

Optimizing the Process of Countering the Corruption of Tax Regulations under the Conditions of the Coronavirus Infection Pandemic

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ABSTRACT

The present article is devoted to the analysis of corruption in the optimization of the tax laws and regulations. An attempt is made to analyze the limits of the admissibility of anti-corruption regulation of tax legal relations by subordinate legal acts. With the development of public relations, there is an increase, alas, in illegal acts. Corruption is no exception. Thus, its variety is corruption in the field of tax legislation, where corruption poses a threat to the economic security of the country, distorting the system of fiscal state power and management, disrupting market reforms and, accordingly, distorting the law-abiding legal consciousness of Russian society. Individual representatives of the legislative branches of government sometimes use their powers and the rights entrusted to them for personal criminal gain. By its very nature, the verification of the law for compliance with the Constitution of the Russian Federation is addressed to the knowledge of the normative forming grounds of law, followed by a particular economic meaning. The inseparable link between all elements of the legal system and the Constitution of the Russian Federation, supported by the activities of the Constitutional Court of the Russian Federation, does not allow the main priority of the legal social state — constitutional legality, including the optimization of the process of combating corruption, tax rulemaking in the context of the coronavirus pandemic, to disappear.

Keywords: anti-corruption, tax legislation, bylaws, regulation of relations in the field of taxes and fees, conditions of the coronavirus pandemic, admissibility

On October 22, 2020 the President of the Russian Federation Vladimir Putin spoke at the meeting of Discussion club «Valday». According to his speech, it is necessary to create a strong, safe, invulnerable and absolutely stable system, which would ensure independence and sovereignty for Russia¹.

The speech of the President of the Russian Federation emphasizes, that the optimization of the constitutional principles protection of human and citizen rights is designed to identify and eliminate defects of law-making, that (beside direct results which are of some use for the legal system) maintain a value-based and hence integral attitude to law in the legislator. At the level of the Russian Federation's legal systems such legal awareness gets institutional support from authorities, that are not entangled in the dogmas of narrow normativism, but, on the contrary, evaluate the law for compliance with a document of higher power, which binds together legal and other social norms.

With the progress of social relations, we can unfortunately notice the increase of illegal acts. Corruption isn't an exception. Thus, its variety, corruption in the field of tax legislation, creates the threat of economic security of the state, deforms the system official state power, frustrates the market reforms and accordingly misrepresents the law-abiding of citizens. Based on the above mentioned, corruption in the field of tax legislation is a usage by a representative officer of their privileges and the rights entrusted to them for personal purposes, which contradicts the established law and the rules of rule-making.

As the practice of combating corruption in the field of tax legislation in the Russian state shows, not only the Tax Code of the Russian Federation needs protection, but also the implementation of tax law at the regional level.

In conditions of COVID-19-pandemic, the by-law regulation of legal relations in taxes-and-fees sector became widespread. So, the Government of the Russian Federation(hereinafter – the Government of the RF) issued a fairly large number of acts regulating taxes and fees (e.g., the resolution of the Government of the RF from 02.04.2020 №409 «Measures of providing stable development of economy», and some others). All these facts bring up to date the problem of by-law in taxation sector.

¹ Quote from: [online source] URL: <https://sib.fm/news/2020/10/22/vystuplenie-putina-na-valdae-22-oktyabrya-pryamaya-translyatsiya> (data of access: 10.02.2021).

According to part 1 of Article 1 of the Russian Federation's Tax Code² (hereinafter – the RF TC) the legislature of the Russian Federation on taxes and fees consists of the RF TC and federal laws on taxes, fees, and insurance contributions adopted in accordance with it. In addition, the legislation on taxes and fees in accordance with Part 4 and Part 5 of Art. 1 of the RF TC also includes legislative acts of the constituent entities of the Russian Federation and regulatory legal acts of municipalities in the relevant field.

The possibility of publishing issues by the Government of the RF, by the federal executive body, authorized to exercise elaboration of state policy and normative-legal regulation in taxes-and-fees sector and in customs, and by the local executive bodies, is provided in Part 1 Article 4 the RF TC. It should be noted that this norm contains some restrictions on the issuing of legal acts by the mentioned authorities, namely:

Possibility and cases of issue of a by-law act have to be directly specified by law on taxes and fees;

The issue of a by-law act is permissible within jurisdiction of the issuing authority only;

The issued by-law acts cannot change or supplement law on taxes and fees, unless otherwise provided by the Article 4 the RF TC.

The possibility of issue by the RF President decrees about taxes and fees isn't provided by law. But it doesn't mean that the State Chief Executive Officer doesn't participate in legal regulation of taxation sector. It should be noted that before the RF Tax Code was accepted, the decrees of the President had played the main role in regulation of fees and payments. So, for example, the decree №1212 of the RF President dated 18.08.1996 determined particular legal directions, addressed to taxpayers, aimed at increasing tax collection. With the adoption of the RF TC in 1998 the role of the President's decrees reduced. Nowadays the decrees of the President regulate common issues, for example, anti-corruption. Conformably, the President's decree № 314 dated 09.03.2004 (amended 12.04.2019)³ established the system and structure of federal executive bodies. Beside this, according to the Article 3 of the Law of the RF №943-1 dated 21.03.1991 (amended 26.03.2020)⁴ the taxation authorities shall be guided in their work by directions of legislative acts of the President of the RF. Also according to Professor M.A. Krasnov the role of the President in economic sector is crucial. De-facto the Constitution of the RF grants unlimited power to the President including the power in economy. M.A. Krasnov calls such state of things the effect of «competence gravitation»⁵. This statement is not indisputable. The President determines domestic affairs of the state as well. We can say, he plans general principles of development and their aims, he forms a «roadmap». But a significant amount of regulation is entrusted to legislative and executive authorities of the appropriate level.

As mentioned above, the Government of the RF have the right to issue subordinate acts on regulating not only anti-corruption, but also taxation. As the Government of the RF is an authority of general competence, the competence restriction is not valid by promulgation of subordinate acts. However, other restrictions apply to acts of Government of the RF. Particularly, the Government of the RF doesn't have the right to issue decisions aimed to amend or to supplement of the RF TC's norms. The Plenum of the Supreme Arbitration Court specified in paragraph 20 of Decree №33 dated 30.05.2012 that by considering by courts disputes concerning reasons of use of reduced tax rate (10%) by sale of provisions and other goods, it have to be taken into account, that according to paragraph 1 Article 4 of the RF TC the Government of the RF doesn't have right to impose additional restrictions to the rate's use, if they don't follow clauses of paragraph 2 Article 164 of the RF TC⁶.

The federal executive bodies also possess the right to issue by-law acts in the field of anti-corruption and in taxation sector. By promulgation of regulative acts it is necessary to comply with competence restriction. So, according to Part 2 Article 4 of the RF TC a federal executive authority endowed with control and supervision in sector of taxes and fees, other authorities specified in mentioned norm, have no right to issue legal acts in the field of taxes, duties and insurance fees. Such authority is Federal Tax Service (hereinafter – FTS, that is why it has no right to issue legal acts in the field of taxes, fees and insurance fees⁷. At the same time, FTS often clarifies the taxation law. In conformity with Constitutional Court of the Russian

² The Russian Federation Tax Code (Part 1) of 31.07.1998 № 146-Federal Law. Redaction from 23.11.2020 (with amendments coming into force after 01.01.2021) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_327521/17d01b2574b70fa72397256221039ccf439d4981/#dst100115 (data of access: 12.02.2021).

³ About the system and structure of federal executive authorities: the decree of the RF President from 09.03.2004 № 314 (redaction from 20.11.2020) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_46892/ (data of access: 12.02.2021).

⁴ About tax authorities of the Russian Federation: The Russian Federation Law from 21.03.1991 №943-1 (the latest redaction) [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_49 (data of access: 12.02.2021).

⁵ M. A. Krasnov. The President in the Economics: the effect of «the competitive gravitation» // Social sciences and modernity. 2014. №1. Pages 77-92.

⁶ About some questions facing the Courts of Arbitration by considering the added value taxes cases: the resolution of the RF Court of Arbitration Plenum from 30.05.2014 №33 [online source] // Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_164585 (data of access: 10.11.2020).

⁷ The RF Court of Arbitration Decision from 19.03.2010 according the case № BAC-9507/09 [online source] URL: <http://krasnodar.arbitr.ru/files/%D0%9E%D0%B1%D0%B7%D0%BE%D1%80%20%D0%BF%D0%BE%20%D0%9D%D0%9F%D0%90%20%2013.pdf>. (data of access: 09.11.2020).

Federation, such clarifications are de-facto mandatory for implementation by tax authorities under the principle of official subordination⁸.

There is a general discussion in the science of law concerning the role of fiscal authorities' acts. Rather often the Ministry of Finance of Russia and FTS of Russia issue acts, containing clarifications about both anti-corruptional and tax legislation. Such acts have to be issued on the assumption of some demands of part 1 Article 4 the RF TC. At the same time the question is, to what extent they are obligatory.

In the letter №03-02-07/2-138 dated August 7, 2007, the Ministry of Finance stated, that rather often clarifications from Russian Ministry of Finance's letters are considered to be a compulsory norm. But further the Ministry of Finance explains, that the written clarifications are not compulsory for tax authorities, taxpayers and fiscal agents – they only have to be accepted by parties of taxation system equally with other experts' publications in this field⁹. However, this explanation contradicts directly to paragraph 5 Part 1 Article 32 of the RF TC, because according to it tax authorities are obliged to follow written explanations of the Russian Federation's Ministry of Finance on the application of the Russian Federation's legislation on taxes and fees. This defect can be partly compensated by dividing the explanations of the Russian Federation's Ministry of Finance into rule-making: 1) ones granted to tax authorities; 2) ones granted to particular persons because of their appeal. So, the Supreme Court of the RF specified that the tax authorities are not obliged to follow the replies of the Ministry of Finance addressed to particular applicants. Perhaps is what was meant in the letter from August, 7 2007. But anyway the Ministry of Finance's clarifications exist, but the consequences of their application are different, including the fields of anti-corruption and tax legislation.

In court practice, the courts seldom consider the letters of the Ministry of Finance of the RF to be regulatory. So, in 2016 a legal entity tried to dispute a clarification of the Russian Federation's Ministry of Finance, which de-facto authorized the inspections of all deals by any tax authority under the pretext of necessity to elicit facts of manipulation with prices. The Supreme Court of the RF refused to consider the letters of the Ministry of Finance to be regulatory, because it doesn't go beyond the scope of appropriate interpretation of tax law and doesn't abolish any legislation norms about taxes and fees¹⁰.

However, in case of application of FTS's clarifications the taxpayer isn't guilty and accordingly isn't responsible for committing a breach of tax law.

It should be noted, that the clarifying acts of the Ministry of Finance and of the RF TC contribute to achievement of definiteness in taxation. According to A.V. Demin, the main reasons of formal controversies are the objective necessity of concretization and specification of too general taxation norms, the removal of gaps in tax law for lack of stable court practice and conformation of the tax norms with new changing conditions. Beside this, he refers to foreign practice of use of tax law clarifications as the source of tax law. The obvious advantage of fiscal bodies' clarifications is their simplicity. In the tax norms are usually rather difficult to understand, and under these circumstances the tax authorities help the amateurs in taxation to understand the tax norms¹¹.

In practice, when issuing the subordinate act (including anti-corruption in the sector under review), the parties of this rule-making often forget the requirements of paragraph 2 Article 5 of the RF TC – the absence of retroaction. So, the Volgograd Region's Committee of State Property Administration (VRCSPA) to the order from June 27, 2018 amended the order from October 27, 2015. According to these amendments the order of cadastral value was changed. Beside this, the mentioned amendment was attached the retroaction – paragraph 2 of the Order from June 27, 2018 determines, that the order comes into force on the expiration of 10 days after it has been officially published, and is valid for relations originate after January 1, 2016. The administrative court in banc resolved that this clause is illegal because of its contradiction to Part 2 Article 5 the RF TC¹².

Thereby by-law rulemaking in tax and fees sector is permissible and has a positive effect, including the requirements of the President's decrees on anti-corruption. At the same time there are some problems to determine the limits of such rule-making. And the restrictive criteria prescribed in Article 4 the RF TC are not quite clear.

In every social law-governed state there is a distance between rule-making prescriptions and application of law norm. The constitutional control authorities have been protecting the Constitution of the Russian Federation for more than twenty

⁸ The case about the control of constitutional conformity of the paragraph 1 part 1 Article 2 of the Federal Constitutional Law «About the Russian Federation's Constitutional Court» and the third paragraph of the sub-clause 1 clause 1 Article 342 of the Russian Federation's Tax Code because of the complaint of the public corporation «Gazprom neft»: the resolution of the RF Constitutional Court from 31.03.2015 №6-П [online source]. URL: <http://legalacts.ru/doc/postanovlenie-konstitutsionnogo-suda-rf-ot-31032015-n> (data of access: 10/11/2020).

⁹ The clarifications of Tax Law clauses according to the Article 34.2 of the RF Tax Code: the letter of the Ministry of Finance of RF from 07.08.2007 №03-02-07/2-138 [online source]. URL: http://www.consultant.ru/documents/cons_doc_LAW_71640/ (data of access: 10.11.2020).

¹⁰ The Tax Letter of the Ministry of Finance of RF is not a normative act, resolved the Supreme Court [online source] Vedomosti, 27.05.2016. URL: <http://vedomosti.ru/politics/articles/2016/05/27/642643-naligivie-pismo-minfina> (data of access: 10.11.2020).

¹¹ A. V. Demin. The official clarifications of fiscal authorities in conformity with taxations specificity. // Herald of Tomsk State University. Law. 2019. №31. Pages 63-73.

¹² The review of the RF Supreme Court practice №2 (2002) (approved by the Presidium of the Supreme Court of the RF from 22.07.2020). An appeal application of the Supreme Court from 09.10.2019 №16-АПА-19-14 [online source] Access from St. Petersburg «Consultant Plus». URL: http://www.consultant.ru/documents/cons_doc_LAW_358150/fd4e8ca7562b1bd37255e941b02634b90ec3e929 (data of access: 10.11.2020).

years. They provide the supremacy of constitutional law. The sequential removal of defects in law field is incontestable. The process of constitutional optimization per se, mentioned by the Russian Federation's President on October 22, 2020 at the meeting of Discussion club «Valday» is being accomplished due to the actions of the Constitutional Court of the Russian Federation, strengthens the supremacy of Constitution of the Russian Federation, fulfils at the same time its regulating potential and brings the rule-making and the actions of the Russian Federation to a qualitative new level¹³.

Therefore the optimization anti-corruption and rule-making in tax sector in conditions of COVID-19 pandemic, volume and tempo of mentioned rule-making are unprecedented and multiple; a new technology appears and is supplanted by another at once; the new regulation objects appear, the decisions of the Constitutional Court of the Russian Federation have multiplied recently. But nowadays the keeper of the highest – and that's why constant – features of constitutional law is exactly the constitutional control. Inherently the inspection if the law conforms with the Constitution of the Russian Federation is directed to cognition of regulatory constituent base of law with the subsequent particular economic meaning.

Supported by the Constitutional Court of the Russian Federation, indissoluble connection between all elements of law system and the Constitution of the Russian Federation preserves the main priority of the social law-governed state – constitutional lawfulness, including the optimization of anti-corruption and rule-making in tax sector in conditions of COVID-19 pandemic.

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¹³ Supra note 1.