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Digital Transformation of Tax Law Principles

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Keywords

autonomous tax payment,
digital technologies,
fairness of taxation,
law,
professional income tax,
single tax payment,
tax law institution,
tax law principle,
tax monitoring,
tax obligation

Abstract

Objective: to search for conceptual issues, features and prospects of development of tax law principles and tax obligation institute in the context of modern digitalization trends.

Methods: the study is based on a set of general legal (analysis and synthesis, induction and deduction) and special-legal (formal-legal, comparative-legal) methods of cognition.

Results: the main features of tax law principles characterizing their digital development were defined, namely: the expansion of the list of such principles and the changes in their content, predominantly at the level of institutional principles of taxation. A conclusion is made that in the digital era the tax law principles retain their theoretical significance as the most important category of the relevant science. The author states that the digital transformation of the institutional principle of tax fulfillment independence takes place mainly in the following directions: firstly, the range of taxpayers is expanded, in respect of which the duty to calculate tax can be imposed on a tax authority; secondly, the mechanism of the tax obligation execution is changed, among other things, by increasing the tax obligations of state authorities and credit organizations.

Scientific novelty: the paper assesses the approaches used in the scientific literature and normative-legal framework related to transformation of the taxation principles due to the intensive use of information and communication technologies in tax relations. The author also analyzed the digital transformation of the principles of tax obligation as one of the main tax-legal institutions.

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Practical significance: is due to the lagging pace of tax legislation development in the Russian Federation compared to the objective processes of creation and application of new information and communication technologies in tax relations and adjacent spheres. The main provisions and conclusions of the study can be used as a basis to improve the tax legislation, as they develop knowledge about new tax law institutions – professional income tax, tax monitoring, single tax payment, and automated simplified taxation system.

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Contents

Introduction

1. Theoretical issues of development of tax law principles in the context of the economy digitalization

1.1. Key features of digital transformation of tax law principles

1.2. Problems (risks) of the content development of taxation principles under digital transformation

2. Digital transformation of the content of tax law principles (by the example of tax obligation principles)

Conclusions

References

Introduction

The issues of the concept and types of principles of tax law¹ are one of the most common subjects of theoretical discussions in the modern tax law doctrine. Indeed, the importance of such principles both for the tax law theory and for the tax law enforcement is undeniable and is constantly emphasized by researchers at various stages of scientific thought development. The role of taxation principles is that they constitute the basis for the development of tax policy and legislation, being a universal measure of the quality of new norms. They guarantee of the rights and legitimate interests of tax relations' participants and contribute to the resolution of conflicts between taxpayers and tax authorities.

¹ Within this study, tax law principles and taxation principles are synonyms in terms of their content and classification of types.

It is indicative that to date there is no unanimity in tax law studies concerning the principles of this branch of law. Among the broadly discussed issues are the very concept and composition of these principles, as well as the possibility of recognizing various phenomena as separate principles, for example, the conclusions of higher courts or tax authorities. Hence the need for further research into the taxation principles, given the ongoing changes in all spheres of social life and in various legislation branches, including the information technologies development and introduction into social life and economic turnover and the possible emergence of so-called digital legal relations (Banakas et al., 2023).

Indeed, the permanent need to “revise” the tax law principles is predetermined by the high dynamism of tax legislation and a need to ensure the balance of public and private interests in taxation (Tropskaya, 2008). In this regard, we should note that the modern digitalization era, largely affecting taxation, has become a significant factor not only transforming certain rights and obligations of the parties to tax relations. It also raises questions of possible transformation of the “classical” categories of tax law, which make up its toolkit (taxation object, tax legal personality, tax sovereignty, etc.) (Argilés-Bosch et al., 2021; Zhou et al., 2022; Bassey et al., 2022; Cong et al., 2023). The principles of tax law represent one of the universally recognized fundamental categories: hence, they may be the theme of scientific discussion.

One example of a significant impact of digitalization on the tax law principles is the use of blockchain technology in tax administration. Its legal regulation is based on the idea that new special tax and legal principles emerge and tax relations are implemented due to blockchain application (Lyutova & Fialkovskaya, 2021; Wang et al., 2024; Guo et al., 2023; He, & Yang, 2023).

Thus, the inevitable digitalization (Shokhin et al., 2021), entailing the development of the taxation principles, necessitates theoretical assessment of such transformation, as well as development of practical recommendations to improve the tax law norms under the Fourth Industrial Revolution.

1. Theoretical issues of development of tax law principles in the context of the economy digitalization

1.1. Key features of digital transformation of tax law principles

Legal regulation of taxation principles is an independent institute of the general part of tax law. Accordingly, its development under various socio-economic conditions has specific features predetermined by the dynamics and vectors of new digital directions of tax policy. Some of these features are the following.

First, digitalization determines the expansion of the list of tax-legal principles.

For example, analyzing the development of financial-legal principles in the digital economy, Professor E. G. Belikov noted the emergence of the automation principle, the informatization principle, and the principle of informational openness (Belikov, 2020). Since the idea of including tax law in the system of financial-legal regulation is generally recognized (Gracheva, 2013), we consider it appropriate to project them onto tax law as its largest sub-branch.

Indeed, the automation principle, which implies the use of information technologies and automated information systems, is fully implemented in taxation: digital services for interaction between taxpayers and tax authorities are created; applications to perform tax duties in electronic form are actively developed; tax control measures are largely automated. The informatization principle means that the controlling authority does not have to request the necessary documents and information from the audited, as it is contained in state information systems. Thus, a united information system of federal and regional tax authorities is developed under the aegis of the Federal Tax Service of Russia. Finally, the principle of informational openness is a modern reflection of the principle of publicity in the activities of state bodies. It implies the availability of information on control activities of tax authorities within the limits established by tax legislation, which is possible through the use of information technology.

It is important to note that these principles are sectoral, as they are implemented in relation to most tax law institutions: tax obligations and their fulfillment, tax control, as well as in relation to various institutions of the special part, such as calculation and payment of individual taxes. It is the universal nature of the tax law principles in the digital era that allows considering such principles, among other things, as necessary requirements for the application of digital technologies in taxation.

Second, it is not the very concept of the tax law principle that is significantly changed, but the content of certain types of principles.

In our opinion, changes in the content of various taxation principles are associated, first of all, with the lacking norms of taxation digitalization in tax legislation, including general provisions – foundations of digital transformation of tax relations.

It is also important to note that due to the inherent abstractness and the lack of unanimity among theoreticians on the content of a “principle of law” concept (Povetkina, 2017), relevant approaches to the interpretation of “tax law principle” category will be needed also in the regulation of newly emerging tax relations. Because of this, we cannot agree that at present, under the influence of digital novelties, the main categories of tax law are being revised (Tsindeliani et al., 2019) precisely with regard to tax-legal principles.

Third, the digital transformation is implemented predominantly at the level of institutional rather than sector-wide principles of taxation.

It is logical that the emergence of new tax-legal institutions should be accompanied by specific ideas and principles. Analysis of tax legislation and scientific literature shows that the implementation of tax monitoring principles is fully based on information and communication technologies. These principles include voluntariness, cooperation of a taxpayer and a tax authority, openness and transparency of the parties, exemption from tax audits, prompt resolution of disputes using a reasoned opinion as a new tax-legal tool, exemption from penalty accrual and tax liability (Kurbatova, 2018). Similarly, the professional income tax institution is based on the principles of simplicity and convenience of calculation and payment for the self-employed, which was repeatedly emphasized both by state authorities in official documents² and by researchers (Boziev, 2022).

1.2. Problems (risks) of the content development of taxation principles under digital transformation

Besides characteristic features, digitalization of tax law principles is implemented under certain circumstances problematic for their digital transformation. Indeed, the analysis of tax law principles development shows a number of risks, including the following.

First, the list of tax law principles is not unambiguous to date. This fact significantly complicates the issue of changing the scope of taxation principles.

Such ambiguity is due to the following circumstances:

- some tax law principles are directly enshrined in tax legislation (norms-principles) and some can be “deduced from the content of law by interpretation”³. At the same time, digitalization makes it important to analyze, first of all, the generally recognized tax law principles, called the basic principles of tax legislation and contained in Article 3 of the Taxation Code of the Russian Federation (hereinafter – TC RF). Correlating new tax-legal phenomena with the content of such principles allows evaluating their development prospects.

In particular, Professors M. D. Napso and M. B. Napso note that the principle of fairness is highly important in the digital age, although it is not mentioned in Article 3 of the TC RF, which regulates the basic principles of taxation. The authors note the need to legislate such a principle, pointing to its importance along with the principles of obligation, legality, voluntariness, equality and universality of taxation (Napso & Napso, 2020).

² See, e. g.: On the application of the professional income tax in relation to leasing of non-residential premises: Letter of the Russian Ministry of Finance of February 24, 2022 No. 03-11-11/12806.

³ Tyutin, D. V. (2020). Tax law: a course of lectures. SPS KonsultantPlyus.

Another aspect of the growing importance of the fairness principle under digitalization is the need to address the issue of digital companies' profit distribution (Milogolov & Berberov, 2020). It is based on the fairness requirement that the new standards of "tax linkage" should be established. These standards help to determine which state may tax transnational companies performing transactions in the virtual environment and to use digital logistics and cooperation to prevent tax evasion and double taxation.

It is worth noting that taxation fairness, despite the absence of its legislative enshrinement, was repeatedly mentioned in the decisions of the Constitutional Court of the Russian Federation. This approach is also used for other tax-legal principles that are not contained in the TC RF, but are generally recognized in the tax law doctrine and enforcement, as they are regularly mentioned by the Court;

– some categories are referred by researchers to tax law principles, not being such. For example, one-time taxation, which is a very controversial tax law principle per se, is rather a feature of a tax, which means independence of a taxation object for each tax. In particular, this conclusion was repeatedly confirmed in both Russian and foreign practice of imposing several taxes on the same taxation object. This fully demonstrates that one-time taxation cannot be considered as the basic idea of tax legislation construction (Tyutin, 2013).

Among other things, a "catalyst" of mixing the tax law principles with related categories is the intensified use of new digital technologies in tax administration. One example is the alleged possibility of recognizing a risk-oriented approach as a sectoral principle (Efremova, 2022). This characteristic of tax monitoring is one of the main features in organization and conduct of preliminary tax control.

We see the solution to the problem of distinguishing tax law principles from other legal phenomena in defining the concept and establishing the characteristics of legal principles. Despite the objective complexity of the "principle of law" category, as was noted above, and the lack of a universally recognized definition of this concept, we may state the following.

As is known, a principle, as a theoretical and legal category of tax law, is highly abstract and reveals its meaning in the norms of tax legislation. Thus, it plays a system-forming role in its development, which is not characteristic to tax-legal categories. That is, the "reflection" of a tax law principle is a specific rule of behavior contained in a tax-legal norm. Accordingly, the existence of a certain taxation principle can be proved by the existence of a group of norms regulating various types of tax relations, which disclose the content of such principle.

In addition, the undeniable theoretical importance of tax law principles distinguishes them from other tax-legal phenomena, in particular, from tax norms and signs of tax law categories and concepts.

Under digitalization, theoretical issues related to the principles of law have become an object of numerous discussions. This is due, first of all, to the emergence of a new special tax regime, which initially had an experimental temporary nature – a tax on professional income. According to researchers, taxation of the self-employed, who pay the professional income tax, does not comply with a number of tax law principles (legality, fairness, etc.). In this regard, it is proposed to change the rules of calculation and payment of this tax (Napso, 2023). The conclusions about the inconsistency of the new tax regime with the general tax law principles seem controversial, at the very least. However, they confirm the importance of principles in the tax-legal regulation mechanism under the emergence of tax relations, which are impossible without electronic interaction between their participants (the use of My Tax application; the alleged use of blockchain for “automatic” taxation at the moment of an operation, etc.).

There are also more generalized judgments on the theoretical role of taxation principles under digitalization. For example, a research team from the Institute of Legislation and Comparative Law under the Government of the Russian Federation, studying the issues of digitalization of the financial-legal sphere, came to a conclusion that “under digitalization in the transformation of legislation on taxes and fees, the principles of taxation retain their key role in the formation of a relevant legislative array” (Kucherov & Povetkina, 2022). In turn, I. M. Stepnov and Yu. A. Kovalchuk stated the following as a key prerequisite when analyzing the impact of digital challenges on taxation: “preservation of basic principles leads to the preservation of the tax system stability, while revision of principles leads to the need for its modernization” (Stepnov & Kovalchuk, 2020).

We believe that the opinion about the theoretical value of tax-legal principles deserves unconditional support. At the same time, an unambiguous fact is the transformation of the content of individual tax law principles, which occurs under the influence of digitalization of the economy, state, and society.

2. Digital transformation of the content of tax law principles (by the example of tax obligation principles)

In the context of digital development of the state and society, various tax law principles repeatedly become researched by tax scientists: legality (Lyutova, 2022), fairness (Zhuravleva, 2020), openness in tax-legal relations (Migacheva, 2022), independence of tax duty fulfillment (Napso, 2022) and other principles. Some works mention the need to reconsider the content of tax law principles (Boboshko, 2021), which is significantly modified as a result of taxation automation and digital and other information technologies; however, the essence of such changes is not analyzed.

It is important to note that in one way or another digitalization affects all tax law principles (Ugalde et al., 2020; Pobee et al., 2023; Ouyang et al., 2023). However, the real

transformation of the content occurs at the level of tax law institutions – new norms and institutions appear; the conditions of “classical” tax relations change. Therefore, it is indicative to study the issues of digital transformation of tax law principles, primarily at the institutional level. To this end, the principles of the institute of tax obligation can be used.

The institute of tax obligation is traditionally considered one of the central in the tax law theory, at the same time playing a system-forming role, which has been repeatedly emphasized in the legal literature⁴ (Pechenkina, 2018). Accordingly, the tax obligation has its own object of legal regulation and structure, based on a set of institutional principles, which, in turn, reflect general legal principles of taxation.

It should be noted that the list of institutional principles of tax obligation is rather conditional in terms of their types, as it largely depends on the legislator discretion and can vary significantly depending on specific socio-economic conditions and the relevant political and legal documents.

Under the digitalization of the economy, the “broad discretion of the legislator” regarding the tax obligation principles is exemplified by the emergence of scientific discourse around one of the principles of tax obligation fulfillment. This principle – that of convenience, underlying the payment of the unified professional income tax, – is atypical for the Russian tax-legal doctrine. According to the Head of the Russian Federal Tax Service D. Egorov, the main components of tax payment in the Russian Federation should be inevitability and comfort⁵.

In our opinion, mentioning tax convenience as an institutional principle of tax obligation requires additional explanations. Undoubtedly, digitalization of taxation aims to simplify and accelerate interaction between tax authorities and private subjects of tax relations, which, in turn, affects their content. At the same time, convenience not only for a taxpayer, but also for a tax authority, depends on the limited possibilities of tax administration, carried out, in particular, in respect of those paying the professional income tax. Hence, under the digital development of the tax obligation institute, the principle of convenience is associated not only with the execution of such an obligation, but is also implemented at the stage of its establishment and introduction.

In general, the doctrine of tax law very rarely mentions the types of principles of tax obligation institute; most often we talk about tax obligation from the viewpoint of its fulfillment. Given the above position, it seems reasonable to classify the principles of the tax obligation institute into two groups – those related to its establishment and introduction and those related to the fulfillment of tax obligations by taxpayers.

⁴ Kucheryavenko, N. P. (2009). A course in Tax law: In 2 vol. Vol. 1. General part. Moscow: Statut. (In Russ.).

⁵ Daniil Egorov, the new Head of the Federal Tax Service, outlined the key tasks of the agency. RG.RU. <https://clck.ru/LydXx>

Thus, based on the applied research establishing the list of tax law principles and specifying for the tax obligation institute, stemming from modern issues and relations in tax-legal regulation, we can propose the following special principles of the tax obligation institute related to its fulfillment:

- the principle of independent tax obligation fulfillment by a taxpayer (also referred to as the principle of independence of calculation and payment of tax);
- the principle of good faith in tax obligation fulfillment;
- the principle of mandatory tax obligation fulfillment;
- the principle of simplicity and economy of taxation, also realized in the tax obligation fulfillment.

As for the principles governing the establishment and introduction of tax obligation, to form their set and describe their types, an intersectoral approach is necessary, which implies taking into account the provisions of political documents, constitutional-legal, administrative-legal and tax-legal norms. This, in turn, requires further research into determining the types and establishing the content of the principles of tax obligation institute.

One of the key principles of the tax obligation institute is the independence of its fulfillment (tax payment, tax reporting, taxpayer registration, accounting policy, obtaining various statuses, for example, controlled foreign company, etc.).

In a generalized version, the rule of independence of tax payment is stipulated by part 1 of Article 45 of the TC RF, according to which “a taxpayer is obliged to independently fulfill the obligation to pay tax, unless otherwise provided by the legislation on taxes and fees”. Based on the literal interpretation of the norm, this principle consists of two elements and includes, firstly, the obligation to pay tax at one’s own expense and, secondly, the fulfillment of such an obligation by the taxpayer’s own actions.

The taxpayer’s independence in the fulfillment of tax obligation both in terms of their activity and in terms of their capital was not initially absolute, because it implied a number of exceptions. These were provided, first of all, for taxpayers – physical persons in relation to both the obligation to calculate and the obligation to pay tax. Such exceptions were always objective and dictated by the convenience of tax administration for both the taxpayer and the tax authority. For example, some researchers considered the institution of tax agents as an exception, as well as indirect taxation in terms of its mechanism ([Sadchikov, 2018](#)).

The development of tax obligation institute under the digital transformation of its principles causes the expansion of the list of exceptions to the general rule of tax payment independence in the following directions.

First, the rejection of the independent tax payment was extended to certain cases of tax payment not only by organizations, but also by physical persons and individual entrepreneurs.

The development of this direction took place step by step. The first step towards the rejection of independent tax payment by physical persons was the appearance of the professional income tax, which is calculated by a tax authority and then sent to the payer as a tax notice via the My Tax mobile application.

The next stage of expanding the “non-independent” fulfillment of tax obligations was the adoption and enactment of a new special tax regime – Automated Simplified Taxation System (hereinafter – ASTS)⁶ from July 1, 2022. One of its main features is calculation of tax for taxpayers-organizations and individual entrepreneurs exclusively by a tax authority.

ASTS, compared to the taxation regime for self-employed taxpayers, implies a fundamentally different approach to the distribution of tax obligations, which affects the implementation of the principle of independence in tax relations. Namely, a credit organization is obliged to perform actions to submit to the tax authority information on transactions on an account opened in the credit organization, on transactions with electronic cash, as well as on the payment of income to physical persons, necessary for the calculation of personal income tax and insurance contributions to state non-budgetary funds in “credit organizations authorized by the taxpayer”. According to a fair remark by A. V. Krasnyukov, in the case of ASTS “a credit organization is endowed with the above additional responsibilities not by virtue of an instruction from the taxpayer, but by virtue of the law” (Krasnyukov, 2022).

Thus, digitalization is a catalyst for the process of gradual abandonment of the autonomy of taxpayers. This is expressed in a decreased number of cases when the need for the taxpayer to perform independent actions was established. This shows that the relevant principle of the tax obligation institute is implemented.

Secondly, new mechanisms for the tax obligations fulfillment appear, implying a significant expansion of the duties of tax authorities. This also leads to a decrease in the taxpayer’s independent participation in tax payment.

One of such mechanisms is the new Article 45.1 of the TC RF on the single tax payment (hereinafter – STP) of a physical person. This is essentially a mechanism of advance payment to the Russian budget by a taxpayer; the amount transferred to the tax account is subsequently redistributed by tax authorities.

We consider it important to note that the calculation and payment of STP as a new tax-legal procedure is carried out as follows. A taxpayer or a third party on their behalf makes a special advance payment in fulfillment of the obligation to pay transport, land

⁶ On conducting an experiment to establish a special tax regime “Automated simplified taxation system”. No. 17-FZ of 25.02.2022. (2022). Collection of legislation of the Russian Federation, No. 9 (part 1), Art. 1249.

and (or) property tax on physical persons to the Russian budget. The tax authority is entitled to determine independently, in accordance with the rules established in the tax legislation, which tax should be paid. The factors influencing the decision of the tax authority are, for example, the presence or absence of arrears and (or) tax debts.

Thus, after the STP emerged as a new form of fulfillment of tax obligation to pay, the taxpayer's obligation to pay tax became not a one-step, but a staged one. This mechanism also transferred the decision on the disposal of the advance payment received on the tax account to the tax authority. Accordingly, the principle of the taxpayer independence, associated with the tax payment, in this case is also not absolute and is implemented jointly by the taxpayer and the tax authorities through consecutive actions provided for by the tax legislation.

Conclusions

The tax law principles are the most important tool for the effective development of tax legislation in the era of digitalization. As for the general taxation principles, their list and content seem to be relatively stable.

At the same time, at the level of tax law institutions under the economy digitalization, global changes take place that imply a fundamental transformation in the content of such principles. In particular, the content of the principle of independence of tax obligation fulfillment is developing, as the balance is shifted towards increasing the tax authorities' duties and gradual decrease in the taxpayers' activity.

The legal discussion on the content of tax law principles should continue, first of all, in terms of compliance of legislative innovations, as well as individual decisions of state authorities, with the basic principles of tax law. Further research is also required on transforming the existing institutional principles and providing new tax-legal institutions with their own principles.

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Цифровая трансформация принципов налогового права

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Ключевые слова

единый налоговый платеж,
институт налогового права,
налог на профессиональный
доход,
налоговая обязанность,
налоговый мониторинг,
право,
принцип налогового права,
самостоятельность уплаты
налога,
справедливость
налогообложения,
цифровые технологии

Аннотация

Цель: поиск концептуальных проблем, особенностей и перспектив развития содержания принципов налогового права и института налоговой обязанности в контексте современных тенденций цифровизации.

Методы: основу исследования составляет совокупность общенаучных (анализ и синтез, индукция и дедукция) и специально-юридических (формально-юридический, сравнительно-правовой) методов познания.

Результаты: определены основные особенности принципов налогового права, позволяющие охарактеризовать процесс их цифрового развития, а именно: расширение перечня таких принципов, изменение их содержания, осуществляемое преимущественным образом на уровне институциональных принципов налогообложения. Сформулирован вывод о том, что в цифровую эпоху принципы налогового права сохраняют свое теоретическое значение как важнейшая категория соответствующей науки. Автор приходит к выводу о том, что основными направлениями цифровой трансформации институционального принципа самостоятельности исполнения налоговой обязанности являются: во-первых, расширение круга налогоплательщиков, в отношении которых допускается «переложение» обязанности по исчислению налога на налоговый орган, и, во-вторых, изменение механизма исполнения обязанности по уплате налога, реализуемое в том числе путем увеличения налоговых обязанностей у государственных органов и кредитных организаций.

Научная новизна: в работе дана оценка имеющихся в научной литературе и нормативно-правовой базе подходов к вопросу трансформации содержания принципов налогообложения, осуществляемой под влиянием активизации использования в налоговых отношениях информационно-коммуникационных технологий. Также проанализированы особенности цифровой трансформации принципов одного из основных налогово-правовых институтов – налоговой обязанности.

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Практическая значимость: обусловлена отставанием темпов развития налогового законодательства Российской Федерации от объективных процессов создания и применения новых информационно-коммуникационных технологий, используемых в налоговых и смежных с ними отношениях. Основные положения и выводы настоящего исследования могут быть использованы для совершенствования налогового законодательства в части развития положений о новых институтах налогового права – налога на профессиональный доход, налогового мониторинга, единого налогового платежа, а также в отношении автоматизированной упрощенной системы налогообложения.

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