

The Problem of Protecting Taxpayers' Rights

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The problem of protecting the taxpayers' rights is one of the most important problems in Russian law. Every year it becomes more and more difficult to protect your rights in court. In this regard, it would be very important to note some very complex issues that arise daily, and they need to be discussed.

Every taxpayer or tax agent has the right to appeal against acts of tax authorities of a non-normative nature, actions or inaction of their officials, if, in the opinion of the taxpayer or tax agent, such acts, actions or inaction violate their rights as stated in Article 137 of the Tax Code of the Russian Federation.

However, according to Article 57 of the Constitution of the Russian Federation: "Everyone is obliged to pay legally established taxes and fees. Laws establishing new taxes or worsening the position of taxpayers are not retroactive". In our country income tax is 13%, whereas in other countries it is equal to 40-50%. In fact, we pay a lot more: paying the state duty for something, for social insurance, for a pension fund, for goods with tax. Every year the Ministry of Finance develops and updates systems that help us to pay taxes in a more or less easy way. But, starting from the end of 2018, problems and complains of taxpayers have become more frequent: a large amount of taxes; no one knows where the tax appeared from, the tax bill was sent by mail and received later than it should be received, and there are no penalties for that. At this point my personal example can be taken in consideration as I had such a problem when I was unable to pay the tax due to maintenance work on the website «Gosuslugi». Several months have passed since that time and the receipt is still not registered on my personal account on the «Nalog.ru» website.

According to Article 108 of the Tax Code: "Every taxpayer is considered innocent of committing a tax offence, while his guilt is not proved in the established federal legal order and established by a valid court decision". The most interesting fact is that the most of taxpayers' appliances for unlawful addition of taxes, penalties and fines are rejected. Information that is based on statistics demonstrates that tax authorities, unfortunately, satisfy only about 14% of taxpayers' complaints, the remaining 86% go back to arbitration courts.

According to part 5 of Article 89 of the Tax Code, tax authorities are not entitled to conduct two or more field tax audits for the same taxes and period. Tax authorities are not entitled to conduct in respect of one taxpayer more than two on-site tax audits during a calendar year, apart from the cases when the head of the Federal Tax Service decides that a taxpayer should conduct a

field tax audit over the specified limit. Order of the Federal Tax Service of Russia from 30.05.2007 approves concept of the system of planning field tax audits, defining 12 criteria for tax risks that should be obtained as a result of analytical work. In practice, it is possible to get into the situation when some tax payments were checked on a regular basis. In fact, the tax authorities either detect errors or shortcomings, that is, if the test does not find any faults, the Office of the Federal Tax Service considers this a “bad checking”.

An interesting fact is that disputes in the field of taxation are of a publicly legal nature and thus the subject of an agreement cannot be changed in tax consequences. So, it is impossible to reduce the tax rate, change the rules for calculating fines, or exempt from paying taxes for a certain period or operations.

Penalties can be directly applied not only to the taxpayer, but also to the tax authority, if the taxpayer was able to prove the illegality of non-performance of obligations by the tax authority. But fines are credited in favor of the state. According to Article 46 of the Tax Code of the Russian Federation, judicial fines are to be credited to the federal budget according to the standard of 100%.

The Tax Code does not provide respectful reasons for not paying tax. If you go missing because of, for example, a raid or an avalanche, and then you are discovered, a lot of taxes will appear when you are in rehabilitation. From our point of view, it is not right.

An interesting case is the Decision of Miass City Court No. 2A-1664/2018 2A-1664/2018 ~ M-1487/2018 M-1487/2018 dated July 24, 2018 in case No. 2A-1664/2018. Mrs. Petrova I.V. sold non-residential premises for 850000 rubles, but did not pay attention to the cadastral value of the premises. The court found that the administrative plaintiff did not use the provided Article 24.18 of the Federal Law of July 29, 1998 No. 135-FZ «On appraisal activities in the Russian Federation» with the right to challenge the results of determining the cadastral value of the said immovable property objects did not apply with a corresponding application to revise the cadastral value to the Office of ROSREESTR in the Chelyabinsk Region.

Moreover, by paragraph 2 of Article 227 of the CAS of the Russian Federation, the court satisfies the stated requirements only if it recognizes them as non-compliant with the regulatory legal acts and violating the rights, freedoms and legitimate interests of the administrative claimant, and imposes an administrative defendant to eliminate the violation of rights.

It means, that the legislator provided that the satisfaction of the requirements considered in the order of Chapter 22 of the CAS of the Russian Federation is possible only if there are two circumstances at the same time: the illegality of the actions (inaction) of the official (the illegality of the decision taken by him or the body) and the real violation of the applicant’s rights.

The administrative claimant did not provide evidence of violation of his rights by the Interdistrict Inspectorate of the Federal Tax Service of Russia No. 23.

Consequently, the Department of the Federal Tax Service of Russia in the Chelyabinsk Region had the right to take one of the decisions referred to in paragraph 3 of Article 140 of the Tax Code of the Russian Federation on the appeal of Petrova I.V., which cannot be considered as a violation of the rights and interests of the administrative claimant.

Despite this, we can still point out the injustice of actions and decisions with respect to taxpayers for a long time. Taxpayers, unfortunately, are the most unprotected people. What are the ways to protect their rights?

There are three main ways: judicial, administrative and self-defence. When challenging acts of tax authorities relating to individuals, the actions (inaction) of their officials, through legal proceedings (with the exceptions noted above, which immediately appeal to the court), the periods for accessing justice are calculated from the date when the person learned about the decision of the highest tax authority on the relevant complaint, or from the day when the deadlines specified in paragraph 6 of Article 140 of the Tax Code have passed. Protection of the rights of taxpayers in the administrative procedure occurs in the mode of chapters 19 and 20 of the Tax Code. Within the framework of administrative protection, the following are appealed against non-regulatory acts of tax authorities (they affect specific individuals, for example, the requirement to pay tax or penalties); actions (inaction) of officials of these bodies, which, according to the taxpayer, violated his rights. Tax rights can also be protected through the prosecution authorities, which supervise the correct application of legislation, including tax legislation.

Moreover, if a complaint is filed, for example, on the incorrect calculation of a tax on an individual, the tax authorities may intentionally “slow down” the process, delaying its consideration for a long time. During this time, penalties and fines may accumulate. Unfortunately, the tax authority will not incur any liability or a fine for this. Pre-trial decision is less effective than judicial. This can be seen in article 138 of the Tax Code.

A complaint against the tax inspectorate may be filed with the following authorities:

1. The superior tax authority. Any illegal decision of the tax authorities may be reversed by a higher tax authority. Such an administrative procedure for appealing against illegal actions or inactivity of the tax inspectorate does not often lead to positive results, however, it is a fairly operational way to resolve disputes where the tax fault is obvious.

2. The prosecution authorities. The presence of a general oversight function allows prosecutors to monitor the actions of any government body. However, in practice, the prosecutor's office rarely intervenes in tax disputes, reacting only where there are signs of a criminal offence in the actions of the tax authorities.

3. Court. The jurisdiction of the courts extends to all legal relations, which create prerequisites for filing a complaint against the actions of the tax authorities to the judicial authority.

Together with the obvious advantages (independence of the judiciary, the high level of qualifications of the person considering the case), filing a complaint with the court involves certain shortcomings, the key of which is a long period of judicial review.

At this point an example of successful protection of taxpayers' rights can be given for a better illustration of the question under discussion. Filatov V.V. appealed to the court to the Interdistrict Inspectorate of the Federal Tax Service of Russia No. 5 for the Saratov region to oblige to reflect the overpayment of the single tax on the personal account. In support of the requirements indicated that the decision of the Arbitration Court of the Saratov region decided to recover from Filatov V.V. arrears of taxes, penalties and fines in the amount of 512,702 rubles.

At the same time, the tax authority did not send to the bailiff service information about the test carried out, which led to the withholding of debt in the amount of 512,702 rubles. And, in addition, by offsetting (transfer of funds) in the amount of 149,862 rubles, i.e. on Filatov V.V. illegally charged to pay taxes (penalties and fines) in a specified amount of his income.

Representative of the Interdistrict Inspectorate of the Federal Tax Service of Russia No. 5 for the Saratov Region and the Office of the Federal Tax Service of Russia for the Saratov Region Fakhretdinova E.D. objected to the satisfaction of the clarified administrative claims, stating that the transfer during the executive production of funds occurred in violation of the Rules approved by the Order of the Ministry of Finance of the Russian Federation of November 24, 2004 N 106n.

Meanwhile, in accordance with Article 78 of the Tax Code of the Russian Federation, the taxpayer refunds the amount of overpaid tax if there are arrears in other taxes of the corresponding type or arrears of corresponding penalties and fines to be collected in cases provided for by this Code, is made only after offset the amount of overpaid tax to repay arrears (debts), while offsetting these amounts is made by the tax authority itself. Considering that Filatov V.V. there is a tax arrears, tax refunds cannot be made, this overpayment is subject to offset against existing debt.

The court decided to satisfy the administrative claims of Filatov V.V. and oblige the Interdistrict Inspectorate of the Federal Tax Service of Russia No. 5 for the Saratov Region to return Filatov V.V. that was excessively collected during the enforcement proceedings. The court declared the debts of Filatov V.V. hopeless to recovery in connection with the expiration of the term of collection.

To conclude, we can point out that the problem of non-compliance with legislation and judicial decisions are of great importance, since it is related to the problems of the taxpayers' rights protection and the problems of the application of certain rules in practice.

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