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Tax Risks: Problems of Minimization and Prevention of Their Negative Consequences

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ABSTRACT

The article considers the problems of the implementation of the tax risk management methods in the practice of economic entities and governmental authorities. The main idea of the article is to show the possible opinions concerning the essence of the tax risks and methods of their minimization by risks. The relevance of such type of research is stipulated by the necessity to consider the economic, financial and also the legal nature of the tax risk. On the base of the performed research of the existing scientific views on the essence of the risk in regard to the tax component, the article offers the specifying notion of a “tax risk”. The classification of the tax risks was concretized; the criteria and factors that influence the estimation and choice of methods of tax risk minimization were grouped. The main conclusions of the authors showed that today the minimization of the tax risks requires the application of new, more qualified tools of research, one of which is tax risk management. Such theoretical and empiric approach to the tax risks will enable the participants of the tax legal relations to estimate the tax risks, to determine and take measures for their prevention and significant minimization.

Keywords: Tax, tax risks, indicators, factors, minimization.

1. INTRODUCTION

Why economic agents put themselves in jeopardy? The reason is that they believe in the possibility to use the risks as a resource of the formation and increase of profit and hope for the growth of the cost of business. Could there be any other explanation of the tendency of the largest companies to enter the developing markets? The list of risky steps performed by the agents is rather long. The study of the notion “risk” has a long history. The study of various aspects of risk gets the special relevance at the end of the 19th and the beginning of the 20th century. Taking into account all said above, it should be mentioned that scientists still cannot come to the consensus concerning the problem of determination of risks and their classification.

The complexity and interrelation of the factors of risk creation from each other makes us think that the economic science will not come soon to the clear division of risks (Shatalov 2000). However, many offered types of risks and their model shave the right to exist. The urgency of the problem of risk study is stipulated by the fact that despite the multidimensionality and branching of the systems of risks, the new types of risks appear that become the subject of the active discussions. One of such is a tax risk.

Undoubtedly, the process of management of any risks, including the tax risks, has specific features; nevertheless, it is under action of the general theory of risk and includes the following stages: identification, estimation, and minimization. The economic nature of the tax risk also shows itself through the most important principles: the probability of unfavorable events in the uncertainty conditions.

First of all, the theoretical and methodological identification is required and also the detailed selection of factors and the ways of minimization of the tax risks.

Many scientists, including Bryzgalin A., Bernik V. and Golovkin A. (2006), believe there is no clear understanding of the essence of the tax risk by now, which is explained by the multiple aspects of this phenomenon and practically complete ignorance of it in the Russian legislation, in the real economic practice and business activity (Bryzgalin, Bernik & Golovkin 2007; Grekova 2008; Dadashev 2008). There is no doubt that scientists distinguish various notions of the tax risk; nevertheless, a common moment can be distinguished in all scientific views: the tax risk is more often associated with negative sides that should be overcome (Mayburov 2010b; Panskov 2011)

Besides, a wide range of scientific approaches in regard to the diversity of risks represents a rather complicated system of views that makes their classification more difficult. Besides, it should be mentioned that there are some special risks that refer to a particular sphere of activity or situation. (Beresneva 2006)

Sharing the above-presented opinions of the authors, we would like to add that the tax risk, in our opinion, can be interpreted in a narrow and a wide sense. In the narrow sense, it is the probability of financial and other losses. In the wide sense, the tax risk is an activity connected to the overcoming of uncertainty of the situation of a change in tax rules that leads to the decrease in the level and quality of life on the whole.

Consequently, the notion “tax risk” is connected directly to the notions “probability” and “uncertainty”. The *probability* is understood as some possibility to achieve the particular result, objective. *Uncertainty* presupposes the presence of factors at which the results of actions are not determined and the degree of the possible impact of these factors on the results is unknown. Different points of views of the ratio of notions of the tax risk and uncertainty are distinguished, but the most significant are the following:

1. Tax risk is an *activity*, connected to the overcoming of the uncertainty and situations of change of tax rules, during which there is a possibility of quantitative and qualitative estimation of the achievement of the presupposed result;
2. The situation of tax risk is a *diversity of uncertainty*, when the occurrence of the events is probable and can be determined.

2. METHODS

In the economic sciences, the tax risk is based upon the probability nature of the economic activity of agents and uncertainty of the situation during its performance.

We will try to understand this phenomenon and presuppose that this phenomenon (uncertainty) should be considered in two planes:

1. Mathematical plane, where uncertainty is considered in the interaction with risk and estimated through the included coefficient of the tax risk.
2. Management plane, where uncertainty is considered as the changing tax environment around us, that is, at the institutional level.

Synthesizing the quantitative and qualitative approaches to the essence of the tax risks, one shall concentrate on the theory and empiricism of the real and possible types of risks of the taxation policy. (Aronov 2004) The offered classification was specified and added by the authors with the new components that allow obtaining a full picture of the essence of tax risks (Table 1).

Table 1
Classification of forms and types of tax risks

<i>Features</i>	<i>Types of budget risk</i>	<i>Description of budget risk</i>
Uncertainty	Pure (statistic)	Probability of unfavorable consequences for economic agents and budget
	Speculative (dynamic)	Probability of unfavorable, neutral and favorable consequences
Coverage	External	Risks arising beyond the taxation system of economic agents, territory (political, natural, ecological, etc.)
	Internal	Risk arising within the framework of the taxation system of economic agents, territory (inefficient management, local events in the region)
Time of appearance	Current	Risk acting in the current taxation period
	Past	Risk that have already been identified earlier and was not eliminated
	Future	Risk that will start to act when performing the future stages of the taxation policy
Character of impact	General	Risk typical for all economic entities and territories regardless of their geographical position, sectoral structure and other factors
	Specific	Risk typical for particular entities regardless of their geographical position, economic specialization and other factors
Form of participation in budget	Positive	Risk arising during the formation and execution of profitable budgetary flows
	Negative	Risk arising during the formation and execution of expenditure budgetary flows (penalties, fees, etc.)

<i>Features</i>	<i>Types of budget risk</i>	<i>Description of budget risk</i>
Reputation	Commercial	Risk of loss of business reputation due to the disclosure of facts of tax evasions and information of non-payments
	Political	Risk of loss of political reputation due to the disclosure of facts of tax evasions and information of non-payments
Level of taxation system	Federal	Risk arising during formation and execution of federal taxes
	Regional	Risk arising during formation and execution of regional taxes
	Municipal	Risk arising during formation and execution of local taxes
	Special	Risk arising during formation and execution of special tax regimes
Importance of result	Main	Risk resulting in the significant financial disproportions (losses of economic agents, budget deficit, non-payments, etc.)
	Secondary	Risk making an insignificant impact
Objectivity	Objective	It predetermines the risk leading to the unfavorable consequences for economic agents, taxation system as a result of the processes, phenomena and actions independent for human consciousness
	Subjective	It predetermines the risk leading to the unfavorable consequences for economic agents, taxation system as a result of the intended activity of entities (low human resources, corruption, etc.)
Level of controllability	Completely controllable	Risk that can be minimized maximally during management
	Controllable	Risk that can be minimized partially, diversified
	Uncontrollable	Risk that cannot be a priori minimized during management
Probability of event	Allowable	Low probability of an event, lower than mathematical expectation
	Acceptable	The probability of an event is equal to mathematical expectation
	Critical	High probability of an event, higher than mathematical expectation
	Catastrophic	Low probability with significant losses
Structure	Invariant	Risk arising under impact of one factor
	Variable	Risk arising under impact of several factors

Sharing the opinions of the authors and despite the significant potential of losses that tax risk bears, it is at the same time the source of possible profit (Dzhaarbekov 2008; Kamalova 2007; Kiryushina 2006). Therefore, the main task of the economic agent is to avoid the risk at all or to choose the risk-connected solutions on the base of the objective criteria, that is: up to what limits can one act taking risk that is to determine the limits.

It should be mentioned that the existence of the tax risk led to the fact that the management of tax risk of some cases became an independent type of the professional activity performed by the institutes of specialists and also by the financial managers, risk managers and insurance agents.

Thus, it should be mentioned that the problems of the management of tax risks and taking decisions when they are not certain are rather relevant in the market economy conditions. Trying to answer the question “What is going on with the tax risks?” means to come closer to the problem of the management of the tax risks.

As it was said before, the tax risks are a probability that the actions of tax payers will be considered as non-conforming to the tax legislation, as the result of which the penalties will be applied according to the norms of the Tax Code, Budget Code, Criminal Code, etc. However, neither tax legislation nor budget legislation or moreover the criminal legislation does not contain such notion as a tax risk. Instead of this, the category “unjustified tax benefit” is used to which even the legal methods of tax optimization can lead (Resolution of the Plenum of the Supreme Arbitration Court of the Russian Federation dd. October 12, 2006 No. 53 “Arbitration Court estimation of the justification of obtaining of a tax benefit by the tax player”).

We should mention that the tax benefit is determined as:

Decreasing the taxation base; obtaining the tax deduction: obtaining the tax allowances; application of the lower tax rate; obtaining the tax return (allowance) or tax refund from the budget (Ovchinnikova 2007; Pazdnikova 2014; Paschenko 2010; Uglanova 2009).

The said typical operations can be found in the fiscal accounting of every organization. According to the Resolution of the Government of the Russian Federation No. 53 “Importation of the products subject to the obligatory confirmation of conformity into the customs territory of the Russian Federation”, the tax benefit is unjustified in the cases, if: 1) the economic sense of the operations is distorted; 2) their business objective is absent (for example, the operation is directed to the decrease in the taxation base only); 3) the real business activity is absent, including the physical resources, human resources, fixed assets and so on economically necessary for the manufacture of goods, performance of works or rendering of the services. At this, the features for the receiving of the tax benefit are specified: the absence of the business objection; unreal character of operations; availability of the particular circumstances that cannot serve as a reason to consider the tax benefit to be unjustified; requalification of the transactions; availability of counterparts that were recognized as abusive tax payers.

Consequently, the tax risks give the possibility to bring the material losses to the entity of the economic activity as a result of the overpayment (non-payment) of taxes or the application of the tax sanctions, penalties to it from the taxation authorities and also the possibility of criminal and administrative prosecution of its officials. (Pechenegina 2006; Savina & Savin 2013; Pinskaya 2003)

3. RESULTS

The following stage is the selection of factors and their estimation. The tax risk is connected, first of all, to the availability of some subjective reasons by the financial entity. Below is the attempt to systematize the risk indicators according to the reasons of its presence (Table 2).

Table 2
Factors of tax risks

<i>Risk indicator</i>	<i>Possible risk factors</i>	<i>Risk estimation, %</i>
1	2	3
	<i>Tax over payments</i>	
Systematic overpayment of taxes according to the taxpayer account	<ul style="list-style-type: none"> • Weak operational control of the budget payments • Untimely representation of the applications for the overpayment return • Errors while determining the size of the advance payments 	0.058
Availability of growing tax overpayments in the statement of the taxpayer account	<ul style="list-style-type: none"> • Problems of interrelations with the Ministry for Taxes and Charges Tax Inspectorate and financial authorities that require the intervention of the management of financial entity, activation of actions of the public officials by presenting of claims and appealing of their lack of action in the superior authorities 	0.058
Availability of factors of unjustified deduction (penalty) of the surplus sums of taxes by the tax authorities	<ul style="list-style-type: none"> • The economic entity does not take measures of impact on the tax authorities and this creates the atmosphere of lawlessness of their actions 	
Errors when charging taxes that lead to the overpayments and facts of non-use of the tax allowances	<ul style="list-style-type: none"> • Absence of the tax administration and internal audit • Lack of confidence of the specialists of financial and accounting services in their actions • Over cautiousness by the unauthorized management • Over estimation of the charged sums of taxes and refusal of the disputable allowances • Intentional creation of the insurance mechanism for the cases of additional charging of taxes following the results of inspections 	0.058
	<i>Financial sanctions</i>	
Single cases of the enforced recovery of tax arrears and charged penalties in the uncontested proceeding	<ul style="list-style-type: none"> • Weak operational control of the payments to budget • Errors when compiling the current plan of the economic entity 	0.058
Systematic cases of the enforced recovery of tax arrears and charged penalties in the uncontested proceeding	<ul style="list-style-type: none"> • Absence of tax administration • Weakening of work of the financial services to provide the monitoring of the status of payments to budget and receiving of the possible delays, installments and tax credits <ul style="list-style-type: none"> • Non-optimal taxation regime • Imperfect method of compiling of current plans, budgets of the economic entity • The economic entity creates the planned tax arrear 	0.058

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<i>Risk indicator</i>	<i>Possible risk factors</i>	<i>Risk estimation, %</i>
Applying of sanctions for the breach of order of the tax registration and procedure of tax returns	<ul style="list-style-type: none"> • Absence of knowledge of the elementary requirements of the tax legislation by the authorized specialists of the financial service or accounting office • Weakening of the discipline and absence of the proper sanctions to those responsible from the managers <ul style="list-style-type: none"> • Absence of tax administration 	0.058
Penalty and application of sanctions for breaching of rules of accounting of the taxable objects, tax calculation procedure	<ul style="list-style-type: none"> • Low level of the legal protection, qualification of lawyers, failure to provide the cassation appeals • Absence of the efficient technology of the internal tax control and low quality of the external audit <ul style="list-style-type: none"> • Low qualification of personnel of the financial and accounting services • Realization of the high risky schemes of tax optimization 	0.058
Application of sanctions for counteractions of the taxation authorities when they perform the tax control	<p>Absence of the internal instruction for the specialists of financial services regarding the enquiries of the taxation authorities</p> <p>Weak discipline</p> <p>Failure of particular employees to estimate the operational situation</p> <p>Rudeness and tactlessness of some specialists regarding the officials of the taxation authorities</p> <p><i>Attempts to bring the officials to account</i></p>	0.058
Imposition of administrative sanctions on the person, guilty in tax violation	<ul style="list-style-type: none"> • Availability of formal signs of administrative violations and also ignorance of the procedure of imposition of administrative sanctions on citizens and officials 	0.058
Tax evasion, tax payable and performing of actions that can be qualified as tax evasion	<ul style="list-style-type: none"> • Irrational use of incoming income <ul style="list-style-type: none"> • Absence of tax payments • Public announcement of unwillingness to pay taxes • Absence of arguments of economic reasonability of schemes of activity arrangement <ul style="list-style-type: none"> • Absence of information protection • Low quality of legal expertise of the performed operations • Strongly pronounced propensity toward conflict in the relations with public authorities, tax and law enforcement authorities 	0.058
Illegal business operations	<ul style="list-style-type: none"> • Systematic receiving of profit from the activity that requires permission (Paragraph 3, Article 2, CC RF) <ul style="list-style-type: none"> • Availability of the documented confirmations or own confessions of intent 	0.058
Pseudo-entrepreneurship (cash out transactions, etc.)	<ul style="list-style-type: none"> • Absence of documented confirmations of economic sense of the performed operations and intentions to perform the activity to gain profit 	0.058

<i>Risk indicator</i>	<i>Possible risk factors</i>	<i>Risk estimation, %</i>
Failure to return the funds in foreign currency	<ul style="list-style-type: none"> • Documented availability of instructions of the manager to the foreign partner to non-return or transfer of funds abroad free of charge • Failure to take measures of funds return 	0.058
Deliberate bankruptcy of the economic entity	<ul style="list-style-type: none"> • Availability of documented confirmations of the intention of the manager or owner to perform actions that will deteriorate the economic state of the entity • Absence of argumentation of economic reasonability of such actions (even if it is wrong) and intentions of the manager to promote the healthy atmosphere 	0.058
Fraudulent bankruptcy	<ul style="list-style-type: none"> • Availability of documented confirmations of malice intention of the manager to bankrupt and the documented evidenced of the availability of unaccounted assets of the entity that are enough to eliminate the signs of bankruptcy 	0.058

4. DISCUSSION

The presence of the tax risks is characteristic of all without exclusion Russian economic entities; therefore, it is evident that the level of tax risks is predetermined by the character of financial and economic activity, the volume and activity of the measures of optimization of the tax burden. In our opinion, the level of risk can be, to a large extent, minimized as a result of the transfer of factors that form it from the area of responsibility of the entity and its managers by means of the formation of centers of delegated risk. Besides, the decrease in the tax risk can be provided by the exclusion of the factors of unjustified risk: arithmetic errors, incorrect interpretations of laws and regulations, taking wrong decisions, that is, by the realization of the particular complex of protective operations.

However, first of all, the economic entity shall create an organized structure of protection that includes: *a)* tax administration service; *b)* internal audit service; *c)* security service; *d)* legal service. The latter three types of structure subdivisions can perform other laid functions and their creation can be dictated by other reasons.

Tax administration service is a structural subdivision mostly of a large enterprise that is responsible for the status of the tax burden and consequences of the policy performed by the enterprise regarding the taxation or the specialist – consultant of the taxation issues for medium and small enterprises. The protective functions of this service consist of:

1. The development of the methodical and instructive documents regulating the actions of the officials of the enterprise that are directly or indirectly connected to the taxation;
2. Tax expertise of the draft contracts and agreements, business plans, programs, intentions and draft executive documents;
3. Current monitoring of their conformity (after they come into force) to the conditions of the changing legislation;
4. The development of the tax groundings and programs, analysis and communication of the new tax norms to the managers and officials.

Now, at most enterprises the tax administration service (TAS) is one of the sectors of the accounting office, and this can be doubted (Mayburov 2010a; Mayburov, Ushak, & Kosov 2010). The tasks of the TAS and the accounting office are completely different despite the fact that the activity of both is based upon accounting. The accounting office shall, first of all, provide the formal book-keeping and the tax administrator shall, firstly, perform the managerial functions. At the same time, the deviation of the TAS from the tax accounting will make it an additional specialized department of tax planning or legal department that does not possess the initial information. Therefore, the grounded separation of the TAS into a separated subdivision subordinated to the financial director and investment of functions of tax accounting and planning is provided.

The protective functions of *internal audit service, security service, and legal service* consist of the implementation of internal control, monitoring, drafts of executive documents. Besides, the legal service and security service shall provide the protective reaction in case of claims to the enterprise from the taxation authorities and the Ministry for Taxes and Charges Tax Inspectorate.

We suppose that one more mechanism of decreasing tax risks is the formation of an efficient technology of internal tax control and the provision of efficient measures of the adequate protection during conflicts, one side of which is the taxation authorities and the bodies of the Ministry for Taxes and Charges Tax Inspectorate.

5. CONCLUSION

Thus, the tax risk is always connected to the probability of occurrence of economic, first of all, financial consequences for a taxpayer in the form of a decrease in its economic and financial potential and financial sustainability, and for the state in a form of the underpayment of the financial resources with the corresponding economic and financial losses for the budget.

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