

Tax System: The Concept and its Legal Content

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ABSTRACT

The purpose of the study is to analyze the “tax system” concept in jurisprudence and modern scientific studies. The research established that different authors attach different meanings to the “tax system” term, or use this term to denote different public relations. This is evidenced by the lack of unity in the definitions that are provided by different researchers. Moreover, the lack of a scientifically substantiated understanding of a tax system explains the fact that the legislator decided not to fix this term in the law. The author defines «tax system» scientific term as a social category, which is considered an open system that incorporates political, economic, and legal provisions, and is established with a view to ensuring the implementation of the tax mechanism. The study determined that the legal constituent of the tax system, its subsystem, is formed by legal provisions, which are based on initial political regulations, which implement current economic ideas of taxes. Research findings may be useful for jurists, specialists in the field of economics, sociologists, and political science experts.

KEYWORDS

Tax system concept; tax system formation; tax relations' participants; tax system' economic characteristics; mechanisms of tax administration

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Introduction

The “tax system” concept should be referred to the debating points of tax law. On the one hand, the “tax system” term is widespread, and is constantly used in regulatory acts, court rulings, scientific researches, and mass media. On the other hand, the authors seldom explain what they mean by a tax system.

Without a single theoretical perspective on the “tax system” concept, there is no point in legitimizing it by fixing the concept in a legislative act. This is evidenced by Russian legislative practice. For example, Article 2 of the Law of the Russian Soviet Federative Socialist Republic No. 2119-1 dated 27.12.1991 “On the Bases of the Tax System in the Russian Federation” says that the “tax system” is a set of taxes, fees, duties, and other payments, charged in accordance with established procedures. This brought about the practice of imposing taxes that contradicted Article 57 of the Constitution, and led to over 70 regional and

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local laws' being adopted in Russia by 1994 in addition to the ones provided by the said Law.

At the same time, determining the content of the concept and providing a respective definition of a tax system as a scientific category would facilitate the creation of a mechanism for legal regulation of taxes (Bryzgalin, 2002). This would allow distinguishing the elements of the tax system, determining the place and role of each element and the interconnection of elements within a tax system, and drawing the line between the tax system elements and external factors that influence the tax system (Sokolova, 2007). This, it turns, would form a scientific basis for efficient legal fixation of tax regulation.

The elaboration of the "tax system" concept is especially important in terms of legal regulation, since this concept can help determine the system organization of the field of taxes and fees, the issues due for regulation, and regulation limits. This concept can lay the foundation for the formation of the general conditions of tax legislation, and legislative provisions regarding individual taxes (Aronov & Kashin, 2006). In a modern constitutional democratic state, no compulsory payment may be considered a tax without appropriate legal regulation.

The first scientific model of a tax system was developed by A. Smith (1904). His four rules (maxims) "with regard to taxes in general", in combination with the suggestions on the tax system can be viewed as the first scientific model of a tax system.

Since that time, taxation and the scientific thought took a huge step forward. However, scientists failed to arrive at a single understanding of a tax system. The concept of "tax system" is studied in the works of modern Russian economists and jurists.

It is worth emphasizing the following interpretation of the "tax system" concept, provided by tax law specialists. Thus, I.I. Kucherov (2006) defines a tax system as a principle-based system of legally regulated public relations that emerge due to the imposition and levy of taxes and fees. The author distinguishes "certain isolated subsystems (bodies)" in the structure of a tax system (Kucherov, 2006): the body of taxing subjects (taxing body); the system of taxes and fees; the body of taxpayers (taxable body); the system of tax administration bodies; the system of bodies that ensure tax security.

A.V. Bryzgalin (2002) defines the tax system as an interconnected community of all existing public relations (economic, political, organizational, and legal) in the field of taxation. According to the author, the main elements of any state's tax system are the economic characteristics of the tax system, current and future courses of the tax policy, the system of tax legislation principles, the system of tax and other fiscal bodies, the conditions of interaction between budgetary and tax systems, the procedures of tax distribution among budgets, the forms and methods of tax control, the order and conditions of tax proceedings, the responsibility of tax legal relations' participants, the means of protecting the rights and interests of taxpayers, etc. (Bryzgalin, 2002).

While studying the "financial system" concept, E. D. Sokolova (2007) writes that the tax system is a constituent of the financial system's public sector and includes all taxes and fees, and bodies that organize their payment and tax control (Sokolova, 2007).

V.N. Ivanova (2004) views the tax system as a complex legal, socioeconomic, and political phenomenon of public life, wherein the following constituents can be distinguished: the juridical construction of the tax as the fundament for the tax system formation (distinguished from the taxation system with a view to emphasizing the special role of the legal category as a system-forming element); the state taxation system that is formed, based on the unification of the juridical constructions of all imposed and introduced taxes; the rulemaking activity of representative government bodies in the field of taxation; the system of tax bodies; tax control; the state tax policy; the tax culture of the population (Ivanova, 2004).

Now let's consider the definition of the tax system in the works of economists.

D.G. Chernik (2006) defines the tax system as a complex formation that includes interconnected subsystems: the taxation subsystem and the tax administration subsystem. The taxation subsystem is presented as a set of legislatively established taxes and fees that are paid by legal entities and natural persons to the state budget system. The tax administration covers the set of bodies, empowered by the state to exert control over the observance of taxpayer obligations by legal entities and natural persons. The tax system of constitutional democratic states formed under the influence of historical, political, economic, and social conditions and factors that emerged for different reasons in this or that period of international or national life (Chernik, 2006).

A.V. Tolkushkin (2000) defines the tax system as a set of taxes and fees that are charged in a state, and the forms and methods of its organization (Tolkushkin, 2000). T.F. Yutkina (1999) argues the tax system is a set of taxes, duties, and fees that are charged in the territory of a state in accordance with the Tax Code, and also the set of rules and regulations that determine the powers and responsibilities of parties that participate in tax legal relations (Yutkina, 1999).

I. A. Mayburov (2007) provides the following definition: the tax system is a principle-based integral unity of its main interconnected and interrelated elements. These elements are the regulatory legal basis of taxation, the set of taxes and fees, payers of taxes and fees, and the mechanism of tax administration. The tax system is open and dynamic (Mayburov, 2007).

The interpretation of the tax system as a system of taxes and fees can also be encountered in modern literature (Milyakov, 2008; Aronov & Kashin, 2006; Gracheva & Tolstopyatenko, 2009).

Thus, it is worth noting the following. With regard to individual research topics or specific historical facts, the “tax system” term can be used to denote a part of the tax system, for example, the system of taxes and fees, or the tax administration system. However, such interpretation of the “tax system” concept may distort the research object, including the objects of such disciplines as “Tax law” or “Tax and taxation”, cause an incomprehensive investigation of relevant issues, or, in practice, like it happened in modern Russia, as previously mentioned, cause a nonobservance of the constitutional principle of paying only the taxes that are established by the law.

When studying the topic of “Tax systems within the framework of tax law in foreign countries” and indicating their multiplicity and substantial differences

due to the impact of economic, political, and social conditions, I.I. Kucherov (2003) covers only two issues: 1) the typology of tax systems as a result of national and administrative-territorial structure of a state or international formation; 2) the model of tax and fees system (Kucherov, 2003).

The role of the economic constituent of the tax system can be characterized by the words of one of the classic Russian scientists in the field of tax law, A.A. Isayev (2004): “The tax system only meets the requirements of the scientific thought when it consists of taxes, the object whereof allows judging the solvency of a private household and the nature of its income, since only these terms determine how much a citizen can and should pay the state” (Isayev, 2004).

The importance of the political constituent can also be demonstrated by the words of this scholar: “Without knowing the principles of tax policy, we could not evaluate the tax systems in terms of their content” (Isayev, 2004).

Method

This study is based on theoretical research methods, namely the methods of economic analysis and method of comparing existing “tax system” concepts. We have assessed different meanings to the “tax system” from the standpoint of economists and lawyers.

Data, Analyses, and Results

So, we adhere the position that the scientific category of “tax system” should be differentiated from the colloquial understanding of a tax system, i.e. the understanding of a tax system as the result of established taxation conditions in a certain territory as a combination of the influence of the declared taxation procedures and external factors, which do not form the tax category as such, but which may at times have a determining influence of the actual state of affairs in the field of taxes.

This understanding of a tax system is the basis for the World Bank paying taxes indicator, which is intended to evaluate the convenience of a state’s tax system.

This indicator includes three parameters:

- 1) the tax burden of an organization (the amount of taxes to the amount of income of the organization);
- 2) working time, spent by the organization to perform its tax obligations;
- 3) the number of taxes paid by the organization annually, as the ones that are determined for small and medium-sized national organizations and which, at least in part, reflect the actual status of the taxpayer.

All the above indicates that in socio-political and economic studies and the legal field, the “tax system” scientific term should be used as a concept that characterizes the tax law and order overall. It is also worth noting that most scientists acknowledge the existence of a political, economic, and legal constituent in the tax system, but the authors do not divide tax system elements by their belonging to respective subsystems, and do not distinguish the legal constituent of the tax system.

The tax system incorporates three main interconnected, interpenetrative, and, at the same time, independent (i.e. not rigidly connected) subsystems – economic, legal, and political.

The legal subsystem of the “tax system” concept is formed by the following legally fixed provisions:

- 1) the procedure of establishing and bringing into force taxes and the taxing body;
- 2) the legal construction of the tax, the exhaustive list of payments that are considered taxes, and the procedure of performing obligations for paying taxes (general and special);
- 3) provisions that reflect and fix the specificity of legal regulation in the field of taxes: normative principles of taxation (in the amount required to resolve conflicts and fill gaps with a view to assessing the actual circumstances during the resolution of specific disputes), legal and regulatory framework (including the system of sources, special terms, etc.), and certain peculiarities of the tax system (for example, the procedure of tax prosecution, system of tax body organization);
- 4) the legal status of persons and entities with tax liabilities;
- 5) forms and methods of tax control and the order of control over the observance of legislation on taxes and fees (including the legal status of tax administrators), authorities of state law enforcement agencies in terms of tax security;
- 6) penalties for violating laws on taxes and fees.

Discussion

K.S. Belskiy (2006) provides the following definition: “... a tax system is a principle-based set of interconnected parts (elements) in the field of taxation, which includes the tax solvency of the country’s citizens, the system of legally established laws and fees, the tax administration, and the methods of tax administration”. At the same time, he excludes from the “tax system” concept the principles of taxation, and, when describing the tax system concept, writes, “... the tax system elements are of an objective nature, they are specific and, to a certain extent, material.

The principles of taxation are fundamental and guiding ideas that are comprehended and substantiated by financial and legal experts during the historical formation of the tax system. They relate to the political and legal field that “feeds” the tax system, and facilitates both its stability, and its evolution” (Belskiy, 2006).

This position, according to which, taxation principles are not included in the “tax system” concept, is in line with the position of the Constitutional Court, which is stated in the Constitutional Court Ruling No. 2-P dated 30.01.2001: “The establishment of general principles of taxation and fees, and the formation of the tax system that includes a comprehensive list of regional taxes as sources of revenues to the budgets of subjects of the Russian Federation and local budgets, shall be executed by the federal law in accordance with the Constitution of the Russian Federation” (Collection of Russian Federation Legislation, 2001).

It is also pertinent to point out that the provisions on the protection of rights of persons and entities with tax liabilities, the mechanisms of appeal, the

system of tax bodies and the responsibility of their officials should be determined primarily by other segments of the state tax system. We agree with, M.P. Arena &, G.W. Kutner (2015) that they should be considered external factors of a tax system.

According to this conception, external factors of influence on the tax system can be divided into two types: constant, like the state structure, procedure of complaints and dispute settlement in a certain state, and temporary, for example, a financial crisis. Thus, in Russia, external factors of influence on the tax system include (at least until the Tax Code and the laws on the judicial system are changed) the explanations of the Ministry of Finance of the Russian Federation and the judicial practice regarding tax disputes, which formally, within the framework of the Russian legal system, cannot be referred to “established essential conditions of taxation”.

At the same time, I.I. Kucherov (2006) observes external factors can dominate over the provisions of the tax system by determining the procedures in the field of taxes and fees, and by forming the colloquial understanding of the tax system.

Conclusion

In summary, the “tax system” scientific term is a social category, which is considered an open system that incorporates political, economic, and legal provisions, and is established with a view to ensuring the implementation of the tax (or tax mechanism) as a means of financial support for the activity of public-territorial formations.

The modern tax system incorporates three main interconnected, interpenetrative, and, at the same time, quasi-independent (i.e. not rigidly connected) subsystems – economic, legal, and political.

The legal constituent of the tax system, its subsystem, is formed by legal provisions, which are based on initial political regulations, which implement current economic ideas of taxes, and which are specifically established in a certain state in the field of taxes and fees.

Disclosure statement

No potential conflict of interest was reported by the authors.

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References

- Arena, M. P., & Kutner, G. W. (2015) Territorial tax system reform and corporate financial policies. *Review of Financial Studies*, 28(8), 2250-2280
- Aronov, A. V. & Kashin, V. A. (2006) Tax policy and tax administration. Moscow: Ekonomist. 111p.
- Belskiy, K. S. (2006) Basics of Tax Law loop material on the theory of tax law of five parts. *Citizen and law*, 1, 3-15

- Bryzgalin, A. V. (2002) The system of taxes and fees in the Russian Federation. Imposition, introduction, and abolition of taxes. In M.V. Karaseva (Eds.). *Financial law of the Russian Federation*. Moscow: Yurist, 324-325
- Chernik, D. G. (2006) *Taxes and taxation*. Moscow: MCFR. 288p.
- Collection of Russian Federation Legislation (2001). Direct access: http://www.gov.ru-main/page4_en.html
- Gracheva, Ye. Yu. & Tolstopyatenko, G. P. (2009) *Financial law*. Moscow: Prospect. 238p.
- Isayev, A. A. (2004) *Essay on the tax theory and policy*. Moscow: Statut. 585p.
- Ivanova, V. N. (2004) About a systems approach to understanding the legal categories of "legal construction tax", "system of taxation" and "tax system". *Legislation and economics*, 6, 69-73
- Kucherov, I. I. (2003) *Tax law of foreign countries*. Moscow: Jurinform Center. 124p.
- Kucherov, I. I. (2006) *Tax law in Russia*. Moscow: Jurinform center. 71p.
- Mayburov, I. A. (2007) *Theory and practice of taxation*. Moscow: UNITY-DANA. 301p.
- Milyakov, N. V. (2008) *Taxes and taxation: Textbook*. Moscow: INFRA-M. 50p.
- Smith, A. (1904) *Inquiry into the Nature and Causes of the Wealth of Nations*. 5th edition. London: Methuen & Co. 132p.
- Sokolova, E. D. (2007) *Theoretical and legal bases of the financial activity of the state and municipal formations*. Moscow: Jurisprudence. 229p.
- Tolkushkin, A. V. (2000) *Taxes and taxation: Encyclopedic dictionary*. Moscow: Yurist. 290p.
- Yutkina, T. F. (1999) *Taxes and taxation*. Moscow: INFRA-M. 200p.