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Tax Compliance and its Enforcement Instruments: Russian Approach

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Abstract. The absence of a tax compliance theory in the Russian doctrine predetermined the objectives of the study – the search for promising tools to achieve the willingness of taxpayers to comply with the tax legislation voluntarily, as well as determining the place of coercive measures against taxpayers in order to ensure tax compliance in the Russian Federation. The work is based on the complex application of a number of general and special research methods (structural and functional analysis, comparative legal, formal-logical, system-structural methods). The information base of the research is represented by domestic legal acts and judicial practice, official data of the Federal Tax Service of Russia, scientific works of both Russian and foreign authors. The study's main outcome is to validate the conclusion that tax administration (in order to ensure tax compliance) must combine not only the tools of coercive influence (tax audits, horizontal tax monitoring, anti-tax avoidance measures aimed at tackling aggressive tax planning) but also stimulating tools: interaction between tax payers and tax authorities in the form of information exchange, sending recommendations and proposals to the taxpayer on independent clarification of the tax base and tax obligations.

Keywords: tax compliance, tax monitoring, enforcement measures, voluntary compliance, partnerships, information exchange.

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Налоговый комплаенс и инструменты его обеспечения: взгляд из России

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Аннотация. Отсутствие в отечественной доктрине отраслевой теории налогового комплаенса предопределило цели исследования – поиск перспективных инструментов для достижения готовности налогоплательщиков добровольно соблюдать налоговое законодательство, а также определение места принудительных мер воздействия в отношении налогоплательщиков с целью обеспечения налогового комплаенса в Российской Федерации. Работа построена на комплексном применении ряда общих и специальных методов исследования (структурно-функциональный анализ, сравнительно-правовой, формально-логический, системно-структурный методы). Информационная база исследования представлена отечественными нормативно-правовыми актами и судебной практикой, официальными данными Федеральной налоговой службы России, научными работами российских и зарубежных авторов. Основным результатом исследования состоит в обосновании вывода о необходимости сочетания налоговой администрацией (с целью обеспечения налогового комплаенса) не только инструментов принудительного воздействия (налоговых проверок, горизонтального налогового мониторинга, антиуклонительных норм, направленных на пресечение агрессивного налогового планирования), но и стимулирующих инструментов: взаимодействия налогоплательщиков и налоговых органов в виде обмена информацией, направления рекомендаций и предложений налогоплательщику о самостоятельном уточнении налоговой базы и налоговых обязательств.

Ключевые слова: налоговый комплаенс, налоговый мониторинг, меры принуждения, добровольный комплаенс, партнерские отношения, обмен информацией.

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Introduction

Tax compliance presupposes that all participants of tax relations comply with the tax legislation both because of voluntary and forced compliance. Nowadays, in the world of science tax compliance issues are considered to be the most relevant and spark the most heated debates. For this purpose, it is worth noting the most fundamental monograph by the Australian authors Ian Ayres and John Braithwaite «Responsive regulation: Transcending the deregulation debate». The problems of tax

compliance are discussed in the works of Mark Burton, Julia Black, Robert Baldwin, Martin Cave, Gunther Teubner, Valerie Braithwaite, Neil Gunningham, Sagit Leviner, Vibeke Lehmann Nielsen. The questions of achieving a balance between voluntary and compulsory tax compliance are discussed in the works of Richard M. Bird, Hans Gribnau, Eelco van der Enden, Stephen Daly. Ethical and moral aspects of tax compliance are outlined in the works of Ana Paula Dourado, Justine Nolan, and Benno Torgler.

In Russian science, the concept of tax compliance (especially voluntary compliance) is studied only tangentially and superficially. Some aspects are considered in the works of S. A. Arakelov, A. A. Artyukh, D. V. Vinnitsky, O. O. Zhuravleva, M. V. Karaseva, A. N. Kozyrin, I. I. Kucherov, E. N. Nagornaya, S. G. Pepelyaev, D. V. Tyutin, I. A. Khavanov, R. A. Shepenko, D. M. Shchekin, and et al. It can be said that the theory of tax compliance in the domestic doctrine is in its infancy as the doctrinal concept of tax compliance has not been developed, there is no legal definition for it in the tax and fees legislation, and no agreement on doctrinal approaches have been reached yet. As a rule, some relevant issues of tax compliance are considered along with the other issues of tax law, its conceptual framework is limited to a small number of publications in academic journals.

Theoretical framework

The classic tax compliance model is based on the economics-of-crime model developed by Gary Stanley Becker in 1968 (Becker, 1968: 169). Within the framework of «Crime and punishment» Becker, using various economic methods, considers any offense to be a conscious choice of an individual after weighing the uncertain benefits of successful non-compliance against the risky prospect of detection and punishment.

Michael Allingham and Agnar Sandmo adapted Becker's economic model to tax compliance further naming it the «deterrence model» or «the standard model». The key takeaways are published in the now-textbook publication «Income tax evasion: a theoretical analysis» published in 1972 in the *Journal of Public Economics* (Allingham, Sandmo, 1972: 323–338). Allingham and Sandmo start with the concept of «homo economicus» – a rational and selfish person who pursues maximum wealth for his own benefit (taxable income) and makes decisions based on the expected benefits of successful non-compliance (Allingham, Sandmo, 1972: 323–338).

As we can see, a central thesis of the standard model is that people pay taxes mostly for fear of probable material losses resulting from the detection of the offense and the

punishment imposed. Hence the conclusion that tax compliance can only be improved by increasing tax control and sanctions in order to convince potential violators that non-compliance is an irrational strategy (in terms of material consequences). «It is more trouble than it is worth!» is probably the best motto in this context. Thus, the state justifies the tax policy based on such coercive measures as the intensification of tax audits and the increase in the amount of tax sanctions.

So, the standard economic model considers the problem of tax compliance to be a solution in the conditions of uncertainty. The taxpayers are supposed to maximise their revenue by weighing the pros and cons of tax evasion. Thus, the standard model is based on the concept of *homo economicus* **designed** to maximize the expected utility by making a rational choice between lawful and unlawful behaviour by «weighing» positive and negative consequences. The former includes the expected benefits of tax evasion while the latter mostly relate to the associated costs (collection of arrears, fines, losses of goodwill, etc.).

Without refuting the validity of the standard model, the scientific community has now established an understanding of its limitations, which is confirmed by empirical research and field studies (Bărbuță-Mișu, 2011: 69–76). According to most researchers, the existing levels of tax compliance in various legal systems cannot be explained solely by law enforcement effects (Feld, Lars, Frey, Bruno, 2002: 87–90). Thus, the tax compliance significantly exceeds the forecasts based on the taxpayers' self-serving instrumental behaviour.

The point is that the total number of taxpayers covered by field tax inspections is minuscule and decreases annually. Therefore, the probability of detecting tax violations and imposing sanctions is low. From the perspective of a rational *homo economicus* the risk of adverse consequences related to tax fraud is very unlikely. Yet, in all tax jurisdictions, even the least advantageous in terms of tax collection, tax evasion is never regarded as something that can be predicted merely by economic analysis. At the same time, a significant number of taxpayers – both individuals and

organizations – systematically and fully fulfil their tax obligations, regardless of the negative organizational and legal incentives applied by tax administrations. The secret of tax compliance is *why people pay taxes*, not why they avoid them (Feld, Lars, Frey, Bruno, 2007:102). The standard model is only partly capable of explaining the phenomenon of the compliance behaviour prevalence. The question raised – why do most people pay taxes voluntarily? – resulted in the search of and justification for new factors lying outside the framework of tax enforcement and yet affecting the level of tax compliance. Economic factors that affect tax compliance include, for example, the type of taxpayer activity (Kamleitner, Bernadette, Korunka, Christian, Kirchler, 2012: 330–351), the level of his income (Gangl, Katharina, Torgler, Benno, 2020: 114–116), the total and individual tax burden in a particular jurisdiction (Kirchler, Muehlbacher, Kastlunger, 2018: 23), the intensity of tax audits and other verification activities with the tax authorities, as well as the size and inevitability of tax sanctions.

In turn, non-economic factors include tax morals, social norms (Alm, 2019: 395), the civil position of the taxpayer (Williamson, 2017:304), the fairness of taxation and budget reallocation (Uslaner, Eric, 2018:175), age and gender differences (Alm, Beebe, Kirsch, Marian, Soled, 2020: 296), etc.

Statement of the problem

Given the diversity of the determinants described above, tax authorities can ensure tax compliance by various instruments, combining the means of positive incentives and coercive influence. In this regard, the following issues are put in the centre of our attention:

- identifying specific types of instruments to achieve voluntary compliance in the Russian Federation;
- determining the role of coercive measures in making the taxpayers obey the tax compliance in the Russian Federation.

Methods

The methodological basis of the research is based on the following methods of scientific knowledge: analysis, synthesis, deduction,

interpretation, forecasting, and the comparative method. The comparative method was used in the analysis of compulsory instruments for achieving tax compliance (the experience of Kazakhstan is considered).

Discussion

1. Positive incentives for tax compliance

1.1. Mutual exchange of information

The positive promotion of tax compliance is based on the concept of the constructive exchange of information between tax authorities and taxpayers, based on trust, openness, and mutual desire for cooperation. The reciprocal exchange of information between tax authorities and taxpayers is the basis of modern taxation. On the one hand, taxpayers are interested in receiving timely and regular information, explanatory and interpretative advice regarding the interpretation of the application of tax norms. This gives them confidence in the lawfulness of their activities, allows them to predict tax risks, and stabilizes economic turnover. On the other hand, tax authorities need to get credible information about the facts and circumstances relating to the activity of the taxpayers on a regular basis.

The modernization of the whole system of tax administration is impossible without large-scale implementation of electronic digital technologies based on various Internet platforms and mobile networks. In this context, the introduction of the latest IT technologies is considered by the Federal Tax Service of Russia as a priority in the process of modernizing tax administration, which allows automating, simplifying and speeding up the process of tax management radically.

A network of interactive *online services* for taxpayers is being actively developed in Russia. Today their total number amounts to more than fifty and it continues to grow. Some of them perform general informational and educational functions, while others provide information about the exact taxpayers. Their implementation allows optimizing the workload of territorial tax authorities, cutting the red tape and facilitating the information exchange for all parties to tax legal relations. The key factor in increasing the level of voluntary compliance is expanding the

range of information services provided by the Federal Tax Service of Russia.

At the same time, the large-scale introduction of digitalization in tax administration produces new threats that require their understanding and adequate response. The thesis stated above can be exemplified by the implementation by the Federal Tax Service of Russia of the automatic control system of VAT-2, which automatically divides all taxpayers (legal entities that have submitted VAT declarations) into three subgroups of tax risks, namely, low, medium and high.

High-risk taxpayers are those participating in the chain of interaction between persons united by business transactions, generating document flow, and allowing applying tax deductions even if the previous participants, so-called «one-day», «technical», «transit» organizations, failed to pay a real VAT in the budget having no sufficient resources (assets) for business activities, and also not fulfilling their tax obligations or fulfilling them in the minimum amount. As a result of the analysis of the links between the participants of the «chains», the VAT-2 ASK system detects so-called «tax gaps», that is, the situation of declaring the amounts of VAT deductions that were not paid to the budget by the previous participants, and the tax authorities take measures to determine the recipient of an unjustified tax benefit in the absence of a tax source in the budget.

Russian tax legislation does not allow for the possibility of enforcing any restrictive measures in case of revealing «tax gaps» either to the intended beneficiary or to the «technical» participants in the document flow, except for the refusal to provide a deduction based on the results of a tax audit.

The tax authority cannot refuse «transit organizations» to accept their tax return even if they do not belong to their legal address, systematically participate in a chain of questionable transactions, the share of deductions in the amount of tax calculated from their taxable transactions is close to 100 % of the calculated amount of VAT, therefore making the amount of tax payable minimal.

The judicial practice analysis shows that there are such court disputes in which the

analysis of the VAT-2 automated control system is used as a justification for fictitious document flow when this information resource serves as a proof of the taxpayers' bad faith.

At the same time, there is criticism of the legality of this data application by tax authorities when assessing tax reports and determining tax liabilities.

From the perspective of A. V. Krasniukov, there is a need to legally safeguard the subjects against tax authorities abuse through electronic communication, for example, by restricting the access of tax authorities to the management of the VAT control system and the electronic document management system (Krasniukov, 2018: 43–50).

Obviously, in this case, the problem is that the legal framework is lagging behind the pace of digitalization in the field of tax administration. Establishing the responsibility of the tax authorities, as well as their officials, for refusing to accept tax returns and similar actions, may resolve the issue of taxpayers rights' violations when accepting a tax return. When receiving the information accumulated through the VAT automated control system, the tax authorities get access to a large amount of data relating to the relationship of taxpayers (their business operations, actions for calculating and paying value added tax, etc.) and at the same time constituting a tax secret. The analysis of the data received allows us to assume with a greater or lesser degree of confidence the presence of tax offenses in the chain of interaction.

At the same time, in accordance with the powers granted by the tax legislation, the tax authorities have the right to use this information officially only within the framework of tax control in relation to taxpayers, i. e. by conducting in-house or on-site tax audits. The current tax legislation does not provide for another option. The use of other coercive measures against taxpayers goes beyond the control powers of the tax authorities and at the same time may violate the protected rights of taxpayers, as illustrated by examples from judicial practice.

Therefore, the issue of the necessity and expediency of using this information in such a way as not to violate the legitimate rights and interests of the taxpayer (even if the system

classifies it as a «high risk» group) and at the same time protect the interests of the budget acquires more topicality. It is worth noting that VAT-2 automated control system has been operating in the country for several years, but the problem of «tax gaps» has not yet been solved. At the same time, in our opinion, the expansion of the tax authorities control powers in this case is not a priority in the legal regulation of this problem.

As is known, two-sided (counter) information exchange between fiscal authorities and taxpayers is the fundamental basis for tax administration and achieving a balance of private and public interests. With the continuous growth and complexity of tax legislation, the growth of «uncertainty zones» in tax legislation, the shift in emphasis from formal legality to good faith, and the priority of «substance over form», taxpayers are interested in timely obtaining information available to the tax authorities. This allows them to predict tax risks, judge the legality of their activities, and stabilize economic turnover.

The first step to ensure a balance of private and public interests in this case should be to provide access to the information of VAT-2 control system for those taxpayers who are links in the «chain» generating «tax gaps». Obviously, if some (or even all) of the participants of the «chain» interact to obtain an unjustified tax benefit, then the information received by the tax authority is not a secret for them. The relevant information should not remain closed for those taxpayers who participate in the «chain» without the purpose of tax non-payment. In this case, the concealment of information contradicts the position of the Constitutional Court of the Russian Federation on the need for interaction between the parties to the tax legal relationship on the basis of mutual openness of information about each other's intentions and actions, its availability, and reliability.¹

¹ This position is reflected in many decisions of the Constitutional Court of the Russian Federation, for example, «On refusal to accept for consideration complaints of «AGROUP» Ltd. for violation of constitutional rights and freedoms by the provisions of paragraph 8 of Article 75, paragraph 1 of Article 388 and subparagraph 1 of paragraph 1 of Article 394 of the Tax Code of the Russian Federation»: Ruling of the Constitutional Court of the Russian Federation No. 2725-O of 08.11.2018

As it can be seen, the optimal use of the information accumulated by the tax authorities through the VAT control system is possible not only to improve tax administration but also to improve the interaction between the parties to the tax legal relationship, to create the effect of transparency in these relations, even if this requires some changes in the way of working with confidential information, including changes to the norms of Article 102 of the Tax Code of the Russian Federation, which regulates the mode of use of information that constitutes a tax secret.

1.2. Paid Tax Whistle-blowing

In recent years, the institute of paid tax information (*tax whistle-blowing*) has been actively developing in many countries (Dourado, Anna, 2018: 422–426). The greater the array and variety of sources of information about tax violations, the more effectively the national system of tax control and administration works. The impressive cost-benefit ratio confirms the validity of the implementation of the concept of tax informants in the national legal order (Givati, Yehonatan, 2018: 106–110). In Russia, this tool has not yet been implemented. We assume that foreign experience in stimulating tax informants and their legal protection may be in demand in the Russian reality. It is advisable to discuss the use of this legal structure for the modernization of Russian legislation on taxes and fees, but, of course, taking into account the national mentality, cultural and legal traditions of our people, as well as the large-scale threats and challenges that the Russian tax system faces. Moreover, in the conditions of unfavourable factors growth in the global economy, any effective tools to increase budget revenues are becoming very topical and significant.

1.3. Tax Commissions

Another tool of compliance positive promotion in Russia was associated with the work of special tax commissions on the legalization of the tax base, which operated for seven years in the system of the Federal Tax Service of the Russian Federation and was created to prevent tax evasion and tax avoidance. The work of the commissions was based on the fact that tax authorities using various technological

resources had an opportunity to determine the signs of a tax offense before the appointment and conduct of tax audits, and to invite the taxpayer to a conversation, letting them clarify their tax obligations and eliminate violations. Thus, both parties were enabled to clarify their positions and resolve any doubts and differences without resorting to tax controls and legal proceedings. However, the work of the commissions on the legalization of the tax base was seriously criticized by tax law experts, who, in particular, believed that the intervention of tax authorities in the formation of the tax base and the determination of tax obligations of an exact taxpayer is permissible only in cases and forms directly provided for by law. In the end, the commissions did not «take root» in the system of tax authorities.

In our opinion, the practice of the commissions could be regarded as a search for new forms of interaction between taxpayers and tax authorities. If we assume that the purpose of interaction (on the part of the state represented by the tax authorities) is to avoid negative consequences for the taxpayer and the budget by correcting all errors without conducting a tax audit, then the methods tested by the commissions can be regarded as one of the means to achieve tax compliance. In our opinion, this form of interaction is also a manifestation of good tax administration. The Constitutional Court of the Russian Federation noted that not only do tax authorities have a right but they also must require the taxpayer to provide the explanations and documents confirming the correctness of the calculation and timely payment of taxes (Ruling of the Constitutional Court of the Russian Federation of 12.07.2006 No. 267-O).

It seems that within the framework of transiting to a new – «partner» – model of tax administration in the Russian Federation, it is advisable to adopt norms regulating the grounds and procedure for interaction between tax authorities and taxpayers in a situation where the balance of interests is possible without conducting control activities, applying tax sanctions or other coercive measures. It is in this context that the experience of the commissions on the legalization of the tax base is of particular interest.

The form of interaction previously used by the commissions in the form of sending recommendations and proposals for independent clarification of the tax base and tax obligations can be legalized by giving the tax authorities the authority to send a reasoned proposal to the taxpayer to clarify their tax obligations.

Certain prerequisites for this are laid down in section 5. 2 of the Tax Code of the Russian Federation, which regulates tax monitoring. Within the framework of tax monitoring, the tax authority sends a reasoned opinion to the taxpayer organization – a document reflecting the position of the tax authority on the correctness of calculation (withholding), completeness, and timeliness of payment (transfer) of taxes, fees, and insurance premiums. The disagreements arisen are considered within the framework of a mutually agreed procedure, according to the results of which a reasoned opinion can be changed or left as it is.

Thus, in our opinion, the practice of the work of the commissions on the legalization of the tax base deserves not only negative assessments. Considering already available rules of tax monitoring in the tax legislation, it seems appropriate to provide for the following rule in the Tax Code of the Russian Federation (for example, in Article 31 – «Rights of tax authorities»):

«When finding the facts indicating tax violations, the tax authority, outside the framework of the tax audit, has the right to send a reasoned proposal to the taxpayer to conduct an independent assessment of these facts in order to clarify its tax obligations on a voluntary basis.»

2. Enforcement of Tax Compliance

In the context of tax compliance, James Alm writes, a rational individual makes a choice between *tax compliance* and *tax non-compliance* in a situation of uncertainty, weighing the expected benefits of successful deception with the risky prospect of being caught and punished; people pay taxes only for fear of exposure and sanctions. This approach generally leads to a very plausible and productive result, demonstrating that compliance depends on the scale of the audit and tax sanctions (Alm, Jorge, 2010: 3–4).

Thus, despite the active introduction of incentive tools, the main role in ensuring tax compliance is still played by measures of tax control, coercion, as well as measures aimed at suppressing aggressive tax planning.

2.1. Tax Audits

The main forms of tax control in the Russian Federation are in-house tax audits of tax returns submitted to the tax authority for specific taxes and on-site tax audits of documents and taxpayer reports required to determine the correctness of tax calculation.

For failure to submit tax returns, the relevant officials of the taxpayer are subject to an administrative fine of up to five hundred rubles, tax sanctions under Article 119 of the Tax Code of the Russian Federation in the form of a fine of up to 30 percent of the amount of tax payable on the basis of this declaration, and such a compulsory measure as the suspension of transactions on settlement accounts.

In-house tax audits are conducted on all submitted tax returns. According to the statistical reports of the Federal Tax Service of Russia, in 2020, during desk inspections, 34,259,307 thousand rubles of taxes were accrued as a result of the detected violations (in 2011–52,883,130 thousand rubles). When conducting on-site tax audits for 2020, an additional 134,250,128 thousand rubles were accrued (in 2011–287,178,704 thousand rubles). The number of on-site tax audits conducted in 2020 was 29,601, compared to 67,351 in 2011.²

The decrease in the number of inspections is due to the orientation of the tax authorities to increase the efficiency of tax control, the desire to avoid ineffective low-performance inspections with small amounts of additional charges. Experts in the field of tax audit suggest determining the effectiveness of audits, for example, by the following indicators (Osipova, 2020: 31–35):

- the number (relative share) of tax audits that revealed violations of tax legislation;
- the number (relative share) of the complaints received and the number of satisfied

complaints about the results of pre-trial tax audits, as well as the number of satisfied claims;

- the number (relative share) of tax authorities decisions declared invalid by the court;
- the number (relative share) of decisions based on the results of inspections, claims for which were won in court by tax authorities;
- the amount and proportion of taxes, fines, and penalties collected (or voluntarily transferred) to the budget after court proceedings, i. e. in disputes settled in favour of the tax authorities.

Does the appointment of tax audits (taking into account these approaches) contribute to ensuring tax compliance?

For the budget economic interest, it does not matter what resulted in the tax debt: the independent calculation of the tax by the taxpayer or the determination of the debt by the tax authority as a result of control measures. It also does not matter what was the reason for the incorrect calculation of taxes by the taxpayer (for example, with technical errors or intent to reduce tax payments). Yet in the tax legislation of some states, the appointment of tax audits and the application of tax enforcement measures depend on the «tax loyalty» of taxpayers. For instance, the tax Code of the Republic of Kazakhstan allows for the differentiation of taxpayers into three groups: low, medium, and high risk- and establishes general criteria for assigning taxpayers to a certain group. According to the Code, tax risk is seen as «the probability of non-fulfilment or incomplete fulfilment of a tax obligation by a taxpayer, which could or may cause damage to the state».³ When assigning tax audits, it is taken into account which risk group the taxpayer belongs to. Thus, it is in taxpayers' interest not to fall into medium- or high-risk groups, since this affects not only the purpose of tax audits but also the differentiation of subsequent enforcement measures (for example, depending on the risk group, the timing of the introduction of specific enforcement measures differs). In the Russian Federation, tax risk assessment criteria are also used for planning

² https://www.nalog.ru/rn14/related_aktivities/statistics_and_analytics/forms/3897764/; https://www.nalog.ru/rn14/related_aktivities/statistics_and_analytics/forms/9770621.

³ Paragraph 2 of Article 136 of the Code of the Republic of Kazakhstan. Available at: kgd.gov.kz/ru/content/nalogovyykodeks-rk (accessed 23.03.2021).

tax authorities' control work⁴ but this is not explicitly stipulated by law. The division of taxpayers at the legislative level into categories based only on the assessment of tax risks seems indisputable in itself since the assessment always contains a subjective component and any forecast may not coincide with reality, which will create additional conflict situations in the relationship between tax authorities and taxpayers. As long as the tax legislation of Russia declares the presumption of taxpayers' good faith, the problem of distinguishing between bona fide and unscrupulous taxpayers for them and for the tax authorities will remain unsolvable. This problem has been widely discussed for years but neither the doctrine nor the judicial practice of generally recognized criteria and approaches has been developed to date.

At the same time, since the technical possibility of classifying the taxpayers into groups is already available, in our opinion, fixing in the tax legislation the rule on tax audits exemption of taxpayers who do not belong to risk groups for a certain tax period, could become an effective tool for ensuring tax compliance.

2.2. Horizontal tax monitoring

The Institute of horizontal tax monitoring was adopted by the Russian tax system in 2014.

As follows from the explanations of the Federal Tax Service of the Russian Federation, tax monitoring is «a method of extended information interaction, in which an organization provides the tax authority with real-time access to accounting and tax accounting data, which, in turn, frees the organization from conducting desk and field tax audits and retains the ability for the tax authority to verify the completeness and timeliness of the calculation (payment) of taxes and fees.»⁵

In the scientific and practical literature, tax monitoring is considered by the authors as an innovative (promising) form of tax control (Voronov, 2016: 146). According to O. Yu. Bakaeva and E. V. Pokachalova, due to

tax monitoring «the relationship between the tax authority and the taxpayer is transformed from vertical (with mandatory subordination of one subject to another) to horizontal (with elements of partnership), which allows us to resolve possible contradictions and disputes, eliminate existing shortcomings in advance, without resorting to traditional methods of legal protection» (Bakaeva, Pokachalova, 2018: 616–646).

Among the principles of tax monitoring, practitioners distinguish the following, «trust, open dialogue, and cooperation in relations between taxpayers and tax authorities; maximum transparency for the tax authority by providing online access to taxpayer accounting and tax accounting data; exemption from tax audits and transition from traditional forms of tax control, such as on-site and off-site tax audits, to enhanced information interaction» (Pipko, 2019: 41).

Tax monitoring results in the adoption of a reasoned opinion of the tax authority, which is adopted in order to clarify the tax authority's position on the correctness of the calculation (withholding) and payment (transfer) of mandatory payments by the taxpayer, in case of establishing a fact that indicates an incorrect calculation (withholding), incomplete or late payment (transfer) of taxes, fees, insurance premiums by the organization. A reasoned opinion (if the taxpayer refuses to comply with it) may be followed by a mutually agreed procedure, but not by actions aimed at bringing the subject to responsibility or collecting debts. A reasoned opinion (as opposed to a tax audit report) can be prepared at the request of the taxpayer, since tax monitoring is based on the principles of voluntariness and mutual cooperation of the parties. Taxpayers are exempt from liability and penalties in case of conscientious execution of the reasoned opinion of the tax authority.

Rendering a reasoned opinion of the tax authority can equip the taxpayers with the willingness to comply with tax legislation. In case of its non-fulfilment, the tax authority is entitled to start an on-site tax audit, following which a report will be drawn up, a decision on bringing to tax liability will be made, and the procedure for compulsory collection of tax arrears will be initiated.

⁴ Order of the Federal Tax Service of Russia of 30.05.2007 no. MM-3-06/333@ «On approval of the Concept of the system for planning on-site tax audits», In SPS «ConsultantPlus».

⁵ Letter of the Federal Tax Service of Russia dated 17.12.2014 no. ED-4-2/26194.

2.3. Measures aimed at curbing aggressive tax planning

Anti-tax regulations designed to suppress aggressive tax planning have been in force in the Tax Code of the Russian Federation since August 19, 2017, with the adoption of Article 54.1 – «Limits on the exercise of rights to calculate the tax base and (or) the amount of tax, collection, and insurance premiums».

According to the management of the Federal Tax Service of Russia, these regulations comply with the general rules on combating tax evasion (General Anti-Avoidance Rules, hereinafter referred to as the GAAR rules).

«The GAAR rules are a reference point for assessing the actions of taxpayers, identifying key signs of abuse, such as gaining a tax advantage that contradicts the purpose of the law; unusual (unreasonable) nature of the transaction by the taxpayer; artificial motive – intent in constructing operations to obtain tax preferences; contradiction to the economic content of the transaction in order to obtain tax benefits» (Arakelov, 2018: 109–115).

In part 1 of Article 54.1 of the Tax Code of the Russian Federation, it is considered unacceptable to reduce the tax base and (or) the amount of the tax due as a result of misstatement of the facts of economic life (an aggregation of such facts), about taxable objects subject to reflection in the tax and (or) accounting or in the tax statements of the taxpayer. Law enforcement practice shows that gaining unjustified tax benefits, in particular for income tax and value added tax, is achieved by including in the tax calculation expenses (tax deductions) from business transactions that did not actually take place through the use of the so-called formal document flow, when actually goods (works, services) are not purchased, and documents are drawn up formally to reduce tax liabilities. Thus, it covers the situations of gaining an unjustified tax benefit in the absence of real transactions, i. e. in cases where the purchase of goods (works, services) did not actually take place, and the documents submitted by the taxpayer are unreliable, which the taxpayer could not have been unaware of. This norm corresponds to the judicial doctrine previously developed by the judicial system on the criteria for

recognizing a tax benefit as unjustified, reflected in the Resolution of the Plenum of the Supreme Commercial Court of the Russian Federation No. 53 of 12.10.2006 and confirmed by judicial acts of the Supreme Court of the Russian Federation (for example, the Ruling of the Supreme Court of the Russian Federation No. 305-KG16–10399 of November 29, 2016). It is worth noting that the Federal Tax Service has officially stated the position that the new anti-tax rule «is not a codification of the rules formulated in Resolution No. 53, and represents a new approach to the problem of the taxpayer abuse of their rights, considering the main aspects of established judicial practice» (Yakushev, 2020: 4–7).

In part two of Article 54.1 of the Tax Code of the Russian Federation, the following situations are described: when the transactions (business operations) affecting the amount of tax payments really took place, namely taxpayers obtained goods (works, services) but from different suppliers (contractors). To exclude unjustified tax minimization, legislator considered it important to curb the rights of taxpayers – they are allowed to minimize the tax base and (or) the amount of the tax when complying with the two conditions:

- the main objective of the transaction is other than non-payment (incomplete payment) and (or) offset (refund) of the tax amount;
- transactional obligation is fulfilled by a person who is a party to the contract concluded with the taxpayer, and (or) by a person to whom the obligation to perform the transaction (operation) is transferred under the contract or by law.

By introducing these conditions, the aim was to prevent unjustified receipt of tax benefits, when the actual economic relations of the taxpayer for the purchase of goods (works, services) exist with real suppliers (contractors), and legally they make transactions with «technical» firms, which, as a rule, do not properly pay taxes on their sales operations.

Applying this rule, the tax authorities refuse to deduct VAT, as well as to take into account income tax expenses on transactions with «technical» firms.

In the judicial practice established before the adoption of this rule, a different approach was exercised. In particular, the decree of the

Presidium of the Supreme Commercial Court of the Russian Federation No. 2341/12 of 03.07.2012 indicated the legal position on the unfounded refusal to accept income tax expenses for accounting in the case when a business transaction (for example, the delivery of goods) actually took place, the expenses were incurred and the prices did not exceed the market prices for similar goods (works, services). This position is also held by some courts when considering tax disputes under Article 54.1 of the Tax Code of the Russian Federation (for example, the Decision of the AC ZSO of 09.07.2020 in case no. A27–17275/2019).

The Federal Tax Service of Russia has repeatedly expressed its opinion in letters (for example, letter No. SA-4–7/16152@ dated 16.08.2017) that when applying Article 54.1 of the Tax Code of the Russian Federation, the tax authority does not calculate the scope of the rights and obligations of a taxpayer who has allowed a distortion of the actual economic meaning of a financial and economic transaction. Otherwise, taxpayers will understand that they are not risking anything, and the likelihood of reviewing the results of the calculation in court is quite high.

In this regard, the anti-tax nature of the norm is devalued, since non-compliance with the rules established by it does not bear material consequences for the violator, except for bringing to tax liability and charging penalties for late payment of taxes.

The courts also point out that the norm in question does not prohibit the so-called «tax reconstruction» of the tax liability for income tax, so it is quite permissible. Complete non-acceptance of income tax expenses in the event that the reality of the service provision (purchase of goods) is not refuted by the tax authority during the audit, inevitably leads to a distortion of the real amount of tax liabilities for income tax. The amount of income tax may be additionally charged for payment to the budget in such a way as if the taxpayer did not abuse the right. Otherwise, in the opinion of the court, additional tax assessment in a larger amount than it should be becomes an additional measure of liability, which is not provided for by the current tax legislation (see the decision of the FAS of

the Ural District of 23.10.2020 No. F09–5758/20 in the case A76–46624/2019). And it is hard to disagree.

Thus, there are discrepancies in the understanding of the norm of Article 54.1 of the Tax Code of the Russian Federation as anti-tax, which can be regarded as legal uncertainty, which currently creates obstacles to achieving tax compliance when applying the GAAR rule in Russia. From our perspective, the uncertainty of application results from the lack of a legally established mechanism for restoring the rights and obligations of the parties to the tax relationship if it is proved that the taxpayer has violated the limits of rights established by Article 54.1 of the Tax Code of the Russian Federation for calculating the tax base and the amount of taxes. Such rules are likely to be developed in the future by judicial practice, and then the gap will be filled by the legislator.

Conclusion

Tax compliance means following the letter and spirit of tax legislation on the part of taxable persons, regardless of their motivation. The standard economic model generally reflects tax realities correctly and can be used as a basis for tax policy development. At the same time, the problem of tax compliance is too complex to be exhaustively described by a purely economic approach. Taxpayers' motivations are rather multifaceted. Therefore, a standard model is subject to expansion and supplementation by taking into account numerous non-economic factors that affect compliance.

The internal motivation to pay taxes can be determined not only by the threat of detection and punishment, but also by various factors, including non-monetary ones. People's ideas about taxes are always more than a rational comparison of costs and benefits. Individual and group ethics, national mentality, prevailing mores, traditions and stereotypes, civic maturity, conformity, value orientations, perception of justice or injustice of the tax system, irrational motivations, etc. play an important role in the formation of tax-relevant behaviour models. The choice between lawful

and unlawful behaviour is determined not only by pragmatic considerations of the benefits and costs of non-payment of taxes, but also by value factors, in particular, the deeply inherent desire for justice in most people.

Accordingly, tax administration can ensure tax compliance through various legal and non-legal instruments, including both instruments of coercive influence and instruments of voluntary incentives – in various combinations.

References

- Allingham, M.G., Sandmo, A. (1972). Income tax evasion: A theoretical analysis, in *Journal of Public Economics*, 1(3–4), 323–328.
- Alm, J., Jorge, M.V. (2010). *Developing Alternative Frameworks for Explaining Tax Compliance*. Editor(s): James Alm et al. Routledge: Taylor & Francis, 272p.
- Alm, J., Beebe, M.S., Kirsch, O.Y., Marian, J. (2020). New Technologies and the Evolution of Tax Compliance, in *Virginia Tax Review*, 39(3), 287–356.
- Alm, J. (2019). What Motivates Tax Compliance?, in *Journal of Economic Surveys*, 33(2), 353–388.
- Arakelov, S.A. (2018). Antiuklonitel'nye normy v mezhdunarodnoi praktike [Anti-deviation norms in international practice. New legislative instruments to combat tax evasion in Russia], in *Zakon [Law]*, 5, 109–115.
- Bakaeva O., Pokachalova E. V. (2018). Monitoring and audit as a tool for achieving a balance of private and public interests in tax and customs legal relations, in *Vestnik of Permsky university. Iuridicheskie nauki [Bulletin of the Perm University. Legal sciences]*, 4, 616–643.
- Bărbuță-Mișu, N. (2011). A Review of Factors for Tax Compliance, *In Economics and Applied Informatics*, 1, 69–76.
- Becker, G. S. (1968). Crime and punishment – an economic approach, *In Journal of Political Economy*, 76, (2), 169–217.
- Cui, Wei. (2017). Taxation Without Information: The Institutional Foundations of Modern Tax Collection, *In University of Pennsylvania Journal of Business Law*, 93 (1), 93–146.
- Dourado, Anna P. (2018). Whistle-Blowers in Tax Matters: Not Public Enemies, *In Intertax*, 46 (5), 422–426.
- Evans, C. (2018). *Improving Tax Compliance in a Globalized World*. Editor(s): Michael Lang et al. Amsterdam, IBFD, 940p.
- Feld, Lars P. & Frey, Bruno S. (2007). Tax Compliance as the Result of a Psychological Tax Contract: The Role of Incentives and Responsive Regulation, *In LAW & POLICY*, 29(1), 102–119.
- Feld, Lars P. Frey & Frey, Bruno S. (2002). Trust Breeds Trust: How Taxpayers are Treated, *In Economics of Governance*, 3(1), 87–99.
- Gangl, K., Benno, T. (2020). How to Achieve Tax Compliance by the Wealthy: A Review of the Literature and Agenda for Policy, *In Social Issues and Policy Review*, 14 (1), 108–151.
- Givati, Yehonatan. (2018). Of Snitches and Riches: Optimal IRS and SEC Whistleblower Rewards, *In Harvard Journal on Legislation*, 55(1), 105–142.
- Hatfield, M.W. (2017). Privacy in Taxation, *In The Florida State University Law Review*, 44 (2), 579–633.
- Huiskers-Stoop, Esther & Gribnau, Hans. (2019). Cooperative Compliance and the Dutch Horizontal Monitoring Model, *In Journal of Tax Administration*, 5(1), 66–110.
- Kamleitner, Bernadette & Korunka, Christian & Kirchler, Erich. (2012). Tax compliance of small business owners. A review, *In International Journal of Entrepreneurial Behaviour & Research*, 18 (3), 330–351.
- Kirchler, E., Muehlbacher, S., Kastlunger, B. (2018). Why pay taxes? A review of tax compliance decisions, *In Improving Tax Compliance in a Globalized World*. Editor(s): Michael Lang et al. Amsterdam, IBFD, 940 p.
- Krasiukov, A.V. (2018). Fulfilment of tax obligations in the digital economy [Ispolnenie nalogovogo obiazatel'stva v usloviakh tsifrovoi ekonomiki], *In Materialy nauchno-prakticheskoi konferentsii. Nalogovaya Sistema RF v usloviakh razvitiia tsifrovoi ekonomiki: pravovye i ekonomicheskie aspekty [Proceedings of the Research-to-Practice conference. The tax system of the Russian Federation in the context of the development of the digital economy: legal and economic aspects]*, Moscow, 43–50.

Osipova, E.S. (2020). Otsenka effektivnosti vyezdnykh nalogovykh proverok: metodiki i pokazateli [Evaluating the effectiveness of on-site tax audits: methods and indicators], *In Nalogi [Taxes]*, 5, 31–35.

Pipko, N. (2019). Nalogovi monitoring: tekushchie rezul'taty i perspektivy razvitiia [Tax monitoring: current results and development prospects], *In Nalogovaia politika i praktika [Tax policy and practice]*, 3, 41.

Thimmesch, A.B. (2018). Tax Privacy? *In Temple Law Review*, 90(3), 374–426.

Uslaner, Eric, M. (2018). Tax evasion, corruption, and the social contract in transition *in Improving Tax Compliance in a Globalized World*. Editor(s): Michael Lang et al. Amsterdam, IBFD, 174–190.

Voronov, A.A. (2016). Monitoring kak perspektivnaia forma nalogovogo kontroliia [Monitoring as a promising form of tax control], *In Vestnik finansovogo universiteta [Bulletin of the Financial University]*, 2, 146.

Wenzel, M. (2002). The impact of outcome orientation and justice concerns on tax compliance: The role of taxpayers' identity, *In Journal of Applied Psychology*, 87(4), 629–645.

Williamson, V.S. (2017). *Read My Lips: Why Americans Are Proud to Pay Taxes*. Princeton University Press, 304 p.

Yakushev, R.V. (2020). Ot pervogo litsa [From the first person], *in Nalogovaia politika i praktika [Tax policy and practice]*, 2, 4–7.