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# **ADMINISTRATIVE LAW. FINANCIAL LAW**

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## **SEVERAL ISSUES OF FORMATION OF THE LEGAL GROUNDS OF ADMINISTERING TAXES**

*SUMMARY* The system of tax administration established in the early 1990s and focused primarily on meeting the needs of the budget resulted, among other factors, in fiscal imbalance in the actions of the authorized state bodies which does not meet the modern challenges of social and economic development of Russia. Therefore, it is important and urgent to eliminate conflicts of regulation in tax legislation, to ensure a better legal base aimed at the improvement of the system of tax control and document flow; it will serve to provide additional legal guarantees and legally simplify tax burdens for honest taxpayers; it will reduce conflicts in the system of tax administration and improve tax legislation.

*The concept of the presumption of the fiscal honesty of citizens can and should be involved in the implementation of the legal functions of tax and other competent authorities, and should be applied at the highest level of proficiency.*

*The authors of this article have carried out a comparative analysis of the legal regulation of tax administration, and bring a number of suggestions to improve tax control activities by systematizing the procedural rules of the Tax Code. There should be a partnership-oriented legal basis for the activity of tax bodies and other authorized state agents.*

*KEY WORDS.* Administrative process, taxation process, tax control, tax administration, tax violation, fiscal procedure.

A number of objective reasons related to the Soviet Union's collapse and the creation of a socio-economic market-oriented model caused problems with the provision of the budgetary needs of the state, which led to fiscal imbalance in the tax administration.

It has been over 20 years since the establishment of the legal and institutional grounds of the current tax system of the Russian Federation. Over the years, the government at all levels, including its court system and its taxpayers, has done a lot to systematize and formalize tax legislation and improve taxation. All the legal rules

of the Tax Code have been further developed and improved, especially its first part. However, so far the tax administration lacks legal regulation and the setting of the legal norms of the tax system in the Tax Code.

Tax administration as a special function of tax bodies has not yet been documented in the Federal Act "Tax bodies" in its part concerning the Federal Tax Service and its territorial bodies and detailing organizational and functional measures of tax and administrative control in certain spheres [1].

Legal regulation of separate elements of the tax system at the subordinate level is exercised by the legislative bodies within their powers, the Government and the Ministry of Finance together with other authorized bodies of the Russian Federation and its territorial entities and municipalities.

Currently, the most comprehensive legal acts regulating relations in tax and administrative proceedings are the Administrative Provisions detailing certain state functions and the provision of public services by the executive bodies and developed in accordance with the recommendations of the Government of the Russian Federation [2].

Today the Ministry of Finance and the Federal Tax Service of Russia have adopted and put into effect over 30 Administrative Provisions detailing the procedure of exercising state functions and rendering state services in the work of financial and tax bodies [3].

However, these and other management and regulation acts do not provide a holistic and systematic definition of tax administration and its content. Measures for tax administration improvement were outlined in a more detailed way in Federal Act № 137-FZ dated 27 July 2006 [4].

Though numerous professional remarks concerning the acts were released in print and mass media, some further details should be provided on the general role of law in establishing the legal basis for a new tax administration model. Having developed and adopted numerous additions and amendments to the Tax Code of the RF, the legislators tried to improve the tax inspection procedure and related measures for tightening up on tax violators, paying fines and penalties and other enforcement measures. We agree with T.D. Sadovskaya, who says that many essential matters of tax verification procedures have finally been settled. Firstly this refers to the function of verification by the authorized bodies [5].

However, the revised and updated (based on critical analysis of previous acts) Tax Code of the RF contains conflicting, fragmentary and incomplete legal provisions which regulate tax and administrative relations. Many experts have expressed their criticism and made suggestions to eliminate drawbacks in the legal regulation of taxation. For example, A. S Titov argues that many legal rules and provisions in the taxation acts are not clearly worded, which leads to ambiguity in their understanding, interpretation and application. It complicates applying the law for both officials and ordinary citizens, breeds legal nihilism and often leads to very situational and calculable adverse financial consequences [6].

Thus the Government of the Russian Federation is taking the necessary steps to build a new tax administration model [7]. The basis for this partnership law application model should be a carefully developed legal regulation of administrative relations in the field of taxation, especially in tax administration. Voluntarism and subjectivism in this relationship would cause abuse, corruption and violation of taxpayers' rights, which is unacceptable both morally and pragmatically.

First of all, it is necessary to eliminate controversies, lacunas and other deficiencies in the Tax Code of the RF. For example, supervisory relations are not detailed in the Code, although since the administrative reform in 2004, the functions of control and supervision have been established as the basis for all Federal services including the Federal Tax Service of Russia [8].

Besides, significant lacunas and controversies in regulation of measures and means of tax verification and supervision, investigation procedure, seizure of documents and objects and other additional measures of tax verification are to be found.

The Tax Code (s.5, art.88) states that if the person in charge of a cameral tax inspection reveals a tax violation or other violation of tax legislation, s/he shall make an inspection report as stated in Art. 100 of the Tax Code. Obviously, the concept of "a violation of tax legislation" requires further explanation, since in the Tax Code there are no other violations of tax legislation then tax violations.

The Tax Code (Art. 1) is the only source to define the types and methods of tax verification and responsibility for tax violations (no other violations are mentioned). The acts defined in Art. 18 of the Tax Code cannot be regarded as "other violations of tax legislation", since they concern banks failing to comply with obligations and the associated responsibilities. Thus under "other violations of tax legislation", the legislator meant violations committed by persons in charge of legal bodies liable to taxation. We are talking about an administrative offense, as expressly stated in paragraph 4 of Art. 108 of the Tax Code, and in Section 15, Art. 101, which states that the tax authorities shall make a report on an administrative offence if s/he reveals a violation for which individuals or officials of the organizations shall be subject to administrative liability. Similarly, the legal procedure for tax violations revealed during other tax verification activities (besides tax inspections) is stated on p. 13 of Art. 101.4 of the Tax Code of the RF.

The Tax Code (p.2, Art.10) states that legal proceedings concerning violations of tax legislation featuring administrative offenses or crimes are regulated by RF Administrative Offences Legislation and Criminal Procedure Legislation. Thus we conclude that the Tax Code contains several articles that regulate reports on administrative offences, which is excessive. It would be sufficient to preserve p. 2 of Art. 10 of the Tax Code while all the rest should be deleted, since the Code of Administrative Offences details the proceedings on administrative offences exhaustively. In Section 5, Art. 88, the phrase "other violations of tax legislation" should be replaced by "other violations" so that the meaning is clear. The report of a cameral inspection is made when a tax violation or other violation of the law (a punishable criminal or administrative offence) is revealed.

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The Tax Code has no clear or systematic definition of the “other measures and means of tax verification” which are mentioned on p. 2 Art. 100, and other provisions of the Tax Code which are called “other forms” in section 2 part 1 art. 82. It is obvious that “other measures and forms” imply other activities except for those stated in p. 6. art. 101. It is doubtful that the list of “other measures” legitimately includes actions specified in Part 2, Section 1, Art. 82, since these actions can be carried out only during a field tax audit (for example, inspection of premises and territories).

Based on the analysis of the provisions of articles 31, 82 and other provisions of the Tax Code of the RF, verification measures may include suspension of operations on bank accounts and seizure of property (p. 5, p. 1 art. 31, art-s 76, 77 Tax Code); records and data checks (p. 2 art. 82), mutual informing of tax authorities (p. 3 art. 82), provision of relevant information by banks, registration, licensing and other authorized bodies, discovery of documents and information by the tax authorities, other notices and measures that provide information on tax offenses (art. 60, 85, 86, 90, 93, 93.1 Tax Code of RF); also measures connected with the execution of a decision concerning tax audit and tax collection procedure (art. 45-48). Other forms of tax control include joint verification of paid taxes together with the taxpayer (p. 7. art. 45, p. 3 art. 78).

The Tax Code (art. 101, 101.4) provides a different order of proceedings for tax violations revealed by audits (Art. 101) or by other measures of tax verification (Art. 101.4). The subjects of legal regulation here are so similar that we may combine them in a single procedural complex. This issue was treated by A. Peredernin in a monograph devoted to the status and problems of tax administration [9].

However, further research and suggestions to improve the legal regulation are required for the procedural order of introducing tax penalties. The Tax Code does not fully and accurately define (or does not define at all) the concept, objectives, forms, methods and structure of tax control procedure, the procedure of consideration of tax audit reports and tax offenses. Instead of unambiguous legal concepts, the following substitutes are offered: “judgment on the results of the tax audit materials” instead of a concise and sufficient “proceedings of the consideration of tax audit materials”; “enforcement of tax penalties” instead of “procedure of fixing punishment” and other terms and concepts that lead to a deficiency in execution procedures or direct the law’s application towards the fiscal nature of such measures.

We admit that it is problematic to conduct a thorough and systematic analysis of the problems associated with the improvement of tax administration in a single article. We also argue that instead of introducing fragmentary changes and amendments in Part 1 of the Tax Code, it would be better to provide a separate section “Tax Administration” and revise its content (legal regulation) by paragraphs (sections, chapters) which would simplify research into and application of tax law, and also eliminate the repetition of legal norms, lacunas, contradictions and other drawbacks of the Tax Code in force. [10]

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