



International Journal of Applied Business and Economic Research

ISSN: 0972-7302

available at <http://www.serialsjournal.com>

© Serials Publications Pvt. Ltd.

Volume 15 • Number 13 • 2017

The Peculiarities of Bank's Liability for Committing Tax Offences

Liana R. Barashyan¹

¹*Institute of Service and Entrepreneurship (Branch) of Don State Technical University, Rostov region, Russia. Email: Liana_80@mail.ru*

ABSTRACT

The need for the influence on the bank as an important institution of financial market and primarily through taxes is a very relevant problem. The theme of relations between banks and tax authorities are always relevant and affects the interests not only of banks but also their customers the taxpayers. A balance between measures to a bank secrecy and state control over the banking operations of taxpayers depends on the requirements of the current legislation in the established order. That's why from the perspective of constitutional economics there is the problem of the effective integration of economic and legal communication, mediated by the activity of the bank in the segment of the tax subsystem. The specifics of the development and functioning of commercial banks determines the direction of the impact on their activities through taxes. The tax impact of the state can be directed to individual elements of the system and the set of elements. In particular, the purpose of state impact can be a set of banks (all banks in general). For example, setting higher rate of income tax compared to other subjects of the economy in order to equalize the profit rate of banking and other sectors, all sectors of the economy. The purpose of the legal impact of the state may not be the totality of banks and its individual elements (banks). An example in this case can serve as economic and legal support of banks received losses in the previous periods by providing credits to cover such losses. The state may seek to enhance or to limit certain activities of banks and individual operations of credit institutions.

JEL Classification: G21, H21, H29, K34.

Keywords: Bank, liability, taxes, offences, tax system, tax liability, administrative liability, taxpayer, state, institution, taxation, violation of law, finance, taxes, legal relationship.

1. INTRODUCTION

Tax legal relations are characterized by the presence of the special subject. Its members can include entities involved in tax administration directly concerned in the results of the tax process; the subjects executing

the tax obligation; other legal subjects involved in tax administration (for support functions). The latter are entities that promote the fulfillment of the tax obligations (the bodies of state registration, tax agents and banks) and conducting tax control (experts, specialists, interpreters, witnesses of inquest and witnesses); tax informants (banks; notaries; the body carrying out the state registration of rights to immovable property and transactions and vehicles; stock brokers, etc.), and some other entities (Gogolev, 2016, p. 28).

The subjects of tax legal relations can be both banking and non-banking credit organizations.

In accordance with article 9 of the Tax code of the Russian Federation (TC of the RF) banks are participants of the relations regulated by legislation on taxes and fees as taxpayers, payers of fees and tax agents (Popov & Trishina 2015, p. 50).

They also have the rights and obligations of third parties in the tax legal relations as intermediaries: first, between taxpayers, payers of fees, tax agents in case of voluntary payment of obligatory payments and secondly, between tax and customs authorities during the forced recovery of such payments from tax payers, on the one hand, and territorial budgets of all levels of budgetary system of the Russian Federation, on the other hand (article 45, 46, 60 TC of the Russian Federation) (*"The Tax code of the Russian Federation"*, 1998).

The relevance of studying this problem is determined by several factors. As it is known in any economic-legal system the bank performs a threefold function as a separate taxpayer as a mediator between the government and the taxpayer and as a tax agent.

- as independent taxpayers banks like any other businesses must pay legally established taxes and fees. Some do not pay taxes since the Law of the Russian Federation "On banks and banking activity" prohibited to banks any operations on the production and trade of material values.
- as an intermediary between the state and taxpayers who carry out financial and business transactions of other taxpayers (enterprises, organizations, citizens) and which may provide specific services to the tax authorities including necessary information to verify the correctness of calculation and timeliness of payment of taxes to the budget.
- as tax agents (in terms of calculation, withholding of taxes from funds paid by taxpayers and transfer them to the budget).

This threefold role of banks raises many theoretical and practical questions. Commentators of article 134 of the Tax code indicate that the obligations of the commercial bank the failure of which gives rise to liability under article 134 are defined in article 76 of the Tax code regulate the procedure of suspension of transactions on accounts of a taxpayer as one of the ways of ensuring the obligation to pay taxes and fees. Thus, if the bank has not violated article 76 of the Tax code it can not be applied measures of tax liability, provided for by article 134 of the Tax code. However, in this aspect of the legal activities of the state there is a phenomenon that complicates the problem of qualification of the offence committed by the bank: liability for similar in content and method of the offence is also provided by article 15.9 of the Administrative code. Let's compare features of the bank liability for failure to execute decisions of the tax authority to suspend transactions on the accounts in accordance with the Tax code and Administrative code.

2. THEORETICAL ANALYSIS

The subject of financial offences the subject of financial activities, subject of the administrative offense, as a rule, is an officer of the organization. It is no accident that legal structure of administrative liability of legal entities had no a due development in the regulation of legal remedies of the Administrative code. In contrast, the tax code establishes the tax liability of legal entities (e.g. bank) for tax offenses (Barashyan, 2016, p. 239).

The nature of the offence of failure to fulfill the decision on suspension of account transactions is identical with the position of its tax-legal or administrative-legal perspectives. The legislator has established differences in the way of committing the offense and subject of the offense which determine the qualification of the offence. If the subject of the offense is a bank as the legal entity that carried out the execution of the taxpayer's order to transfer funds to another person that is not connected with the performance of duties on payment of taxes and fees, other payment order having advantage in sequence of execution over payments in the budget (extrabudgetary fund) according to the legislation of the Russian Federation, the offense is qualified as a tax according to the Tax code.

At the same time according to the Administrative code the implementation of the accounts of a taxpayer, payer of fees, tax agent, tax collector and (or) collections or other persons is qualified as an administrative offence at presence of the decision of tax body, customs body or body of the state off budget fund about the suspension on these accounts:

- expenditure transactions which are not related to the performance of duties on payment of taxes and fees.
- other payment order having according to the legislation of the Russian Federation advantage in execution over payments in the budget (extrabudgetary fund).

According to the Administrative code the subject of an administrative offence is an officer of the bank and other credit institution.

As you can see this competition of norms shows, at least, the logical inconsistency of the legislators: the norm about administrative responsibility of legal entities in the Administrative code has not received proper deployment while the bank as a legal entity subject to legal liability in accordance with tax legislation.

We have previously noted that the Tax Code doesn't indicate banks and credit institutions as a specific independent participants of tax relations. However the Tax Code of the Russian Federation sets the status, rights and obligations of the banks in certain articles which not only de facto but also de jure defines their important role in the domestic tax system.

Moreover, since the tax payments are made through commercial banks, they are endowed with special powers for the implementation of control functions within the tax system. The efficiency of the banking system's work largely depends on the success of the financing revenues of budgets of different levels, the efficiency of the functioning of all tax system in Russia.

3. RESULTS

Identifying areas of exposure brings another problem to the fore. The problem is what methods of taxation on banking activity to use, to what extent and how they will affect the activities of credit institutions, on the results of the entire tax system.

The principle of separation of powers leads to the specialization of the branches according to the criterion of the most optimal and balanced exposure to the dynamics of the tax system.

You can legally change the taxation system through the introduction or abolition of certain taxes and to make adjustments to already existing laws, for example, to change the object of taxation and tax rates.

Administrative and legal method determines the entire spectrum of tax administration, tax control, including audit, implementation of information functions of the state while maintaining balance between the interests of state and taxpayers. Finally, the judiciary should maximize the protection of the interests of all participants of tax process.

That tax system is the most important that should regulate the production, business activities, investments.

When building a tax system we should orient ourselves to the model concept developed in the theory of institutional economics.

These include, for example, the concept of compensation benefits, an equal share of the tax burden assuming proportionality between the tax and the amount of earned income and a resource concept which focuses on the relationship of tax with the cost of the resources consumed. The choice of the concept of tax system is a complex task of state influence on the economy as a whole, and in particular, on the activities of commercial banks. One of the most important elements of this concept is the matter of tax liability of banks. At different stages of development of the country this problem is solved in different ways.

In world practice there are four basic models of the tax systems depending on the distribution of tax burdens reflecting the peculiarities of legal systems: Anglo-Saxon, Continental, Latin American and mixed (Barashyan, 2014, p. 53).

A feature of the Anglo-Saxon model is its focus on imposing direct taxes, taxpayers - individuals bear the main burden.

A characteristic feature of the continental model is the high share of social insurance contributions, which can be attributed to tax payments, since they have all the signs of a tax. The share of indirect taxes is also considerable in particular VAT.

The high level of inflation determines the specific features of Latin American tax model which is focused on the imposition of indirect taxes with the aim of protecting budget revenues from inflation.

The existence of a mixed model of the tax system also in Russia is due to the fact that many countries diversified the structure of revenues not wanting to make the budget revenues of countries dependent on a specific tax or a group of taxpayers.

An important activity in the field of taxation is to bring it in the line with the conditions of development of society and confronting the country's problems.

In a market economy (decentralised and indirect role of the state in managing the economy) the impact on the activities of other entities of economic relations has a corresponding tax policy of the state and banks are no exception. The development of activities and areas of tax impact on the economy including banking pursues certain goals. The main ones are encouragement of investments in the real sector of the economy; increasing investment potential of the Russian banks; limitation of the possibility of using various

schemes of optimization of financial flows, both the banks and the enterprises-customers; develop rational and fair system of taxation.

Achieving these goals is only possible with the simultaneous use of two areas of tax exposure on banking activities: direct (taxation of banks) and indirectly (tax on operations related to banking activity).

A direct dependence of state budget from tax revenues has made the liability for tax violations one of the main components of the system of tax legal relations and demanded its deep legal regulation.

The responsibility for compliance of legislation defines responsibility because if there is no liability then there is no obligation. Thus, any rule of law for ensuring its implementation should be accompanied by the establishment of responsibility for its failure. For example, prior to the enactment of the Part one of Tax code of the Russian Federation there were no sanctions to tax agents (including banks) for delayed withholding and transfer to the budget of tax on income of foreign legal entities from sources in the Russian Federation, i.e. the obligation of tax agents was established but the responsibility wasn't.

However, sanctions should not be overly harsh in order not to come the taxpayer to bankruptcy result in the state may lose income in the future (because of the absence of the taxpayer). An individual can be held to the liability, for example, for a late payment of tax due to insurmountable objectively (when appropriate) events and phenomena: floods, earthquakes, hostilities, epidemics, etc. Thus, for the purposes of justice and further development of the economy should be wide differentiation of responsibility for tax violations. In this case, the subjects of responsibility should be not only taxpayers but also tax agents, banks and other lending organizations responsible for transfer taxes to the budget or extrabudgetary funds, as well as the executive authorities for unauthorized and illegal actions.

Selecting and changing the tax system, establishing tax rates, providing tax incentives belong exclusively to the competence of the state legislature.

However, in recent years, the governments of the various States increasingly develop a single solution in the tax area. This extension of foreign trade relations in various fields of Economics and Finance and political integration of the Council of States (the most actively this is done in the EU). This is especially for banks which are increasingly appearing on the international financial markets.

The administrative method of the tax impact on the activities of banks is defined as a complex of measures and activities of the executive authorities to ensure full and timely payment of all taxes and fees.

The administrative method involves not only the control work of tax authorities but also accounting and analytical and Advisory activities of the executive authorities. Thus, the administrative method is implemented through: the work of tax authorities with taxpayers directly (answers to questions, explanation of tax legislation: the issuance of regulations, guidelines, letters, etc.); desk and field tax audit of activity of commercial banks; analysis of the effectiveness and appropriateness of certain taxes paid by commercial banks; audit.

Desk audits are designed to identify the violations committed by taxpayers on the basis of provided reports by the tax authorities in the purpose of direct inspections in banks. Thus, a desk audit is one of the sample of choice required for field audits of taxpayers. Field examination is designed to identify offenders to improve tax discipline and culture, identify common errors and shortcomings of the current legislation in order for its further improvement.

According to the Federal law of 2 December, 1990 No. 395-1 “On banks and banking activities” (as amended) the credit institution's activity shall be subject to annual audit by an auditing firm having in accordance with the legislation of the Russian Federation license to conduct such inspections.

Due to the large number of commercial banks and a significant amount of services, the Central bank of Russia and the Russian Federal tax service is simply unable to efficiently and adequately check the activity even of a certain percentage of banks. The role of statutory audit as the form of the tax impact is to help the CB and the Russian Federal tax service to control the activities of commercial banks including the order of conducting of accounting and taxation. Audit company shall compile a report on the results of the audit check containing information on validity of financial statements of a credit institution, the compliance with the mandatory ratios established by the CB the quality of management of credit organization, condition of internal control and other provisions established by Federal laws and the Charter of the credit institution.

However, according to many economists and lawyers, the quality of the audit reports on the activities of commercial banks does not meet the requirements. According to experts, most of these assessments is done at a low professional level, in many cases unnecessarily, in a positive light in the interests of the audited banks. Thus, in our view, there is an urgent need to improve the level, quality and accountability of audit firms is conducted in credit institutions inspections.

At the same time the state must consider the balance of interests of various stakeholders in the justification of the level of requirements for audit companies. So, six Russian auditing trade associations wrote the letter with the request to soften guidance for banks in choosing auditors to the Ministry of Finance of the Russian Federation and the Central Bank of the Russian Federation.

As you know since 2005 banks are required to report according to international standards.

In the opinion of the Central Bank auditing firms must check these reports in the staff of which are at least four professionals with degrees of IFRS. Since most Russian companies do not meet the requirements banks prefer to turn to the international auditors. That is why Russian companies propose to reduce the number of specialists to one or two people.

As a result of implementation of tax legal relations can be tensions between taxpayers and tax authorities. The judiciary aims to protect the rights and interests of taxpayers and the state, which determined the selection of the third method of tax impact - judicial. The better and more powerful the judicial system, the more possibilities for the normal functioning of the market economy.

The fact of presence of judicial protection psychologically contributes to the improvement of tax culture of taxpayers (including banks). The decisions of courts on contentious tax issues provide as practice shows a common approach to certain norms of the tax legislation by taxpayers and tax authorities which in turn facilitates the payment of taxes in accordance with the law. In addition, the judiciary provides the completeness of tax revenues to the budget and takes decisions on recovery of sanctions. The efficiency of the judicial method, the tax impact is determined by the organization of the judiciary (powers of the courts, the timing of cases, etc.) and their funding (which directly influences the organization of their work). In general by the judicial method the state influences not only on banks but also on authorities (principle of equality - all are equal under the law and must obey it).

Directions and methods of tax effects are in close relationship and interdependence: the use of a particular method determines the direction of the impact, the choice of direction involves the use of a particular method of exposure. So, changing the taxation system (introduction or elimination of taxes) and tax rates, the government affects the banking system as a whole. The change in the tax base can be directed at the banking system as a whole and on the separate bank operations (for example, when the total change in the order of definition of tax base the impact on all the banks; change the order of the taxation of futures transactions only for the specified operations of banks - participants of the urgent market). By granting or withdrawal of benefits the state can impact on the banking system as a whole (for those benefits that apply to all banks, for example, the pre-existing exemption for the contributions to the reserve fund) and private banks (e.g., the exemption for profit tax on losses from previous years) and separate bank operations (the exemption for government securities). Defined similarly and inverse relationship: when determining areas of impact are developed appropriate methods.

Determining the directions and methods of tax impact on banks requires consideration of border effects since any effect has its limits.

Borders of tax effects (tax burden) for banking activities are defined by the maximum and minimum rates and amounts of benefits. The basis for the definition of the boundaries is the theoretical dependence of the tax rate and total tax revenues by A. Laffer which consists in the following:

- there are no revenues at zero and 100% tax rates;
- the maximum revenues at the 50% rate of tax.

The Laffer effect is to increase revenues to the budget with tax increases (to 50% and rates) and the fall in revenue (rate above 50%).

The direction of the Laffer curve is affected by the tax system and the mechanism of collecting specific taxes because of differences in their interaction. In this regard, the more revealing and practical seem to be a correlation between budget revenues from not the average tax rate, and rates of specific taxes. For Russia, we should not to determine the optimal tax rate and expand the tax base through legalization of the incomes and business.

4. DISCUSSION

Analysis of the existing system of taxation of Russian banks shows that a small reduction in the tax burden will only lead to a reduction of budget revenues. In order to increase tax revenues and development banks it is necessary more dramatic reduction in the tax burden. A small increase will boost revenues until the payment of taxes will not lead to a loss of activity of the taxpayer in accordance with law.

On the basis of the characteristics of the boundaries of the tax impact, the main source of increase of incomes of the budget at the moment is the legalization of business for which is necessary the first to cut taxes to the level of the cost of different schemes of tax evasion and the second is to strengthen measures of responsibility for violation of legislation.

However, such judgments eliminate the problem of strengthening of responsibility of banks for infringement of the legislation on taxes and fees.

We consider the problem of similar rights and obligations of the banks as taxpayers.

Credit organizations (according to the tax code of the Russian Federation) have the right to receive free information from tax authorities at the place of registration on current taxes and levies, legislation on taxes, fees and other acts containing norms of the legislation on taxes and fees, as well as the rights and duties of taxpayers, the powers of tax authorities and their officials; and other authorised state bodies written explanations on issues of application of legislation on taxes and fees. However, banks have the right to use tax benefits provided there are sufficient grounds and in order established by the legislation on taxes and fees; to obtain a deferment, installments, tax credit or investment tax credit in the manner and on the terms established by the Tax code. Legal norm on timely offset or return of overpaid or overcharged taxes, fines, penalties also applies to banks.

Taxpayers have the right to appeal the acts of tax authorities and actions (inaction) of their officials in the prescribed order; to require the full compensation for losses caused by unlawful decisions of the tax bodies or unlawful actions (inaction) of their officials. They can demand the observance of tax secrecy (Barashyan, 2016, p. 194).

Banking secrecy in a commercial bank shows a modification of (commercial) confidential information. As a special case of commercial secret in a commercial bank when it is submitted to the courts, the Audit chamber, tax, customs and investigative bodies this secret becomes a professional secret – a special case of official secrets.

There are a number of responsibilities which include: payment of legally established taxes; registration with the tax bodies if it's provided by TC; records of their income (expenses) and objects of taxation, if such obligation is stipulated by the legislation on taxes and fees; to submit to the tax authority at the place of registration in the prescribed manner the tax return for the taxes that they are required to pay if such duty is foreseen by the legislation on taxes and fees, and accounts in accordance with the Federal law “On accounting”; to submit documents to the tax authorities and their officials in cases provided by this Code required for tax calculation and payment; to comply with the lawful requirements of tax bodies to eliminate violations of legislation on taxes and fees, and not to hinder lawful activity of officials of tax authorities in the performance of their duties; to provide to the tax authority the necessary information and documents in cases and order provided by TC; within four years to ensure the safety of accounting data and other documents necessary for calculation and payment of taxes, and documents confirming the income earned (for organisations, also expenses incurred) and paid (withheld) taxes;

Banks are required to report in a written to the tax authority at the place of registration:

- about the opening or closure of accounts – within ten days;
- all cases of participation in Russian and foreign organizations – not later than one month from the date of beginning such participation;
- all separate divisions created on the territory of the Russian Federation, – not later than one month from the date of their creation, reorganization or liquidation;
- declaring insolvency (bankruptcy), liquidation or reorganisation – not later than three days from the date of such decision;
- about the change of its domicile or place of residence – not later than ten days from the date of such change.

Since 1 January, 2002 credit institutions in the order established by Chapter 25 of the Tax code used the accrual method of accounting for income and expenses for tax purposes.

The Tax code introduced the concept of tax accounting. This is the system for collecting information to determine the tax base for tax on the basis of primary documents grouped in accordance with the procedure provided in this Code. Tax accounting is in a summation method.

Despite the fact that banks for some reason not mentioned in article 9 of the Tax Code as independent participants of tax relations, however, the role and importance of banks in the tax field cannot be underestimated.

For more accurate and detailed definition of the role and importance, we believe it is necessary to define more precisely the concept of "tax agent". The Tax Code gives the following definition: tax agents admit persons who are responsible for the calculation, withholding from a taxpayer and transfer to the appropriate budget taxes (off-budget fund) (*"The Tax code of the Russian Federation"*, 1998).

Tax agents have the same rights as taxpayers, unless otherwise provided by the Tax Code.

Tax agents send the withheld taxes as provided by the order for payment of the tax by the taxpayer.

For non-discharge or improper discharge of his duties the tax agent is liable in accordance with the legislation of the Russian Federation.

In some cases, the bank like any organization performs the duties of a tax agent, for example, on the tax to incomes of individuals, tax on income of foreign persons, tax on purchase of foreign banknotes and payment documents in foreign currency.

Obligations of the bank as a taxpayer are sufficiently developed in the tax legislation but with regard to the duties of the bank as a tax agent or as a person on which the government imposed duties related to the tax paying and control (hereinafter "person"), the banks have a number of questions, in particular, how does the right of the tax authority to request the submission documents by bank on the accounts of individuals with the obligation of banks to maintain "a bank secret".

5. CONCLUSION

As you know contracts and account of customers are the primary documents that carry objective information about transactions of these entities. the Need for these documents for tax control is undeniable. According to item 4 p. 3 of article 24 of the Tax code, tax agents are obliged to submit documents to the tax authority at the place of registration required to control the correctness of calculation, withholding and transfer taxes. In accordance with p. 2 of article 93 of the Tax code "...refusal of a tax agent from the submission of documents requested by the tax inspection or refusal to submit them within the deadline shall be a tax offence and shall be liable under article 126 of the Code (*"The Tax code of the Russian Federation"*, 1998). In the case of such refusal the official of the tax authority performing a tax audit shall carry out the seizure of necessary documents in the manner prescribed by article 94 of this Code." As for the rule of paragraph 2 of article 86 (offset her norms of article 135.1) of the Tax code of the Russian Federation, its provisions do not apply to bank's obligations as a tax agent and sets out the obligations of the bank as "other person", which holds data on taxpayers engaged in entrepreneurial activity. In addition to the liability under article 135.1 of the tax code the bank as "other person" may be liable under article 129.1 of the Tax code for

wrongful failure of information (untimely message) that the person must inform the tax authority. The general rule defining the concept of tax offense “other person” is article 106 of the Tax code.

Thus, articles 24 and 126 of the Tax code, on the one hand, and articles 86 and 135.1, 129.1 of the Tax code, on the other hand, regulate legal relations with a variety of subjects.

References

- Barashyan, L. (2014). Correlation of tax and administrative liability. *Life Science Journal*, 11(9), 51-55.
- Barashyan, L. (2016). Problems and prospects in the field of tax administration. In *IV International Scientific-Practical Conference “Actual Problems of Improving Legislation and Enforcement”* (p. 193-195). Ufa: Eurasian Research Institute of Law.
- Barashyan, L. (2016). The relation of financial, tax and administrative responsibility. *International Review of Management and Marketing*, 6(S6), 235-240.
- Gogolev, A.M. (2016). The problems of legal regulation of the state administration in tax and fee sphere. *Financial law*, 3, 28-32.
- Popov, V.V. & Trishina E.G. (2015). The participation of banks in tax legal relations: the separate matters of legal identity and rights protection. *Banking law*, 5, 50-57.
- The Tax code of the Russian Federation* (Part one) of 31 July 1998 № 146-FL. Retried 3 July 2016 from <http://www.pravo.gov.ru>.