

INDIVIDUAL LEGAL ACTS IN THE TAX LAW OF RUSSIA

The tax system cannot work efficiently without the interference of the special fiscal state authorities which control taxation and bring its violators to justice. Rating authorities formalize their decisions towards particular tax-payers in the form of individual legal acts. Individual legal acts are the jural facts that lead to the accrual, change or termination of the tax relationships. In this quality individual legal acts existed even during the Soviet period of the Russian history in the capacity of authoritative acts. But they were not numerous because taxation was not the main source of the budget formulation.

The building of the modern tax system began when the first part of the Tax Code of Russian Federation¹ (hereinafter referred to as the TC of RF) was passed in 1998. Since that moment we could have been speaking of the comprehensive whole of individual legal acts. The Tax Code of Russian Federation provides the closed system of individual legal acts. To exemplify the last we can name the tax notification (Art. 52), the conclusion of the collection of a tax, a charge, a fine out of the monetary funds of tax-payers' bank accounts (Art. 46), the determination of the collection of a tax or a charge at the expense of tax-payer's property (Art. 47), the requirement for the payment of a tax or a charge (chapter 10), the conclusion of the stoppage of the account transactions of a tax-payer (Art. 76), the conclusion of distress (Art. 77), the conclusion of the granting the right to pay by installments, deferment of payment, investment tax credit (articles 61-68), the conclusion of offsetting or repayment of the overpaid (overimposed) tax, charge or fine (articles 78-79), the conclusion of the field tax audit (Art. 89), and the determination of calling a tax-payer to the tax account (Art. 101).

These acts are provided by the law only – by the TC of RF, and cannot be brought by the Ministry of Finance of RF subordinate legislations.

Individual legal acts are passed during the taxation process. The evolution of individual legal acts follows the path of more and more accurate legislative regulation

¹ Tax Code of Russian Federation of 31 July 1998 ("Sobranie Zakonodatelstva RF", N 31, 03.08.1998, Art. 3824)

in the procedure of their passing and realization. The first steps in this direction were done by the TC of RF that assigned some of the rules of passing such acts, their execution and realization as well as the appeals of these acts.

The science of tax law established that the direct legal effect display of law enforcement acts is their obligatoriness and invariability. Nevertheless, the obligatoriness of some individual legal acts is quite conditional. For example, if a tax-payer who is not a sole trader does not execute a decision of the rating authority on the tax, charge or fine collection voluntarily, the rating authority has to go to court with a recovery suit of the delinquent tax, charge or fine. If a tax-payer who is not a sole trader does not agree with a decision of the rating authority about the amercement, he has the right not to pay the fine while the tax authority is obliged to go to court with the recovery suit of a proper sum of the tax sanction from the guilty (Art. 48, Art. 101, 104, par. 7 Art. 114 of the TC of RF).

Individual legal acts are usually passed in order to control tax relations individually by means of tax principles of law. These tax relations are regulated generally by the law (by the tax laws and by-laws), but they need concretization and personification of a party or an object to the relationship. Individual legal acts are connected with the process of realization of a particular law or the obligation towards a particular case and situation rather than with the process of regulation. Individual legal acts are always concretized in time, space and public.

Individuality of the administration of the rules of an individual legal act consists of the fact that the bases for its publication are particular factual circumstances and particular rules of legal and social relations. Its contents are also individual as well as the consequences arising on its basis. Individual legal acts are addressed personally to particular tax-payers who are under the tax authorities' subordination.

The sphere of passing individual legal acts is quite extensive. These acts are passed at the different stages of the tax process: at the stage of the tax computation and paying (tax notification, request for the tax discharge, conclusion of granting the right to pay by installments, deferment of the payment, etc.), the stage of the tax control (conclusion of the field tax audit, of taking tax inspection arrangements, etc.), stages of calling to the tax account (conclusion of calling a tax-payer to the tax account, of refusal from calling a tax-payer to the tax account, of additional taking tax inspection arrangements).

Individual legal acts are passed by the state executives and judicial authorities, who carry out financing activities only, except local governments. Moreover, the circle of the state authorities and their officials who are authorized to pass individual legal acts is strictly bounded by the law. First of all, they are the rating authorities (Federal Tax Service of the Ministry of Finance of RF and its territorial bodies) which pass most of these acts provided by the TC of RF; custom authorities (Federal

Customs Service of RF and its territorial bodies) which make decisions on changes in terms of paying taxes-and-duties that are to be paid in connection with the relocation across the border of Russian Federation, and other acts that are passed in concordance with the tax law. For instance, custom authority makes a decision on the organization-tax-payer in concordance with Art. 77 of the TC of RF; authorities of the public off-budget funds which are authorized to make decisions on changes in terms of taxes-and-duties payments into the above-named funds, and other acts that are passed in concordance with the tax law; authorities that are authorized to handle payments of state due (courts, state interior bodies, etc.).

One of the most considerable problems is the terms of passing of individual legal acts. A term of passing of an individual legal act is a period of time established by the tax law since the beginning of the collection of evidential information proving the factual situation, which is connected with the publication of the act, to the moment of its passing calculated according to the procedure laid down.

On the basis of the analysis of tax law and judiciary law the following traits of terms of passing of individual legal acts may be distinguished.

1. Terms of passing of individual legal acts are specified only in the law – the TC of RF and cannot be set in other legal texts.
2. Terms of passing of individual legal acts have an imperative character and cannot be changed under the agreement between a tax authority and a tax-payer.
3. Terms of passing of individual legal acts possess a procedural character.
4. Terms of passing of individual legal acts are the jural facts that lead to the accrual, change or termination of the tax relationships.
5. Terms of passing of individual legal acts are fixed because the TC of RF unequivocally fix the duration of the time in which the bill should be published.
6. Terms of passing of fundamental individual legal acts may be characterized as compound ones, i.e. consisting of several particular durations.
7. Terms of passing of individual legal acts may be preclusive or organizational depending on the consequences of their non-observance.
8. According to the method of numeration, terms of passing of individual legal acts are subdivided into the term-period that are determined by the indication on the time period numerating in months or days, and term-moments that are determined by the indication on the moment in time designated as a calendar date or a particular event that is inevitable to come.

Individual legal acts have the internal and external form. The internal form of an individual legal act is its building and structure that organizes its contents (the splitting of the contents of a bill into paragraphs, parts, sections, etc.) The external form of an individual legal act is a written document. For some acts the TC of RF basic requisites, circumstances and questions which should be reflected in acts are fixed. Its details are regulated by the Code for such law enforcement individual legal acts as the resolution on tax responsibility charge (pt. 3, Art. 101, pt. 9 Art. 101.1 of the TC of RF); the demand of paying a tax or a duty (Art. 69 of the TC of RF). Forms for such acts are developed and approved by the Ministry of Finance of RF.

In the structure of an individual legal act the introductory, descriptive, preamble and resolute parts are distinguished. General requirements for all the individual legal acts are the requirements of legality, validity, rightfulness and reasonability. Unfortunately, consequences of the contradiction of individual legal acts to these requirements are not fixed in the TC of RF. The appropriate regulations in the Tax Code are absent. The legislative gap is being made up by the judicial tax practice. But, unfortunately, the criteria of legality of individual legal acts that are produced by the judicial practice are not uniform.

The uniformity is absent in such an element of the form as the name of an individual legal act. Most often in the TC of RF the term “conclusion” occurs as the name of a bill. Nevertheless, some individual legal acts are named as determinations. It seems to be logical to name all the individual legal acts published by the head of the tax authority and called conclusions as determinations.

It is reasonable to supplement the TC of RF with the article containing general requirements for the content and the form of individual legal acts as well as the consequences of non-observance of these demands.

The TC of RF does not create the opportunity for a tax authority to make changes in the individual legal act that has already been passed by it. But the superior tax authority (the common superior) can make changes in the individual legal act in the course of appealing (sub-paragraph 4 of the paragraph 2 of Art. 140 of the TC of RF). Nevertheless, there occur some cases in practice when the tax authority changed the resolution on the responsibility charge that had already been passed, for example re-qualified a deed of a tax-payer. Courts definitely interpret such actions of tax authorities as illegal because the TC of RF does not create the opportunity for a tax authority to make changes in the individual legal act that has already been passed.

There are two forms of judicial control of the publication of individual legal acts: a) preliminary and b) subsequent. The legal basis of the preliminary judicial control over the individual legal acts' passing is Art. 35 of the Constitution of RF, according to which a citizen cannot be deprived of his property anyhow but according

to the legal decision. That is why the determination concerning a tax and the duty of fine collection by the tax authority from a tax-payer who is not a sole trader is not absolutely obligatory for him. A tax-payer may not serve it, and in this case the tax authority is obliged to go to court with the recovery suit of arrears from the tax-payer. In this case the court verifies the legality and the validity of the decision of the tax authority that is expressed in the individual legal act. If a tax-payer who is not a sole trader does not agree with the decision of the tax authority to impose a fine, he has the right not to pay the fine, and the tax authority is obliged to go to court with the recovery suit of a proper sum of the tax sanction from the guilty (articles 48, 101, 104, paragraph 7 of Art. 114 of the TC of RF).

Consequently, the individual legal act does not possess a sign of obligatoriness until the court approves it. The disposition of the Russian Tax Law of the preliminary judicial control over the acts of jurisdiction corresponds with article 6 (the fair court examination right) of the Human Rights and the Fundamental Freedoms Convention in its interpretation by the European Human Rights Court. The court must have an opportunity to control the actions of the administrative bodies in questions of the suits and sanctions (the decision of 23.09.1998 in the case of *Malige v. France*, and of 23.10.1995 in the case of *Gradinger v. Austria*).

The subsequent judicial control is realized when judicial appealing of individual legal acts have already taken its legal validity and obligatoriness for a tax-payer.

According to the Tax Code of RF, there can appear some individual legal acts of a controversial nature in the tax law (the compact of the investment tax credit, conclusions of offsetting or repayment of taxes-and-duties). The enforcers wonder what the nature of these acts is, whether the civil law is pronounced for their regulation and what the limits are.

The research on such categories as tax enforcement, tax compact, the contents and form of individual legal acts, terms of their passing, and the burden of proof while passing individual legal acts, could provide a considerable contribution to the theory of financial law and the tax law in particular.

Streszczenie

Artykuł został poświęcony indywidualnym aktom prawnym wydawanym przez organy podatkowe w Rosji. Akty te są prawnymi faktami, które powodują powstanie, zmianę lub wygaśnięcie stosunków podatkowych. Rosyjski Kodeks Podatkowy wprowadza ich zamknięty system.

W treści opracowania autor definiuje indywidualne akty prawne organów podatkowych, analizuje ich strukturę, formy, procedury uchwalania, jak również dokonuje ich klasyfikacji.