

СОВЕРШЕНСТВОВАНИЕ НАЛОГОВОГО АДМИНИСТРИРОВАНИЯ В УСЛОВИЯХ ЦИФРОВОЙ ЭКОНОМИКИ: ПРАВОВЫЕ АСПЕКТЫ

IMPROVING TAX ADMINISTRATION IN THE DIGITAL ECONOMY: LEGAL ASPECTS

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Аннотация. Динамичное развитие информационных технологий, которое в настоящее время происходит во всем мире, меняет существующие условия в экономике и государственном управлении. Границы между странами давно не воспринимаются как барьер для информационного и финансового потоков, а мобильность капитала и развитие финансовых технологий привели к тому, что минимизация обязательств налогоплательщиков все чаще происходит в цифровом поле. Создаются новые, виртуальные и гибридные, бизнес-модели, распространение цифровых товаров и услуг сопровождается развитием мошенничества в сфере электронной торговли, а возникновение стартапов на основе современных технологических решений приводит к изобретению теневых цифровых активов. В результате изменяется поведение не только потребителей, но и профессиональных участников оборота, а также государственных органов.

Ключевые слова: налоговое администрирование, противодействие уклонению от уплаты налогов, цифровая экономика, криптовалюта, цифровые финансовые активы

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Abstract. The dynamic development of information technology, which currently is taking place all over the world, is changing the existing conditions in the economy and public administration. Borders between countries have not been perceived as a barrier to information and financial flows for a long time, and the mobility of capital and the development of financial technologies have led to the fact that the minimization of taxpayers' obligations is increasingly taking place in the digital field. New virtual and hybrid business models are being created, the spread of digital goods and services is accompanied by the development of fraud in the field of electronic commerce, and the emergence of startups based on modern technological solutions leads to the invention of shadow digital assets. As a result, the behavior of not only consumers but also professional participants in the turnover, as well as government agencies, is changing.

Keywords: tax administration, counteraction to tax evasion, digital economy, cryptocurrency, digital financial assets

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The process of globalization daily leads to the emergence and development of new technology that radically changes the reality around us.

In accordance with the Decree of the President of the Russian Federation dated September 9, 2017 № 203 “On the Strategy for the development of the information society in the Russian Federation for 2017-2030” and the Program “Digital Economy of the Russian Federation” (approved by Government Decree No 1632-p dated July 28, 2017), digitalization has come into all areas of social life, including the financial sphere [1].

As it was noted by M.V. Mishustin, who at that time headed the Federal Tax Service of Russia, within the framework of the OECD Tax Administration Forum (FTA), held in Santiago in 2019, “digitalization provides unlimited opportunities for improving tax administration” [2]. Indeed, when analyzing the activities of the Federal Tax Service of Russia over the past five years, it is clear, that this principle largely determines the nature of innovations in the field of domestic taxation [3].

Speaking more specifically on the topic of the domestic experience of reforming the tax system, one of the significant steps in the field of legal regulation of the digital economy was the introduction of the so-called “Google tax”. Since January 1, 2019, Federal Law No 335-FZ [4] of 27.11.2017 has changed the procedure for paying VAT when providing digital services on the territory of the Russian Federation. Now, foreign organizations that provide services in digital form, that is, services provided through information and telecommunications networks, are subject to mandatory registration with the tax authority in the application procedure [5]. In addition, since the entry into force of this law, foreign IT companies providing digital services on the territory of the Russian Federation are required to independently calculate and pay value-added tax (VAT) in the amount of 16,67% to the budget [6]. As of recently, the tax authorities have been forced to temporarily change the procedure for paying such a tax; due to the difficult foreign policy situation and the introduction of restrictions by foreign states on settlements with the Central Bank of Russia, many foreign organizations have encountered difficulties in transferring funds to pay taxes from accounts opened in foreign banks to the accounts of the Federal Treasury

of Russia. To solve the current situation, the Federal Tax Service of Russia issued clarifications in March 2022 that contained recommendations for Russian organizations and individual entrepreneurs who are consumers of digital services specified in Article 174.2 of the Tax Code of the Russian Federation to act as tax agents and independently complete calculations, withhold and pay VAT on transactions with foreign companies, and then accept the amount of tax paid for the deduction [7].

At the same time, when analyzing the tax systems of states that are not members of the Organization for Economic Cooperation and Development (*hereinafter OECD*) (for example, the Russian Federation), it is necessary to take into account that legislative innovations in such countries often outstrip the adoption of conventions at the supranational level of the G20 countries. The conventions adopted by the OECD are not norms of direct action for such countries, but at the same time have a significant impact on interstate relations due to their wide distribution among the leading world powers. As a result, non-OECD member countries are trying to anticipate changes in international tax law by adopting internal acts in order to prepare in advance for a change in the paradigm of international legal regulation and not to fall out of tax relations at the supranational level.

Returning to the example of the Russian Federation, it should be noted that the adoption of Federal Law № 236-FZ [8] on 01.07.2021, well known to the general public as the “landing law”, pursues several goals at once. On the one hand, this is the reaction of the domestic legislator to the daily growing volume of services: the number and the speed of transactions performed by taxpayers have increased significantly, and traditional methods of administration have ceased to be relevant, which required the introduction of new tools to meet the fiscal interests of the state. On the other hand, as noted earlier, the development, and implementation of new principles of taxation of the digital economy is actively underway at the level of the Organization for Economic Cooperation and Development, one of the criteria of which is the number of consumers of digital services on the territory of a particular state (Pillar 1 and Pillar 2). The Russian Federation, as one of the leading actors in international relations, also improves its legal regulation in accordance with global trends.

The “landing law” of foreign IT companies came into force on January 1, 2022. According to its provisions, the owners of websites on the Internet, as well as other information systems or programs for electronic computers, whose daily audience is at least 500 thousand people located on the territory of the Russian Federation, are required to comply with the following requirements:

- to register a subsidiary legal entity, branch, or representative office in accordance with the procedure established by the laws of the Russian Federation, which will be authorized to be responsible for compliance with legislation, including tax, by the parent company, as well as resolve consumer claims;
- for these purposes, a feedback form should be provided on the organization’s website;
- in addition, it is necessary to have a personal account on the website of the federal executive authority that performs the functions of control and supervision in the field of information technology.

Such body is the Federal Service for Supervision of Communications, Information Technology and Mass Media (Roskomnadzor), according to which the new law affected such IT giants as Apple, Google, Meta, Twitter, Viber, Zoom, and others, while some of them (Apple Inc., Likeme and Rakuten Viber) have already taken measures to bring their business activities in line with the new requirements.

The introduction of this measure, according to the Chairman of the State Duma of the Federal Assembly of the Russian Federation V.V. Volodin, will contribute to better monitoring of compliance by large foreign companies with Russian legislation [9].

In addition, we believe that the emergence of such legal regulation of IT business activities will not only contribute to monitoring compliance with legislation in the future, in particular in the field of taxation but also increase tax collection due to the gradual transition to new, digital taxation criteria, such as the number of consumers of digital services within a particular jurisdiction.

If we talk about such a high-risk area of the economy as the issue and circulation of digital assets and digital currencies, thoughts about the need to regulate this area have been expressed for quite a long time in the scientific community, as well as among practitioners who point out the similarity of the crypto economy with offshore territories due to its lack of control by state financial institutions [10].

The need to improve legislation in the field of cryptocurrency turnover is also understood at the level of the state machinery.

One of the first documents that raised the issue of the importance of taking legislative measures to control the activities of persons engaged in professional activities in

the field of cryptocurrency circulation was the Letter of the Federal Tax Service of Russia dated October 3, 2016 No OA-18-17/1027 [11], which proposed to extend the effect of Federal Law No 173-FZ [12] and No 115-FZ [13] on operations using cryptocurrency.

At the same time, in order to increase the effectiveness of legislative regulation, it is first of all necessary to definitively determine the content of the terms used.

Despite this, there is still no unified approach in domestic legislation to the content of the terms “cryptocurrency” and “mining”, as well as regarding the key parameters of economic activity in this area [14].

Currently, there are explanations of the Federal Taxation Service from 2018, according to which, until the adoption of a legislative act, cryptocurrency assets should be considered as property. In turn, this approach requires individuals who make transactions using cryptocurrencies to pay personal income tax [15]. At the same time, the Federal Taxation Service provides for the possibility of reducing the tax base by the number of expenses for the purchase of crypto assets, however, the calculation of the amount of tax, its payment, and filing of a tax return is entirely the responsibility of the taxpayer himself [16]. In the absence of official explanations regarding the list of documents that can be accepted as confirmation of the reality of expenses, the situation of taxpayers in the current situation seems extremely difficult.

The use of cryptocurrencies in the economic activities of individual entrepreneurs and legal entities is even less regulated. According to the Ministry of Finance of the Russian Federation, the decision on the taxation of income from such activities should be postponed until the legislative consolidation of the concepts of “cryptocurrency” and “mining” [17].

The considered approach to the definition of legal regulation of crypto assets is also supported by judicial practice. Thus, the Ninth Arbitration Court of Appeal, in its ruling on case No 09AP-16416/2018 dated May 15, 2018, ordered the debtor in the bankruptcy case to transfer access to the crypto wallet to the financial manager for replenishment at the expense of the bankruptcy estate funds on it. In support of its decision, the court points out that, within the meaning of Article 128 of the Civil Code of the Russian Federation, cryptocurrency should be considered as other property [18].

At the same time, the supreme court notes the significant risks associated with the possibility of using cryptocurrencies to launder funds obtained by criminal means.

In anticipation of the delegation of the Group on the Development of Financial Measures to Combat Money Laundering (FATF) to Russia, the Supreme Court of the Russian Federation adopted Resolution of the Plenum No 1, on February 26, 2019, in which the real danger of

using digital financial assets as the subject of crimes was pointed out, the elements of which are provided for, including (but not limited to) Articles 159, 159.3, 159.6, 172, 174–174.1, 187, 195–197, art. 199–199.2 of the Criminal Code of the Russian Federation [19].

The next important step towards the legislative consolidation of the status of cryptocurrency as the property was the adoption in 2020 of the Federal Law “On Digital Financial Assets, Digital Currency and on Amendments to Certain Legislative Acts of the Russian Federation” [20]. This federal law, in addition to defining the concepts of “digital currency” and “digital financial asset”, finally equated crypto assets to property at the legislative level. However, the peculiarity of the legislative technique is that, based on the text of Federal Law No 259-FZ, the status of property is applicable to cryptographic coins only for the purposes of a closed list of regulatory legal acts in the field of countering the legalization of proceeds from crime and the financing of terrorism; insolvency (bankruptcy); enforcement proceedings and anti-corruption.

However, within the framework of this article, we are interested in the status of digital assets specifically for tax purposes, and this aspect up to now remains regulated only at the level of the by-laws of 2018.

On the one hand, it seems to be only a matter of time, which is confirmed by the speech of the head of the State Duma Committee on the Financial Market of the Russian Federation A.G. Aksakov on April 7, 2022, according to whom, before the end of the spring session of the State Duma, it was planned to adopt amendments to the Tax Code of the Russian Federation, which would finally approve cryptocurrency assets in the status of the property [21]. On the other hand, there is clearly no unified approach to the issue under consideration in the structure of public power, which is clearly seen by the example of directly opposite concepts that were published by the Central Bank of Russia [22] and the Government of the Russian Federation [23] in January and February 2022, respectively.

Thereby, the mega-regulator advocates the introduction of a legislative ban on the circulation of cryptocurrencies on the territory of the Russian Federation. To achieve this goal, it is proposed to completely prohibit the issue and circulation of crypto assets even between individuals, prohibit investments in derivatives derived from cryptocurrencies for financial organizations, and also establish responsibility for the use of cryptocurrencies by individuals and legal entities as a means of payment.

In turn, the Government takes the side not of prohibition, but of regulation. Thus, the concept proposed by the Government distinguishes different categories of participants in the crypto assets market and also outlines

the circle of subjects who are supposed to be charged with reporting to the tax authority information about obtaining the right to dispose (independently or through third parties) of digital assets, as well as transactions with such assets and digital currency balances on accounts. The specified information must be submitted to the tax authority no later than April 30 of the calendar year following the reporting period, while the concept provides for the possibility of communicating information in electronic form (via the taxpayer's personal account or via telecommunication channels).

It is not yet clear which of the proposed solutions will ultimately receive legislative consolidation, but already today several bills are under consideration in the State Duma of the Russian Federation — on the taxation of digital currency and taxation of digital rights, which means that it will soon become known which vector of regulation of crypto assets will be chosen by the domestic legislator.

In our opinion, despite careful elaboration and continuous improvement, the approaches proposed above pose certain difficulties in the field of tax administration and control, and therefore, in the process of adopting the final legislative act, existing approaches need to be supplemented with a number of provisions.

Of course, many concepts of legal regulation of the digital assets market are aimed at solving urgent tasks and challenges, including the field of cryptocurrency circulation, and definitely contain significant novelties that will give impetus to the further development and legalization of the crypto market. Nevertheless, both domestic and international concepts are limited to the fact that they provide for the legislative consolidation of taxation of transactions with digital assets and also impose the obligation to disclose information about their customers and their accounts on cryptocurrency exchanges, digital wallet operators, and other professional intermediaries.

Such innovations will have a significant impact not only on professional participants in the digital assets market but also on ordinary citizens — individuals, the severity of whose tax burden will increase due to the emergence of the obligation to calculate and pay taxes from transactions with cryptocurrency.

Of course, both Russian and supranational initiatives provide certain tax benefits, such as, for example, the ability to reduce the tax base on transactions with cryptocurrency by the number of expenses for the acquisition of digital assets.

At the same time, it is important to note the following points:

First, the value of cryptographic coins during transactions is determined at the exchange rate, which is most often set in US dollars (USD), whereas, in accordance

with the national legislation of different countries, the obligation to pay taxes, as a general rule, must be fulfilled in the national currency;

Second, it seems obvious that the emergence of legislative regulation of crypto investments creates certain security guarantees for ordinary financial market participants, which in the near future will significantly expand the circle of people who will start using digital assets as a source of income;

Last, tax legislation is complex and difficult to understand for “ordinary taxpayers” who will have to face the need to independently calculate and pay tax amounts, as well as track tax periods and apply deductions.

These listed features create significant difficulties for unqualified taxpayers, and increase the risks of the state budget not receiving tax revenues as a result of intentional or accidental errors in the calculation and payment of tax amounts.

In addition, it should be taken into account that a large amount of unpaid taxes (especially at first, during the period of adaptation to the new legal regulation) will inevitably entail the need for tax audits and tax disputes, which will significantly increase the array of work of tax authorities.

In our opinion, all the difficulties listed above will be avoided if we centralize the mechanism of taxation of transactions with cryptocurrency and assign the duties of calculating and paying taxes to professional participants of the financial market — tax agents.

In this regard, we consider it appropriate to send the following proposal to the authorized state bodies of the Russian Federation:

1. Make the following amendments to the Tax Code of the Russian Federation:

Extend the effect of Article 226.2 (as amended by Draft Law No 106872-8 “On Amendments to Part Two of the Tax Code of the Russian Federation (on Taxation of Digital Rights)” to transactions made with digital currency. Additionally, supplementing Paragraph 2 of article 226.2 with subparagraph 4) as follows:

4) *A digital currency exchange operator, a foreign digital currency exchange, or another Russian or foreign organization registered in accordance with the procedure established by law, which, as a professional activity, carries out transactions with digital financial assets (including crypto assets) or provides a platform for such transactions for and/or on behalf of clients.*

2. Make changes to other regulatory legal acts, the subject of regulation of which may contradict Article 226.2 in the new edition.

In addition, for the purposes of improving and developing the legal regulation of the cryptocurrency market at the supranational level, we consider it appropriate to send a proposal to the Organization for Economic Co-

operation and Development, the essence of which is as follows:

1) include in the agreement of the G20 countries, drawn up following the results of public discussions of the OECD report “Crypto-Asset Reporting Framework and Amendments to the Common Reporting Standard”, a recommendation for the participating countries to grant the status of tax agents to organizations that, as a professional activity, carry out transactions with crypto assets or provide a platform for such transactions for and/or on behalf of clients (Reporting Crypto-Asset Service Providers);

2) recommend to the participating countries to grant such persons the appropriate rights and obligations of tax agents to calculate, withhold and transfer taxes from transactions with digital assets to the budget, by analogy with granting such rights to brokers who currently operate on the stock market.

In conclusion, it should be noted that the relevance of developing new mechanisms for tax administration and countering tax evasion in the digital economy is recognized by specialists not only at the national but also at the international level. We also consider it important that despite the temporary foreign policy tensions and sanctions imposed against the Russian Federation (such as the European Commission’s ban on providing cryptocurrency management services in our country), increasing tax transparency and combating tax evasion, in our opinion, are global problems, the solution of which is much more effective taking into account the international experience. In this regard, the measures proposed in the framework of this article are aimed at improving not only domestic but also international legal regulation of the digital economy.

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