

## Tax Law System

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### ABSTRACT

The article deals with consideration of the actual theoretic problems of the subject and system of tax law in Russia. The theoretical approaches to determination of the nature of separate institutes of tax law are represented. The existence of pandect system intax law building as financial law sub-branch of Russia is substantiated. The goal of the article is to review tax law in Russia and to evaluate tax law condition in a legislative system. Base methods which is used during the work are: dialectical method, also that're methods of historic, comparative legal and system analysis, formal logical, axiological and also literary review of the native and the abroad scientists. In a result we see that tax law is a sub-brunch of financial law. As a perspective we can distinguish procedural tax law as a complex part of tax law in tax law system. The article may be used as a theoretical base for following development of tax law.

### KEYWORDS

Subject and system of tax law, tax laws in the legal system, tax law institutes, tax law sub-institutes

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## Introduction

The modern scientific views about the tax law system are not distinguished by the stable uniformity (Berman & Haneman, 2014). As a result, scientific discussions directly or indirectly get the reflection in modern educational literature, and in future are reflected on the area of practical application(Harris, 2013). Accordingly, determination of the system of tax right and elements of their forming remain actual and requiring scientific comprehension. Considering the questions of construction of the tax law system, it is impossible not to consider the problem of location tax law in the whole in modern system of law for the state, and also object and method of the tax-legal regulation. During determination of the tax law system, we are unavoidably forced to come from the subject of regulation on one side, and on other side - come from regularities of the law system building in the whole (Shaviro, 2014).

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In fact, it is possible to speak about two conceptions: dualistic and branch systems of law building.

The law is examined as the system-phenomenon, and according to reveal of structural elements of legal education we rely ourselves on the category of “law system”. The system character of law in the legal literature is characterized by the following signs (Hogg, Magee & Li, 2013):

- the components of legal system and its sub-system are found in the united, integral-system state;
- form the unity as a result of structural arrangement of its components (sub-systems), which determined their functional dependence and interaction;
- presence of the relative independence properties;
- the relative stability, within which the changes of properties of its components (sub-systems) and their connections were allowed;
- the relative autonomy of its functioning, which degree determines the level of this system (Kerimov, 2000). Thus, the law system represents the hierarchical formation, within which the processes of integration and differentiation take place.

As it is obvious, the category of “law system” and determination of its element content is based on the general theory of system and system analysis.

### Literature Review

In literature, discussion about what unites the legal regulations into corresponding institutes and sub-branches or branches of the law are held for long time already (Rembar, 2015).

The analysis of the majority of branch legal works allows to state that the most organizational forms of arranging the elements in the branch of law are pandect or institutional forms of branch arrangement. It is necessary to remember that there are other distribution offers of the law branch regulations in the institutes and sub-branches in the law branch system, especially in application to one or other law branch.

Pandect or institutional system of branch building derives from the legislation system, mostly in the system of regulatory acts building, which first of all are codified. Appealing to the place of tax law in the law system must be recognized as the presence of opinions of the wide range of sciences, which sometimes bear the mutually exclusive character. Namely:

- tax law is the financial law sub-branch (Krokhina, 2004);
- tax law is the independent branch of law (Parygin & Tedeev, 2011);
- tax law is the complex branch of legislation;
- tax law is the budget law institute;
- tax law is the complex institute of financial law (Kucheriavenko, 2009).

In modern conditions within the frameworks of financial law, the tax law transformed from the financial law institute into the sub-branch that is conditioned by several moments, change of the role of tax and fees themselves in the process of economic activity state regulation, increase of the role of tax profits at formation of the budgetary and non-budgetary funds of the monetary funds, and necessity of providing the balance of interests as public-legal

formation for citizens and economic entities. The legal law should be considered as the sub-branch of the financial law (Tavis, 2015).

As for today, it appears that the subject of the tax law is distinctly determined by the art. 2 of TC of the RF includes the following groups of relations, which are characterized by their public-legal nature (Vinnitskiy, 2015):

- according to establishment, implementation and collection of taxes and fees;
- relations appearing in the process of tax control existence;
- relations appearing at the appeal of tax authority acts, activity (inactivity) of officials;
- relations appearing at bringing to responsibility for the commitment of tax infringement.

The problems of the tax law method are disputable in the legal literature. The problem of this issue is conditioned by presence of own method of regulation in the tax law in literature. And usage of dispositive regulation method in regulating tax relations are substantiated. It seems that the main method of regulation in the taxation area is predetermined by the nature of tax relations – imperative method of regulation. It appears that the imperative method is peculiar to all public-legal branches of the law and is displayed in each of the institutes or sub-branches and is shown uniformly. According to tax law, as financial law sub-branch, for regulation of tax relations the imperative method of regulation is used (Fujii, 2016).

Accordingly it is possible to speak that in the legal regulation mechanism of one of those public relations, not the concrete independent methods of regulation are used, but types of regulation, conditioned by the combination of effect means on the law subjects; namely: permit, prescription and ban (Qiu, 2014).

Thus, it is possible to speak that namely fiscal interests of public-legal formations considerably effect on the formation of element content of the tax law system. The criteria, under which tax-legal institutes are formed, what are the variety of financial-legal norms and what are the properties peculiar to them. Are there other important moments for determination of the tax law system. In general words, the institute of law in modern academic and scientific literature is determined as comparably small stable group of legal norms, regulating the certain variety of public relations, which represents only the separate part of the branch regulation subject (Romashov, 2005).

In her examination of the tax legislation content, Professor T. Ehrke-Rabel (2014) divides it into material and formal tax legislation, referring the tax collection order to the latter and the rules defining the content of specific taxes and fees to the material legislation. It is obvious that the systematization has been conducted on the legislative level, based on legislation rules content and intended function. It appears that the conduction of such systematization can take place and allows, to a certain extent perform a distinct differentiation of rules in accordance with their intended functions, during the regulatory process.

In his turn, professor J. Heinrich (2013) during his legislation systematization by types – federal, land taxes and rates – noted that tax law, despite being a public law, interacts with other branch-specific legislations, namely: administrative and international. As a result, the taxation field can

potentially be a field of regulation for not only tax legislation, but for other legislation branches, as well. This once again emphasizes need to conduct a distinct tax law rules systematization, because this will allow to avoid improper legal rule application under a rules collision, which could potentially arise during law administration.

The functional criterion, namely: the functions performed by laws; can be of particular interest to the tax law systematization. Professors Peter von Unger and Martin Vock (2015) emphasize three tax functions: fiscal, redistributive and regulating. In practice legislation embodies each of them in specific tax rules. Nonetheless, each tax has different functions depending on its embodiment state.

Undoubtedly, approaches to legislation systematization according to types of responsibility for tax legislation violation are of particular interest. According to professor R. Pahlsson (2001), Swedish law emphasizes criminal and administrative sanctions. Interestingly, sanctions division is based on the violation's social danger. However, such an approach does not allow for a distinct differentiation of criminal and administrative sanctions application. Modelling of responsibility for tax law violations should be implemented under even more distinct criteria, which would allow for a distinct differentiation between taxpayer illegal actions subject to an administrative penalty and those subject to criminal law sanctions.

The provided review of foreign authors scientific opinions is also relevant to the contemporary scientific literature of the Russian Federation, which is clearly visible from the issues examination with debating solution options.

Review of the tax law institutes will help to develop tax law itself, find white spots, legislation collisions not only in Russia, but also in others post-soviet countries.

### ***Aim of the Study***

Review of the tax law institutes, evaluation of the condition of tax law in the Russian legislation system.

### ***Research questions***

The overarching research question of this study was as follows:

What is the meaning of obligation, procedural tax law, tax liability in tax law?

### ***Method***

As a methodological basis of the study was chosen dialectical method in tax-law institutes learning, which allows to look directly on their development, interrelation and interdependence. During this research was used the summation of common and special methods of scientific studying. Among the common methods were used: analysis and synthesis, comparison, analogy method, induction and deduction. From the special methods were used such: historic, legal comparative and system analysis, formal logical, axiological and also literary overview of the native and abroad scientists.

### ***Data, Analysis, and Results***

In modern conditions we think that the tax law system is represented by the total and the special part in which, according to the subject-functional criteria, tax-legal institutes are included. They're consist of one or several sub-institutes.

The general part of tax law includes the following tax-legal institutes:

- taxes and fees;
- establishment and running the taxes and fees;
- sources (forms) of tax law;
- principles of tax law;
- subjects of tax law;
- terms;
- obligation tax right;
- tax administration;
- tax procedural law;
- tax responsibility.

The peculiar part of tax law includes the following tax-legal institutes:

- federal taxes and fees, which consists of the following sub-institutes:
  - value added tax;
  - excise-duty;
  - personal income tax;
  - corporate profit tax;
  - mineral extraction tax;
  - water tax;
  - fees for using the animal world objects and for usage of the water biological resource objects;
  - state duty.
- regional taxes and fees, which consist of the following sub-institutes:
  - corporate property tax;
  - gambling industry tax;
  - transport tax;
- local taxes and fees, which consistof the following sub-institutes;
  - land tax;
  - personal property tax;
  - sales tax.
- special tax regimes, which consist of the following sub-institutes:
  - taxation system for the agricultural commodity producers (single agricultural tax);
  - simplified taxation system;
  - taxation system in the form of single tax on imputed incomes for separate types of activity;
  - taxation system at execution of the agreements about production division;

- patent system of taxation.

Presence of obligatory relations in the system of tax-legal regulation, and according to presence of the tax obligation institute in tax law system is the subject of urgent discussions. I. Kucherov (2012) very radically spoke about this problem and expressed in the following way: “the supporters of the theory of tax obligations until presently there is any other, more substantial arguments as confirmation of the necessity and possibility to use the category “obligation” in the tax law are not represented yet”. In proper case the general phases about unity of all proprietary relation or verification of the facts of using the term “tax obligation” take place in the literary sources and also in the judicial acts and legislation of separate states”. However, it is difficult to agree with such categorical judgments, because in substantiation of the presence of obligatory relations in the tax-legal regulation system many famous scientists, substantiating its presence, don't limit themselves only by literary sources, judicial acts or legislation of separate states, and state the serious scientific substantiation, A. Hudiakov & G. Brodskiy (2002) states that the obligation – general legal category, which at concrete usage acquires character of branch instrument and in full extent corresponds the character of branch instruments and full extent correspond to the essence of taxation, dividing the tax obligations on the material and organizational.

The other not less disputable problem is the problem of formation in the tax law system of the tax procedural law.

In the theory of law until present there is no single opinion about the place and role of the legal process in the system of the one or the other branch of law. The horizontal building of the law allows seeing all branches, which compose law, and their classification allows to separate two parts of law: material and procedural ones. The number of procedural branches includes: the criminal process, civil process and arbitration process. The other procedural branches are in the process of formation: constitutional process, administrative-procedural law, tax-procedural law, budgetary process, etc. In the theory of law, two basic conceptual directions received the development in the determination of legal process, namely: the narrow notion of process and wide consideration of the legal process. In that approaches each of the conceptions are also not distinguished by the uniformity. In each from the conceptual directions there are different approaches. The narrow approach essentially considers the legal process as the jurisdiction procedure on solution of the dispute about law and execution of the legal enforcement. While the conception of wide consideration of legal process considers the legal process as one, that covers any activity directed on realization of the material norms of law.

The category “process” in the financial law is very specific and serves for determination of the relations, providing regulative and protective proprietary legal relation in the financial law. The procedural financial-legal norms fix the procedure of financial activity execution of state and municipal establishments, i.e. financial procedures, the procedure of application and activity of financial-legal norms, terms and etc. The procedural norms determine the procedure of conflict solving and have arrangement in the financial legal relations. The absence of universality of procedural financial-legal norms is the serious lack, as some provide realization of the material norms of budgetary law, the other – of tax law, the third – of other financial law institutes. The absence of universality

and substantial development of the financial-procedural area don't allow to state that within the frameworks of the financial law, formed as independent procedural institute, and it is possible to speak about the presence of procedural norms in application only to budgetary and tax law.

The considerable attention in the financial-legal literature is paid to the problems of tax and budgetary processes. The tax process institute is the complex tax law institute which includes the range of sub-institutes (affiliate institutes), they're regulate separate stages of tax process – tax productions. Tax proceedings are included into the tax process:

- tax control proceeding;
- proceeding tax violation cases;
- proceeding of the complaints and disputes in the taxation area.

Due to the character of legal relations the tax procedures are divided by the author into:

- law-making tax procedures;
- material tax procedures;
- tax process.

According to the opinion of T. Kashanina & A. Kashanin (2009), the autonomous existence of legislation about the taxes and fees, and features, peculiar to the tax law makes us think about appearance of special procedural branch – tax-procedural law. The specified authors came to this conclusion, based upon the fact that there are special financial bodies, which have the right to impose sanctions on the violation of legislation about taxes and fees and presence of procedural order of imposing financial sanctions.

O. Staroverova & N. Eriashvili (2004) substantiates the existence of the procedural tax law as forming sub-branch of the financial law and determines it as the aggregate of procedural tax norms on the detection, examination, consideration and solution of the cases about tax law violations and execution of the measures of tax enforcement in the cases of legislation violation about the taxes and fees within the limits of protective tax relations (tax process).

The tax code it is the legislation, which regulated procedure of actions of a taxpayer, tax agent and state-authorized authorities directed on the realization of his tax obligation by the taxpayer. In the whole system of financial law the tax process takes the place of legal institute. The correlation between the categories “tax process” and “tax procedure” are of undoubted interest, or there are different approaches in literature according to this problem.

The procedural activity according to its content in the area of taxation is formalized by tax-procedural forms, and regulated by the procedural relations. The procedural form represents the aggregate of rules of tax procedure realization, fixed by the procedural norms of tax legislation, which guarantee the execution of tax obligation as the basic aim of tax-legal regulation. The tax process is the complex system of interrelated legal forms of activity of the state bodies, legal and physical persons in the realization of the tax procedures.

The tax process represents the certain intensively developing totality of the procedural norms, regulating and providing the execution of tax obligation and tells about appearance of the tax process branch, probably only if the tax-procedural code and specialized tax courts appear. The tax procedural law unites



material and procedural tax-legal norms, which called to ensure the detection and proper procedure of realization of the tax obligation and delictual relations. The tax procedural law regulates both material procedure, and procedure of peculiar character – tax process. The tax process institute regulates the relation of application of the measures of tax-legal enforcement and solution of the tax-legal disputes. It seems that the procedural constituent part in the tax law bears complex and multi-aspect character. In the basis of tax process both material-legal and procedural-legal norms lies. Consequently, when in one codified source they are concentrated in big volume, it can be sometimes difficult to differentiate their target purpose in the process of tax relations regulation. It appears, that in the perspective of a legislator it is appropriate to return back to realization of the tax procedural code adoption.

### Discussion and Conclusion

In present times and in literature there is no single opinion about correlation between the category “process” and “procedure”. In particular, D.M. Azmi (2009), analyzing the correlations of the notions “process” and “procedure” comes to the following conclusion: the notion “process” and “procedure” are not synonymous. The notion of legal process in correlation with single name procedure is seen as more extensional. It covers not only the official ordinal, but the other profiles of legal phenomena, including such ones, which don’t exclude the presence of the material component.

Nevertheless, we think of the approach of A.V. Demin (2010a, 2010b) as substantiated. He on the example of analysis of tax procedural norms comes to conclusion that the norms must be differentiated into the material and procedural, and in the last ones the procedural norms should be separated.

The determination of the legal nature of tax responsibility is no less sharp subject of the scientific discussions.

I. Kucherov (2012) states that in dependence on which violation of the legislation about taxes and fees lies in the basis of analyzed responsibility —it can be considered as the varieties of financial, administrative or criminal responsibility. The persons who guilty in execution of tax legal violation, are brought to tax responsibility, which is the variety of financial responsibility. In her turn, Yu.A. Krokhtina (2012) marks that the tax responsibility institute doesn’t belong to the exclusive phenomena of the Russian legal system. The legal protective mechanism of tax relations is provided by the different branches of law: financial, criminal, administrative and customs. On the assumption of this, Yu.A. Krokhtina (2012) relates the tax responsibility institute to the complex interbranch legal institute.

It should be noted that the discussion, devoted to the problem of determination of the legal nature of tax responsibility is the most urgent. The most disputable question is: does the tax responsibility have the administrative-legal nature or is the tax responsibility the independent legal institute? In many aspects the problem is conditioned, first of all, by the presence of competing contents of violation of the tax and fee legislation in the Tax Code of the Russian Federation and Code of the Russian Federation about administrative legal violations. Some authors substantiate the absence position of the independent type of legal responsibility and its relation by the nature to the administrative responsibility, the other authors substantiate the presence of independent type



of juridical responsibility – tax responsibility or consider the tax responsibility as a variety of financial-legal responsibility (Vinnitskiy, 2015).

In its turn the Constitutional Court of the Russian Federation, determining the legal nature of responsibility, established in the TC of RF, came to conclusion that in the aims of provision of execution of the constitutional obligation by taxpayers, to pay taxes and damage indemnification, incurred by the treasury in the case of non-execution, the federal legislator provides measures of the state enforcement. They can be both law restorative and providing the execution by a taxpayer his constitutional obligation (repayment of arrears and damage indemnification from the untimely and incomplete tax payment – fine), and penalty ones, incurred on the infringers as a measure of responsibility for additional payments.

Consequently, the responsibility for commitment of tax violations, provided by TC of RF, has property character; its implementation is directed on the execution of treasury damage from the tax legal violation. Therefore, application of the liability measures for commitment of the tax legal violation is based on detecting the size of financial damage made to the state in strict procedural form. The amounts of fine sanctions, collected from the persons for violation of tax legislation requirements by them, go beyond the frameworks of tax debt as such one; by this they are distinguished from the arrears and tax fine, and essentially represent the diversity of public-legal responsibility of the property character (Vinnitskiy, 2015).

It seems that the modern approach to certain legal responsibility, and generally, the tax-legal responsibility, must go through consideration of this legal phenomenon as interbranch (complex) institute. Due to our understanding, the tax-legal responsibility is a complex institute, which combines the elements of administrative-legal responsibility and civil-legal responsibility. Tax-legal responsibility combines law restorative and fine properties, accordingly, absorbs the administrative-legal and civil-legal beginning in it.

### **Implications and Recommendations**

The modern system of tax law is very dynamic legal phenomenon which is in constant development and improvement. As it is seen in the financial-legal literature, the category of the tax law system is considered unambiguously. Being the sub-branch of financial law, as opposed from the last one, the tax law has very expressed pandect system of building with separation of the general and peculiar part. In the perspective it is possible to separate the tax procedural law as the constituent of the tax law in the tax law system.

This work may serve as a theoretical base for improvement of the legislative base in the sphere of The Russian Federation financial law and also in financial law of all the others post-soviet countries.

### **Disclosure statement**

No potential conflict of interest was reported by the authors.

### **Notes on contributors**

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