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BUDGET AND TAX LEGISLATION OF THE RUSSIAN FEDERATION: CONSEQUENCES OF CONTRADICTIONS FOR SUB-FEDERAL BUDGETS

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Abstract

The paper discusses contradictions between budget and tax legislation of the Russian Federation that lead to the problems of revenue administration for sub-federal public entities (subjects of the Russian Federation and municipalities). Authors analyze different aspects of interaction between budget and tax legislation and make suggestions for improving status of sub-federal authorities in the area of budget and tax legal regulations.

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Budget and tax law are sub-branches of the same branch of Russian law – financial law. However, they have significant differences regarding the object and principles of legal regulation as well as the subject's structure of the relevant legal relations. These features determine contradictions that exist between sub-branches of financial law and, in the end, affect budget and tax rights and responsibilities of sub-federal authorities.

1. First of all, it is significant to set up the border between budget and tax law in order to see the causes of the contradictions in the legal regulation of budget and tax relations.

In accordance with Art. 39 of Budget Code of the Russian Federation (hereinafter – Budget Code) budget revenues are generated in accordance with the budget legislation of the Russian Federation, tax legislation and the legislation on the other obligatory payments. The Constitutional Court of the Russian Federation laid down the basis of differentiation of tax and budget law in the regulation of relations on the formation of budget revenues. In one of its decrees, the Constitutional Court stated that “tax relations between taxpayers and credit institutions on fulfillment of payment instructions on writing-off tax payments are regulated by tax legislation. Relations on transferring funds received as payment of taxes to the budget accounts are budget relation...”¹ Currently, this approach is reflected in the legislation. Tax law regulates relations ensuring the receipt of taxes and fees to the budget system, including the fulfillment of the obligation to pay taxes and fees payers (Art. 45 of Tax Code of the Russian Federation) and transferring of taxes and fees to the budget system by banks (Art. 60 of Tax Code of the Russian Federation). When mentioned funds are received on accounts of the Federal Treasury aimed to accounting revenues and their distribution among the budgets of the budget system (account No. 40101), relations that are object of budget legal regulation emerge (Art. 40 and Art. 218 of Budget Code).

The above-mentioned allocation of objects of legal regulation between budget and tax law affects other aspects of interaction of the budget and tax legislation. Taking

¹ Decree of the Constitutional Court of the Russian Federation No. 24-II dated 12.10.1998.

into account that objectives of tax law are over by ensuring of receipt of tax revenues to the budget system as a whole (to account No. 40101), tax legislation does not specify the level of budget system² that should receive this or that tax or fee³. The allocation of tax revenues between budgets of the budget system is the task of budget legislation. The norms of revenues' allocation between budgets are fixed in budget legislation (e.g., chapters 7, 8, 9 of Budget Code).

This, in turn, affects the rights of subjects of legal relations on generating of respective budgets' revenues.

2. Traditionally there are admitted following subjects of tax relations on formation budgets' revenues:

- taxpayers and payers of fees, from one side;
- public entities (the Russian Federation, subjects of the Russian Federation and municipalities), on the other side.

However not all public entities possess equal legal opportunities in the area of tax-legal regulation. The existing legal regulation significantly limits possibilities of sub-federal public entities in the area of tax-legal regulation. Within establishment of regional and local taxes principal powers are presented by the following:

- fixing of tax rates, an order and terms of payment of taxes if these elements of taxation aren't established by Tax Code of the Russian Federation (hereinafter – Tax Code);
- establishment of features of tax base's determination and tax allowances as well as grounds and order of application of tax allowances within in the limits and order provided by Tax Code.

Other powers include:

- establishment of additional grounds of recognition of arrears on regional and local taxes, debts fines and penalties on these taxes as hopeless to collecting (Art. 59 of Tax Code);

² Budget system of the Russian Federation has three levels: federal, regional and local.

³ The only exception is Art. 284 of Tax Code of the Russian Federation, which provides that corporate tax should be paid to the federal and regional budgets in certain percentages. However, in our opinion, this provision specifies the procedure of payment of tax by taxpayers, and it does not pre-judge the final size of allocation of corporate tax between budgets. The final allocation of corporate tax is fixed in Art. 50 and Art. 56 of Budget Code, which include percentage of receipt of the revenues from corporate tax to respective budget.

- establishment of additional grounds and other conditions of granting for deferred payments⁴ of regional and local taxes, fines and penalties on these taxes (Art. 64 of Tax Code);
- endorsement of change of term of tax payment, in particular, when granting the investment tax credit.

Besides mentioned powers, subjects of the Russian Federation possess some rights at introduction on their territories special tax regime⁵ in the form of patent system of taxation.

The scope of tax powers of subjects of the Russian Federation and municipalities allows to draw a conclusion of high extent of centralization of tax powers which, first of all, follows from Art. 71 of the Constitution of the Russian Federation referring financial regulation to exclusive competence of the Russian Federation. Besides, opponents of tax centralization also have to consider its objective reasons showing consequences of functioning of a federal state with so extensive and non-uniform territory. Some of these reasons are legal ones, such as necessity of the organization of effective tax administration and counteraction to tax evasion. Other reasons have social and economic nature. In particular, among these are inequality in distribution of tax potential between regions, considerable distinctions of social and demographic situation and others.

It is necessary to note that transfer of tax powers to sub-federal authorities will inevitably demand control of legality and validity of their decisions from higher authorities. However the appropriate system of control practically had not been formed yet.

At the same time, high extent of centralization of tax powers shouldn't turn into excessive one. It is obvious that establishment of elements of taxation of some taxes, first of all, property taxes, as well as conditions of application of the majority of special tax regimes, is most effective on sub-federal level. It will allow respective authorities to consider requirements of their own economic development, features of geographical position and demographic situation, national, ethnic specifics and other features of functioning of their regions.

⁴ Tax Code fixes two forms of deferred payments: one of them provides payment of full amount of the tax after the end of a period for which the deferment was granted; the other one provides payment of the tax in parts during the period for which the deferment was granted.

⁵ Special tax regimes provide substitution of one tax from special tax regime for several taxes from the common system of taxation or using special order of determining of elements of taxation from the common system of taxation.

Thus, in the area of tax-legal regulation sub-federal budgets possess insignificant powers of organizational character mainly.

3. Turning to the powers of sub-federal budgets in the area of the property relations, it is necessary to designate that the modern mechanism of tax administration of budgets' revenues is constructed in such a way that the main role is played by the Russian Federation. The account of the Federal Treasury to which taxes and fees are paid by payers (account No. 40101) is formally defined as the account of the federal budget. According to the Regulations on Rules of conduct of accounting in the credit organizations located in the territory of the Russian Federation, the accounts beginning with numbers 401 are intended for the accounting of means of the federal budget. This circumstance testifies that before distribution of the income between budgets appropriate funds are in possession of the Russian Federation, on the account that formally belongs to accounts of the federal budget.

Attempts of subjects of the Russian Federation to participate in the property relations, within which the direct movement of funds in their budgets is carried out, weren't successful. For example, subjects of the Russian Federation tried to defend competence to represent their interests connected with administration of the obligatory payments coming to regional budgets in cases of bankruptcy. However the Constitutional Court of the Russian Federation specified that "according to Art. 45 of Tax Code for subjects of the Russian Federation the right to dispose of the owing money, which was received due to payments of taxes, arises from the moment of receipt of tax payments to the account of appropriate authority of treasury. Respectively, collecting obligatory payments – as the question relating to the area of tax legal relationship – is in the jurisdiction of the Russian Federation"⁶.

As a result, sub-federal budgets are deprived of powers on administration of tax revenues of their budgets.

The above-mentioned features of the status of subjects of the Russian Federation and municipalities don't give them the chance to participate actively in collecting taxes. So, when taxpayers make mistakes or commit violations in a process of payment of taxes that might lead to failure to receive tax revenue by regional and local budgets, only federal bodies – Federal Tax Service – are capable to protect interests of sub-federal budgets.

⁶ Decision of the Constitutional Court of the Russian Federation No. 455-O dated 25.12.2003.

At the same time, present-day court practice testifies to existence of precedents when subjects of the Russian Federation and municipalities successfully protected rights connected with receiving revenues to their budgets in a judicial proceeding. For example, there are precedents when municipalities bring demands to the commercial courts to recognize illegal actions (inaction) of tax authorities in case when tax authorities didn't provide receipt of taxes to local budgets.

4. Budget law, as well as tax law, fixes certain powers of subjects of the Russian Federation and municipalities in relation to generation of revenues. However and in the area of mentioned legal relations rights of sub-federal budgets are also limited.

For example, the Constitutional Court of the Russian Federation considered the powers of the Russian Federation on budget revenue distribution (including revenues of regional budgets) to be ample enough. The Court held that the Russian Federation had discretionary powers to distribute tax revenues between regional and local budgets without reference to types of the tax (federal, regional or local). Those federal powers do not encroach constitutional rights of regional (local) budgets⁷. In practice the Constitutional Court confirmed the right of the Russian Federation to enact percentage allocations from regional tax revenues to local budgets.

Subjects of the Russian Federation and municipalities get the right on their budget revenues only after the money are credited to account of their budgets in the Federal Treasury. This rule is confirmed by mentioned Decision of the Russian Constitutional Court No. 455-O of December 25, 2003 where it is stated that "...subject of the Russian Federation is authorized to dispose of budget revenues (including tax payments) since the revenue is received on the Treasury account".

As a result sub-federal budgets are enabled just appeal against the actions of the Russian Federation (federal authorities) concerning distribution of the budget revenues between regional and local budgets. For example, sometimes subjects of the Russian Federation and municipalities sue the Federal Treasury for transacting of revenues to their budget. In one case local government appeal in court inaction of Federal Treasury connected with failure to transfer revenues to local budget as well as demand to transfer the revenues to the local budget account⁸. The claim was settled.

⁷ Decision of the Constitutional Court of the Russian Federation No. 142-O dated 12.04.2005.

⁸ Decree of Federal Commercial Court of Povolzhsky Okrug on case No. II55-10037/05-3 dated 18.05.2006.

5. Inconsistency and limited budgetary and fiscal powers of the regions and municipalities are not the only reason of sub-federal budgets problems. Another cause for these problems is conflicts in current tax legislation affecting the budgetary independence and security of the sub-federal level. The most obvious example of that is the emergence and the need to cover tax expenditures of sub-federal budgets arising from the implementation of the federal tax law norms.

In the Russian Federation tax expenditures are budget revenue losses attributable to tax exemptions, tax preferences, etc. established by the federal law. According to Russian tax authorities the amount of tax expenditures became bigger by half from 2010 to 2012⁹.

At the same time in 2012 almost a third of tax expenditures were concerned corporate income tax due to the regional budgets. The third of these tax expenditures was a result from the use “bonus depreciation” and higher depreciation rates by organizations.

Tax Code adapted a significant number of tax allowances and other mechanisms to reduce tax burden on corporate income tax as well as regional, local taxes and special tax regimes that cannot be repealed or amended by sub-federal authorities. They entitled just to add tax exemptions on appropriate level taxes based according their socio-economic priorities.

An exception is the corporate income tax. Subjects of the Russian Federation enable to reduce its tax rate (in part paid to regional budgets) from 18% to 13.5% for certain categories of taxpayers. For comparison with the mentioned data of tax expenditures, reduction of corporate income tax rates by regional tax laws led to the drop of only 3,47% of all tax expenditures in 2012.

It seems soundly to conclude that tax expenditures of sub-federal budgets arising in connection with the implementation of the federal legislation are one of the serious reasons of the independence declining by regional and local budgets.

The acuteness of mentioned problem and the necessity to resolve it were confirmed by the Guidelines for Tax Policy of the Russian Federation for 2015 and the planning period of 2016 and 2017. As part of budget sustainability maintenance the Guidelines propose gradual cancelation of existing federal tax exemp-

⁹ The Guidelines of tax policy for 2015 and the planning period of 2016 and 2017 (approved by the Government of the Russian Federation on 01.07.2014, http://www.minfin.ru/ru/performance/tax_relations/policy).

tions and tax benefits concerning regional and local taxes (except of those privileges and exemptions that have a direct impact on the already started investment projects). Despite its importance such “technical” cancellation of preferential mechanisms may violate the balance between public and private interests as well as social guarantees for taxpayers. The repeal of social tax exemptions performing compensatory function without guarantees of similar law implementation by sub-federal authorities may lead to serious social consequences for a significant number of less protected categories of taxpayers. That is true for stimulating tax allowances whose purpose is to achieve positive social effect as well.

The first steps in this direction have been already taken. Federal authorities cancelled tax exemptions for property tax concerning transportation, communications and utilities lines that made 0.3% of GDP tax expenditures (more than a third of tax expenditures on property tax).

At the same time, budget legislation does not prescribe clear mechanism for reimbursement of the effects from federal tax exemptions for sub-federal budgets. In 2007 Russian Parliament considered amendments to the Tax Code provided that losses of regional (local) budget revenues from regional (local) tax allowances should be the fully compensated from the federal budget. However, in May, 2011 the bill was rejected.

In general there is no transparent mechanism for compensation of additional expenditures that may occur in the sub-federal budgets in connection with decisions made by the Russian Federation.

Some basis for such reimbursement is included in the Constitution of the Russian Federation. For example, the Russian Constitution guarantees the local government right for compensation of additional expenditures concerning decisions taken by the public authorities (Art. 133). The Constitutional Court of the Russian Federation confirmed this right. The Court drawn attention to the fact that the federal and regional authorities of the Russian Federation are obliged to carry out a proper budget regulation through the use of legal mechanisms prescribed to be the Budget Code of the Russian federation in case of local revenue lack¹⁰. It was also confirmed that the expenditures of local budgets with insufficient own financial resources should be covered by the federal and regional budgets. However, the Constitutional Court of the Russian Federation did not specify a particular

¹⁰ Decree of the Constitutional Court of the Russian Federation No. 12-II dated 17.06.2004.

form of such compensation. It just made reference to the fact that law should determine the particular mechanism of compensation.

In practice, some kind of preclusion to legislative decisions leading to loss of sub-federal budgets revenue are put by legal conclusion on the bill. Responsible committees and commissions of the Parliament as well as of the Government should pay attention to point resources for compensation of lost revenues while the preparation of such legislation.

However, the legislation does not provide particular mechanisms to protect the interests of regions and municipalities from those cases when federal authorities adopt amendments entailing loss of subnational budget revenues.

Conclusions

Nowadays sub-federal budgets have limited powers concerning revenue part of their budgets in the framework of tax and budget law. In fact, they are excluded from the administration of budget revenues as well as from distribution of revenues between the budgets. Remedy of their rights and interests in this area can be carried out by appealing in court action (inaction) of tax authorities and the Federal Treasury as well as by recovering from the Russian Federation the losses caused by the federal authorities.

In the area of tax introducing sub-federal budgets have more ample powers. Nevertheless, despite the objective economic and legal reasons for the centralization of powers concerning sub-federal budget revenue administration, it seems reasonable to broaden tax powers of subject of the Russian Federations and municipalities. At the same time, such power extension should be accompanied by working out mechanisms for monitoring new acts regulating tax relations. Moreover, responsibility for adopting decisions that resulted in violations of the taxpayer and budget rights should be provided. To interest sub-federal governments in developing their tax potential, it is important to "link" the effectiveness of sub-federal tax power implementation with the margins of discretion as well as with responsibility for balance of the budgets.

In order to increase autonomy and security of the sub-federal budgets it is required gradual repealing of tax norms that lead to rising of tax expenditures for sub-federal budgets as well as corresponding transfer of relevant tax powers

to subjects of the Russian Federation and municipalities. First of all, such measures should concern tax allowances for taxes and special tax regimes that belong to sub-federal budgets. Simultaneously, it is important to secure social tax rights of taxpayers as well as to save stimulating allowances aimed at positive social effect.

Finally, budget legislation should prescribe effective mechanisms to compensate decrease in sub-federal budgets revenues caused by federal decisions.

Documents

The Guidelines of tax policy for 2015 and the planning period of 2016 and 2017 (approved by the Government of the Russian Federation on 01.07.2014) http://www.minfin.ru/ru/performance/tax_relations/policy/ [last visited: 1.12.2014].

Jurisdiction

Decision of the Constitutional Court of the Russian Federation No. 455-O dated 25.12.2003.

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