

Combating Tax Crimes at International and Intrastate Levels

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Abstract: Tax crimes may be of intrastate or transnational character. In this connection, it is necessary to study combating tax evasions within intrastate and international contexts. With the purposes of advancement of countermeasures, directed at tax crimes, it is necessary to develop international cooperation between various states in this sphere. In this study, we consider bilateral agreements of Russia with Foreign states regarding avoidance of double taxation as well as legal help, cooperation and information exchange in the sphere of combating violations of the tax legislation. We analyze accountability for tax crimes in Russia and other countries, make suggestions regarding advancement of criminal law of the Russian Federation which regulates accountability for tax crimes. In particular, we suggest approving non-exclusive list of means of tax evasions of legal or natural person. Besides, it is suggested to spread the action of the regulation about criminal responsibility for tax evasions from enterprises to sole traders. Strengthening cooperation between tax and law enforcement bodies would also favor combating tax crimes in the Russian Federation.

Key words: Tax crimes, tax evasion, combating tax crimes, double taxation, criminal

INTRODUCTION

Article 57 of Constitution of the Russian Federation regulates the following: "Each person is obliged to pay legally established taxes" (Rossiyskaya, 1993). This is in many ways conditioned by the fact that filling out of budgets of various levels depends in timely and full tax collection. Currently, we may observe mass tax evasion on the side of legal and natural persons. The budget receives much less money than it should be which unfavorably affects the life of all society and endangers economic safety of the country.

MATERIALS AND METHODS

Quite often tax crimes get transnational character which implies combating tax evasions not at national level only but also at international one. Countries strive to unite their efforts for taking countermeasures to tax and other economic crimes. This implies development of general approaches and principles at international level which are established in international acts. In resolution of the general assembly of UNO dated December 14, 1990 No. 45/107 "International cooperation in the area of crime prevention and criminal justice within the context of development" it is stated that, considering that innovative technology and special technical knowledge are used in

criminal operations in the sphere of international trade and commerce, including violation of the tax legislation and customs regulations, law enforcement and criminal justice personnel should be properly prepared and provided with adequate legal and technical means for detection and investigation of such violations of laws. It is necessary to provide coordination and cooperation with other corresponding establishments at national level and further enhance their possibilities. It is also necessary to press for conclusion and strengthening of direct agreements about international cooperation between various institutions of national criminal justice systems (Anonymous, 1990). As of today, the Russian Federation has concluded a range of bilateral agreements about cooperation in the sphere of combating.

Tax crimes. For example, Agreement between the government of the Russian Federation and government of the Kingdom of Sweden about mutual aid in the sphere of combating violations of tax legislation (Stockholm, December, 2, 1997). Agreement between the government of the Russian Federation and government of Georgia regarding cooperation and information exchange in the sphere of combating violations of tax legislation (Tbilisi, December, 9, 1997).

Another direction of international combating violation of tax legislation is conclusion of agreements about avoidance of double taxation. As it is known,

double taxation occurs in cases when the same revenue or property is subject to imposition of similar tax in two or more countries. There are two ways to avoid double taxation of legal or natural person: by means of unilateral relief or tax credit, provided in residence country and by means of concluding agreements, aimed at elimination of double taxation (Ibragimov *et al.*, 2014). There are >80 current bilateral international agreements about avoidance of double taxation in the Russian Federation. For example, convention between the government of the Russian Federation and the government of Democratic People's Republic of Algeria dated March 10, 2006 "About avoidance of double taxation with respect to income and property taxes". Agreement between the government of the Russian Federation and the government of the Republic of Tadjikistan dated March 31, 1997 "About avoidance of double taxation and prevention of evasion from income tax and capital tax", convention between the government of the Russian Federation and the government of Japan dated January 18, 1986 "About avoidance of double taxation with reference to income taxes", etc.

Some difficulties in combating tax crimes at international level are connected with various legal regulation of violations of tax legislation in various countries. Thus, there is no provision of criminal responsibility for tax evasion in legislation of Luxembourg at all; in Switzerland, tax frauds are referred to the subject of administrative law regulation. In the countries where there is criminal responsibility for tax crimes, these relations are not normalized. Criminal Code of the Russian Federation, touching upon tax evasions, mentions two crimes: evasion from payment of taxes and (or) charges from natural persons (Article 189), evasion from payment of taxes and (or) charges from legal persons (Article 199) (Anonymous, 1996). Similar divisions of taxpayers on natural and legal persons may be seen only in criminal legislation of CIS states. Criminal Code of Kazakhstan, just like the one of the Russian Federation, implies exhaustive list of means of tax evasions (Articles 221, 222 of Criminal Code of Kazakhstan). Criminal Code of the People's Republic of China contains Paragraph 6 "Crimes against procedure of tax collection". It also includes crimes, connected with non-payment of tax (for example, non-payment or underpayment of taxable sum by the tax payer by means of falsification, alteration, concealment, unauthorized destruction of invoice books and account vouchers (Article 201) as well as the crimes which regulate evasion from payment of specific taxes (for instance, fictional execution of special invoices for value-added tax (Article 2015).

RESULTS AND DISCUSSION

Fight against committing tax crimes at intrastate level is impeded by imperfection of taxation system and criminal legislation. One of the problems of bringing to criminal responsibility for commitment of tax crimes is exhausting list of means of tax evasion in the Article 198 and 199 of the Criminal Code of the Russian Federation, particularly failure to present tax declaration and other documents, presentation of which in accordance with legislation of the Russian Federation about taxes and charges is obligatory or by means of inclusion of knowingly false information into declaration or such other documents. In 1996 when the Criminal Code of the Russian Federation was adopted, the list of means of tax Evasion was exhausting and "other mean" was absent at objective side of mentioned crimes in 1998 Articles 198 and 199 of this part were added and the list became exhausting (Federal law of the RF dated June, 25, 1998, No. 92-Φ3) and in 2003 "other mean" was again annihilated (Federal Law as of the 8th of December, 2003, No. 162-Φ3). At interpretation of "other mean" of tax evasion various and even contradictory opinions were expressed. From this viewpoint, mentioned changes would allow avoiding possible disputes in theory and practice. On the other hand, relationships in society have been constantly developing and each day new and more sophisticated methods of tax evasions occur. In this connection, we suggest complementing part 1 of Article 198 and Part 1 of Article 199 of the Criminal Code of the Russian Federation with formulation "or by other means".

Another topical problem concerns special cases of relief from criminal responsibility for evasion from paying taxes and (or) charges from organization or natural person. Notes to Articles 198 and 199 of the Criminal Code of RF show that persons who committed abovementioned crimes for the first time are relieved from criminal responsibility in case they paid full sum of tax arrears or fees as well as the sum of the fine at the amount, defined by the Internal Revenue Code of RF. Position of legislator, who approved similar norm in the Article 76 of the Criminal Code of RF is not quite clear to us. It states that the person who committed crime provided by Articles 198-199 of the Criminal Code of RF for the first time, is relieved from criminal responsibility, in case damage, caused to budget system of the Russian Federation as a result of this crime, has been compensated in full. With the aim of elimination of possible confusion, it is advised to such repeat exclude from criminal legislation, either by removing part 1 of Article 76 from the Criminal Code of the Russian Federation or by excluding paragraph 2 from the notes to Articles 198 and 199 of the

Criminal Code. In addition, we do not agree with part 2 of Article 76 of the Criminal Code as related to special case of relief of criminal responsibility for committing crimes, provided by Article 199 of the Criminal Code of the RF. Thus, a person is relieved from criminal responsibility in case he/she compensates the damage to the person, organization or state as a result of committing the crime and in case he/she transfers cash compensation at the amount of fivefold sum of damage done to federal budget or in case he/she transfers revenues from crime commitment to federal budget as well as cash compensation at the amount of fivefold sum of revenues, obtained as a result of crime commitment. It turns out that social danger of the crime, stipulated for by Article 199 of the Criminal Code of the Russian Federation significantly exceeds social danger of other tax crimes, since in order to be relieved from criminal responsibility for its commitment one needs not only to reimburse the damage, caused to state financial system, as it is provided by Articles 198, 199, 199 of the Criminal Code but also to compensate it fivefold. Some authors suppose that obstruction to tax enforcement (Article 199 of the Criminal Code) is called a variety of tax evasion, with a special composition in relation to actions, stipulated for by Article 198 (as related to sole traders) and Article 199 of the Criminal Code of the RF (Bobyrev and Yefimichev, 2007; Solovyev and Knyazkov, 2012). We consider these positions not quite correct. Thus, in our opinion, concealment of monetary resources or property, at the account of which tax collection should be performed, should not be considered as a variety of evasion of payment of taxes. In accordance with paragraph 3 of Decision of Plenum of Supreme Court of the Russian Federation "About practice of application of criminal legislation about responsibility for tax crimes by courts", the moment of termination of the crime, provided by Article 198 of 199 of the Criminal Code of the Russian Federation, should be considered actual non-payment of taxes within the time limit set by tax legislation (Anonymous, 2007). Concealment of monetary resources and property, at the account of which collection of tax arrears should be performed, takes place yet after commitment of crimes, stipulated for by Articles 198 and 100 of the Criminal Code of the RF. Thus, according to Paragraph 1 of Article 46 of Internal Revenue Code, in case of non-payment of incomplete payment of tax within the prescribed timelimit, responsibility for tax payment is enforced by means of levy of execution on cash funds. In such a way, concealment of monetary resources and property will be performed at the time when tax evasion is a completed crime. Similar position is supported by Plenum of Supreme Court of the RF, noting: "If the person, who is guilty of tax evasion in large or especially

large scale, conceals monetary resources or property of organization or sole trader, at the account of which in accordance with the established procedure collection of tax arrears should be performed, the actions committed by this person is subject to additional qualification in accordance with Article 199 of the Criminal Code of the Russian Federation. In spite of the fact that Article 199 of the Criminal Code of the RF is not a special norm with reference to tax evasion, Articles 198-199 of the Criminal Code of the RF form unified system of tax crimes in legislation of Russia and require unified approach at legal regulation. The rule about special case of relief from criminal responsibility should be extended to crimes, stipulated for by Article 199 of the Criminal Code of the RF.

The attention should also be paid to the problem of definition of large scale of non-paid taxes in the context of Articles 198 and 199 of the Criminal Code of the Russian Federation. Pre-requisite for bringing to criminal responsibility for tax evasion is a large-scale evasion. According to note to Article 198 of the Criminal Code of the RF, a large scale for natural persons is considered to be a sum of taxes or charges which within the period of three financial years equals more than six hundred thousand of rubles, provided that the share of unpaid taxes exceeds 10% of the sum that is subject for payment, or which exceeds one million eight hundred thousand of rubles. Regardless of multiple discussions of this means in scientific literature and clarifications of Plenum of Supreme Court of the Russian Federation, law enforcers are still experiencing issues at classification of tax arrears. For solving of the problems that occur with definition of a large scale of unpaid taxes, investigators should have recourse to experts, who may be represented by specialists from tax authorities.

Besides, criminal legislation of the Russian Federation differentiate responsibility for tax evasion depending on type of taxpayer. Thus, if a natural person evades a tax, responsibility occurs according to Article 198 of the Criminal Code of the RF and if organization evades a tax, responsibility for its director or chief accountant occurs according to 199 Article. A question arises: if a sole trader evades a tax which article of the Criminal Code of the Russian Federation should a responsibility occur? Sole trader is not just a natural person, but also a natural person who does business activity (Akhmetshin and Shafigullina, 2015) Internal Revenue Code of the Russian Federation match sole trader with a legal person (for example, Article 46 of IRC of the RF) (Anonymous, 1998). However, Criminal Code of the RF match sole trader with a natural person and consequently, a sole trader who evades taxes should be

punished according to Article 198 of the Criminal Code. Since, criminal responsibility for tax evasion occurs only in case of a large scale evasion, then establishment of the same amount that defines a large scale for natural persons in general and natural persons who do business activity (for sole traders), in our opinion, breaks the principle of justice since, taxation of natural persons and sole traders differs. In this connection, we suggest recognizing sole trader as a subject of a crime, provided by Article 199 of the Criminal Code of the RF, i.e., to equate sole traders to legal persons.

Summary: Consequently, combating tax crimes requires further advancement at both international and intrastate levels. At international level, it is necessary to develop unified rules of cooperation of law enforcement bodies of various countries on cooperation and information exchange in the sphere of combating violations of tax legislation. Intrastate improvement must include a reform of criminal legislation of the Russian Federation by means of timely reacting to changes in tax legislation as well as the work on coordination of actions of law enforcement and tax bodies.

CONCLUSION

Not rarely tax crimes are of transnational character that's why the process of combating them requires cooperation between the countries. The Russian Federation concluded bilateral agreements with more than 80 countries regarding avoidance double taxation and rendering of legal aid in the sphere of combating violations of tax legislation.

Different countries prescribe different responsibility for violations of tax legislation. For example, there is no criminal responsibility for tax evasion in Luxembourg, in Switzerland tax fraud is regulated by administrative legislation and there is an entire chapter in criminal legislation of China which stipulates responsibility for crimes against the order of tax collection.

Since, every day new methods of tax evasion occur, we consider it rational to provide non-exhaustive list of means of committing the abovementioned crime in the Criminal Code of the Russian Federation.

Difficulty of definition of large scale of non-paid taxes for taking decision about bringing to criminal responsibility conditions the necessity of cooperation between investigators and tax authority specialists.

Advancement of international fight against commitment of tax crimes at international level should go

by way of development of unified rules of cooperation of large number of countries rather than bilateral conclusions as it takes place now. Intrastate improvement must include improvement of criminal legislation of the Russian Federation.

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