the legislation on taxes and dues;

*Granting of budgetary subsidies on compensation of expenses of participants of the free economic zone, including expenses for payment of customs duties, taxes and dues – concerning the goods (except for the by-excise goods) imported for their use at the building, equipment and hardware of objects, necessary for realization of investment projects.

The potential resident of FEZ should be: 1) registered in territory of Republic of Crimea or territory of federal city of Sevastopol; 2) to consist on the tax registration in tax authority.

If the novel tax laws leading to alteration of tax rates under federal taxes (except for the excise taxes, tax on value added on the goods produced in territory of the Russian Federation) and tariffs of insurance contributions in state off-budgetary funds (except for contributions in Pension fund of the Russian Federation); or if they made alterations to the federal laws and other normative legal acts of the Russian

[1] On development of Crimean federal district and free economic zone in territories of Republic of Crimea and federal city Sevastopol: federal law of the Russian Federation from November 29, 2014 № 377.

Federation, which result to increase in cumulative tax loading at the participant of the free economic zone (including establishing of obligatory payments or increase in their scales); or if they fix the regime of interdictions or restrictions concerning realized by the participant of the free economic zone of investments (in comparison with cumulative tax loading and the regime operating at date of inclusion of the participant of the free economic zone in the uniform register of participants of the free economic zone) – such the federal laws and other normative legal acts of the Russian Federation are not used during contract period of validity about activity stipulations in the free economic zone concerning the resident of the FEZ under condition of realization by him of legal requirements.

TAX LEGAL REGIME FOR ZONES OF TERRITORIAL DEVELOPMENT

Zone for territorial development (ZTD)[1] – is the territory of the Subject of the Russian Federation, on which are granted measures of the state support to residents of the ZTD with the purpose of acceleration of social and economic development of the Subject of the Russian Federation by formation of favorable conditions for involvement of investments into its economics.

ZTD is formed for the period of twelve years in territory of one municipal union or territories of several municipal unions. In the municipal union territory is not supposed formation of special economic zone.

Resident of ZTD – is the legal person or individual businessperson, included in the register of residents of ZTD. Subjects of natural monopolies, state and municipal unitary enterprises; as well as economic partnerships and societies shares (participatory share) in the authorized capital of which belong to the Russian Federation, Subjects of the Russian Federation, municipal unions – all of them do not liable to inclusion in the register of residents.

TAX REGIME OF ZTD is concluded in rendering of the tax privileges and investments tax credit to residents according to the legislation on taxes and dues.

Investments tax credit can be rendered for the term up to ten years (in detail about that – in items 66-67 of TCR). However if the resident-organization has broken the obligations – it is obliged in the lawful date) to pay all sum of the not paid tax, as well as interests for this sum which are charged for each calendar day, since the day following by day of cancellation of the contract before the day tax payments (item 68 of TCR).

TAX LEGAL REGIME FOR TERRITORIES OF THE ADVANCING SOCIAL AND ECONOMIC DEVELOPMENT

Territory for advancing social and economic development (TAD)[2] is the part of territory of the Subject of the Russian Federation, on which is established the special legal regime for realization of business and other activity with the purpose of the formation of favorable conditions for attraction of investments, supports of the accelerated social and economic development and formation of comfortable

[1] On zones for territorial development in the Russian Federation and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from December 3, 2011 № 392 // Rossiiskaya Gazeta. – 2011. – On December 9.

[2] On territories for advancing social and economic development in the Russian Federation: federal law of the Russian Federation from December 29, 2014 № 473 // Rossiiskaya Gazeta. – 2014. – On December 31.

conditions for support of ability to live of the population. Financial guaranteeing of placing of objects of an infrastructure of territory for advancing social and economic development is realized by the federal budget, budget of Subject of the Russian Federation and local budgets, as well as off-budget sources of financing.

TAD should play one of key roles in development of subjects of the Russian Federation[1]. For example, realization of investment projects in the Far East will guarantee 89.5 billion rubles of tax, dues, and inpayments until 2025 and will allow making almost 8.5 thousand workplaces[2]. Therefore, the first-ever TAD has provided in the Far East. For example: 2 TAD in Khabarovsk Krai («Khabarovsk», «Komsomolsk») and 1 TAD in Primorsky Krai («Nadezhdinsky»)[3].

Taxpayers – are residents of the TAD.

Resident – Russian organization should correspond continuously during the tax periods and simultaneously to following *requirements*:

1) State registration of the legal person is realized in the TAD territory;

2) Organization does not have the incorporated separate subdivisions located outside of the TAD territory;

3) Organization does not use the special tax regimes provided by TCR;

4) Organization is not the participant of the consolidated group of taxpayers;

5) Organization is not the – noncommercial organization, bank, insurance organization (insurer), private pension fund, professional participant of a securities market, clearing organization;

6) Organization is not the resident of a special economic zone of any type;

7) Organization is not the participant of regional investment projects.

Residents of the TAD receive essential tax privileges under the following taxes:

VALUE-ADDED TAX (VAT)

The privilege under the VAT is received by the residents given with the tax declaration (in which alleged right on tax compensation) the contract of guarantee of management company (or copy of the contract of guarantee), providing commitment of the management company based on tax authority requirements to pay in the budget instead of the taxpayer the tax sums unduly received him) (offset to him) as the result of tax compensation in a declarative procedure – if the decision about compensation of the tax sum will cancelled in full or in part in the cases provided by TCR.

ORGANIZATION PROFITS TAX

Tax rate – 0 percent – under the tax liabling to transfer in the federal budget, is established for residents-organizations. Besides for such organizations, can be established the lowered tax rate of the profit tax, liabling to transfer in budgets of Subjects of the Russian Federation.

In case of stop of the status of the resident of TAD, the taxpayer loses the right on use of the preferential tax rate from beginning of that quarter in which he has been excluded from the register of residents.

[1] Drobysheva I. Recent view on the East // Rossiiskaya Gazeta. – 2014. – On December 16.

[2] Buharova O. From Khabarovsk to Komsomolska // Rossiiskaya Gazeta. – 2015. – On February 25.

[3] Dotsenko I. Dmitry Medvedev has confirmed three first TAD in the Far East // Rossiiskaya Gazeta. – 2015. – On June 26.

MINERAL EXTRACTION TAX

Preferential coefficient characterizing territory of extraction of the mineral, is used by the participant of the conforming regional investment project or by the resident-organization – since the tax period in which the organization is consigned in the register of participants of regional investment projects or has received the status of the resident of TAD. Such coefficient is zero before the beginning of use by the resident of the tax rate established by item 284 of TCR.

TAX LEGAL REGIME FOR FREE PORTS

Let's consider the regime **on the example of VLADIVOSTOK**. In pre-revolutionary history of Vladivostok, already there was the period when in port operated the regime of duty-free commerce (i.e. free port). The tsarist government then has cancelled duties, which at the expense of involvement of of traffic flows to accelerate economic development of Far Eastern remote area and to solve the problem of supply of region by essential commodities. As the result, in far 1914 port Vladivostok has overtaken Hamburg and London on a cargo turnover.

The modern history of Vladivostok has begun summer of 2015[1].

Free Port Vladivostok (FPV) is the part of territory of Primorsky Krai on which established measures for the state support of business according to the federal laws. Collegiate body of Port administration is Supervisory Board of Free Port Vladivostok. The operative management of the Port realizes Management Company. The Port includes following territories of Primorsky Krai – Artem urban district, Vladivostok urban district, urban district Bol'shoy Kamen', Nahodka urban district, Partizansk urban district, urban district Spassk-Dal`niy, Ussuriisk urban district, Nadezhdinsky metropolitan borough, Kotovsky metropolitan borough, Oktyabr'skiy metropolitan borough, Olga metropolitan borough, Partizansk metropolitan borough, Pogranichnoe metropolitan borough, Khasan metropolitan borough, Khanka metropolitan borough, including territories and water districts of the seaports located in territories of the municipal unions. To the Port are not related territories on which formed the special economic zone, zone of territorial development or territory of advancing social and economic development.

Financial provision of formation (modernization) of objects of the transport, power, utility, engineering, social, innovative and other infrastructures in the Port is realized at the expense of the off-budget sources with use of mechanisms of state-private partnership (and also in the procedure provided by the budgetary legislation of the Russian Federation), at the expense of federal budget, budget of Primorsky Krai, budgets of the municipal unions which territories are part of the Port. Residents of the Port (i.e. individual businesspersons and juridical persons) have tax, customs and other privileges and advantages. In check points of the Port is realized the mechanism of "single window" by profert in customs body by the carrier to the interested person all documents and the data necessary for realization of the customs, transport, quarantine and sanitary, veterinary, quarantine phytosanitary control (supervision). The accounting of the goods resident of Port realizes by the in electronic form with use of information systems of the accounting, and by computer-based (i.e. automated) system of the accounting of the goods.

In pre-revolutionary history was a period when in Vladivostok operated the regime of duty-free commerce (i.e. free port). The tsarist government has cancelled

[1] On Free Port Vladivostok: federal law of the Russian Federation from July 13, 2015 № 212 // Rossiiskaya Gazeta. – 2015. – On July 15.

duties that at the expense of attraction of currents of trade to accelerate economic development of Far Eastern remote area and to solve the problem of supply of region essential commodities. As a result, in 1914 port Vladivostok has overtaken Hamburg and London on a turnover of goods.

TAX-LAW REGIME OF FPV is regulated by the base federal law, TCR, and international treaties of the Russian Federation. During the process of the analysis we will to emphasize coincidence in the tax regimes of FPV and other specific territories, as well as to emphasize peculiarities of their regimes.

So, *for the organizations* which have received the status of the resident of FPV or TAD, tax rate – 0 percent – under the tax liabling transfer to the federal budget, is used in the procedure provided by item 284.4 of TCR; and the laws of Subjects of the Russian Federation can establish the lowered tax rate of the profit tax liabling to transfer to the budgets of Subjects of the Russian Federation.

Residents of FPV or TAD have the right to use preferential tax rates at realization of following *stipulations*:

1) Their incomes from activity in FPV or TAD form not less than 90 interests of all incomes considered at fixing of tax base under the tax;

2) They realize the separate accounting of the incomes (expenses) received (suffered) from activity in FPV or TAD, and the incomes (expenses) received (suffered) at realization of other activity.

The zero tax rate of the organization profits tax (item 284 of TCR) is used during five tax periods since the tax period in which according to data of the tax registration has been received the first profit on activity.

At that scale of rate of the tax liabling to transfer to budgets of Subjects of the Russian Federation, cannot exceed 5 percent during five tax periods, since the tax period in which the first profit has been received – also it cannot be less than 10 percent during following five tax periods.

At realization of the legal regime of FPV, Russian tax legislation interacts with the customs legislation, as well as with the legal norms regulating activity of Eurasian Economic Union (EEU). For example, in lawful cases at importation in territory of the port plots and logistical plots of the goods of EEU placed under the customs procedure of export – is realized exemption from payment of the VAT, excise tax or refund before paid sums of the VAT and excise tax.

In case of stop of the status of resident of FPV or TAD, the taxpayer is considered lost the right on use of features of the preferential tax rate since beginning that quarter in which he has been excluded from the register of TAD or FPV.

TAX LEGAL REGIME FOR INNOVATIVE CENTERS

Let's consider the regime **on example of SKOLKOVO**[1].

Innovative centre «Skolkovo» (ICS) – is complex of the infrastructure of its territory and mechanisms of interaction of its participants.

ICS has the specific legal status.

*Nation-wide control and supervision is kept in ICS, but powers of regional and local authorities are limited.

*Participants of realization of innovative projects within 10 years:

[1] On Innovative Centre «Skolkovo»: federal law of the Russian Federation from September 28, 2010 № 244 // Collection of Legislative Acts of the Russian Federation. – 2010. – № 40. – Item 4970.

1) Exempted from accounting keeping (if the proceeds do not exceed 1 billion rbl.);

2) Receive subsidies in the form of advance payments from the federal budget on compensation of expenses on payment of customs payments;

3) Exempted from *tax* payment of the *value added and organization profits tax*;

4) Pay the lowered insurance contributions in state off-budgetary funds;

5) Has others lawful privileges and advantages.

THE LITERATURE LIST

Include basic sources (look chapter 1)**, and:**

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On production-sharing agreements: federal law of the Russian Federation from December 30, 1995 № 225 // Collection of Legislative Acts of the Russian Federation. – 1996. – № 1. – Item 18.

On special economic zone in Magadan Oblast: federal law of the Russian Federation from May 31, 1999 № 104 // Collection of Legislative Acts of the Russian Federation. – 1999. – № 23. – Item 2807.

On special economic zones in the Russian Federation: federal law of the Russian Federation from July 22, 2005 № 116 // Collection of Legislative Acts of the Russian Federation. – 2005. – № 30. – Item 3127.

On special economic zone in Kaliningrad Oblast and on alteration of some acts of the Russian Federation: federal law of the Russian Federation from January 10, 2006 № 16 [Electronic resources]//the URL: http://www.pravo.gov.ru.

On Innovative Centre «Skolkovo»: federal law of the Russian Federation from September 28, 2010 № 244 // Collection of Legislative Acts of the Russian Federation. – 2010. – № 40. – Item 4970.

On zones for territorial development in the Russian Federation and on alteration in some legislative acts of the Russian Federation: federal law of the Russian Federation from December 3, 2011 № 392 // Rossiiskaya Gazeta. – 2011. – On December 9.

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Primorsky Kray on October 31, 2012 [Electronic resources] // URL: http://www.primorsky.ru.

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On system of the taxation in the form of unified tax on imputed income of individual entrepreneurs in the Vladivostok city: decision of Duma of Vladivostok city from October 28, 2005 № 109 [Electronic resources] // URL: http:// www.vlc.ru.

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On case of constitutionality test of provisions of the federal legislation and legislation of the Subjects of the Russian Federation regulating the taxation of subjects of small business and individual businesspersons, practising simplified system of the taxation, financial accounting and reporting, in connection with complaints of some citizens: ruling of Constitutional Court of the Russian Federation from June 19, 2003 № 1141// Rossiiskaya Gazeta. – 2003. – On July 2.

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On case of constitutionality test of the subparagraph «з» of point 2 of the List of types of wages and other income from which deduction is realized of the alimony on minor children, in connection with the complaint of citizen L.R. Amajakjana: ruling of Constitutional Court of the Russian Federation from July 20, 2010 № 17 // Rossiiskaya Gazeta. – 2010. – On July 28.

On case of constitutionality test of provision of point 2 of item 1086 of Civil Code of the Russian Federation in connection with the complaint of citizen J.G. Timashov: ruling of Constitutional Court of the Russian Federation from June 5, 2012 № 13 [Electronic resources] // URL: http://www.pravo.gov.ru.

On case of constitutionality test of provisions of points 6 and 7 of item 168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with complaint of Limited responsibility society «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

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Section V. INTERNATIONAL ASPECTS OF THE TAXATION

Chapter 15. LEGAL FUNDAMENTALS OF TAX PLANNING

15.1. Conception of tax planning.
15.2. Tax losses.
15.3. Specialized offshore companies.

15.1. Conception of tax planning

Legal science is constantly applied to various aspects of tax planning[1]; therefore the theme is interest at this time. At that, there happens narrow approach to the problem[2]. *We defend the complex approach to theme developing*[3].

From the moment of tax duty occurrence, taxpayers of all countries aspired and aspire to reduce scale of taxes given to the state, or quite to avoid the taxation. There were some methods of activity on tax base mitigation, or to full exemption from the taxation. There are – *tax evasion, tax immunity* and *tax planning.*

TAX EVASION

Tax evasion is a tax violation. In the majority of the countries including Russia, tax evasion is penal deed – by virtue of high degree of its public danger (the state receives less the necessary sums of budgets).

Violators use refined schemes of evasion:

*Formation of short-lived companies;

*Use of influential politicians;

[1] Gorbunov A.R. Tax planning and formation of the companies abroad. – M.: ANKIL publishers, 1999;

Get`man-Pavlova I.V. International and law aspects of activity of the offshore holding companies on a securities market // The Banking Law (journal). – 2006. – № 6;

Zrelov A.P. Possibilities of tax planning at charge and wages of payment: the review of popular schemes 2003 // The Law and Economics (journal). – 2003. – № 12;

Kashin V.A. Tax agreements of Russia. The international tax planning for the enterprises. – M.: Finances, JUNITI publishers, 1998;

Labos`kin M.A. International and law regulation of cooperation of the states in taxation sphere: the abstract of thesis … PhD in jurisprudence. – St.-Petersburg, 2007;

Tax law foundations: the methods handbook / under the S.G.Pepeljaev`s editorship. – M.: Invest Fund publishers, 1995.

[2] Volevodz A.G. Financial mechanisms of legitimization (laundering) of the money resources received by criminal, connected with their transfer abroad // The Banking Law (journal). – 2012. – № 3;

Kirilina V.E. Legal fundamentals of tax planning // The Financial Law (journal). – 2010. – № 8.

[3] Beloshapko Yu.N. Legal problems of development of modern tax planning // Collection of scientific works on materials of the international scientifically practical conference «Modern directions of theoretical and applied researches-2010». Volume 17. Juridical and political sciences. – Odessa: Black Sea Coast publishers, 2010. – Pp. 32-41.

*Formation of the foreign funds, fictitious companies, ethnic noncommercial organizations;

*Use of cashless transfers by the phones and Internet; and so on.

So, have accessed wide circulation the *transfer schemes* based on transfer pricing. Their essence that one company realizes production below cost to own offshore structure registered in tax haven, which does not pay taxes by virtue of the offshore status. Russian insurers in complicity with the foreign insurance companies by such attractive resafety schemes (i.e. by an artifice and abuse of confidence) entice (i.e. steal) at clients hundred millions dollars and transfer them to offshore zones[1].

Tollingovye transactions are not less harmful to the budget. *Tolling* – is the specific legal regime of customs formalization of cargo, according to which the raw materials are supplied on reprocessor in other country, whence the finished goods go back without payment of taxes and duties. Essence of the scheme is realization of services only on processing of another's raw materials. It allows not to pay taxes and customs duties both at raw materials importation in Russian Federation and at exportation of received production abroad Russian Federation. The offshore companies receive net profit. To stop tolling – means to fill up the budget with tax revenues on billions US dollars[2].

Tolling long time was considered favourable from the point of view of preservation of productions, workplaces and tax payments. Really, in 90th years it was the method to keep branch. But it is obvious now, that tolling destroys an inland mining industry. Hence, taxes on tolling should be. In some branches, it is necessary to consider their specificity. For example, increase of taxes in gas sphere can negatively effect on investment programs. Now, in a state tax policy is observed selective decrease in taxes with the purpose of stimulation of modernization of economics. Experts believe that the government should move aside unified taxes and refusal of selective excessive privileges, such as tolling[3].

On the **Internet on official site Http://www. fatf – gafi. org.,** as well as partially in Rossiiskaya Gazeta (2004, on September 1) has been published the report of FATF with generalization of various schemes.

All of them are a necessary component of legitimization (laundering) of the illegal incomes. The incomes with the purpose of legitimization are necessary in the beginning taking out outwards Russia, and then them to return in the form of investments etc., or to place into accounts of banks of the foreign states. From such laundering of incomes Russia annually lost the minimum 15 mlrd US dollars[4]. Only in 2000 the Russian commercial organizations have taken out to Antilles 250 million 300 thousand USA dollars, and have imported therefrom into Russia 274 million 500 thousand dollars – i.e. they used the islands for laundering of the incomes not considered to Russia[5].

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[1] Nikiforuk V. Black transfer // Rossiiskaya Gazeta. – 2005. – On October 20;

Zykova T. Block post of financial intelligence // Rossiiskaya Gazeta. – 2008. – On December 19.

[2] Izosimov B. Whether will cancel tolling // Rossiiskaya Gazeta. – 2010. – On July 30.

[3] Kress A. There have reminded about tolling to the government // Rossiiskaya Gazeta. – 2010. – On November 17.

[4] Vladimirov D, Grishina K. «Corruption»: it is clearly in any language // Rossiiskaya Gazeta. – 2001. – On June 6.

[5] Ugodnikov K. Capital export: Russia takes out and... wins?// Rossiiskaya Gazeta. – 2001. – On March 30.

In Strasbourg (France), 11/8/1990 has been enacted Convention on laundering, revealing, withdrawal and confiscation of incomes from criminal activity. FATF controls its discharge.

FATF (Financial Action Task Force on Money Laundering) is the international organization (group) under the control over financial transactions and struggle against money laundering. FATF founded in 1989 at the summit of «Group of Seven» in Paris (France)[1]. Russia has officially entered to FATF in 2003 by Rusfinmonitoring (the authority analyzed in chapter 3). The general rating of Russia following the results of international estimation FATF in 2008 has made 70% that corresponds to level of Canada, Italy, and Switzerland. Full conformity of our activity to the international standards is noted[2]. In September 2009, Russia has successfully protected in the Council of Europe the report on progress in struggle against «black money»[3].

Group EGMONT is FATF analogue, named so in the place of the first meeting of heads of national financial investigations in palace Egmont in Brussels. It formed in 1995 and unites financial investigations of 106 countries of the world (for comparison, in FATF are 33 countries, including Russia). Russia by Rusfinmonitoring since 2008 officially participates in the Group and annually pay in a payment – 11.7 thousand dollars, i.e. is obliged to provide corresponding expenditures in the federal budget. Participation in Egmont expands possibilities of Russia on joint international financial investigation of the crimes connected with laundering of criminal income, including by alternative systems of money order and offshore zones[4].

Formation in the world of others similar international financial organizations are possible. Money all will more actively be legalized by the *Internet*[5]. Anonymity of financial services by the Internet, its specific information environment and high speed of realization *of transactions* (remittance from account into the account) – form the boundless international environment for criminal financial streams. Money is transferred in the Internet from any point of the world and in any direction – by the undesirable mail, spam and various services. There are many of schemes. For example, use *«money mules»* becomes more intensive. As experts explain, «money mules» are people who agree to act as financial intermediaries, to initiate and use own banking accounts for remittance from accounts of victims into accounts of kiber-criminals. For the services «money mule» receives compensation in the form of interest from the transfer sum. Hence, «money mules» are used for fulfilment of computer crimes, including for laundering of money.

In Russia, the basic method of counteraction illegal schemes and in the world is identifications of clients. Suspicious payments of citizens are fixed by the bankers, insurers, jewellers, realtors, notaries and other authorized persons. Then the information is transmitted to national financial intelligence.

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[1] Vasil`chenko E. In lists it is not significant // Rossiiskaya Gazeta. – 2002. – On October 12;
Vasil`chenko E. To currency freedom a delay // Rossiiskaya Gazeta. – 2002. – On October 15.

[2] Zykova T. On a ruble trace // Rossiiskaya Gazeta. – 2009. – On February 25.

[3] Zykova T. Load money by trunks // Rossiiskaya Gazeta. – 2009. – On October 7.

[4] Zykova T. Rosfinmonitoring contacts // Rossiiskaya Gazeta. – 2008. – On April 16.

[5] Zykova T. Financial intelligence has gone to the Internet // Rossiiskaya Gazeta. – 2010. – On November 10.

IMMUNITY FROM TAXES

Immunity from taxes is the lawful inactivity which is not generating a tax duty. For example, the Russian invalids have the right to standard tax deductions from tax base of the individual income tax, i.e. by virtue of physical inability (item 218 of TCR). However in the scientific literature is used other term – *tax avoidance*.

Tax avoidance is a situation at which the organization and (or) natural person are not taxpayers, because their activity under the law does not liable to the taxation, or they receive incomes not assessed by taxes, or in the absence of registration in tax authorities[1].

From the definition, it is possible to draw the conclusion, that the term «tax avoidance» includes and tax evasion. In our opinion, it is wrong, since tax avoidance is not connected with illegal activity. In our example, physical inability is received by virtue of circumstances, instead of with the purpose of «avoidance» of taxes. Hence, tax evasion and tax avoidance are different categories; there are necessary for accurately differentiating, i.e. tax avoidance needs to be understood as the immunity from taxes acquired by virtue of circumstances, but not by virtue of any deliberate activity.

TAX PLANNING

S.V. Zhestkov (he is supported by S.G. Pepeljaev) defines tax planning as recognition, for each payer, of the right to use all methods and ways admissible by the laws for the maximum reduction of the tax commitments[2].

A.R.Gorbunov understands tax planning as formation of schemes and tools for the purpose of decrease in tax losses at carrying out of the international investment and financial transactions[3].

Authors of the Big law dictionary of 1999 believe, that tax planning is a choice between various variants of realization of activity of the legal person and placing of its actives (assets), directed on achievement of probably low level of tax commitments forming at that[4].

Each of the definitions limits an essence of tax planning, as:

a) At tax planning is possible not only reduction, but also full exemption from payment of the concrete tax;

b) Tax planning is not only the right recognition, but also planning;

c) Tax planning is realized not only in the international relations, but also in Russia;

d) Not only organizations, but also natural persons can realize tax planning.

There are also other conceptions.

So, *E.V. Shestakova results the following* (in our opinion – bulky) *viewpoints*. Tax planning of the concrete subject of business is the process of predetermination and formation of scale of tax commitments by choice of an optimum combination and construction of various legal forms of activity and by placing of actives (assets) with the purpose of decrease in tax burden of within the limits in force tax legislation (*D.J. Akulinin*). Tax planning is complex of lawful purposeful actions of the taxpayer

[1] Tax law foundations. – Mentioned writing. – P. 155.

[2] Ibidem. – P. 153.

[3] Gorbunov A.R. – Mentioned writing. – P. 11.

[4] Big law dictionary / Under the A.J. Suharev`s, V.D. Zor`kin`s, V.E. Krutskih`s editorship. – M.: INFRA-M publishes, 1999. – P. 392.

connected with use of receptions and methods (ways), as well as all privileges given by the law and exemptions for the purpose of tax mitigation (*S.M. Ryumin*). E.V. Shestakova (as far as we have understood) understands tax planning as methods (ways) of the choice of an optimum combination and construction of legal forms of relations and possible variants of their interpretation of within the limits in force tax legislation. At that various techniques of tax planning are resulted in E.V.Shestakovoj's work[1].

We can propose following definition.

Tax planning is an activity of payers of taxes and dues on lawful reduction of a tax duty or exemption from it under concrete taxes and dues. As synonyms of tax planning, are not infrequently used terms «tax optimization» and «tax mitigation»[2]. *In our opinion*, such terms are incorrect since they include only a part of tax planning.

The right of the payer on tax planning is based on the constitutional prince of inviolability of the property in its any form, including the private. According to Constitution of the Russian Federation, in Russia – is guaranteed the economic activities freedom; are recognized and protected similarly all forms of ownership (items 2, 8 and 18, 46, 118, 128). Besides, Russian Constitution guarantees the right of everyone on free use of the abilities and property for entrepreneurial and other economic activities not forbidden by the law (item 34). Also it fixes, that – private property right is protected by the law; everyone has the right to have property, to own, use and give orders it as individually, and together with other persons; everyone can be deprived the property only under the decision of court (item 35).

The federal legislator regulates the property right and relations connected with it on seizin, use and direction to property (material resources) only with the purpose of protection – foundations of the constitutional system, morals, health, rights and legitimate interests of other persons, ensuring of defence of the country and security of the state[3].

Taxes and dues – are a part of property of the payer, levied by authoritative bodies by lawful strong-willed methods. Hence, the *taxpayer as the proprietor has the right to protect own property by any lawful method*, including by tax planning.

For example, *Constitutional Court* of the Russian Federation has emphasized that: a) rules of item 173 of TCR provide possibility of a choice by the taxpayer *of the optimal method of formation of economic activities and tax planning*: b) the taxpayer has the right – to form the price of the goods (works, services) without the regard of

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[1] Shestakova E.V. Tax planning. The theory and practical recommendations with judiciary practice materials. – JUSTITSINFORM publishers, 2010.

[2] Maltsev O.V. Administrative-law regulation of tax optimization //Administrative Law and Process (journal). – 2014. – № 2.

[3] On case of constitutionality test of provisions of parts 1, 3 and 9 of item 115, point 2 of part 1 of item 208 of Criminal and procedure Codes of the Russian Federation and 9 of point 1 of item 126 of Federal law «On inconsistency (bankruptcy)» in connection with complaints of Closed joint-stock company «Real estate-M», Limited responsibility society «Solomatinsky grain-collecting enterprise» and citizen L.I.Kostarevoj: ruling of Constitutional Court of the Russian Federation from January 31, 2011 № 1 [Electronic resources] // URL: http://www.pravo.gov.ru;

On case of constitutionality test of provision of point 3 of item15 of Federal law «On security of traffic» in connection with the complaint of citizen G.V.Shikunovoj: ruling of Constitutional Court of the Russian Federation from April 22, 2011 № 5 // Rossiiskaya Gazeta. – 2011. – On May 4.

the sums of the tax on value added and hence, without allocation of these sums in invoices exposed to the buyer that increases price competitiveness of the goods (works, services); to expose to the counterparty of the invoice with allocation of the sum of the tax on value added, besides that this sum (without the regard of tax deductions) liable to payment in the budget. Such legislative regulation is directed on the coordination of interests of the state and taxpayers, buyers and suppliers of the goods (works, services). The legislative regulation fixes the measure of discretion of taxpayers during the process of discharges of the constitutional duty by them on payment of taxes, at which they have the right independently to realize tax planning that cannot be considered as infringement of their constitutional rights[1].

Ultimate goal of tax planning is receiving of ***tax interest*** – i.e. reduction of the size of a tax duty owing to reduction of tax base, receiving of a tax deduction or privilege, use of lower tax rate, and right receiving on return or compensation of the tax from the budget.

TCR has de facto fixed the principle of presumption of conscientiousness of taxpayers and other participants of legal relations in financial and economic sphere. In this connection, actions of the taxpayer having the result tax interest receiving are discussed as economically justifiable. And the data containing in the tax declaration and the accounting statement, are considered as authentic. Hence, tax authorities should prove (including in court) unconscientiousness of the payer and groundlessness of his tax interest. Adduction by the taxpayer in tax authority of formalized documents with the purpose of tax interest receiving is a fundamental for its receiving, if by tax authority it is not proved, that the data containing in these documents, are incomplete, unreliable and (or) inconsistent. Validity of receiving of tax interest cannot depend on methods of involvement of the capital (i.e. use own or borrowed funds, issue of securities, charter capital increase, etc.) or from effectiveness of use of the capital.

However *tax interest cannot be considered as the independent business purpose*. Therefore if it will be specified, that – an overall objective of the taxpayer was exclusively income receiving or mainly at the expense tax interest for lack of intention to realize real economic activities; transactions for the taxation are considered not according to their valid economic sense or the transactions are not caused by reasonable economic or other reasons (purposes of business character) – that in this case *tax interest can be recognized the unreasonable*. Possibility of achievement of the same economic result with smaller tax interest is not the fundamental for recognition of tax interest unreasonable[2].

As a rule, the actions of the taxpayer connected with receiving of unreasonable tax interest, are directed on – illegal compensation (refund) the tax sums from the budget; underreporting of the taxes sums liabling to payment to the budget for the tax (accounting) period.

[1] On case of constitutionality test of provisions of points 6 and 7 of item 168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with the complaint of Limited responsibility society «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ruling of Supreme Arbitration Court of Rosssijsky Federation from October 12, 2006 № 53 [Electronic resources] // URL: http://www.pravo.gov.ru.

In this connection, ***tax authorities have detected following schemes of minimization of tax burden[1]:***

1) Formation of the scheme directed on increase of cost of the goods for artificial overestimate of the sums of tax deductions under the tax on value added and increases of expenses, reducing tax base under the organization profits tax – in the presence of real transactions on goods acquisition;

2) Use in activity of the taxpayer of organizations not realizing real financial and economic activities (for the purpose of overestimate of the sums of tax deductions under the tax on value added and increases in the expenses reducing taxable base under the organization profits tax) – by conclusion of contracts with such organizations;

3) «Crushing» of business for the purpose of preferential tax treatment use;

4) Use of under control organizations with the purpose of minimization of payment of insurance contributions;

5) Realization of business transactions which formally conform requirements of the tax legislation however has not reasonable business purpose, except for receiving of unreasonable tax interest.

The ***major element of illegal schemes of receiving of tax interest and money laundering is the fictitious companies (firm) – short-lived things.*** Distinctive line of such firms is absence of attributes of real activity, as well as office to the registered address, non-payment of taxes. At the same time, the number of short-lived companies has sharply decreased as the result of automation by Federal Tax Service of the control of VAT payment. The quantity of such companies was reduced from more than 1.7 million in 2011 to 650 thousand in January 2016. As a whole, the participatory part of potential short-lived companies in the overall number of the registered companies has decreased of 5 years from 45 to 15 percent[2].

Tax planning is realized by use of tax privileges and (or) by tax havens (tax shelters).

The tax haven is understood in the wide and narrow sense.

Tax haven in the wide sense is the country with a preferential tax treatment of some types of activity. Example of such harbour is Russia, which legislation provides privileges practically under all taxes and dues (except for the tax on gambling industry).

Tax haven in the narrow sense is the country or part of its territory which specializes on giving of tax privileges to non-residents. Rates of taxes and dues symbolical or are equal in such harbors to zero; there are essential tax privileges. There are – Isle of Man, Principality of Liechtenstein, Republic of Malta, Principality of Andorra, Principality of Monaco, Republic of Cyprus, Gibraltar etc.

Tax havens involve investments. Not infrequently such policy is a unique method of a survival. For example, Republic of Nauru is island-state behind equator in Pacific Ocean. Its area is 21 sq. km. The population is 11 thousand persons. Currency is the Australian dollar. The basic mineral – phosphorites – is exhausted. The vegetation poor, is not present sights, air temperature not the comfortable. There is no port and even moorings: the message with the ships put into practice by boats because of coral reeves. Sea bioresources are destroyed. In such the single way is – to act in the tax

[1] On a direction of the review of practice of consideration of complaints of taxpayers and tax disputes by courts concerning unreasonable tax interest: letter of FTS of Russia from October 31, 2013 № CA-4-9/19592 [Electronic resources] // URL: http://www.consultant.ru/document/cons_doc_LAW_154334/?frame=1#p28

[2] Berezina E. There were not laundered // Rossiiskaya Gazeta. – 2016. – On February 15.

haven role. The interesting fact: Russia and Nauru 9/24/2014 has entered into the agreement on mutual abrogation of visa requirements[1]. This fact, in our opinion, can be used and with the purpose of tax planning, i.e. it simplifies trips and sojournin tax haven.

Tax planning is carried out by the certain technique.

The ***basic method*** of tax planning is ***analytical.*** There is the analysis and comparison of tax stipulations of territories of one country or the different countries and revealing of most tax favorable.

Basic steps of tax planning

1) Revealing of the legislation giving tax privileges;

2) Formation of the legal form of organization falling under the maximum quantity of tax privileges;

3) Solution of problems of financially-accounting compatibility (if the organization is formed abroad, or it is going to work there);

4) Working out of schemes of concrete business transactions.

Stipulations of effectiveness of tax planning

1) *Most favourable (from tax viewpoint) the location of lead agency (parent organization), and its directing bodies, filial agencies, subsidiaries.*

2) *Optimality of the legal form of organization in the ratio with a forming tax regime.* The forms are established and regulated by the national legislation of the state. In Russia there are – Civil Code and federal laws on the concrete form (i.e. joint-stock companies, limited responsibility societies, etc.).

OPTIMUM LEGAL FORMS OF ORGANIZATION PROVIDED BY THE MAJORITY OF CIVILIZED COUNTRIES

General partnership

At their formation is not formed the new legal person: relations between participants are the contractual. The income tax is levied from incomes of each participant. Advantage of such form abroad is absence of the profit tax, as subjects of a tax duty are participants of partnership, but not partnership. Lack of the general partnership is its full liability.

Limited liability companies

They are used with the purpose of tax planning because of peculiarities of legal responsibility. Such companies have limited liability, i.e. each participant of the company answers for obligations only at the rate of the deposit. Besides, liquidation of one participant of the company does not to stop of activity of the company and it continues to be had by business.

Mixed enterprises

In such enterprises depositors have full responsibility, and other participants – limited. Therefore the form unites advantages and lacks of the two first groups of forms.

[1] Agreement between Government of the Russian Federation and Government of Republic of Nauru on mutual abrogation of visa requirements for citizens of the Russian Federation and citizens of Republic of Nauru: it is in New York on September 24, 2014 [Electronic resources] // URL: http://www.pravo.gov.ru.

In ***Russia*** the legal form of organization in itself does not create tax privileges: they are created by an activity type, having of certain objects etc. At that it is necessary to remember, that the businessperson should operate *in exact conformity with the Charter* and the purposes declared in it. Otherwise he falls under chapter 22 of CCRF (i.e. crimes in economic activities sphere, including tax evasion etc.).

At the same time, the responsibility depends on a form choice in case of organization liquidation. And at such liquidation the tax duty is stopped only after repayment of the arrears, fine, and penalties. For example, a full partnership solidary is responsible on partnership debts by all property, i.e. it has full responsibility (items 69, 75 of CCR). On the contrary, the limited responsibility society (LRS) is responsible only within the contributions in the authorized capital (FL on LRS). With 7/1/2009 in Russia has begun obligatory re-registration of limited responsibility societies. For July 1, 2009 the number of such companies was more than 75 percent from total of the registered organizations. It is offered to these companies to reverse structure of the obligatory documentation (for example, instead of the constituent contract the company charter should be the main document of LRS). Necessity of protection of ights of participants from stealing of their participatory shares became one of problems of alteration of the legislation on LRS. Now, is put into operation the notarial certificate of transactions on alienation of a participatory share or its part. The person, who alienates the participatory share or its part, should sign the application for registration: but only the notary authenticated the transaction, devolves this application to registering body. Data on individual share in LRS should appear in the register (that was not provided on former legal norms). Also are toughened requirements to the authorized capital of LRS and other aspects of activity of LRS, including to responsibility under its commitments[1].

But there are situations when the legal form of organization influences intensity of the taxation. For example, a joint-stock company is assessed by the double tax – on profit and on dividends, as dividends by TCR is independent object of taxation.

3) *As much as possible full and correct use of tax privileges in current business.* For example, realization of the major and vital medical products is exempted from VAT (item 149 of TCR).

The states are not interested in subsistence of tax privileges and tax planning since receives less tax revenues in budgets. There is used even the term «unconscientious tax competition»: but in our opinion, it is incorrect, as tax planning is lawful activity.

Nevertheless, each state tries as much as possible to limit use of tax planning with the purpose of increase in tax revenues of budgets. With the purpose of restriction of tax planning are used **following types of the interconnected methods:**

I. National-legal methods of restriction of tax planning

We define the methods based on the concept of separation of powers fixed by item 10 of Constitution of the Russian Federation.

1) Legislative method – is an establishing in Tax Code of the Russian Federation, and other legislation of restrictive measures: duty to register in tax authority and to

[1] On alteration in chapter 4 of part 1 of Civil Code of the Russian Federation and on recognition expired some provisions of legislative acts of the Russian Federation: federal law of the Russian Federation from May 5, 2014 № 99 [Electronic resources] // URL: http://www.pravo.gov.ru;

Panina T. We will rediscount all // Rossiiskaya Gazeta. – 2009. – On October 14.

receive of TIN; duty to render the tax declaration with documents justifying it; restriction of rights of the payer by duties of tax authorities; abrogation or reduction of tax privileges; bringing to legal responsibility, etc.

CCRF establishes the criminal responsibility for following deeds which are realized including for tax evasion (items 173-173.2:

*Formation (reorganization) of legal person by figureheads; data presentation in registering body, which have entailed entering into the uniform state register of legal persons of data on figureheads. At that *figureheads* are persons who are founders (participants) of legal person or who are agencies of administration of legal persons – thanks to which data have been consigned in the uniform state register of legal persons; as well as persons who are agencies of administration of legal person without the purpose of administration by the legal person.

*Identity paper rendering, or proxy delivery – if these actions are realized for entering into the uniform state register of legal persons of data on the figurehead.

* Acquisition of the identity paper, or use of the personal data received by illegal – if these deeds are realized for entering into the uniform state register of legal persons of data on the figurehead.

2) Executive method – is concluded in lawful activity of bodies of the tax control. There are tax inspections, tax proceeding etc.

3) Judicial method – in Russia it is realized by use of legal norms of CCR on fictitious and feigned transactions. They are considered by court as insignificant. *In the USA* is used *judicial doctrines.* For example, it is the judicial doctrine of the USA «Business purpose». According to the doctrine, the transaction forming tax advantages to the parties can be recognized void by court if the transaction does not reach the business purpose. Then the court uses rigid consequences of invalidity of the transaction.

II. International legal methods of restriction of tax planning

1) *Compulsory method* – is use of measures of international and law compulsion (sanctions and counter-measures) to the subjects of the international law who has realized the international tax violations.

2) *Information-analytical method* – is the search, analysis and transfer to the interested countries and organizations of data on the subjects of international law realizing the international tax violations.

So, Government of the Russian Federation in 2014 has included in a government program[1] the index № 27 «Anti-offshore laundering of national economy», according to which it is necessary – increase of a transparency of the Russian economics and effectiveness of a data exchange with tax authorities of the foreign states; initiation in the legislation of Russian Federation on taxes and dues of measures on counteraction to unconscientious use of intergovernmental agreements on double taxation avoidance.

Russia ratified on November 4, 2014 ***Convention on the mutual administrative help on tax causes***[2]. Federal Tax Service, Federal Bailiff Service, as well as their

[1] On the approval of the government program of the Russian Federation «Management by public finances and regulation of the financial markets»: decree of Government of the Russian Federation from April 4, 2014 № 320 [Electronic resources]//URL: http://www.pravo.gov.ru.

[2] Convention on the mutual administrative help on tax causes from January 25, 1988: it is changed by the Protocol from May 27, 2010: it is signed on behalf of the Russian Federation in the city Cannes on November 3, 2011: it is ratified by Federal law of the Russian Federation from November 4, 2014 № 325 // Rossiiskaya Gazeta. – 2014. – On November 7.

authorized representatives are fixed as the Russian authoritative bodies for the Convention. According to the Convention, parties (that is the states or other territories) render the administrative help each other on tax causes. And such help can include the measures undertaken by judicial bodies. The *administrative help* is: information interchange, carrying out of simultaneous tax inspections and participation in tax inspections abroad; help on collection of taxes, including acceptance of injunctions; delivery of documents. However Russia reserves the right to itself not to render the help on recovery of the any tax order or on recovery of the administrative penalty for all types of tax. For October, 2014 the *Convention in an update has come into force for 57 states and territories*: Albania, Anguilla, Argentina, Aruba, Australia, Austria, Belize, Bermuda, British Virgin Islands, Canada, Cayman islands, Colombia, Costa Rica, Croatia, Curacao, Czechia, Denmark, Estonia, Faeroes, Finland, France, Georgia, Ghana, Gibraltar, Greece, Greenland, Guernsey, Iceland, India, Ireland, Isle of Man, Italy, Japan, Jersey, Republic Korea, Latvia, Lithuania, Luxemburg, Malta, Mexico, Moldova, Montserrat, Netherlands, New Zealand, Norway, Poland, Romania, Sent-Maarten, Slovakia, Slovenia, Republic of South Africa, Spain, Sweden, Tunis, Turks and Caicos Islands, Ukraine, Great Britain. The *convention have signed*: Andorra, Azerbaijan, Belgium, Brazil, Cameroon, Chile, China, Cyprus, Gabon, Germany, Guatemala, Hungary, Indonesia, Kazakhstan, Liechtenstein, Monaco, Morocco, Nigeria, Philippines, Portugal, San Marino, Saudi Arabia, Singapore, Switzerland, Turkey, the USA. *In the Convention offshore jurisdictions do not participate*: Bahamas, Dominica, Marshall Islands, Panama, Seychelles, Saint Vincent and Grenadines, Sent-Kits and Nevis, as well as) United Arab Emirates and Hong Kong.

15.2. Tax losses

Tax losses are losses of the payer of taxes and dues in connection with inadequate tax planning.

Hence, the businesspersons or other persons are interested in decrease in losses based on use of the force tax legislation. For example, from tax base of the individual income tax can be deducted expenses on acquisition of medicines. But for this purpose it is necessary to collect documents under the fixed form and then to append them to the application in tax authority on deduction use. It is the elementary scheme of decrease in tax losses under the individual income tax. However the businesspersons or other persons are interested in considerable mitigation of tax base and consequently legally or wrongfully they uses different schemes of decrease in tax losses.

BASIC SCHEMES OF DECREASE IN TAX LOSSES

ELIMINATION OF DIRECT TAXES BY FORMATION OF THE OFFSHORE and DECREASE IN TAX EXPENSES AT EXPORTATION OF INCOMES

The term «offshore» has originated from English «*off shore*» – i.e. it is being out of country territory, behind its limits. Therefore in Russian variant of spelling of the term more correctly to use two letters «f». Unfortunately, often take place simplifications[1] which even have got to legal acts. We will write correctly.

[1] Pavlov P.V. Offshore activity: issues of a legal regulation // The Journal of Russian Law. – 2011. – № 5.

«The offshore aristocracy» – is the pseudo-elite of the Russian business using the offshore for exportation of the Russian capital, or as the expansion instrument. As a result in most cases the Russian magnates become «foreign investors», who have earlier transferred financial assets by the offshore in tax havens under control to them. With reference to the offshore, is used the term «offshore jurisdiction». I.e. is underlined sovereignty of the territory on which the offshore is registered, as well as independence of the company of jurisdictions of other countries. Besides, is used the definition «offshore business» as international-economic event and difficult complex process[1].

General attributes of all types of the offshore companies (offshore):

A) They are necessarily registered in tax haven;

B) They operate in not-tax or concessionary terms.

Attributes of the classical offshore:

1) They are nonresident in relation to territories where they have registered. It signifies that their centre of the control and management is outside of tax haven, and any transactions are realized outside of tax haven where the offshore is registered.

2) They are exempted from taxes and pay annual obligatory due in comprehensible rate.

3) Procedure of registration and administration by the company is simplified. Requirements to carrying out of general meetings and company boards of directors have formal character.

4) In the classical offshore – it is not realized financial control (including currency, tax etc.); requirements under the financial accountability are reduced to a minimum; there are no auditor inspections.

5) Seizin by the company can be anonymous, at high guarantees of confidentiality fixed by the tax haven law.

Examples of the classical offshore[2]:

A) **Cayman Islands** – is seizin of Great Britain in Caribbean Sea. The minimum capital is not fixed. The registered office is not required, the agent or the secretary is not necessary. The board of directors is realized once a year. However some countries could form the relative control over Cayman Islands. For example, the USA assents to use the islands only regarding the incomes necessary for indemnification of losses from placing of manufacture abroad. In other part incomes should be transferred to USA and from them should be paid the tax

B) **Gibraltar** – is the basic naval base of the Great Britain in Mediterranean Sea. The territory adjoining to it is the area of free trade and offshore business. Privileges on their territory are provided not only for investors, but also for trading transactions. Therefore Gibraltar is used as tax haven for contraband of the goods and capitals. According to British and Spanish sources, the illicit goods the sum of 400-500 thousand USA dollars every day arrive to Europe by Gibraltar. Here incomes of North American narcobusinessmen are laundered. The special Spanish-British commission on struggle against illegal transactions in Gibraltar has been formed, but it cannot influence a situation.

Classical offshore is used for laundering of illegal incomes and terrorism financing. Tax havens in which the classical offshore is registered, are called –

[1] Pavlov P.V. The mentioned writing.

[2] Baliev A., Dymov G. The Extreme West will not leave to Europe // Rossiiskaya Gazeta. – 2001. – On February 23.

offshore zones ***(or silent tax havens). Thereby their criminal character is underlined.***

However attempts to improve such zones are undertaken. So, P.V. Pavlov believes that offshore business is realized in offshore zones, and an offshore zone at him – is a component of term «free economic zone»[1]. We are convinced, that such position contradicts both to the legislation and reality. Use of offshore zones realizes to an unconscientious tax competition (i.e. tax competition violating of national legal norms both the conventional principles and rules of international law).

Offshore zone is the wrong word-group as in it are connected the type of the company and territory. But by virtue of repeated reiteration in mass-media it has become current and is already used in legal acts. *In Russia*, the list of offshore zones fixes Ministry of Finance of the Russian Federation by the decree.

This decree refers to offshore zone the following state and territory: Antilles; Principality of Andorra; Antigua and Barbuda; Aruba; Commonwealth the Bahamas; Kingdom Bahrain; Belize; Bermuda; Brunei-Darussalam; Republic Vanuatu; British Virgin Islands; Gibraltar; Grenada; Commonwealth of Dominica; Special administrative district Hong Kong (Siangan) and Special administrative district Macao – all in Chinese National Republic; and other offshore zones – only 42 points[2]. Besides, Federal Service for Financial Monitoring in coordination with Ministry of Foreign Affairs of Russian Federation, Ministry of Internal Affairs of Russian Federation, the bodies of state security (taking into account FATF documents) – fix the list of the states (territories) which do not carry out the FATF recommendations[3]. The organizations registered in offshore zones, since August 13, 2015 cannot participate in the state purchases. The commission on realization of purchases has acquired the right to reject all demands of organization which is offshore[4].

The Russian mass-media emphasize[5] that because of withdrawal of money in the offshore the Russian budget annually receives less from 30 to 50 billion dollars of taxes.

Russia made active struggle against the offshore by, in particular, signing of agreements with offshore jurisdictions on information interchange. For example, such agreement has been signed with Cyprus[6] and the country is in this connection

[1] Pavlov P.V. The mentioned writing.

[2] On the approval of the List of the states and territories which are rendering to a preferential tax treatment of the taxation and (or) not providing disclosings and rendering of the information at carrying out of financial transactions (offshore zones): decree of Minfin of Russia from November 13, 2007 № 108н // Bulletin of statutory acts of federal enforcement authorities. – 2007. – № 50.

[3] On the procedure of fixing and publication of the list of the states (territories) which do not participate in the international cooperation in sphere of counteraction to legitimization (laundering) of proceeds of crime, and to terrorism financing: decree of Government of the Russian Federation from March 26, 2003 № 173 [Electronic resources] // URL: http://www.pravo.gov.ru.

[4] Federal law of the Russian Federation from July 13, 2015 № 227 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] Cucol E. The offshore on equal footing // Rossiiskaya Gazeta. – 2010. – On November 17.

[6] Agreement between Government of the Russian Federation and Government of Republic of Cyprus on double taxation avoidance concerning taxes on the income and capital: it is signed in Nicosia on December 5, 1998 [Electronic resources] // URL: http://www.pravo.gov.ru.

excluded from the «black list» of Ministry of Finance of the Russian Federation and Bank of Russia.

Attributes of the companies of offshore type

1) They have the right to initiate real offices at the place of registration in tax haven

2) They have the right to do business and to buy the real estate in tax haven at the place of registration at the preferential taxation.

3) Over them is supposed the financial control.

For example is the independent state – *Commonwealth of the Bahamas* (West Indies). The offshore companies on the Bahamas must – to have the registered office and at least two shareholders; to realize general meetings. The Bahama Senate has passed the law about information disclosing on banking transactions. Bahamas take the third place under investments into the Russian nonferrous metallurgy after France and Virgin Islands[1].

Formally, formation of the offshore and their registration in tax havens are considered as lawful activity. Because the offshore company is formed and registered based on tax haven legislations, and is guaranteed by the laws. Public prosecution of the offshore companies can be considered as interference in internal affairs of the sovereign state.

Strategy of Russia in this connection

1) Russia should not interfere to use of tax havens which do not violate the conventional legal norms (principles) of international law and international treaties of the Russian Federation.

2) Russia should – stop formation of the companies in tax havens, which are used for laundering of proceeds of crime, financing of extremism and terrorism, and other illegal activity; to co-operate with this view with international organizations (FATF etc.).

Government of Russia believes that the taxation of the Russian offshore companies should depend not on the state legislation on which the company is founded or registered, and from the labour and administration place. If company is the Russian tax resident, Russia has the right to assess by tax on income of it company all over the world. It follows from natural connection of the company with the state[2].

The federal law № 88 from 7/28/2004[3] *has forbidden* the Russian credit organizations*:*

- To open an accounts and deposits to anonymous possessors, as well as natural persons in their absence;
- To establish and keep relations with the banks – non-residents who do not have in territories the states in whom they are registered, constantly in force agencies of administration.

Russian President has paid special attention to problems of tax planning in the Budget message on the budgetary policy in 2010–2012. He has underlined, that practice of use of grey tax schemes still has risk for stability of a profitable part of the

[1] Bahamas-mums // News (newspaper). – 2000. – On August 16.

[2] Konishcheva T. The state will receive profit even in the offshore // Rossiiskaya Gazeta. – 2001. – On April 11.

[3] Rossiiskaya Gazeta. – 2004. – On July 31.

budget. In this connection President of the Russian Federation has proposeded to realize the following ***complex of measures***: *a)* legislatively to fix instruments of counteraction to abusing by legal norms of the legislation of the Russian Federation on taxes and dues with the purpose of tax mitigation, making use at that the practical experience of the arbitration courts; *b)* operatively to adopt the amendments to Tax Code of the Russian Federation in the part concerning the control of transfer pricing. At that the amendments should – to exclude risks of ambiguous interpretation of legislative legal norms by participants of tax legal relations; to guarantee working capacity of the new mechanism of the control; to be directed on minimization of the risks connected with use of the transfer prices; c) legislatively to fix the mechanisms of counteraction to use of agreements on double taxation avoidance with the purpose of tax mitigation at realization of transactions with the foreign companies when final beneficiaries are not residents of the country with which is entered the agreement.

The effective legislation[1] any more does not allow the organizations which are in offshore jurisdiction, to get the state support. The interdiction mentions the Russian legal persons in whom authorized capital the participatory part of the offshore companies exceeds 50 percent, and beneficiaries, that are natural persons which will receive behalf from the transaction. Under such circumstances, many Russian organizations should undertake measures on re-structuring of business and deducing from the corporate structure of majority foreign participants[2].

World community strategy

The world community urges not to cancel preferential tax rates (it will ruin world finances and economics), and to achieve a transparency and cooperation. It is necessary, that tax havens rendered the information to tax authorities about transactions to accounts that will reduce grey schemes and will increase a collecting of taxes[3].

The specialized offshore companies are formed for the maximum decrease in tax losses by businesspersons.

15.3. Specialized offshore companies

Specialized offshore companies are the organizations registered in tax havens which specialize in various spheres of business for achievement of as much as possible net profit. Their overall peculiarity is the minimum taxation which is not generating tax losses.

The specialized offshore companies are various. We with the purpose of educational process can choose the most interesting: international financial channels; insurance firms; leasing firms; building firms; sea firms; offshore trusts; offshore banks.

INTERNATIONAL FINANCIAL CHANNEL

International financial channel (Conduit Company) is financial organization by which dividends and banking percent are transferred. Such companies name «channel» (from English «conduit» – i.e. channel, secret passage).

[1] Federal law of the Russian Federation from February 15, 2016 № 32.
[2] Voronina Yu. Guarantees only for own // Rossiiskaya Gazeta. – 2016. – On February 2.
[3] Latuhina K. In economics language // Rossiiskaya Gazeta. – 2009. – On April 8. – P. 3.

International financial channel it is formed by lead parent organization (Transit Company) in the form of subsidiary and it is registered in tax haven (there are – Belgium, Netherlands, Switzerland, Austria, Denmark, Luxemburg) which should have:

1) The law, giving to the foreign companies: right on carrying out of credit transactions; zero rate of the tax on exportation of incomes in the form of dividends and banking interests; the preferential taxation of a margin.

Margin (from French «marge» – i.e. page field, kedge) – is the difference between the prices of the goods (purchased and selling), prices of securities (at date of a celebration and day of discharge of the transaction or between the price of the buyer and by the seller) and other indicators. The margin is used in trading, exchange, insurance and credit practice.

2) Tax agreements on elimination of the double taxation with other states, in which is registered the holding intermediary (it transfers dividends and interests between the transit company and Conduit Company).

INSURANCE OFFSHORE FIRMS

Insurance offshore firms – are financially-stable insurers who are registered in tax haven and are had by reinsurance of risks and responsibility of the foreign trade supplies of legal persons.

Insurance – is the business type, which basic subject is the ***insurer*** – (i.e. the legal person of the lawful legal form of organization formed with the purpose of insurance business.

The insurer should be financially steady, i.e. have the paid authorized capital, insurance reserves and insurance funds. Such reserves and funds the insurer have the right to place any lawful method (to advance a credit, invest etc.) – and all it on a returnable basis and under interests. For receiving of profit the insurer can enter to the public international insurance market, but tax losses are great. Therefore insurers use *tax sparing intrafirm insurance schemes* at reinsurance in the wide sense, i.e. at insurance of risks and responsibility. Reinsurance is the most favourable, as the reinsurer is authoritative by virtue of high financial stability. Clients trust it already because he not simply insurer, and the reinsurer.

For example, the offshore insurance company can be incorporated on Bahamas, or to be the foreign company registered according to Bahamas Foreign Companies Act. The offshore insurance company operates the businesses from territory of the islands, is licensed according to the Bahamas insurance legislation, and also has the right to insure only the risks which are them foreign. At that the risk matter can concern shareholders of the insurer. On Bahamas, there are two the laws on insurance for the offshore companies and accordingly two types of insurance licences – «Life» and «Other Than Life». If the sum of awards of captive company (with one or group of shareholders) insuring risks of its members, exceeds $500 000, that it falls under action of External Insurance Act from 1983. All other captive companies are regulated by the other law – Insurance Act from 1969. The law from 1983 named such companies «foreign» insurers, and from 1969 – «nonresident»[1].

Strategy of Russia in this connection is – to block possibilities for giving of tax sparing insurance schemes by legislative way. Such schemes should become unprofitable for businesspersons, since all of them – are the type of short-term

[1] [Electronic resources] // URL: http://www.airn.ru/mw-arch/worldbusiness/990825/front.htm

insurance. It is necessary for Russia to emphasize on long-term insurance since it was real protects beneficiaries and guarantees it a gain of personal savings. On this way for a long time there are the USA, Finland and Canada: their insurers simultaneously are the largest investors of national economies (their participatory share is 13 % of the gross domestic product)[1].

LEASING OFFSHORE FIRMS

Leasing offshore firms – is organizations which are registered in tax haven (i.e. Luxemburg, etc.) and are had by realization of special leasing schemes.

Leasing is a financial lease. The basic model of leasing can be looked on the Internet site[2]. Transactions of leasing firm on property acquisition in leasing, on its amortization, as well as other leasing transactions are assessed by the minimum taxes. The profit on leasing transactions also is taxed under the minimum rate, i.e. is received the net profit: it can be put on the bank account for the further use.

BUILDING OFFSHORE FIRMS

Building offshore firms – is organizations which are registered in tax haven (i.e. Belize, etc.) and are had by building and construction works on contractual objects.

According to the tax haven laws, such firms are not taxpayers the first 12 months. If the object is built up within the first 12 months – incomes from its sale are not taxed. The received net profit can take places on bank accounts for the further use.

SEA OFFSHORE FIRMS

Sea offshore firms – is organizations which are registered in tax haven and are had by the international carriages of goods, passengers and their luggage by sea.

Sea firms, as a rule, are registered in tax havens which name the countries of «convenient flags». There are countries «PanHoLibCo» (i.e. Panama, Honduras, Liberia, Costa Rica), Cyprus and some other. After registration in tax haven, all incomes from ship exploitation under the «aconvenient flag» and not infrequently personal incomes of members of the commands are exempted from the tax, or assessed by it under the symbolical rate.

In the late eighties Soviet Union took the fifth place in the world by quantity of sea trading ships (there are nearby 1600). In 1992 under the Russian flag went already 800 ships, and in 2004 – 204. The others ships have lifted «convenient flags». Ships were formalized on subsidiaries of the Russian trading shipping companies, or their foreign shareholders and registered in tax havens. The reason was covered in the unreasonable tax policy of Russia. Ships under the Russian flag have been compelled to transfer into the budget to 80 % of the incomes. According to Federation of trade unions of workers of sea, river and fishing fleet – on foreign ship-owners worked as a rule seamens from three countries – China, Philippines and Russia. Therefore in Russia the reasonable idea has formed ***Russian international register of courts*** (further – the register), registration of ships in which forms for ship-owners essential privileges and transforms already Russia into the «country of a convenient flag»[3].

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[1] Maltsev V. The insurance – treasury to behalf // Rossiiskaya Gazeta. – 2001. – On June 1.

[2] [Electronic resources] // URL: http://www.profiz.ru/se/7_2005/class_l_opp/

[3] Zykova T. Offshore will lower the Russian flags // Rossiiskaya Gazeta. – 2005. – On June 7. – P. 4;

Zykova T. Taxes knee-deep to sailors // Rossiiskaya Gazeta. – 2005. – On November 25. – P. 5.

The FL-168 from 12/20/2005 has received the bulky appellation «On alteration in some legislative acts of the Russian Federation in connection with formation of the Russian international register of ships»[1].

The law has fixed following privileges:

*Only the ships included in the register, can be had by carriages of goods, passengers and their luggage by sea, as well as rendering of other services (items 33 of MCR);

*Importation on customs territory of Russian Federation of the courts liabling to registration in the register, is not taxed on value added (item 150 of TCR);

*Realization of the built courts liabling to registration in the register is taxed on value added under the rate of zero % (items 164 of TCR);

*At fixing of tax base of the organization profits tax are not considered the incomes of ship-owners received from exploitation of ships registered in the register (item 251 of TCR);

*Ships registered in the register, are not object of taxation by transport tax (item 358 of TCR);

*Organizations – concerning the courts registered in the register – are exempted from taxation on property of organizations (item 381 of TCR);

*Ships registered in the register, are exempted from the customs duty (item 35 of the Law of the Russian Federation «On the customs tariff»);

Russia as the state receives incomes in the form of State Duty for registration of ships in the – State register of shipping, and Russian international register of ships (and for annual acknowledgement of such registration), ship book or bare-boat-charter register and for any alterations made to them (item 36 of MCR; chapter 25.3 of TCR).

OFFSHORE TRUSTS

Offshore trust – is the organization which is registered in tax haven (i.e. the USA, Great Britain, Canada, and Australia) and realizes *trust* scheme of conclusion of property from under the taxation and suit.

Trust – is the specific legal form of fiduciary management by property (material resources) by a trust contract.

The parties of the trust contract are:

*Founder of a trust;

*Authorized representative (curator of a trust).

*Beneficiary (proprietor).

The founder and curator of a trust can be in one person. The beneficiary by the founder devolves own property in fiduciary management to the curator of a trust. The curator of a trust invests beneficiary property in the capital of any financially steady company or places by different way. At that the curator of a trust is registered in tax haven.

Hence, the property temporarily leaves the beneficiary property (he loses seizin, i.e. actual possession by property). But at that such property is not the property of the founder and curator of a trust (they operate the property, but they do not give orders). Therefore the property devolved in a trust, is protected from actions at law and not taxed on property. The *basic lack* of a trust consists in antinomies of the trust laws,

[1] On alteration in some legislative acts of the Russian Federation in connection with formation of the Russian international register of ships: federal law of the Russian Federation from December 20, 2005 № 168 // Rossiiskaya Gazeta. – 2005. – On December 23.

and in absence of their unification. Therefore in case of dispute the court of the state cannot recognize the contract as the trust. In this case on beneficiary property can be comprehensively applied sanction (including tax).

OFFSHORE BANKS

Offshore bank – is the depositary credit organization registered in tax haven and having the offshore banking licence. Such bank has the right to render financial services only to non-residents of tax haven. The taxe on income of offshore bank is minimal.

Offshore banks are classified on following ***types:***

1) *Bank with the resident status* – has real office at the place of registration in tax haven. Example of tax haven for banks of such type is – Belize.

2) *Bank unstaffed* – functionate on the basis of other bank (patronizing), having the general licence. Relations are formalized by the bilateral mutually advantageous agreement. The patronizing bank ensures activity of offshore bank. Bank unstaffed – is the resident therefore it has high authority. The minimal authorized capital of such bank – is not less than 500 000 USA dollars. Isle of Man, Jersey, etc. – are examples of tax havens under such banks:

3) *Joint Stock Company* – is the non-resident; it no office in the place of registration has. Its licence gives the right opening of accounts and receiving of money only from the persons, specified in the licence or the special list. At the same time such bank has the right to realize various banking transactions without restrictions. The minimal capital of bank – is 100 000 USA dollars. Examples of tax havens under such banks are the – Vanuatu, Western Samoa, and Monserrat.

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On case of constitutionality test of provisions of parts 1, 3 and 9 of item 115, point 2 of part 1of item 208 of Criminal and procedure Code of the Russian Federation and 9 of point 1 of item 126 of Federal law «On inconsistency (bankruptcy)» in connection with complaints of Closed joint-stock company «Real estate-M», Limited responsibility society «Solomatinsky grain-collecting enterprise» and citizen L.I.Kostarevoj: ruling of Constitutional Court of the Russian Federation from January 31, 2011 № 1 [Electronic resources] // URL: http://www.pravo.gov.ru.

On case of constitutionality test of provisions of points 6 and 7 of item 168 and point 5 of item 173 of Tax Code of the Russian Federation in connection with the complaint of Limited responsibility society «Trading house «Kamsnab»: ruling of Constitutional Court of the Russian Federation from June 3, 2014 № 17 [Electronic resources] // URL: http://www.pravo.gov.ru.

Chapter 16. INTERNATIONAL TAX LAW

16.1. Conception of the international tax law

In the scientific literature are reflected various conceptions and problems of international financial and tax law[1] and even specialists in technical sphere[2]. There are also the works coordinating tax problems with concrete international legal practice[3]. There is realized the comparative analysis of the taxation of some objects in Russia and other countries[4]. Their analysis, as well as current status of world finances and economics allows us to defend own position[5].

The understanding of international tax law is impossible without analysis of such concepts as «international law», «international public law», «international private law», «international financial law» and without the solution of the problem of their correlation with each other and with a category «national law».

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[1] Guseva T.A., Afonina N.G. Economic crisis and financial law // The Financial Law (journal). – 2009. – № 8;

Zapol`sky S. Century Economics globalisation: financial-law aspect // The Financial Law (journal). – 2011. – № 11;

Kudryashov V.V. The investment policy of world Sovereign Wealth Funds in financial-law context // The Financial Law (journal). – 2009. – № 7;

Petrova G.V. The basic approaches to formation of international financial law as legal system // The Legislation and Economics (journal). – 2005. – № 8;

Problems of modernisation of system of tax correlations of the Russian Federation and the basic problems of the transboundary taxation in the European-Asian space: Matters of the European and Asian legal congress. – Ekaterinburg, 2011;

Smirnov D.A. Implementation of the principle of international and law cooperation in system of the taxation of the Russian Federation // The Financial Law (journal). – 2011. – № 10;

Shapovalov M. A. International financial law: matter, system, sources // The Banking law (journal). – 2010. – № 3;

Shepenko R.A. The international tax legal norms: dialogue on law principles // The Financial Law (journal). – 2011. – № 5;

Shumilov V.M. International financial law: the schoolbook. – M.: International Relations publishers, 2005.

[2] Zhuravlyov O.O, Ismailova L.Yu. Problems of interaction of tax legal systems in the conditions of globalization // The Financial Law (journal). – 2010. – № 7.

[3] Machehin V.A. Application of the international tax agreements in the Russian Federation: processual problems // The Financial Law (journal). – 2011. – № 7.

[4] Batjaeva A.R. Legal regulation of the taxation of interests and dividends in Russia and in USA // International Public and Private Law (journal). – 2014. – № 5.

[5] Beloshapko Yu.N. Problems of financial and tax responsibility. The basic educational edition in electronic form. It is registered on February 12, 2007 in Branch fund of algorithms and programs of the State coordination centre of information technologies of Federal agency by training // Certificate on branch registration of working out № 7658 from 2/27/2007;

Korchagin A.G., Beloshapko Yu.N. Problems of juridical responsibility in public and privet law: monograph. – Vladivostok: Far Eastern University publishers, 2008;

Beloshapko Yu.N. Financial law of Russia: the schoolbook. – Vladivostok: Vladivostok State University of Economics and Service publishers, 2015;

Yuriy N. Beloshapko. On the issue of a correlation of Russian and international financial law // The Journal of Scientific Research and Development. – 2016. – № 3 (6). – P. 39-44.

Various concepts and problems of international financial law reflected in the scientific literature[1]. Analysis of the concepts and modern condition of the world finances and economy allows us to defend ***own position***[2].

Relating to a category «international law» it is possible to accentuate monistic and dualistic concepts, which are in detail described in *R.A. Mjullerson's*[3], *V.V. Gavrilov's*[4] scientific works and others. Followers of monism (there are V. Levi, etc.) believe, that international law and national law are a uniform legal system. Followers of dualism (there are G. Tripel`, etc.) confident, that international law and national law are various independent legal systems.

The solution of the problem of correlation of international law and national (i.e. interstate) law is especially serious[5]. Use of international legal norms in the country is realized by of debatable mechanisms of implementation, receiving, transformations[6].

OUR VIEWPOINT

National law (domestic law) has a supremacy (primacy) over international law, i.e. it has primary character. Let us consider this thesis on an example of Russia[7].

According to point 4 of item 15 of RF Constitution, the conventional principles and rules of international law, international treaties of Russia are the component of its legal system. Rules of the international treaty are used, if the international treaty of the

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[1] Guseva T.A., Afonina N.G. Economic crisis and financial law // The Financial Law (journal). – 2009. – № 8;

Zapol'skij S.V. Globalization of economy – financially legal aspect // The Financial Law (journal). –2011. – № 11;

Kudryashov V.V. The investment policy of world sovereign funds in a financially legal context // The Financial Law (journal). – 2009. – № 7;

Petrova G.V. The basic approaches to formation of international financial law as legal system // The Legislation and Economics (journal). – 2005. – № 8;

Problems of modernisation of system of tax correlations of the Russian Federation and the basic problems of the transboundary taxation in the European-Asian space: Matters of the European and Asian legal congress. – Ekaterinburg, 2011;

Smirnov D.A. Implementation of the principle of international and law cooperation in system of the taxation of the Russian Federation // The Financial Law (journal). – 2011. – № 10;

Shapovalov M. A. International financial law: matter, system, sources // The Banking law (journal). – 2010. – № 3;

Shumilov V.M. International financial law: the schoolbook. – M.: International Relations publishers, 2005.

[2] Korchagin A.G., Beloshapko Yu.N. Problems of juridical responsibility in public and privet law: monograph. – Vladivostok: Far Eastern University publishers, 2008.

[3] Mjullerson R.A. Correlation of international and national law. – M.: International Relations publishers, 1982.

[4] Gavrilov V.V. International private law. The course of lectures. – Vladivostok: Far Eastern University publishers, 1999. – Pp. 131-139.

[5] Gavrilov V.V. Concept and interaction of the international and national systems: the monograph. – Vladivostok: Far Eastern University publishers, 2005.

[6] Look about that in detail: Mjullerson R.A. – The mentioned writing. – Pp. 3-20, 29-30, 56, 114-124;

Butkevich V.G. Correlation of interstate and international law: the monograph. – Kiev, 1981;

Smirnov D.A. Implementation of the principle of international and law cooperation in system of the taxation of the Russian Federation // The Financial Law (journal). – 2011. – № 10;

Smirnikova Yu.L. Legal regulation of financial relations: international level // International Public and Private Law (journal). – 2012. – № 1.

[7] Yuriy N. Beloshapko. On the issue of a correlation of Russian and international financial law // Journal of Scientific Research and Development. – 2016. – № 3 (6). – P. 39–-44.

Russian Federation establishes other rules, than are provided by the law. International treaties are used in Russia not directly, but only as the component of its legal system.

To become the component of Russian legal system, rules and principles of international law should be conventional (i.e. to admit and Russia) and correspond to national interests of Russia.

Thus, *supremacy over laws* has not rules and principles of international law, but only international treaties of *Russia.* The treaties should come into force. Thus, they can be challenged in Constitutional Court of the Russian Federation (item 125 of Russian Constitution). In addition, at last, Russian federal law «On the international treaties of the Russian Federation» regulates the treaties. Moreover, point 2 of item 4 of RF Constitution in the unequivocal and categorical form, without reservations specifies, that RF Constitution and federal laws have *supremacy in all territory of the Russian Federation.*

Thus, the chairperson of Constitutional Court of the Russian Federation correctly, in our opinion, has advised[1] to use the position of Federal Constitutional Court of Germany, according to which does not contradict the purpose of adherence to international law if the legislator, as an exception, does not observe law of the international contracts provided that it is the unique way to avoid of infringement of basic constitutional principles.

As correctly has specified Constitutional Court of the Russian Federation, the decision of the empowered interstate body cannot be executed the Russian Federation if interpretation of rule of the international treaty on which the decision is based, violates corresponding positions of Constitution of the Russian Federation[2].

Such position long time was only opinion, without applicable formalization. The situation has changed in December, 2013 – when Constitutional Court of the Russian Federation has enacted the ruling in connection with inquiry of presidium of Leningrad district military court on the same cause.

Official positions of Constitutional Court of the Russian Federation are: 1) general jurisdiction court obliged to submit only to Constitution of the Russian Federation and the federal law can come to conclusion *on impossibility of execution of the ruling* of *European Court of Human Rights*. In this case the general jurisdiction court is competent to suspend the procedure and to be applied to Constitutional Court of the Russian Federation with inquiry on constitutionality test of these statutes[3]; 2) interaction of European conventional and Russian constitutional legal orders is impossible in the conditions of subordination as only dialogue between various legal

[1] Zor`kin V. Compliance limit // Rossiiskaya Gazeta. – 2010. – On October 29.

[2] On case of constitutionality test of provisions of item 1of Federal law «On ratification of Convention for the Protection of Human Rights and Fundamental Freedoms and protocols to it», points 1 and 2 of item 32 of Federal law «On international treaties of the Russian Federation», parts 1 and 4 of item 11, point 4 of part 4 of item 392 of Civil Procedure Code of the Russian Federation, parts 1 and 4 of item 13, point 4 of part 3 of item 311 of Arbitration Procedure Code of the Russian Federation, parts 1 and 4 of item 15, point 4 of part 1of item 350 of Code of Administrative Court Procedure of the Russian Federation and point 2 of part 4 of item 413 of Criminal and procedure Code of the Russian Federation in connection with inquiry of group of deputies of State Duma: ruling of Constitutional Court of the Russian Federation from July 14, 2015 № 21 // Rossiiskaya Gazeta. – 2015. – On July 27.

[3] On case of constitutionality test of provisions of item 11 and points 3 and 4 of part 4 of item 392 of Civil Procedure Code of the Russian Federation in connection with inquiry of presidium of Leningrad district martial court: ruling of Constitutional Court of the Russian Federation from December 6, 2013 № 27 // Rossiiskaya Gazeta. – 2013. – On December 18.

systems forms a basis of their applicable balance; hence, a ruling of European Court of Human Rights cannot be obligatory for the Russian Federation if concrete provision of Convention for the Protection of Human Rights and Fundamental Freedoms (on which this ruling leans) as a result its interpretation conflicts to provisions of Constitution of the Russian Federation[1].

In 2015, Constitutional Court of the Russian Federation has continued to defend supremacy of Russian Constitution according to the following legal proposition: the decision of the authorized interstate body, including the ruling of European Court of Human Rights, cannot be executed by the Russian Federation, – if interpretation of rule of the international treaty on which this (decision is based, breaks conforming provisions of Constitution of the Russian Federation[2]. In this connection the FCL on Constitutional Court of the Russian Federation has been added by chapter XIII.I (Disposal of legal proceeding on possibility of execution of decisions of interstate body on protection rights and liberties of the person), – according to which Constitutional Court of the Russian Federation has acquired such right from viewpoint of foundations of constitutional system of the Russian Federation and the legal regulation of rights established and liberties of a person and citizen by the Constitution of the Russian Federation[3]. The Court has immediately used such right[4].

Permanent Court of Arbitration at The Hague is one more example of the international judicial institution which roughly interferes with internal affairs of Russian Federation. The Court in the summer 2014 has obliged Russia to pay 50 billion US dollars for an expropriation of assets of Open Society «TCR YUKOS» (in connection with violation of the tax legislation by it), – because Russia has ostensibly broken the Energy Charter (though the Russian Federation did not ratify the Treaty to the Energy Charter)[5]. However District Court at The Hague has declared as the void six decisions of Permanent Court of Arbitration at The Hague. It signifies that Russia not only de facto, but also de jure is not obliged to pay 50 billion dollar to companies Yukos Universal Limited, Hulley Enterprises Limited and Veteran Petroleum Limited which were shareholders of gone bankrupt Russian oil company «YUKOS». Also according to the ruling of the District Court, each of three companies representing to interests of the former shareholders «YUKOS», should pay to Russia on 16 801 euros for the compensation of the legal cost[6].

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[1] On cause on the problem solution about execution possibility according to Constitution of the Russian Federation of the ruling of European Court of Human Rights from July 31, 2014 on cause «Open Society «Oil company «YUKOS» against Russia» in connection with inquiry of Ministry of Justice of the Russian Federation: ruling of Constitutional Court of the Russian Federation from January 19, 2017 № 1 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] Ruling of Constitutional Court of the Russian Federation from July 14, 2015 № 21.

[3] Federal constitutional law of the Russian Federation from December 14, 2015 № 7.

[4] On cause about the problem solution on execution possibility according to Constitution of the Russian Federation of the ruling of European Court of Human Rights from July 4, 2013 on cause «Anchugov and Gladkov against Russia» in connection with inquiry of Ministry of Justice of the Russian Federation: ruling of Constitutional Court of the Russian Federation from April 19, 2016 № 12 [Electronic resources] // URL: http://www.pravo.gov.ru.

[5] Zykova T. Russian Federation will challenge at the Hague decisions under YUKOS claims // Rossiiskaya Gazeta. – 2015. – On February 6.

[6] Fedjakina A. Without the policy // Rossiiskaya Gazeta. – 2015. – On April 20.

In 2015, the Russian legislators at last were resolved to limit, by the federal law, the so-called ***jurisdictional sovereignty*** of the foreign state and its property in territory of the Russian Federation. For the first time with reference to the foreign state have been defined such terms as the – foreign state, property of the foreign state, jurisdictional immunities of the foreign state and its property, judicial immunity, immunity concerning measures on ensuring, immunity concerning executions of judgment, court of the Russian Federation, sovereign imperious powers. Under the law, jurisdictional immunities of the foreign state and its property in lawful volume can be limited based on the principle of reciprocity. So, the foreign state in lawful cases will not use in Russia judicial immunity concerning disputes on right on property, on harm compensation, etc.[1]

In this connection and in the conditions of current and perspective western restrictive measures it is necessary for Russia (in our opinion):

*To leave U.N.O and to form its analogue – Russian international organization «Multipolar world» with a site in St.-Petersburg;

*To leave Council of Europe and all other European structures as we can form conforming structures on the basis of Eurasian Economic Union;

*To leave from under jurisdiction of international courts noticed in rendering of politically motivated Antirussian decisions;

*To maintain only mutually advantageous financial and economic relations with all without an exception the foreign states.

Russia should not enter to various international organizations, but the foreign states should enter to Russian international organizations. Only in this case Russia will keep the sovereignty and world power role, will strengthen own international legal system, will allow reaching stability, including in economics and finances.

The problem of a correlation of international law and national law is complicates also by absence of unanimity in understanding of international law concerning problems of its correlation with categories «international public law» and «international private law.

Our viewpoint is following:

International law can be understood in the wide sense and as international law from positions of Russia.

International law in the wide sense is the special legal system, regulating the relations between subjects of international law by international legal norms.

International law *from positions of Russia* is the special component of the Russian legal system, regulating the relations between Russia and other subjects of international law by international treaties of the Russian Federation, and by principles and rules of international law recognized by Russia.

International public law is the synonym of international law.

International private law can understood in the wide sense and as *international private law* of Russia.

International private law *in the wide sense* is the part of any national law with a foreign element.

[1] On jurisdictional immunities of the foreign state and property of the foreign state in the Russian Federation: federal law of the Russian Federation from November 3, 2015 № 297 // Rossiiskaya Gazeta. – 2015. – On November 6.

International private law *of Russia* is the inter-branch legal institution, regulating civil, family, labour and other private relations in the Russian Federation with a foreign element.

DIFFERENTIATION OF INTERNATIONAL LAW AND INTERNATIONAL PRIVATE LAW IS REALIZED BY FOLLOWING CRITERIA[1]

1. Subjects:

Subjects of *international law* are the states and the international organizations. The subjects are universally recognized. All attempts to classify other subjects (there are people, nation, Multinational Corporation, juridical and natural persons etc.) are disputable.

Subjects of *international private law* are juridical and natural persons.

2. Objects:

Object of *international law* are interstate authoritative relations with elements of contractual relations.

Object of *international private law* are private-law relations (i.e. civil, family, labour relations etc.), having the international character (i.e. a foreign element).

3. Sources:

Sources of *international law are* the – universally recognized rules of international law, international treaty, and international habit.

Sources of *international private law* are the national legislation, commercial usage (i.e. usage of trade, commercialism) and some other.

4. Responsibility:

Responsibility in *international law* is international legal (i.e. international).

Responsibility in *international private law* is civil legal (i.e. civil).

5. Sphere of activity:

Sphere of activity of *international law* is global (i.e. all states and other subjects of international law).

Sphere of activity of *international private law* is national (i.e. in each state – international private law).

At the same time, international law and international private law are not isolated systems. Between them, there is an interrelation.

Features of interrelation of international law and international private law are:

1) Homogeneous orientation – i.e. regulation of the relations, having the international character.

2) Recognition of the states – i.e. recognition of juridical ability of other state.

3) Sources of *law are* the universally recognized rules of international law, international treaties and legal habits.

4) International treaties *concerning* international private law cannot contradict to international law principles, i.e. there are overall aims for the formation of legal conditions for the international cooperation in various spheres.

In the modern world, there is no uniform mechanism of realization of the international legal norms within the limits of national legal systems. Each state solves the problem independently, and the disorder of their final decisions in that question is wide enough: from declaration of supremacy of all international legal norms concerning national laws and even constitutions to recognition of possibility of

[1] Panov V.P. International law: teaching materials. – M.: INFRA-M publishers, 1997. – Pp. 6–10.

realization in the concrete country only their several versions in specially stipulated cases and at execution of some conditions[1].

Coordination of concepts is necessary for the further disclosing of theme – «international tax law» – with concepts: «international (world) finance», taking into account of our position concerning concepts – «finance», «international law».

Our interpretation of financial and tax aspects

International (world) finances are complex of international-public relations, resulting between the states and other subjects of international law concerning formation, distribution and using of funds of money. International financial law regulates it.

International (world) financial law is an inter-branch legal institution in the international legal system, regulating relations between subjects of international law in the process for the formation, distribution and using of funds of money.

International financial law is realized by its financial system.

World financial system is the complex and interrelation of international legal financial institutions.

International legal financial institution is the complex of the international legal norms, regulating group of homogeneous international financial relations.

Depending on kinds of financial institutions, it is possible to choose following kinds of international legal financial institutions: international tax law; international budgetary law; international currency law; international insurance law; international credit law; international investment law; securities market international law. ***Hence, international tax law – is international and law financial institution.***

However not all so is unequivocal in an international law science. The term « international tax law» as a rule (i.e. with rare exception) in the educational literature on international law is not used, and the tax aspect is only designated (and that infrequently) at the analysis of the international economic law. Therefore about the international tax law basically write specialists in tax law and occasionally – in international law (Boguslavsky M., Veral`sky M., Zagrjatskov M., Zapol`sky S., Kashin V, Kozyrin A., Lisovsky V., Padejsky N., Rovinsky E., Tolstopjatenko G., aKrokhina Yu., Pepeljaev S., Kucherov I,, Kotljarenko S. and others).

I.I. Kucherov understands international tax law as complex of the legal norms established exclusively at interstate level and regulating tax relations[2].

V.V. Poljakova and S.P. Kotljarenko believe that international tax law – is the complex branch of law representing complex of rules of national (interstate) and international law, regulating the international tax relations[3].

According to *S.V. Zapol`sky*, international tax law – is the category conditional also signifies a special regime of the taxation of the non-residents, formed on a recognition of transboundary tax legal norms[4].

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[1] Gavrilov V.V. Position and international law role in legal system of the Great Britain // TheJurisprudence (journal). – 2008. – № 4 (279). – P. 209.

[2] Tax law of Russia: the schoolbook for high schools / Editor-in-chief Yu.A. Krohina. – M.: NORM publishers, 2003. – P. 579–581.

[3] Tax law: the schoolbook / under editorship of S.G. Pepeljaev. – M.: JURIST publishers, 2004. – P. 339-341.

[4] Zapol`sky S.V. Economics globalisation: financial-law aspect // The Financial Law (journal). – 2011. – № 11.

E.A.Rovinsky is convinced, that international tax law is discussed as a sub-branch of the international financial law which, in turn, is considered as independent branch of international public law[1].

M.M. *Boguslavsky* proves that international tax law is a sub-branch of the international economic law[2].

Position of M.O. Klejmenovoj[3]

International tax law – is the specific of tax law which specializes on the international aspects of the taxation.

She relates to the principles of international tax law:

1) Sovereign equality of the states in the international tax relations;

2) Cooperation, interaction of the states on a fair and mutually advantageous basis (for example, in such directions, as the solution of the controversial problems, concerning the double taxation, etc.);

3) Mutual recognition of rights and duties corresponding by it in tax sphere;

4) Conscientious fulfilment of obligations, contextual international legal norms;

5) Tax not discrimination.

Matter of international tax law is tax relations of interstate level.

The international tax relations accrue from the moment of a celebration by the state of such international agreements, as:

- Agreement on elimination of the double taxation and prevention of evasion from the taxation;

- Treaties on legal aid rendering in tax sphere, at interaction of authoritative bodies of the states concerning the taxation.

At that to the international tax relations are related to:

- Relations between the states concerning celebration and discharge of the international tax agreements;

- Tax relations between the states both natural and legal persons of other states, i.e. the tax relations touching the sovereignty of other states;

- Relations of public character between legal and (or) natural persons of the various states.

L.P. Fatkinoj's position[4]

In a tax law of the any country, besides the national legislation, there is relations at which necessarily take place a foreign element. The taxing subject is based on the principle of territorial supremacy of the state over the territory with the purpose of fixing by the national tax legislation of certain legal norms of the taxation of subjects of foreign law. The international legal principle assumes the state right to regulate and control activity of foreign organizations within national territory, including on distribution of the tax jurisdiction on the non-residents who are putting into practice the activity in territory of the foreign state.

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[1] Rovinskij E.A. International financial relations and their legal regulation // The Soviet State and Law (journal). – 1965. – № 2. – Pp. 60–68

[2] Boguslavsky M.M. International economic law. – M., 1986. – P. 5.

[3] Kleymenov M.O. Tax law: the manual. – M.: Moscow financial and industrial university «Synergy» publishers, 2013.

[4] Fat`kina L.P. Tax law. Course of lectures: the manual. – M.: Book World publishers, 2010.

The purposes of the international cooperation in taxation sphere are:

*Elimination of the double taxation;

*Harmonization of the tax systems and tax policy;

*Tax legislation unification;

*Prevention of evasion from the taxation;

*Avoidance of discrimination of taxpayers – non-residents.

Possibility of the double taxation forms in the case when one party applies for the right to collect tax based on the fact of presence of the taxpayer, and other party – based on the place of receiving of the income in territory, as well as if both countries consider the foreign taxpayer as the resident.

In this connection double and even the repeated taxation forms in following cases, if:

*Under the national tax legislation of the several states the taxpayer is recognized by the resident and carries certain tax commitments before each state;

*At the resident of one state forms the object of taxation in territory of other state, and both states collect tax from this object of taxation;

*Some states subject one and too the person who is not their resident, to the taxation on object which forms at the taxpayer in these states.

The double and repeated taxation is possible concerning direct taxes: profit tax – i.e. on incomes, property, and capital. For example, by item 209 of TCR it is fixed, those natural persons-residents of the Russian Federation are payers of the taxe on income received both in territory of Russia, and behind its limits. Indirect taxes are levied starting with territoriality of the taxation.

The problem of elimination of the double and repeated taxation is solved both at level of the national tax legislation, and at level of the international agreements. At that the national legislation of the states provides measures on elimination of the repeated taxation only for own residents. Item 311 of TCR establishes the legal norm, according to which the sums of the tax paid under the legislation of the foreign states by the Russian taxpayer, are set off at payment of the tax by him in Russian Federation. Such elimination of the double taxation is called as *tax credit*.

In the national tax legislation, also is used the *distributive method* of elimination of the double taxation, based on the principle of exemption from the tax. According to the method, one state does not levy a tax on the income which is assessed by tax in other state according to the treaty between them about types of these incomes. The tax abatement reduces tax base of the sum of paid tax abroad.

We see, that all abovementioned viewpoints reflect various aspects of international tax law, but without their complex correlation. There are also other conceptions of international tax law[1]*. Hence, it is necessary for us to adhere to our general conception.*

[1] Kucherov I.I. International tax law and its sources // The International Public and Private Law (journal). – 2001. – № 2;

Kucherov I.I International tax law (the academic course): the schoolbook. – M.: Joint-Stock Company «YurInfoR» publishers, 2007;

Tax law of Russia: the schoolbook for high schools / Editor-in-chief Yu.A. Krokhina. – M.: NORM publishers, 2003;

Tax law: the schoolbook / under S.G. Pepeljaev`s editorship. – M.: YURISTЪ publishers, 2004.

OUR INTERPRETATION

The establishing of the taxes, dues, insurance contributions, special tax regimes, and tax duty – is the state exclusive right on which cannot encroach the international community. At that tax law related to only to public law, i.e. it cannot be considered as private law as legal relations form with obligatory participation of authorities and have public character. At the same time in tax law of Russia it is possible conditionally to emphasize two parts. To the *first* part related to the legal norms regulating the relations, completely falling under national jurisdiction. To the *second* part are related to the legal norms regulating the relations with participation of a foreign element.

In Russia not only Russians, but also foreign citizens and organizations form objects of taxation and tax base. They are obliged to observe TCR and the legislation to it not conflicting. Besides, their tax relations can be regulated by international treaties of the Russian Federation and the conventional rules (principles) of international law (item 7 of TCR). But also in this case such legal norms and treaties form the Russian tax law – since they are included in the Russian legal system by item 15 of Constitutions of the Russian Federation, and hence they only correspond with international law. Hence, *international tax law regulates relations exclusively between subjects of international law, though and concerning taxes and dues.*

International (world) tax law – is international and law financial institutions in system of international financial law, regulating relations between subjects of international law concerning collection of taxes and dues.

Subjects of international tax law are:

1. The states
2. International organizations

Let's underline! These subjects of international law have not a tax duty, except for no the international organizations formed in territory of Russia (item 11 of TCR). They regulate relations concerning discharge of tax duty by natural persons and organizations which cannot be unilaterally regulated within the limits of national law.

FOR EXAMPLE – EURASIAN ECONOMIC UNION (EEU)

On May 29, 2014 in Astana has taken place ***historical event*** – Russia, Kazakhstan, Belarus have signed **Treaty on the Eurasian Economic Union[1] (EEU)**. EEU is the international organization of the regional economic integration possessing the international juridical ability (i.e. legal personality). In EEU provided freedom of movement of the goods, services, capital and labour, realizing of the co-ordinate, agreed or uniform policy in economy branches. Member-states realize the co-ordinate (agreed) regulation of the financial markets within the limits of the Union.

Union bodies are – Supreme Eurasian Economic Council; Eurasian Intergovernmental Council; Eurasian Economic Commission; Court of the Eurasian Economic Union. Financing of the Union activity is realized by the Union budget. It is formed by Regulations on the budget of Eurasian Economic Union. For the purpose of financial and economic development and attraction of investments in territories of member-states are created and function free (i.e. special) economic zones and free warehouses. EEU provides formation of conditions for a mutual recognition of licenses in bank and insurance sectors, as well as in sector of services on a securities market. In EEU is realized uniform customs regulation by Customs Code of Eurasian Economic Union and other international legal norms. Before coming into force of

[1] [Electronic resources] // URL: http://www.pravo.gov.ru.

Customs Code of Eurasian Economic Union customs regulation in the Union is realized by the Treaty on Customs Code of Customs Union and other acts of Customs Union. The Treaty on the Eurasian Economic Union will be entered by stage till 2025. Because of the whilom USSR-republics are incapable to function without the financial assistance of Russia. The goods imported from territory of one member-state on territory of other member-state, are subjected to indirect taxes.

Member-states in mutual commerce levy taxes, other dues and payments so that the taxation in the member-state in which territory put into practice realization of the goods of other member-states – was not less favorable, than a taxation used by this member-state at the same circumstances concerning of the similar goods, originating with its territories. It is interesting, that in 2015 on this ground Constitutional Court of the Russian Federation has decided the difference on levy of IIT with participation of the citizen of Belarus[1].

Member-states fix directions, as well as the forms and procedure of harmonization of the legislation concerning taxes, which influence on mutual trade – lest that to break the stipulation of a competition and not to interfere with free moving of the goods, works and services at national level or at level of EEU.

The basic sources of the international tax law are:

1. International treaty (agreement);
2. Judicial precedent.

INTERNATIONAL TREATIES

From tax viewpoint, primarily should be discharged the legal norms of TCR on the international treaties of the Russian Federation (item 7 of TCR)[2]. If the international treaty of the Russian Federation establishes other legal norms than provided by the tax legislation – uses legal norms of the international treaties. The international tax treaties are invariable object of scientific researches[3].

The person having an actual right on incomes, with the purpose of TCR and use of international treaties of the Russian Federation concerning the taxation is recognized the person, which by virtue of direct and (or) indirect participation in organization, or the control over organization, or by virtue of other circumstances has the right to use independently and (or) to give orders these income, or the person in which interests other person is competent to give orders such income. At fixing of the person having an actual right on incomes, are considered the functions which are carried out by such persons, as well as risks received by them.

In case the international treaty of the Russian Federation concerning the taxation provides use of the lowered rates of the tax or exemption from the taxation concerning incomes from sources in Russian Federation for the foreign persons having an actual right on these incomes, the foreign person is not recognized having an actual right on such incomes if it – has the limited powers concerning disposals these incomes; realizes concerning such incomes mediatorial functions in interests of other person; does not carry out any other functions and does not take up any risks; expressly or by implication pays

[1] On case of constitutionality test of point 2 of item 207 and item of 216 Tax Code of the Russian Federation in connection with the complaint of the citizen of Republic of Belarus S.P. Ljarskogo: ruling of Constitutional Court of the Russian Federation from June 25, 2015 № 16 // Rossiiskaya Gazeta. – 2015. – On July 10.

[2] On alteration in the part 1 and 2 of Tax Code of the Russian Federation (regarding the taxation of profit of the controlled foreign companies and incomes of foreign organizations): federal law of the Russian Federation from November 24, 2014 № 376 [Electronic resources] // URL: http://www.pravo.gov.ru.

[3] Khavanova I.A. International Tax Treaties in the Legal System of Russia // The Financial Law (journal). – № 12. – P. 18-22 .

such incomes (in full or in part) to the person, which at direct receiving of such incomes from sources in Russian Federation would not have the right on use of such provisions of the international treaty of the Russian Federation concerning the taxation.

In case of payment of incomes from sources in the Russian Federation to the foreign person which constant location is the state (territory) with which there is the international treaty of the Russian Federation concerning the taxation, and which has no actual right on such incomes, if the payment source knows the person having an actual right on such incomes (or their part) – the taxation of the income is realized ***in the following procedure***:

1) if the person having an actual right on the incomes, is recognized according to TCR the tax resident of Russian Federation – taxation of the income is realized according to provisions of conforming chapters of the part 2 of TCR for the taxpayers who are tax residents of Russian Federation, without tax deduction concerning incomes at a source of payment under condition of tax authority informing at the place of organization registrations-source of payment of incomes in the procedure established by federal enforcement authority, authorized under the control and supervision in the field of taxes and dues;

2) if the person having an actual right on the incomes, is the foreign person on whom extends action of the international treaty of the Russian Federation concerning the taxation – provisions of such international treaty of the Russian Federation are used concerning persons who has an actual right on incomes according to the procedure provided by the international treaty of the Russian Federation.

The special literature on international treaties constantly replenishes. So, *V.E. Kuznechenkova* justly emphasizes, that the international tax agreements play the important role in regulation of financial activities of the Russian state and take the important place in hierarchy of sources of tax law. They give to taxpayers the guarantee, that their incomes and property will not be assessed by double taxes; also give protection against the discrimination taxation abroad. They ensure for the state on behalf of tax authorities possibility of mutual direct consultations and contracts for the solution of many vexed questions, as well as for the control of foreign economic affairs of the residents. The international tax agreements have doubtless importance for the state as bearer of sovereign economic rights, as are the method of fixing on a contractual basis of the rights on receiving of a fair participatory share from the taxation of incomes and the property, received by residents from international economic and financial activities[1]. Then *V.E. Kuznechenkova* proposeds own detailed classification of international treaties in tax sphere[2].

We act easier and *we classify* international treaties on the general and special. The general treaties have multilateral character whereas the special treaties are agreed between two subjects of international law.

GENERAL INTERNATIONAL TREATIES

(TYPICAL EXAMPLES)

**Typical convention* of Organization of economic cooperation and development on the taxation of incomes and the capital of 1977. In the Convention is proposed the model of the international treaty on double taxation avoidance which is used as basis

[1] Kuznechenkova V. E. The international tax agreements in legal system of the Russian Federation// The Financial Law (journal). – 2010. – № 4.

[2] Ibidem.

in the majority of in force international tax agreements. Russia has agreed about hundred such agreements with the various countries of the world.

**European charter* of local self-government (Strasbourg, 10/15/1985). The charter has fixed that the part of financial assets of local governments should arrive at the expense the local taxes and dues which rates local governments have the right to establish in the limits fixed by the law (item 9 of Charter).

SPECIAL INTERNATIONAL TREATIES OF BILATERAL CHARACTER

(TYPICAL EXAMPLES)

**Treaties based on the European Social Charter* (Strasbourg, 5/3/1996). Item 16 of the Charter speaks about tax privileges as one of means of ensuring of necessary stipulations for full development of a family.

**Agreements on rendering of the administrative help on tax problems.* Example: Agreement between Government of the Russian Federation and Sweden of 1997 regulates issues of interaction of authoritative bodies on mutual aid rendering in struggle against tax violations by an information transfer, submitting of documents, carrying out of the investigations and exchange of experience. At that the help should not do harm to the sovereignty, public order, security and other essential interests of the state, as well as to entail infringement of the legislation of the state.

**Treaties on diplomatic and consular agreements between the states, based on the Viennese Convention on Diplomatic Agreements 1961 and the Viennese Convention on Consular Agreements 1963.* In treaties is established exemption of diplomatic and consular workers, as well as representative offices of the states from all taxes and dues by receiving party (i.e. immunity from taxes)

**Treaties on principles of mutual relations of international organizations with the countries of a location of the organizations.* Example: Agreement 1997 between Government of the Russian Federation and International Monetary Fund on constant IMF representative offices in Russia. The agreement regulates including tax privileges.

**Treaties on double taxation avoidance.* For example, according to item 11 of Agreement between the governments of the Russian Federation and Peoples Republic of China, the interests forming in one Agreeing State and paid to the resident of other Agreeing State, liable to the taxation only in the other Agreeing State. The term «interests» signifies the income from debt requirements of any kind irrespective of hypothecary ensuring and the right on participation in profits of the debtor and, in particular, the income from central government securities and the income from bonds or bonds of obligation, including the awards and prizes connected with such papers, bonds and commitments. Penalties for the back payment are not considered as interests[1].

[1] Agreement between Government of the Russian Federation and Government of the Chinese National Republic on double taxation avoidance and on prevention of evasion from the taxation concerning taxes on income and the Protocol to i, signed in Moscow-city on October 13, 2014, as well as Protocol on alteration in Agreement between Government of the Russian Federation and Government of the Chinese National Republic on double taxation avoidance and on prevention of evasion from the taxation concerning the taxes on income, signed in Moscow-city on May 8, 2015: are ratified by Federal law of the Russian Federation from January 31, 2016 № 6 [Electronic resources] // URL: http://www.pravo.gov.ru.

**Customs treaties regulating, including, collection of indirect taxes*. For example, Customs Code of EEU regulates collection of excise taxes and VAT from transactions between the member-states of Eurasian Economic Union[1].

Let's discuss ***other nuances*** connected with the type of international treaties, on the example of peculiarities of the taxation of the foreign organizations which are not realizing activity by permanent mission in the Russian Federation and receiving incomes from sources in the Russian Federation,

They are regulated by the item 309 of TCR and legal norms of international treaties (agreements) on double taxation avoidance of the Russian Federation. Conforming explanations in this connection are proposed by Minfin of Russia[2].

According to explanations of Minfin of Russia:

According to item 310 of TCR, in case of payment of incomes by the Russian banks on transactions with foreign banks is not required acknowledgement of the fact of a constant location of foreign bank in the state with which there is the international treaty (agreement) regulating issues of the taxation – if such location is corroborated by data of popular information directories. On sense of the norm, it has the direct relation only to foreign bank, i.e. to its leading office, limiting to that automatic use of the rule to filial agencies of foreign banks.

Possibility of use of the concrete international treaty (agreement) on double taxation avoidance is fixed by fixing of a residency of the person who is the actual possessor of rights on received income. The residency (i.e. constant whereabouts) in the foreign states is fixed according to the national legislation of each concrete state which is based on various criteria. This position also is corroborated in commentaries to the item 4 «Resident» of Model of Convention of Organization for Economic Cooperation and Development (U.N.O) under taxes on income and the capital. In the item is specified, that Agreements on double taxation avoidance do not mention the issue of an establishing of provisions of the national legislation, according to which the person is considered as the tax resident and, accordingly, liable to the taxation to the full in this state.

Agreements do not establish standards which should correspond positions provisions of the national legislation for, fixing of definition of a tax residency. In this connection, the states completely are based on the national legislation.

Thus, at payment by the Russian banks of incomes for filial agencies of foreign banks is necessary to have the document given by authoritative body of the state, in which is located the filial agency of foreign bank – about acknowledgement or non-acknowledgement of a tax residency of filial agency in terms of use of legal norms of the intergovernmental treaty (agreement) on double taxation avoidance.

If the authoritative body of the state of a location of filial agency of foreign bank corroborates a tax residency of filial agency, that at payment by the Russian bank to such filial agency of the incomes recognized by incomes from sources in Russian Federation – is necessary to use provisions of the international treaty (agreement) on double taxation avoidance between Russian Federation and the foreign state, which tax resident is the filial agency of the foreign bank.

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[1] Customs Code of Eurasian Economic Union: attachment document № 1 to the Treaty on Customs Code of Eurasian Economic Union from April 11, 2017 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] The letter of Minfin of Russia from October 2, 2014 № 03-08-13/49428 [Electronic resources] // URL: http://www.minfin.ru/ru/

In case of non-recognition of a tax residency of filial agency of foreign bank by state authoritative body in which the filial agency settles down – the Russian bank at payment to such filial agency of incomes from sources in Russian Federation has the right to use positions provisions of the international treaty (agreement) on double taxation avoidance between Russian Federation and the foreign state of a constant location of leading office of foreign bank, corroborated by data from popular information directories.

JUDICIAL PRECEDENT

It is a source of international tax law if it is formed by interstate court; for example, by European Court of Human Rights. But law of Russia is not precedential. Hence, decisions of the European Court are obligatory for Russia, if Russia is the respondent on concrete dispute in the European Court and recognizes the court decision as corresponding to Constitution of the Russian Federation and national interests of Russia. In such interpretation the decisions of the European Court regarding interpretation of legal norms of European law matter precedent to which should follow judicial bodies of the states which have signed the European convention.

PROBLEMS OF UNIFICATION OF THE TAX LEGISLATION

Now in the world is observed the tendency on unification of the tax legislation of the states. In this case the taxation is reformed not in interests of any one state, and taking into account of economic interests of all countries – participants of conforming international association. At that international organizations fix the general direction and the content of the tax reforms realized in the states, entering to the organizations.

It is also considered, that the international financial and economic activity includes various transboundary commercial and noncommercial transactions also is based on the – international mobility of financial resources; possibilities not only of free moving between the countries by natural persons, but also acquisitions by them property and receiving of incomes.

One of activity *consequences* is – occurrence of objects, for which taxation can potentially apply the any state – if such activity is to some extent connected with territory of its tax jurisdiction. It, in turn, causes possibility of the repeated international taxation as animated action which is signified in claims on the same object of the different states[1]. From here follows necessity of elimination of such taxation (in Tax Code of the Russian Federation it is called as double). The coordinated actions of the states on realization of a tax policy and tax legislation reforming have the *uniform aim* – to eliminate distinctions in the tax legislation of the states which interfere with their economic integration.

TYPICAL EXAMPLES

**European Union (EU)* – is the international organization of the countries which are part of EU. It fixes process of harmonization of the taxation in territory of all countries entering to it. The purposes of tax harmonization in EU are – abolition of tax borders for formation of equal competitive stipulations of business entities; amalgamation and unification of home market of EU; reduction in conformity of structure of tax systems, also procedure of collection of principal views of taxes (i.e. rates approach, bases etc.).

[1] Shahmametev A.A. The repeated (double) taxation: concept and types // Jurisprudence (journal). – 2008. – № 4 (279). – P. 104–113.

* *Coordination Council* of heads of tax services of the CIS countries. It formed under the decision of the Council of heads of the governments of the CIS countries. It realizes taxation harmonization.

* It *is solved the problem on formation* of International Tax Organization of U.N.O. It will be has the right – to collect the tax information on all countries entering to U.N.O.; to develop measures of restraint of activity of the criminal tax havens and offshore companies. It is planned, that as the result such activity, the international corporations will be obliged to pay taxes in territory of the country of receiving of profit[1].

At the same time, an establishing of a uniform tax policy and formation of uniform tax space is process difficult and demanding the big time expenses. It is especially as it can be never finished peremptory. If there are sovereign states, there will be also disagreements between them in tax sphere. The states relate to the taxation exclusively to sphere of the inland jurisdiction, and regard any interference from the outside as an encroachment on the own sovereignty. Tax systems and terminology sovereign the countries essentially differ[2].

At the same time, the world financial crisis initiated by USA in 2008, has forced the countries co-ordinated to operate. At the summit of G20 (London 2009, on April 2) has been formed Financial Stability Board – with participation of Russia. The organization use coordination of working out of financial standards and monitoring of conformity of standards of regulation of the markets. At the Summit, a lot of attention has been given a fixing of the effective control over *tax havens.* At that it was a question not of abrogation of the lowered tax rates, and about a transparency and cooperation. It is necessary to achieve, that tax havens rendered the information to tax authorities about transactions to accounts (it will reduce grey schemes, will increase a collecting of taxes etc.)[3]. At the summit of G20 (China 2016, on September 1), G20-countries obliged to ratify the Agreement on simplification of procedures of international trade[4].

16.2. International tax responsibility

For correct understanding of the international tax responsibility, let us consider theoretical bases of international legal responsibility. International legal responsibility it is understood ambiguously: as a duty of the subject of international law to eliminate the harm caused by it to other subject of international law as the result of infringement of the international legal obligation, or a duty to indemnify a loss as the result of lawful actions if it is provided by the contract[5]; as necessary juridical means of securing of execution of the international legal norms and reinstatement of the violated rights and relations[6]; as the international-law principle, according to which any illegal deed to involve responsibility of the guilty subject of international law; as

[1] Dmitriev O. It is glad in tax paradise, but U.N.O. does not start up // Rossiiskaya Gazeta. – 2003. – On December 26.

[2] Labos`kin M.A. International legal regulation of cooperation of the states in taxation sphere: abstract of thesis …. PhD in jurisprudence. – St.-Petersburg, 2007. – P 14-15.

[3] Latuhina K. In economics language // Rossiiskaya Gazeta. – 2009. – On April 8. – P. 3.

[4] Shchepin K. The summit of the «same boat» // Rossiiskaya Gazeta. – 2016. – On September 20.

[5] Zherebtsov A.N. International law. A series «Schoolbooks and manuals». – Rostov-on-Don: PHOENIX publishers, 2001. – P. 64–67.

[6] International law: the schoolbook for high schools / Editor-in-chiefs are professor G.V. Ignatenko and professor O.I. Tiunov. – M.: NORM-INFRA*M publishers, 1999. – P. 131–150.

responsibility of the state on realization of its international duties[1]; as complex of legal relations, which arise in modern international law in connection with an offence, executed by any subject of international law, or in connection with a damage caused by the state to other state as the result of lawful activity[2].

There are authors who in any way do not define international legal responsibility, and answer a question on the grounds of occurrence of the responsibility[3]. And, at last, *many scientists* believe, that international legal responsibility are the negative legal consequences ensuing for the subject of international law, which have violated effective international legal norms and the international obligations[4].

OUR VIEWPOINT

International legal responsibility is negative consequences for the international offence committed by the subject of international law.

In international law kinds and forms of international legal responsibility are differ.

The ***kinds of international legal responsibility are:***

* Material.

* Non-material (i.e. political)

Forms of international legal responsibility correspond to kinds as well as classified on material and non-material (political). However, as concerns concrete forms of international legal responsibility, we observe various concepts[5].

Absence of unanimity concerning forms of international legal responsibility leads us to a conclusion on inexpediency of classification of international legal responsibility on kinds and forms with the subsequent correlation to it of concrete forms. We believe optimum classification of international legal responsibility only on concrete forms.

FORMS OF INTERNATIONAL LEGAL RESPONSIBILITY[6]

Restoration is reinstatement of the non-material rights of the suffered subjects of international law (for example, there are – stop of illegal occupation, release of wrongfully detained persons etc.).

Restitution in kind (specific restitution) is returning by the state-offender to victim subjects of international law of the property wrongfully captured at them, having individual characteristics (for example, there are – archives, cultural valuables etc.).

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[1] Oppengejm L. International law. Volume 1 the WORLD. Semi volume 1. – M.: Foreign Literature publishers, 1948. – Pp. 309-339.

[2] Mazov V.A. Responsibility in International law. – M.: Juridical Literature publishers, 1979. – P. 10.

[3] Il`yin Y.D. International public law. The lectures. – M.: JURIST publishers, 2002. – Pp. 37-44.

[4] International law: the schoolbook for high schools / Editor-in-chiefs are professor G.V. Ignatenko and professor O.I. Tiunov. – Pp. 131-150;

Panov V.P. International law. The teaching materials. – M.: INFRA-M publishers, 1997;

Panov V.P. International criminal law: the manual. – M.: INFRA-M publishers, 1997;

Ushakov N.A. The grounds of the international responsibility of the states. – M., 1983. – Pp. 17-19.

[5] Look corresponding systems to our chapter.

[6] International law course. In 7 volumes / Under the I.I. Lukashuk's editorship. Volume 3. – M.: SCIENCE publishers, 1990. – Pp. 189-254.

Substitution is replacement of wrongfully destroyed, damaged or stolen property with equivalent subjects. For example, the kind of a substitution is compensative restitution[1].

Satisfaction ordinary is redress by the state-offender of lawful non-material requirements of the victim state for the purpose of reinstatement of non-material damage (for example, there are – apologies, regret expression etc.).

Satisfaction extraordinary – is various temporary restrictions of the sovereignty and juridical ability of the state, which have committed the international crime, for the purpose of abolishing of its reasons and formation of guarantees from its reiteration (for example, there are – reorganization of political system, temporary occupation, disbandment of the armed forces etc.).

Reparation ordinary is compensation by the state-offender of a material damage by payment of sums of money, delivery of goods handing-over, rendering of services equivalent to the recoverable.

Reparation extraordinary – is special burdens, consisting in temporary restriction of competences of the state, which have committed the international crime, to dispose of the material resources for the purpose of the full indemnification of damage and an exception of the reasons for repeated commission. For example, there is duty of deliveries to other subjects of international law of material valuables sine qua non for state-offender, as the state cannot develop a war industry and it is forced to develop economy of a peace orientation.

Compulsion measures are necessary to distinguish from forms and kinds of international legal responsibility.

COMPULSION MEASURES[2]
(MEASURES OF COMPULSION)

1. Sanctions

There is the complex of opinions[3]. According to *our position,* sanctions are compulsion measures of international organizations. Principal views of sanctions are specified in the United Nations Ustav: violate of economic relations, as well as railway, sea, post, cable, radio or other means of communication; breaking of economic relations, military measures (items 41, 42).

These sanctions can be obligatory only under the decision of UN Security Council and only in case of threat to the world or the aggression act. Besides, acceptance of resolutions concerns sanctions (for example, sanctions of General Assembly of the United Nations), and humanitarian intervention under the UN Security Council decision.

2. Countermeasures

Countermeasures are the compulsion measures of states. *Countermeasures* based on the principle of inadmissibility of use of the armed force; should not violate human rights, inviolability of the persons who are under special international legal protection (for example, diplomats; realized taking into account of imperative legal norms.

The ***kinds of countermeasures*** are retortions and reprisals.

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[1] Federal law of the Russian Federation from April 15, 1998 № 64 [Electronic resources] // URL: http://www.pravo.gov.ru.

[2] International law course. In 7 volumes / Under the I.I. Lukashuk`s editorship. Volume 3. – M.: SCIENCE publishers, 1990. – Pp. 189-254.

[3] Look corresponding systems to our chapter.

Retortions are measures of influence of one state concerning another on purpose to induce it to stop unfriendly, unfair, discrimination, but nevertheless, lawful actions (for example, in case of unfriendly restrictions of economic relations). As a rule, retortions are similar to retortions those subjects, who has used them earlier. However, retortions can be used and as a preventive measure in the presence of offence threat.

Reprisals (retaliations) are unilateral actions of the state on state-offender as a compulsion measure for the international offences. They should be proportional, i.e. intensity of reprisals cannot be above that, that is necessary for specific goal achievement, as excess of limits necessary – also an offence. Reprisals stop on reaching the purpose – there is to induce the subject to the termination of an offence and to realization of obligations. Kinds of reprisals are: application stay to the offender of rules of the general international law; stay or cancellation of the violated (disturbed) contracts; self-defense, i.e. state measures in reply to criminal armed attack on it including use of armed force (the right to self-defense is separately fixed in item 51 of Charter of United Nations).

As the various points of view are traced, which other countermeasures concerns to retortions and what – to reprisals, transfer of concrete countermeasures without their division on retortions and reprisals is optimum.

Let us to give examples of concrete countermeasures, which the following concerns are:

1. *Embargo* is a general interdiction of the external economic relations.
2. *Boycott* is the complex of measures on the import termination.
3. *Blockade* is the complex of measures on full refusal of economic relations with the concrete state and the persons connected with it.

For use of international legal responsibility, presence of the grounds is necessary.

The ***grounds*** of international legal responsibility classified on juridical and factual. The *juridical grounds* are complex of legally obligatory international legal acts, on which basis the certain behavior is qualified as the international offence (violation). The *factual grounds* are the international offences.

INTERNATIONAL OFFENCE

In understandinga of international offence, different positions are observed – as deed (action or inactivity) of international law subject, breaking rules of international law and the international obligations of this subject, aggrieving a damage of material or non-material character to other subject, or group of subjects of MT, or all international community as a whole[1]; as any harm, caused to other state by the head or representative office of any state by infringement of the international legal duty. To actions of the head or the states government actions of officials or other persons operating by order of or with the permission of the head of the state or the government are equivalent[2].

The *group of scientists* (N.A. Ushakov[3] and his followers) gives not concept of international offence, and at once its kinds. Thus, *one* believe, that there is more a general concept – international-illegal deed that shares on the international offence and the international crime.

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[1] International law: the schoolbook for high schools / Editor-in-chiefs are professor G.V. Ignatenko and professor O.I. Tiunov. – M.: NORM-INFRA*M publishers, 1999.

[2] Oppengejm L. The mentioned writing.

[3] Ushakov N.A. The mentioned writing.

Others (V.A. Mazov[1] and his followers) consider terms «international-illegal deed» and «international offence» as synonyms. It is possible to meet and other viewpoints.

OUR VIEWPOINT

***International offence* (*international delict, international violation*)** is an international-social-dangerous and guilty deed (i.e. action or inactivity), breaking rules of international law and (or) international treaties (contracts, agreements), for which commission international legal responsibility is provided.

As well as in any offence, in international offence are allocated features and elements of its formal components.

The *general features* (public danger, guilt, illegibility, punishability etc.) are inherent in any violation.

Special features are inherent only to international offence.

We are imposed in this connection by a position of 25 sessions of the Commission of international law as proved and logical. The *international offence is available if:* a) the behavior can be applicable to the state, according to international law; b) such behavior breaks the international obligations of this state; c) such deed is international offence irrespective of an obligation origin, but the obligation should be valid for the state; d) qualification of the deed lawful from the viewpoint of national law cannot influence on qualification of same deed as international offence[2].

In addition, other special features of international offence can be allocated.

It is necessary to distinguish the elements forming its corpus from features of international offence. There are various definitions of *formal components of international violation*, which essence thus one[3].

Formal components of international violation are the complex of legal elements, permitting to qualify the concrete financial deed as an international offence.

Elements of formal components of international violation are the – subject, target, mental element, target element. On each element, there are different viewpoints[4].

OUR POSITION

Subject of international offence is only the subject of international law.

Target of international offence is the international relations. In target can be allocated concrete matter *of* international offence – there are independence of the state, its sovereignty, advantage, conventional laws etc. (i.e. the list of matters not comprehensive).

Mental element of international offence is intention or imprudence. The intention in this case is considered not the subject of international law, and heads of the subject of international law. It is possible to speak on imprudence, if the subject of international law on behalf of heads, making any formally lawful acts, did not expect, but should expect approach or possibility of approach of harm. If the subject was able not expect socially dangerous consequences, it is possible to talk not on international offence, and on the deed releasing from international legal responsibility.

[1] Mazov V.A. The mentioned writing.

[2] Mazov V. A. The mentioned writing. The analysis of article of the project on MPO, the Commission of international law accepted at 25 sessions.

[3] Look corresponding systems to our chapter.

[4] Look corresponding systems to our chapter.

The *target element* of international offence is concrete action or the inactivity of the subject, which has caused or able to harm. Thus, between deed and a socially dangerous consequence there should be a causal relationship.

International offences are various and consequently are classified by various criteria, optimum of which we believe degree of community danger. As a rule, international offences are classified *on degree of* community danger on international crimes and international delicts. Let us consider them separately.

1. International crime is an especially dangerous international offence, encroaching on the vital interests of the international community as a whole. The international crimes concern aggression, a genocide, apartheid etc.

It is necessary to distinguish a crime of the international character from the international crime. It concerns sphere of national law, but thus has international-public danger (interstate terrorism, capture of hostages, stealing of an air ship etc.). Therefore, the crime of the international character cannot be carried to international offence.

2. International delict (the synonym is *ordinary international offence*) is an international offence, which does not concern the international crime and harms to the several subject of international law or the limited circle of subjects of international law. In this case, responsibility relations arise between the subject of international law-offender and the subject of international law-victim from international offence, and the offence does not mention bases of existence of the states and the nations and does not concern the international crime.

There are examples international delicts: pollution of territorial waters of the state; the harm caused by default of the international financial treaty etc. Now we had an opportunity to define international legal financial responsibility and the international financial offence.

International legal tax responsibility is a scientific category, opening specificity of use of forms and measures of international legal responsibility for a perfect international offence in the tax sphere.

International tax offence is an international offence, breaking rules of international tax law and (or) international tax treaties (contracts, agreements), for which commission is provided international legal responsibility.

Subjects of international legal tax responsibility and the international tax offence are only subjects of international law. Concrete forms and measures of international legal responsibility depend on the kind of the international tax offence. We choose degree of community danger of the international offence as criterion of classification.

KINDS OF INTERNATIONAL TAX OFFENCE on degree of community danger are the international tax crime and international tax delict.

1. International tax crime is an international crime, infringing on the vital tax interests of the international community as a whole.

CCRF in the note to item 205.1 defines terrorism financing as giving or fund raising or rendering of financial services with comprehension of that they are intended for financing of organization, preparative or fulfilment at least one of the crimes provided by items 205, 205.1, 205.2, 205.3, 205.4, 205.5, 206, 208, 211, 220, 221, 277, 278, 279 and 360 of CCRF, or for financing or other material ensuring of the person with the purpose of perpetration by him at least one of these crimes, or for ensuring of the formed group, illegal armed formation, criminal society (criminal organization), formed for perpetration at least one of these crimes.

According to item 361 of CCRF, the act of the international terrorism is: 1) perpetration out of limits of territory of Russian Federation of the explosion, arson or

other actions endangering the life, health, freedom or inviolability of citizens of the Russian Federation with the purpose of infringement of peaceful co-existence of the states and people or the Russian Federations directed against interests, as well as threat of perpetration of the actions; 2) *financing* of the listed deeds, or involving in their perpetration.

Example of international tax crime is establishing by the subject of international law of tax privileges and other tax advantages to the persons financing the international terrorism. For example, whole world know that Turkey has exempted the international terrorist organization DAESH (ISIL) (the forbidden by U.N.O.) from the taxation of transactions with oil and incomes from its sale. Oil deposits have been captured by DAESH (ISIL) in territory of Syria.

Hence, here are applicable the sources of international law forbidding financing of terrorism[1].

BASIC SOURCES OF INTERNATIONAL LAW, FORBIDDING FINANCING OF TERRORISM[2]

* *Declaration* on measures on liquidation of the international terrorism – it is confirmed by the resolution 49/60 of General Assemblies of United Nations from December 9, 1994. According to point 5 of the Declaration, the states are obliged to abstain from terrorism financing. Thereupon Russian FL-35 from March 6, 2006 «On Counteraction to terrorism» in item 3 carries to terrorist activity, including financing of act of terrorism.

* *International standards* on counteraction to money laundering, financing of terrorism and financing of distribution of the weapon of mass destruction: recommendations FATF from June 20, 2003. According to the standards each country should introduce measures on formation of the mechanism of immediate freezing of resources and other actives of terrorists, the persons financing terrorism and the terrorist organizations according to resolutions of United Nations on prevention and suppression of financing of terrorism.

For example, in November 2015 Russia has punished Turkey for financing of international terrorist organization ISIL and for perfidious criminal destruction in the sky over Syria the Russian bomber striking blows on DAESH (ISIL) objects with the permission of the Syria. Russia has established interdictions or restrictions of foreign economic transactions with Turkey, labour activity of Turkish citizens in Russia, tourist trips of the Russian citizens to Turkey, and so on[3].

2. International tax delict is an international offence, which does not concern to the international tax crime and harms to the several subject or group of subjects of international law. Example of the international delict is infringement of the international treaty on elimination of the double taxation.

Forms and measures of international legal responsibility for the international tax delict have less rigid character, than for the international tax crime. That is, from forms of international legal responsibility satisfactions and extreme reparations are not

[1] International legal bases of struggle against terrorism: The collection of documents. Composer V.S. Ovchinsky. – M.: INFRA-M publishers, 2003.

[2] Ibidem.

[3] On measures on maintenance of national security of Russia and protection of citizens of Russia against criminal and other illegal actions and on use of special economic measures concerning Turkey: ukase of the Russian President from November 28, 2015 [an electronic resource] // http://www.pravo.gov.ru.

used. From sanctions, military measures are not used. From countermeasures are not used embargo and blockade, etc.

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GLOSSARY

Accounting is formation of the documentary systematized information on lawful objects according to legal requirements, and drawing up on its basis of the accounting (financial) accountability.

Accounting policy for the taxation is the complex of lawful methods of revelation of proceeds chosen by the taxpayer and (or) expenses, their recognition, an estimation and distribution, and the record-keeping of other necessary indicators of financial and economic activity of the taxpayer.

Act in law is the decision, action or document having legal value (for example, the – statutory act, act of expert examination, act of civil status).

Acts of agencies of state administration is lawful expressions of will of subjects of the state administration, fixing, using, changing and cancelling the legal norms and their actions changing sphere.

Act of enforcement of law is the official decision of the competent state or private official, taken out by them on the legal case, consisting in development and acceptance of the legal command, signified in the form fixed by the legislation.

Act of expert examination is the processual document in which experts in writing expound to the ground, process of the carried out research, is formulated the conclusions on questions. The act of expert examination can be formalized in the form of the expert's statement, as well as in the form of the act in case of making of commission or complex expert examination (for example, commission judicial-psychiatric expert examination).

Administrative act is the individual act of administration (management) of law enforcement character which is directed not on a fixing of rules of administratively law, and on their execution.

Administrative compulsion (enforcement) is a method of compulsory maintenance of lawful behaviour of natural persons and organizations in executive power (authority) sphere.

Administrative contract is the administrative agreement not less than two subjects of the administrative law, concluded on the basis of rules of administrative law in the public purposes.

Administrative detention is the measure of the state restraint (measure of restraint) connected with short-term restriction of a natural person freedom with a view of suppression of an administrative violation, an establishment of identity of the infringer, administrative violation (offence) report drawing up at impossibility of its drawing up on a place of revealing of an administrative violation, maintenance of a timely and correct legal investigation about an administrative violation and executions of the ruling enacted on case.

Administrative provision is the normative legal act fixing an administrative procedure (administrative procedures).

Affiliated person is the any lawful person involved in commercial relations with the individual businessperson and (or) organization and capable to influence on their business.

Agio is excess of a market rate of monetary symbols, bills of exchange, securities, gold in comparison with their nominal cost; stockjobbing

Amicable agreement (agreement of lawsuit) is stop of dispute on the basis of voluntary settlement of reciprocal claims and the approval of reciprocal concessions, under condition of its approval by court.

Amount balance is the difference between results of debit postings and to the credit of accounts. The debtor balance (the debit is more the than credit) reflects a position of economic resources for certain date and is shown in a balance active. Credit balance (the credit is more than the debit) reflects a position of sources of economic resources and is shown in a liability. If the account has no balance, it is called as closed. In the foreign trade relations of balance signifies a difference between the export and import sum or sum of requirements of obligations. Export balance of trade (export surplus) gives to debit balance of trading balance, and unbalance in foreign trade – negative. In balance of payments of debit balance signifies excess of all receipts of the country over its payments to other countries, negative – excess of payments of the country over its receipts from other countries.

Appeal is the form of the appeal of court decision, assuming a new legal investigation in essence higher court and acceptance of a new court decision on case.

Appendant responsibility is civil-law responsibility of the basic proprietor for financial instability of the persons formed by it.

Assault with intent to rob is assailing with view of the alien property stealing, realized with use of violence, dangerous for life or health, or with threat of use of such violence.

Aval is the guarantee under the bill, made the person in the form of special guarantee record. The aval can guarantee all sum of the bill or its part, can be given for the any one responsible person under the bill: for the drawer, for acceptor and for the endorsee, for drawer of check and bearer of check. The aval is made on a face sheet of the bill by simple signing or on allonge.

Average is losses intended and reasonably suffered with a view of preservation from the general danger of the property participating in the general sea enterprise, i.e. a vessel, freight, cargo.

Average adjustment (average statement) is calculation on general average distribution.

Averaging is expansion of capital investments by periodic investing of the fixed sum in dollars.

Averaging-out of rest funds is a lending agency (credit organization) right on realization of the specifications of rest funds fixed by Bank of Russia at the expense of maintenance of a share of the rest funds which are not exceeding averaging ratio, on the correspondent bank account of Russia on the average during the established period.

Aviso is the notice on alterations in a status of the mutual accounts, sent by one counterpart to another. It is used in banking practice.

Bank is the credit organization, having the exclusive right to realize bank transactions: 1) involving of money in deposits; 2) their placement on its own behalf and at own expense on the terms of a returnable; 3) opening and closing of banking accounts.

Bank crediting condition index is an overall index of alteration of bank terms of credit which pays off Bank of Russia by results of quarterly inspection of leading Russian banks – participants of the credit market as follows: (the quota of the banks which have informed on essential toughening of terms of credit, in percentage) + 0.5 x (the quota of the banks which have informed on moderate toughening of terms of

credit, in percentage) – 0.5 x (the quota of the banks which have informed on moderate softening of terms of credit, in percentage) – (the quota of the banks which have informed on essential softening of terms of credit, in percentage). It is measured in percentage points.

Bank secrecy are data on deposits and accounts of clients and correspondents, banking transactions under accounts and transactions in interests of the client, as well as data on the clients which disclosure can violate their right on inviolability of a private life.

Banking account contract is a civil-law agreement according to which the bank undertakes to receive and enlist money into the account of the client, to carry out executive orders of the client about carrying out of transactions under the account, and the client (account holder) undertakes to keep money with bank and to realize lawful payment transactions.

Bancomat (cash machine) is the automatic device, paying cash on a credit card and realizing other banking services.

Beneficiary is the person in which interests trust management is realized.

Bi-currency basket (dual currency basket) is an operational reference point of a course policy of the Bank of Russia, signified formalized in national currency both consisting of US dollar and euro.

Bill (bill of exchange) is the unconditional financial obligation, a valuable security type. Bill certifies nothing the caused obligation of the giver of bill (i.e. bill drawer) to pay at occurrence of the term provided by the bill the sum of money specified in the bill.

Bill of lading (B/L, waybill) is the accompanying document by which acceptance and shipment, moving or delivery of commodity-material assets is formalized.

Blockade is the complex of measures on full refusal of economic relations with the concrete state and the persons connected with it.

Boycott is the complex of measures on the import termination.

Bond is the valuable security bringing to its owner the income in the form of predetermined percent of a face-value of a valuable security.

Bookmaker is the person who receives monetary rates in a gambling business, at game in a totalizator on jumps, horserace, and sports competitions.

Borrower is the addressee of the credit.

Broad money stock (monetary aggregate M2X) is indicator which includes all components of monetary aggregate M2 and deposits in a foreign currency of residents of the Russian Federation (organizations and natural persons), placed in banking system of the Russian Federation

Budget is the form of elaboration and expenditure of the money resources for financial provision of problems and functions of the state and local self-government.

Budgetary revenues (budget receipts) are the money, incoming to the budget.

Budgetary system is the complex of federal, regional and local budgets, and budgets of the state off-budget funds.

Bankruptcy is declared by arbitration court an inability of the debtor to pay obligatory payments.

Business is the – lawful, registered, independent, and on the risk activity, directed on regular receiving of profit.

By-laws are legal acts, based on a law and not contradicting a law.

Capital (i.e. basic resources, fixed asset) is the financial resources formed for business. Capital is bankroll and other basic (fixed) assets.

Capital investments are investments into fixed assets (basic assets), including expenses for realization of design and exploration work, new construction, technical retooling, upgrades of fixed assets, building restoration, acquisition of the machines, equipment, instruments, stock.

Cash service of budget execution is the carrying out and accounting of transactions on cash receipts in the budget and to cash payments from the budget.

Cash transaction is the bargain realized with full payment by cash.

Cassation is the appeal of judicial acts in higher court after the appeal.

Certificate is the extra financial obligation of state agencies; the document containing the clauses of contract of insurance, replaces the policy insurance; the written certificate of bank on the deposit of the money resources, a certifying right of the investor on receiving after a target date of the sum of the deposit and percent on it in any one establishment of the bank; the document certifying quality of the goods.

Cession, cession of rights, assignment is a concession of right of claim in the obligation to other person, transfer of rights on something to somebody.

Charter is employment of a ship for transportation.

Charter-party is the contract of affreightment.

Cheque (draught) is a valuable security, containing nothing the caused executive order of a drawer of check to bank to make payment of the sum specified in him to a bearer of check.

Collection of payments, encashment is the commission of the client to an issuing bank to realize at the expense of the client the action on receiving from the payer of payment and (or) the payment accept.

Commonwealth of Independent States (**CIS)** is the interstate association formed by three republics USSR – Belarus, Russia and Ukraine. In the agreement on formation of CIS from December 8, 1991 in Minsk, it is ascertained, that USSR in the conditions of deep crisis and disintegration stops the existence, have declared aspiration to develop cooperation in political, economic, humanitarian, cultural spheres.

Competence of the citizen is ability of the citizen by its actions to buy and realize civil rights, to form for it civil duties and to execute them.

Competition in the market of financial services is competitiveness (i.e. rivalry) between the financial organizations without infringement of the antitrust legislation (there are abuse a dominant position, an establishment of monopoly prices etc.).

Complaint is the address of the person to authority on infringement of rights.

Concession agreement is a contract, on which conditions one party (i.e. concessioner) undertakes to originate and (or) reconstruct at own expense real estate (object) and it to maintain, and other party (i.e. con-assignor) undertakes to give concessioner for contractual term of the right of possession and using the object.

Conditional obligation is the obligation, which having will be corroborated by occurrence or nonoccurrence one or several future events which occurrence is not fixed and which are not completely under the control of not credit financial organization. Besides, the conditional obligation is the obligation which satisfies to obligation making, but does not satisfy to criteria of its recognition.

Constitution of the Russian Federation (Russian Constitution, Constitution of Russia, RF Constitution) is the basis and source of Russian law.

Consumer price index (CPI) is an indicator which characterizes alteration in time of an overall price level for the goods and the services bought by the population for unproductive consumption. It pays off by Census Bureau as the relation of cost of

the fixed set of the goods and services in the prices of the current period to its cost in the prices of the previous period. CPI pays off on the basis of data about actual structure of consumer disbursements and consequently is the basic indicator of cost of living of the population.

Contract is an agreement of two or several persons on fixing, alteration or stop of civil rights and duties.

Contract of the bank deposit (deposit) is a civil-law agreement on which the bank undertakes to return to the depositor the sum of the deposit and to pay interests on it on stipulations and in the procedure, provided by the contract.

Contract of lease is the agreement on which the lessor undertakes to give to the lessee property for a payment in time possession and (or) use. Thus the fruits, production and proceeds received by the tenant, are his property.

Contract of sale and delivery is the agreement on which the supplier-seller, who is realizing entrepreneurial activity, undertakes to devolve in the caused term the goods to the buyer for use in entrepreneurial activity or in other purposes which have been not connected with personal, family, house and other similar use.

Contractual committed liquidity facilities is the instrument of refinancing of the central bank, at the expense of which, can be expanded volume of quasi-money in jurisdictions with insufficient volume of liquid actives (assets). According to Basel III, to the instruments usual bank lines are not carried. The contract bank line is the special agreement meeting certain requirements: bank line term should be more than 30 days; it should be irrevocable; the payment on the instrument should be collected without dependence from actual use of money resources.

Control is activity of competent persons on securing of proper execution of legal norms.

Corporations, corporate juridical persons are juridical persons, which founders (participants) have the right of participation (membership) in them and form their supreme body.

Coupon is the detachable part of securities granting a right on receiving of the dividend or percentage proceeds.

Counter claim (counter-claim) is the independent claim requirement of the respondent to the claimant for collective consideration with the initial plea (claim).

Court is the public authority which is realizing the judicial power by departure of justice in the course of consideration of the administrative, criminal, civil, arbitration and other categories of cases in the procedure fixed by the processual law.

Credit in the wide sense is money and other material objects, which are transferred from the creditor to the borrower in size and on the conditions, provided by the credit contract.

Creditor is the person, having the legitimate right to grant the credit.

Credit organization (i.e. **lending agency**) is the licensed juridical person, formed for profit receipt.

Crimea (Republic Crimea) is the Subject of the Russian Federation since 2014, located on Crimean Peninsula. In the west and south it is washed by Black Sea, in the east – Azov Sea. In the north by Perecop Isthmus, Sivash and Arbat Arrow Worm there take place border with Ukraine Kherson Oblast, administrative centre is Simferopol.

Currency is monetary unit of any country.

Currency transactions are complex of actions concerning flow of currency and currency valuables.

Custom is a rule developed and widely used in any area of the business or other activity. The rule does not provide by the legislation and does not depend on its fixing in any document.

Customs duty (CD) is the obligatory customs payment which is a stipulation of moving of the goods (production) through frontier Russian Federation and (or) customs border of Eurasian Economic Union.

Debit is a left-hand side of accounts in the accounting. In real accounts the debit signifies increase in the considered sums, and in nominal accounts – reduction.

Debts in budgetary law are obligations under borrowings and under obligations of the third persons.

Deficit, **deficiency** is excess of expenses over proceeds.

Deflationary-factor is coefficient which annually is fixed on each next calendar year and pays off as deflationary-factor product in previous calendar year, and the coefficient considering alteration of consumer prices of the goods (works, services) in the Russian Federation in previous calendar year.

Del credere is the guarantee of the commission agent for realization by the buyer of financial obligations

Delta hedging is insurance of risk by purchase and sale of securities.

Demurrage is the board size for demurrage days.

Demurrage days are the vessel idle time.

Denomination, **de-face-value** is reduction of face value of monetary symbols.

DEPO is the speculative operation deal concluded on stock-market counting on fall of a price of securities for the purpose of receiving of a switch rate (i.e. margin).

Devaluation is depreciation of national currency in relation to a foreign currency.

Discount is a margin between the price of acquisition of a security and its realization.

Distillate is a product of fractionation of raw materials (oil, spirit etc.).

Dispatch is the award for preschedule loading or a cargo unloading in comparison with charter-party stipulations.

Dividends are the any income received by the shareholder or the participant of organization according to the TCR, CCR, federal laws, as well as dividends in understanding of the legislation of the foreign state.

Dominant position of the financial organization is such volume of its services, which conclusively to influence on the market of financial services. Dominant position first sign is concentration of the capital in the market of financial services (i.e. amalgamation of the financial organizations; acquisition of assets, shares, parts in the charter capital each other etc.).

Due is an obligatory contribution collected from organizations and natural persons, which payment is one of fulfilment stipulations concerning payers of dues by state agencies, local authorities, other authorized bodies and officials of legally significant actions, including rendering of certain rights or delivery of authorizations, licenses.

Dues for use by objects of fauna and for use by objects of water biological resources are direct federal dues for use by objects of fauna.

Dual currency basket, bi-currency basket is an operational reference point of a course policy of Bank of Russia, signified in national currency both consisting of US dollar and euro.

Dumping is sale of the goods on a foreign market by artificial undercharges for the purpose of a gain of the market and replacement of competitors.

Ecological due (ED) is due on each group of the goods which are subject to recycling after loss by them of consumer characteristics, paid by manufacturers, importers of the goods who do not guarantee with independent recycling of a waste from use of the goods.

Ecological payments (EP) are complex of the taxes and dues collected in connection with wildlife management and preservation of the environment.

Economics, **economic relations, economy** (the words are synonyms) are complex of private relations concerning production and realization of goods, works, and services.

Economic partnerships and societies are corporate commercial organizations with shared on shares of founders the authorized capital.

Economic rights and liberties of the person is a complex of constitutional rights of the person fixing legal possibilities of the person in economic sphere, which character and content fixes finally an economic, social and political order in a concrete society (for example, the – private property right, right of succession, freedom of entrepreneurial activity, labour freedom, right on strike, right on participation in operation of business).

Embargo is a general interdiction of the external economic relations.

Ensuring performance of obligations is provided by the law or contract the special measures directed on coercion of the debtor to satisfaction under the threat of property losses.

Eurasian Economic Union is the international organization of regional economic integration possessing the international juridical ability (i.e. legal personality). In Union provided freedom of movement of the goods, services, capital and labour, realizing of the co-ordinate, agreed or uniform policy in economy branches. Member-states realize the co-ordinate (agreed) regulation of the financial markets within the limits of the Union.

Event after the termination of the accounting period is the fact of activity of organization which occurs during the period between the termination of the accounting period and date of drawing up of the annual accounting (financial) accountability and which has rendered or can influence its financial circumstances.

Export pass (transaction passport) is the document of the currency control, including necessary information from the contract between the resident and non-resident.

Face-value is the cost designated on money, nominal cost.

False pretences (swindling) is stealing of alien property or buying alien property by an artifice (deceit) or abuse of confidence.

Federal Treasury accounts are the accounts opened to territorial bodies of Federal Treasury, intended for the accounting of receipts and their distribution between budgets of budgetary system of the Russian Federation according to the budgetary legislation of the Russian Federation.

Federalism is the constitutional principle of the federative state structure, which optimum unites federal and territorial interests.

Filial agency is subdivision of the legal person who is located out of a place of its finding and realizing all its functions or their part, including representation functions.

Finances (finance, financial relations) are complex of public relations concerning formation, distribution and using of the funds of money.

Financial activity is complex of actions of authorities and other persons concerning finance.

Financial lease (leasing) is the agreement on which the lessor undertakes to buy in the property the property specified by the lessee at the seller fixed by him and to give to the lessee to this property for a payment in time possession and use. The lessor in this case does not bear responsibility for a choice of a subject of rent and the seller.

Financial legal institution (**financial institution**) is the complex of rules of financial law, regulating one group of uniform financial relations. Financial institutions regulate the corresponding Russian **financial markets**.

Financial organization is a business entity, rendering financial services (i.e. insurer, bank, etc.).

Financial recovery of business is the complex of lawful measures on restoration of financial stability of subjects of business.

Financial responsibility is the sciences category, characterizing specificity of using of administrative, criminal and civil juridical sanctions for infringement of rules of financial law.

Financial system is the complex and interaction of financial institutions (there are budgetary, tax, currency, insurance, credit, investment law. securities market law).

Financial resources (**financial assets**; **bankroll**) are environmental resources, as well as money, securities and other property.

Financial service is any one lawful service of the financial organization (insurance, bank, etc.). Thus, financial services are understood as goods.

Financial stability (**business solvency**) is capability of the subject bear responsibility on its obligations independently from circumstances.

Financial federalism is a scientific category, opening specificity of realization of the principle of federalism in financial relations.

Financial violation (financial delict, financial offence) is guilty, illegal, socially dangerous deed (i.e. action or inactivity), for which fulfilment ensues administrative or criminal, as well as civil responsibilities.

Financing contract under a money claim concession is the agreement on which one party (i.e. fiscal agent) devolves or undertakes to devolve to other party (i.e. client) to money resources on account cash claims of the client (i.e. creditor) to the third party (i.e. debtor), and the client concedes or undertakes to concede to the fiscal agent this money claim.

Flags of convenience are flags of the countries «PanHoLibCo» (i.e. Panama, Honduras, Liberia, and Costa Rica) as well as others. The ship «flag-of-convenience» has essential tax and customs privileges, other advantages.

Foreign structure without formation of the legal person is the organizational form formed according to the legislation of the foreign state (territory) without formation of the legal person (i.e. fund, partnership, association, trust etc.) which according to the personal law have the right to realize the activity directed on extraction of proceeds (profit) in interests of the participants (shareholders, principals or other persons) or other beneficiaries.

Foreign financial intermediaries are the foreign stock-markets and foreign depositary and clearing organizations included in the list, confirmed by Central bank of the Russian Federation in coordination with Ministry of Finance of the Russian Federation

Franchise is the part of losses which does not subject to compensation by the insurer to the insurant and is established in the form of certain percent from the insurance sum or in the fixed rate.

Free Port Vladivostok is the part of territory of Primorsky Kray on which established measures of the state support of business according to the federal laws.

Full partnership is the association which participants (full partners) according to the contract are had entrepreneurial activity on behalf of associations and bear responsibility under its obligations their property.

Committent, **consigner** is the natural or juridical person who hands over the goods on the commission that is charges to the commission agent to strike the certain bargain (sale, buying etc.)

Consignee is the seller who undertakes to sell for the certain term (specified period) the goods of a consigner (consignor) on the terms of the commission.

Consigner, consignor is the owner of the goods sold, as a rule, abroad by mediation of the commission agent (consignee).

Corporate property tax (CPT) is the direct regional tax collected in connection with having at organizations of objects of basic assets.

Excise tax (ET) is the indirect federal tax on transaction with the by-excise goods and production.

Gratuitous legal aid is appeared in form of the – legal consultation in the oral and written form; drawing up of applications, complaints, petitions and other documents of legal character; representations of interests of the citizen in courts, state and municipal bodies, organizations; other lawful forms.

Gross domestic product (GDP) is an indicator of statistics of national proceeds in system of national accounts; signifies to cumulative cost of the final goods, works and services made in territory of the concrete country, in market prices. Under naturally-material form GDP is the complex of subjects and services used within given the year on consumption and accumulation. It can be calculated by three methods: industrial, method of GDP formation on sources of proceeds, and formation method.

Gross national product (GNP) is an indicator of statistics of national proceeds in system of national accounts; it is interconnected with a gross domestic product (GDP). It signifies to cumulative cost of the final goods, works and services in market prices. It includes cost of the goods consumed by the population, works and services, the state purchases, capital investments and balance of balance of payments. Unlike GDP, includes also the sum of net profits from abroad. For comparison GNP in different years there are concepts nominal (production volume the current year, formalized in the prices of the current period) and real GNP (production volume in the year, signified in the prices of the base period).

Gross credit of Bank of Russia is the credits done given by Bank of Russia to lending credit organizations (including to banks with the withdrawn licence), the delayed indebtedness and the delayed percent on credits, the resources done given by Bank of Russia to lending agencies by means of transactions REPO, and also transactions «exchange swap».

Hedging is insurance of risks upon losses by various methods.

Human rights system is the complex and interrelation of the persons, which overall responsibility is protection of the rights and legal interests of the natural persons and organizations.

Immunity of budgets is the legal regime, at which the collecting on budgetary resources is supposed only based on the judicial act.

Illegal banking activities are realization of banking activities (banking transactions) without registration or without the special assenting (licence).

Illegal circulation of precious metals, natural jewels or pearls is fulfilment of the bargain (transaction) connected with precious metals, natural jewels or with pearls, in infringement of the rules established by the legislation of the Russian Federation.

Illegal receiving of the credit is receiving by the person of the credit or concessionary terms of crediting by presentation to bank or other creditor of obviously false data on economic situation or financial circumstances of the person.

Independent factors of formation of liquidity of banking sector are independent factors of formation of liquidity of banking sector – factors of alteration of balance figures of the central bank, influencing liquidity of banking sector, but not growing out of transactions of the central bank on management of liquidity. To independent factors are factors of alteration of volume of cash in circulation and the rests on accounts of the expanded government in Bank of Russia, transaction of Bank of Russia on home currency market (except the transactions directed on regulation of liquidity of banking sector), and also alteration of volume of the rest funds which have been placed on deposit by credit organizations on accounts for keeping of rest funds in Bank of Russia.

Individual businesspersons are the registered natural persons which realizing business without formation of legal person, as well as the head of country and farm enterprises. If they are not registered, at execution of a tax duty they not have the right to declare, that they are not individual businesspersons.

Individual income tax (IIT) is the direct federal tax collected in connection with receiving by natural persons of various types of income.

Individual property tax (IPT) is the direct local tax collected in connection with having at natural persons of various kinds of property as objects of taxation.

Indorsement, giro is an inscription on a reverse side of the bill, cheque or other valuable security, certifying transition of rights under the document to other person.

Innovative Centre «Skolkovo» is the complex of infrastructure of its territory and mechanisms of interaction of its participants. It has the special legal status, essential tax and other privileges.

Inquest is the form of the preliminary investigation which is realized by the investigator on criminal case on which preliminary investigation procedure is unessential.

Insurance are relations on protection of interests of any persons at approach of insurance cases at the expense of funds of money of insurers.

Insurer (**assurer**) – is the licensed juridical person (i.e. organization), originated for the purpose of insurance business.

Interests are the any in advance declared or established income (including in the form of discount), received under any kind promissory note, irrespective of a method of its formalization.

International (world) tax law is international and law financial institutions in system of international financial law, regulating relations between subjects of international law concerning collection of taxes and dues.

Interbudgetary transfer is the money arriving from the higher budget in subordinate (i.e. grant, subvention, and subsidy).

International financial channel (Conduit Company) is financial organization by which are transferred dividends and banking percent.

International treaty of the Russian Federation is agreement between Russia and other subjects of international law, regulable by international law.

Interrogation is processual action on legally receiving by the competent official of data from interrogated about the facts important for case.

Inflation is process of devaluation, as well as other crisis position of national monetary system.

Interbudget relations are relations between federal, regional and local authorities concerning budgets.

International law from positions of Russia is the special component of the Russian legal system, regulating the relations between Russia and other subjects of international law by international treaties of the Russian Federation, and by principles and rules of international law recognized by Russia.

International (world) economic is the complex of private international-public relations, resulting between the states and other subjects of international law concerning production and realization of goods, works, and services. International economic law regulates it.

International (world) economic law is an inter-branch legal institution in system of international law, regulating private relations between subjects of international law concerning production and realization of goods, works, and services.

International (world) finances are complex of international-public relations, resulting between the states and other subjects of international law concerning formation, distribution and using of funds of money. International financial law regulates it.

International (world) financial law is an inter-branch legal institution in the international legal system, regulating relations between subjects of international law in the process for the formation, distribution and using of funds of money.

International legal responsibility is negative consequences for the international offence committed by the subject of international law.

International offence (international delict, international violation) is an international-social-dangerous and guilty deed (i.e. action or inactivity), breaking rules of international law and (or) international treaties (contracts, agreements), for which fulfillment international legal responsibility is provided.

Inventory is inspection of factual presence and the condition of financial resources.

Investments are property, property rights and the intellectual values, that deposited in objects of business and other objects for the purpose of receiving of profit and achievement of positive social effect.

Investor is the any personable person, putting the investments and providing them specific-purpose use. Investors operate based on licenses and contracts, are equal in the rights and duties.

Invoice is the account on sent goods with the instructions of short specification, price, expenses and other details of the contract.

Issue of securities is the statutory action sequence of the emitter on placement of issuing securities.

Issuers (**emitters**) are lawful persons, who place securities and bear responsibility on them.

Joint-stock company is the economic society which authorized capital is shared on certain number of shares.

Judicial (court) decision is the processual document adjudging the case and restoring violated rights, taken out by court in the processual form on the basis of a legal investigation in essence.

Juridical facts (legal facts) in financial law are legal vital circumstances (events and actions), causing, changing or stopping financial legal relations.

Juridical (legal) person is an organization which has solitary property and be accountable under the obligations, can buy and realize on its own behalf civil rights and to perform civil duties, to be the claimant and respondent in court.

Jurisdiction is a relevancy of disputes on law and other legal cases to competent authority.

Land-tax (LT) is the direct local tax collected in connection with having of land.

Larceny (theft) is covert stealing of alien property.

Law is the jurisprudence; will of people erected in a law, complex of legal norms, and regulator of public relations.

Law enforcement act is the legal act which contains the individual imperious binding over which has been taken out by competent authority as a result of the solution of concrete legal case.

Laws are normative legal acts, accepted by representative agency of State power, based on RF Constitution.

Legal ability (capacity) of the citizen is ability of the citizen to have rights and to perform duties.

Legal ability (capacity) of the legal person is ability of the legal person to have civil rights and to perform the duties connected with this activity.

Legal regime is a special procedure of legal regulation.

Legal relation is the public relation regulated by legal norms.

Legal responsibility (**juridical responsibility**) is negative consequences for a violation. Administrative, criminal and civil responsibilities are independent basic types of juridical responsibility.

Legal status is legally fixed position of the subject in a society which is formalized in a certain complex of his rights and duties.

Legal system is internal structure of law, its differentiation on branches, sub-branches and legal institutions.

Letter of credit (L/C) is the bank double bond on which issuing bank undertakes to make payments in favor of the fund receiver after presentation of the documents corresponding to all conditions of letter of credit by him or to give to power to paying bank to realize such payments.

Liquidation of the legal person is its dissolution without transition of rights and duties to other persons as universal legal succession.

Limit of budgetary obligations is volume of rights in money terms on acceptance by public institution of budgetary obligations and (or) their execution in current financial year (current financial year and a planning period).

Limitation of action is term for legal protection under the claim of the person which right is violated.

Limited responsibility society (limited liability company) is the economic society, which authorized capital is shared on shares and its participants do not answer for obligations the society and bear risk of losses within cost of their shares.

Loan agreement is the contract on which one party (lender) devolves in the property to other party (loan debtor, borrower) the money or other things fixed by generic features, and the loan debtor undertakes to return to the lender the same sum of money (loan sum) or equal quantity of other things of the same sort received by him and quality.

Manager of budgetary funds is authority and (or) the most significant establishment specified in internal departmental structure of budgetary expenditures, having the right to distribute budgetary allocations and budgetary obligation limits between subordinated managers and (or) addressees of budgetary funds

Marine insurance is the insurance of objects upon dangers or accidents on a sea.

Measure of prices (price scale) is the official value of monetary unit, fixed by the rate of exchange in relation to currencies of other countries.

Medium-sized businessperson is juridical person number from 100 to 250 persons.

Micro-enterprise is the juridical person number to 15 persons.

Mineral extraction tax (MET) is the direct federal tax collected in connection with mining operations.

Monetary circulation (currency circulation) is legal turnover of money at realization of its functions.

Monetary unit is the banknote, fixed by the law and consisting of small proportional parts.

Monetary system (monetary constitution) is the complex of the legal elements, which to guarantee the monetary (currency) circulation.

Money as an economic category is a standard unit of value (i.e. universal equivalent of value) of goods, works, and services.

Money as a juridical category is the type of a property, object of law, object of civil rights.

Money stock, supply of money (monetary aggregate M2) is the sum of cash in circulation and cashless resources not financial and financial (except credit) organizations and the natural persons who are residents of the Russian Federation, on the on-demand accounts and thrift accounts initiated in banking system in currency of the Russian Federation.

Natural persons are citizens of the Russian Federation, foreign citizens and stateless persons.

Nominal effective rouble exchange rate index is an indicator which reflects dynamics of a rouble exchange rate to currencies of the countries – basic trading partners of Russia. It pays off as the average alteration of nominal rates of ruble to currencies of the countries – the basic trading partners of Russia. Quotas of the foreign trade turnover of Russia from each of these countries in the cumulative foreign trade turnover of Russia with the countries – the basic trading partners are used as weight of indexes.

Non-bank credit organizations (lending agencies) are the credit organizations, having the right to realize several bank transactions under the license of CBR.

Normative agreement (i.e. **agreement of the normative content, law-making treaty**) is an agreement between subjects of law-creation, containing legal norms.

Normative legal act is the act of authority or officer, published in accordance with established procedure and containing legal norms (i.e. behavior rules, rules of conduct), obligatory for the uncertain circle of persons and regulating public relations.

Object of taxation is all, that has cost, quantitative or physical characteristics, and is connects with occurrence of the tax duty.

Organizations are the juridical (legal) persons formed according to the legislation of the Russian Federation (i.e. Russian organizations) as well as the – foreign juridical persons, companies and other corporate formations, having civil legal ability and formed according to the legislation of the foreign states, international

organizations, filial agencies and representative offices of the foreign persons and the international organizations formed in territory of the Russian Federation (i.e. foreign organizations).

Organization profits tax (OPT) is the direct federal tax collected in connection with profit received by organizations.

Partnership in commendam (kommandit partnership) is association in which along with full partners is available one or several participants – depositors who bear risk of the losses connected with activity of association, within the sums of the deposits and do not participate in entrepreneurial activity of the association.

Patent system of taxation (PST) is the regional special tax regime for individual businesspersons.

Paying agent is the bank paying interests and dividends on the behalf and at expense of the legal person

Payment commission (payment order, order to pay) is the executive order of the account holder (i.e. payer) to the bank serving him, formalized by the accounting document to transfer a certain sum of money into the account of the fund receiver initiated in this or other bank.

Payments in merchant shipping and on an internal water transport are lawful sums of money as payment for spent on sea both water objects of work and rendered services.

Personal accounts are the accounts opened in bodies of Federal Treasury (other bodies which are realizing initiation and keeping of personal accounts) according to the budgetary legislation of the Russian Federation.

Petition is the written or oral address of the participant of process to law-enforcement or judicial body.

Plea (claim) is the processual requirement of the claimant to the respondent.

Posting is entry in the income item.

Primorsky Kray (Primorye) is the Subject of the Russian Federation, part of Far Eastern federal district. It is located in south of the Far East, on the bank of Sea of Japan, administrative centre is Vladivostok.

Private office of the taxpayer is an information resource which is placed on an official site of Federal Tax Service in the network «Internet».

Processual document is the written document made in the lawful form as corresponding proceeding.

Processual form is the procedure orderliness on various cases.

Production-sharing agreement is a public contract, on which conditions Russia gives to the investor-businessperson exclusive rights to search, prospecting and extraction of minerals on the contractual site of subsoil, and the investor undertakes to realize all works at the own expense and risk.

Proceeds are any material gain.

Property amortization is an objective process of gradual transfer of value of property (fixed capital) in process of its deterioration on industrial production.

Public companies are the Russian and foreign organizations which are emitters of securities, which (or depositary receipts on which) have undergone procedure of listing and (or) have been admitted to the circulation at one or several Russian stock exchanges having the licence, or the stock exchanges included in the list of foreign financial intermediaries.

Public joint-stock company is the joint-stock company which actions (shares) publicly address on the stipulations fixed by laws on securities.

Public institution is the state (municipal) establishment which is realizing rendering of the state (municipal) services, execution of work and (or) execution of the state (municipal) functions with a view of maintenance of realization provided by the legislation of the Russian Federation of powers of public authorities (state agencies) or the local governments which financial provision of activity is realized) at the expense of resources of the corresponding budget based on the budgetary estimate.

Purchase and sale contract is the agreement according to which one party (i.e. seller) undertakes to transfer to the possession a thing (i.e. goods) to other party (i.e. buyer), and the buyer undertakes to receive these goods and to pay for it the certain sum of money (i.e. price).

Real effective rouble exchange rate index is an indicator which pays off as the average alteration of real rouble exchange rates to currencies of the countries – the basic trading partners of Russia. Thus the real rouble exchange rate to a foreign currency pays off taking into account a ruble nominal rate to the currency and correlations of a standard of price in Russia and the corresponding country. Quotas of the foreign trade turnover of Russia from each of these countries in the cumulative foreign trade turnover of Russia with the countries – the basic trading partners are used at calculation of a real effective rate as scales of indexes. The index of a real effective rouble exchange rate reflects alteration of competitiveness of the Russian goods concerning the goods of the countries – the basic trading partners.

Reclamation is the requirement about the compensation for damages in case of miscalculations.

Record is the processual document fixing the course and results of processual action.

Referee in case of need is the person who pays the protested bill on the procuratory (instructions) of the maker (giver of bill)

Regime of targeting of inflation is the regime of monetary-credit policy at which it is specified, that an overall objective of the central bank is maintenance of price stability. Within the limits of the regime the quantitative purpose on inflation for which achievement the central bank is responsible is specified and appears. Usually within the limits of a regime of a targeting of inflation monetary and credit policy influence on economics is realized through rates of interest. Decisions are enacted above all on the basis of the forecast of development of economics and dynamics of inflation. Thus the important element of the regime is practice of a regular explanation of the public of decisions enacted by the central bank that guarantees with the accountability and an information openness of the central bank.

Regime of a floating rate of exchange, currency rate is the regime at which the central bank does not establish fix reference points, including operational, for level or a course change and allows that to a rate fixing (i.e. an exchange rate formation mechanism) to occur under the influence of market factors. Thus the central bank reserves possibility to realize irregular influence on home currency market for smoothing of a volatility of a rate of national currency or prevention of its excessive alterations.

Rent is the regular net profit (from the lending capital, property or land rent), not connected with entrepreneurial activity of the proprietor.

Reorganization of the legal person is its amalgamation, joining, division, allocation, transformation.

Reparation ordinary is compensation by the state-offender of a material damage by payment of sums of money, delivery of goods handing-over, rendering of services equivalent to the recoverable.

Reparation extraordinary is special burdens, consisting in temporary restriction of competences of the state, which have committed the international crime, to dispose of the material resources for the purpose of the full indemnification of damage and an exception of the reasons for repeated fulfillment. For example, there is duty of deliveries to other subjects of international law of material valuables sine qua non for state-offender, as the state cannot develop a war industry and it is forced to develop economy of a peace orientation.

REPO is the operation deal at which the owner of the securities or foreign currency sells to their bank with the obligation of the subsequent buy-out in the term fixed by the contract under higher price; the received difference (i.e. the margin) goes to bank proceeds.

Representative office is subdivision of the legal person located out of a place of its finding which represents interests of the legal person and realizes their protection.

Reserve-estimated liability is the obligation with a sine die of execution or the uncertain quantity obligation.

Restoration is reinstatement of the non-material rights of the suffered subjects of international law (for example, there are – stop of illegal occupation, release of wrongfully detained persons etc.).

Restitution in kind (specific restitution) is returning by the state-offender to victim subjects of international law of the property wrongfully captured at them, having individual characteristics (for example, there are – archives, cultural valuables etc.).

Re-structuring is a contractual change of satisfaction conditions on more preferential.

Retortions are measures of influence of one state concerning another on purpose to induce it to stop unfriendly, unfair, discrimination, but nevertheless, lawful actions (for example, in case of unfriendly restrictions of economic relations). As a rule, retortions are similar to retortions those subjects, who has used them earlier. However, retortions can be used and as a preventive measure in the presence of offence threat.

Reprisals (retaliations*)* are unilateral actions of the state on state-offender as a compulsion measure for the international offences. They should be proportional, i.e. intensity of reprisals cannot be above that, that is necessary for specific goal achievement, as excess of limits necessary – also an offence. Reprisals stop on reaching the purpose – there is to induce the subject to the termination of an offence and to realization of obligations.

Revision is inspection of financial and economic activity.

Road fund is the part of budgetary funds which is the Subject to use with a view of financial provision of road activity concerning of highways of the general use.

Road payments are complex of taxes, dues and other payments of which road funds are formed.

Russia, Russian Federation is the largest state of Eurasia; largest state of world on the territory area, capital is Moscow. Russia is the democratic federal lawful state with the republicanism.

Russian federalism is the balanced differentiation of powers, financial assets and answerability between federal, regional and municipal authorities, an optimum combination of their interests, based on RF Constitution.

Satisfaction ordinary is redress by the state-offender of lawful non-material requirements of the victim state for the purpose of reinstatement of non-material damage (for example, there are – apologies, regret expression etc.).

Satisfaction extraordinary is various temporary restrictions of the sovereignty and juridical ability of the state, which have committed the international crime, for the purpose of abolishing of its reasons and formation of guarantees from its reiteration (for example, there are – reorganization of political system, temporary occupation, disbandment of the armed forces etc.).

Science Town (scientific-cities) is a municipal union with the status of the city district, having high scientific and technical potential, with city-formative a science and production complex.

Securities (i.e. certificates, shares, bonds etc.) are specific documents and the rights, which use realized based on the special legislation.

Securities market law (SM-law) is the financial institution, i.e. it is the complex of rules of financial law in the form of the SM-legal norms, regulating the relations on a securities market, incomes of which turnover forms funds of money.

Seizure is the investigative action consisting in withdrawal of certain subjects and documents, important for case, if it is precisely known where and at whom they are.

Sentence is the judicial act about innocence or guilt of the defendant.

Sevastopol is the federal city, hero town, naval port, base of Black Sea Fleet, and the Subject of the Russian Federation.

Simplified taxation system (STS) is the federal special tax regime for special subjects.

Special Drawing Rights (**SDR)** is artificial monetary unit which is used by International Monetary Fund for interstate and interbank calculations.

Special economic zone is the part of territory of Russia with the special regime of business.

Specific dues is complex of dues and other obligatory payments which are not included into tax system of the Russian Federation, but are objects of taxation, or are used with a view of formation of tax privileges (dues and payments in sphere of rendering of housing-and-municipal services, insurance contributions, heat-recovery due, dues and payments in merchant shipping, customs fees etc.).

State compulsion (restraint) is lawful somatic, psychological or ideological action of the public authority, official on natural persons and (or) juridical persons.

State off-budget fund is the form for the formation and an expenditure of money resources, which forms out of federal and regional budgets.

Subdivision of a legal entity is the any element territorially isolated from it on which location stationary workplaces are equipped.

Small entity (small enterprise) is the juridical person number to 100 persons.

Special tax regime is a replacement of certain complex of taxes and dues with one payment, or other special legal procedure of their calculation and payment.

Spread is a difference (margin) between two indicators (for example, between proceeds from the actives and cost of outside funds).

State is politically-territorial sovereign organization of the public power, having special enforcement machinery and doing the commands obligatory for the population of all country.

State Duty (SD) is indirect federal due for fulfilment by lawful persons of legally significant actions.

State (municipal) task is the document fixing the – requirements to structure, quality and (or) to volume (content), stipulations, procedure and results of rendering of the state (municipal) services (work execution).

Substitution is replacement of wrongfully destroyed, damaged or stolen property with equivalent subjects. For example, the kind of a substitution is compensative restitution.

Switch is devolution of financial instruments from possession of one person to another person by the intermediate entity (i.e. intermediary) as a result conclusion of the pair or series of transactions of purchase and sale.

System of law is the complex and interrelation of the general and especial parts, only applicable to concrete jurisprudence.

System of taxation is complex of the elements guaranteeing tax system (i.e. the – taxation essential elements, tax control, tax responsibility etc.).

System of taxation at realization of production-sharing agreements is the federal special tax regime according to which payment of a part of taxes and dues of tax system of Russia is replaced with production section.

Tax is the obligatory, individually gratuitous payment collected from organizations and natural persons in the form of alienation belonging them on the property right, economic jurisdiction or an operative management of money resources, with a view of financial provision of activity of the state and-or municipal unions.

Tax base is the cost, physical or other characteristic of object of taxation

Taxation essential elements (i.e. essential particulars of taxation) are elements, without which occurrence of the tax duty is impossible. They form legal structure of the tax and dues and mean, that taxes and dues cannot be established by one only declaration.

Tax on gambling industry (TGI) is the indirect regional tax on business in gaming sphere.

Tax collection is the fiscal due entering into taxation system.

Tax evasion (evasion from payment of taxes and (or) dues) is failure to submit of the tax declaration or other obligatory lawful documents, or inclusion in the tax declaration or in such documents of obviously false data

Tax haven, tax shelter is the state or its territory with a preferential tax treatment of non-residents; it is not infrequently used for legitimization of illegal proceeds.

Tax interest is reduction of the size of a tax duty owing to reduction of taxation base, receiving of a tax deduction or privilege, use of lower tax rate, and right receiving on return or compensation of the tax from the budget.

Tax law is the complex of rules of tax law, regulating the relations concerning calculation of taxes and dues, their deduction and direction in budgetary funds of money.

Tax law as an academic subject is the subject matter of teaching.

Tax law as a science branch is the system of knowledge on tax relations and rules of tax law.

Tax losses are losses of the payer of taxes and dues in connection with inadequate tax planning.

Taxpayers are subjects of the tax duty.

Tax period is time, after which termination the taxation base is defined and is estimated the sum of the tax, which is the Subject to payment.

Tax planning is an activity of payers of taxes and dues on lawful reduction of a tax duty or exemption from it under concrete taxes and dues.

Tax rate is lawful digit, which after multiplication to taxation base fixes the sum of the concrete payment, which is the Subject to payment.

Tax system is complex and interrelation of all lawfully fixed taxes, dues and special tax regimes.

Temporary cash gap is predicted during the certain period of current fiscal year insufficiency on the uniform account of the budget of the money resources necessary for realization of cash payments from the budget.

Territory of the Russian Federation and other territories which are under its jurisdiction are territory of the Russian Federation and territory of artificial islands, installations and constructions over which the Russian Federation realizes jurisdiction according to the legislation of the Russian Federation and international legal norms.

Territory for advancing social and economic development in the Russian Federation is the part of territory of the Subject of the Russian Federation, on which is established the special legal regime of realization of business and other activity for the purpose for the formation of favorable conditions for attraction of investments, supports of the accelerated social and economic development and formation of comfortable conditions for support of ability to live of the population.

Sales due is indirect local due for trading activity realization.

Transaction «exchange swap» is the transaction, two-piece: initially one transaction party exchanges the certain sum in national or a foreign currency for equivalent quantity of other currency given by the second transaction party, and then, after the expiry of the term of the transaction, the parties realize a return currency exchange (in corresponding volume) at in advance established fixed rate. Transaction «exchange swap» of Bank of Russia are used for granting to lending agencies refunding in rubles.

Transfer act is the document which contains positions about legal succession under all obligations of the reorganized legal person.

Transport tax (TT) is the direct regional tax collected in connection with having of transports.

Treasury is resources of the budget and other property of Russia, Subjects of the Russian Federation and municipal unions.

Trust is fiduciary management (administration) of estate

Turnover of goods (cargo turnover) is the basic indicator of work of a transport for the period of years.

Uniform agricultural tax (UAT) is the federal special tax regime for agricultural commodity producers.

Unified tax on imputed income is the local special tax regime for separate kinds of business.

Uniform account of the budget is the account (complex of accounts for the federal budget, budgets of the state off-budget funds of the Russian Federation), opened to Federal Treasury in establishment of the Central bank of the Russian Federation separately under each budget of budgetary (system of the Russian Federation for the accounting of budgetary funds and realization of transactions on cash receipts in the budget and to cash payments from the budget.

Unitary enterprise is the commercial organization, which has not right to property, fixed to it the proprietor.

User of credit history is the individual businessperson or legal person who has received written or different way documentary fixed consent of the subject of credit history on receiving of the credit report for celebration of the loan agreement (credit).

Value is materialized labor.

Variable interest rate on transactions of Bank of Russia is the rate of interest adhered to level of the key rate of Bank of Russia. The interest rate corrected on value of alteration of the key rate, is used in case of acceptance by Board of directors of Bank of Russia of the decision about alteration of the key rate under credits earlier given on the floating rate.

Value-added tax (VAT) is the indirect federal tax charged on the added cost.

Verdict is the decision of board of jurymen.

Vladivostok is the city of military glory in Russian Far East, administrative centre of Primorsky Kray, free port, centre of Asian-Pacific region.

Water-tax (WT) is the direct federal tax imposed on special and (or) specific water use.

ENGLISH TENSES (ACTIVE)

ТИПЫ (ФОРМЫ) АКТИВНЫХ ДЕЙСТВИЙ

ACTIVE	SIMPLE (факт)	CONTINUOUS (прост**о**й проц**е**сс) Prepositions-markers (*Предл**о**ги-марке**р**а*) at, from…to	PERFECT (результ**а**т) Prepositions-marker (*Предл**о**г-марк**ё**р*) by	PERFECT CONTINUOUS (дл**и**тельный проц**е**сс) Prepositions-markers (*Предл**о**ги-марке**р**а*) since, for
1	2	3	4	5
PRESENT	**Noun + Verb***1* *Words-markers* (*Слов**а**-марке**р**а)* *usually, often, never, everyday* *I write (He writes) letters once a week. -Я пиш**у*** (он п***и***шет) п***и***сьма раз в нед***е***лю. *It rains every day. -Дождь и***д***ёт к***а***ждый день	**Noun + (am, is, are) + Ing** *Words-markers* (*Слов**а**-марке**р**а)* *now, at present, at moment* *I am (He is) writing a letter now. -Я пиш**у*** (он п***и***шет) письм***о*** сейч***а***с. *It is raining now. -Дождь ид***ё***т сейч***а***с.	**Noun + Have / has + Verb***3* *Words-markers* (*Слов**а**-марке**р**а)* *ever/never, just, yet, already, lately, recently, today* *I have (He has) worked / broken … today. -Я (Он) отраб***о***тал / слом***а***л … сег***о***дня. *It has rained already. -Дождь уж***е*** прош***ё***л.	**Noun + Have / has + been + Ing** *Words-markers* (*Слов**а**-марке**р**а)* *for a moment, for a long time, how long, since when, since 5 o`clock* *I have (He has) been writing a letter for an hour / since two o`clock. -Я пиш**у*** (он п***и***шет) письм***о*** уж***е*** час / с двух час***о***в. *It has been raining for three o`clock. -Дождь ид***ё***т уж***е*** три час***а***.
PAST	**Noun + Verb***2* *Words-markers* (*Слов**а**-марке**р**а)* *yesterday, last week, 3 days ago, in 2005* *I (He) wrote a letter yesterday. -Я (Он) напис***а***л письм***о*** вчер***а***. *It rained yesterday. -Дождь шёл вчер***а***.	**Noun + Was / were + Ing (+Verb***2***)** *Words-markers* (*Слов**а**-марке**р**а)* *at 5 yesterday, from 5 to 6 yesterday, all day long, when we came, while* *I was writing a letter, when we came / while he was reading a book. -Я напис***а***л письм***о***, когд***а*** мы пришл***и*** / пок***а*** он чит***а***л кн***и***гу. *It was raining all day yesterday. – Дождь шёл вчер***а*** весь день.	**Noun + Had + Verb***3* **(+Verb***2***)** *Word-marker* (*Сл**о**во-марк**ё**р)* *before* *I had written a letter before Mother came. -Я напис***а***л письм***о*** до тог***о***, как пришл***а*** м***а***ма. *It had rained before you came. -Дождь прош***ё***л до тог***о***, как вы пришл***и***.	**Noun + Had+ been + Ing (+Verb***2***)** *Сл**о**во-марк**ё**р* (*word-marker)* *when* *I had been writing a letter for an hour yesterday, when he came. -Я пис***а***л письм***о*** вчер***а*** уж***е*** час, когд***а*** он прише***ё***л. *It had already been raining for several hours, when I went out. - Дождь шёл уже н***е***сколько часов, когд***а*** я в***ы***шел на улицу.

Cont. table

1	2	3	4	5
FUTURE	**Noun + Will +Verb***1* *Words-markers* (*Слов**а**-маркер**а**)* *tomorrow, next week, in 3 days, in 2005* *I will work (He will works) tomorrow. -**Я** б**у**ду (Он б**у**дет) раб**о**тать з**а**втра.	**Noun + Will + Be + Ing (+Verb***1***)** *Words-markers* (*Слов**а**-маркер**а**)* *at 5 tomorrow, from 5 to 6 tomorrow, all day long tomorrow, when he comes* *He will be writing when I come (she comes). -Он б**у**дет пис**а**ть, когд**а** я прие**е**ду / он**а** прие**е**дет.	**Noun + Will + Have + Verb***3* **(+Verb***1***)** *Words-markers* (*Слов**а**-маркер**а**)* *when he comes, by next summer, while* *He will have finished his work, when I call / she calls him. -Он зак**о**нчит сво**ю** раб**о**ту, когд**а** я ем**у** позвон**ю** / он**а** ем**у** позвон**и**т.	**Noun + Will + Have + been + Ing (+Verb**1**)** *Words-markers* (*Слов**а**-маркер**а**)* *when, before* *He will have been finishing his work, when he / she comes. -Он б**у**дет зак**а**нчивать сво**ю** раб**о**ту п**е**ред тем, как он / он**а** прид**ё**т

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