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# Legal Principles of Taxation in Russia: Essential Reflection in Legislation

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## ABSTRACT

The present paper aims to study the nature of taxation principles in Russia and analyze how they are structured and outlined in the legislation. The research is based on general scientific research methods, such as the comparative method and the method of system analysis. The study provides a comparative analysis of the views of Russian and foreign scientists regarding the system of taxation principles and the provisions of the current legislation in the field of taxes. The results of the paper offer that a significant amount of research has been devoted to the problem of the essential reflection of taxation principles but it has not been sufficiently developed and updated. The author argues the need to consolidate the principles of taxation in the current legislation by introducing a special chapter in the Tax Code of the Russian Federation, justifies the need for a fair formation of a system of taxation principles in theoretical and practical aspects. The types and structure of taxation principles in the modern world are proposed. A special chapter has been developed, which the author suggests introducing into the Tax Code of the Russian Federation. The author concluded that in order to reflect the basic principles of taxation in the current tax legislation, it is necessary to introduce the proposed changes.

**Keywords:** principles; taxation; tax system; tax policy; property; general legal principles; economic principles; taxation principles; taxation equity

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## INTRODUCTION

Taxation is one of the clearest manifestations of the powers of a public authority<sup>1</sup>, it is an integral part of financial history [1] and has been practiced as an art for a long time but has never been fully explained. Almost all countries of the world levy taxes mainly to increase government expenditure, although for other purposes as well [2]. And a property tax originates from a poll tax (chevage) [3].

Currently, states have developed more sophisticated systems and processes to define who and what should be taxed (“tax base”), and how taxpayers’ circumstances and ability to pay should be accounted for [4]. What are the taxation principles and how do they affect our daily life?

One of the most controversial issues both in theory and practice is the formation of a system of tax principles, which are undoubtedly a centerpiece of a modern tax system in any country. However, there are several questions that science cannot provide answers to. For example, approaches to defining the structural essence of some principles and determining the quantitative composition of the existing principles of taxation are highly controversial. Therefore, each country decides to include (or not) the principles of taxation in tax legislation [5]. It is important to note that the scientific works of tax law specialists and economists and other respected scientists, for example, E. A. Lopatnikova, N. R. Kikabidze, N. M. Boboshko, are devoted to the issues of scientific justification of the basic tax principles systematization, as well as the introduction of a separate chapter on this issue in the legislation. However, this aspect is underdeveloped, in particular, the importance of fair taxation, equitable property taxation which is an integral part of taxation, etc.

Thus, the aim of the study is to analyze the existing provisions of the tax legislation, their essence, and structural and logical consolida-

tion in legislation, as well as the views of domestic and foreign scientists on this issue. We are also considering to develop recommendations on the principles of taxation in the current legislation on taxes and fees (hereinafter referred to as ‘legislation’) and clarify the content of fundamental principles, considering modern realities in the legal field and relations in the field of taxation.

## EVOLUTION OF FUNDAMENTAL PRINCIPLES OF TAXATION THROUGH THE PRISM OF HISTORICAL DEVELOPMENT

The necessity to set rules for calculating and paying taxes arose from the need for regular payments to the state [6].

Meanwhile, the taxation system of different countries is formed under the influence of political, social, and economic conditions [7]. It is impossible to build a fair, developed, and efficient tax system without adhering to common basic requirements.

Adam Smith, the economist, and creator of the classical principles of taxation formulated the basic economic principles of taxation in his work “An Inquiry into the Nature and Causes of the Wealth of Nations”, later called the “Declaration of Payer Rights”. Adam Smith argued that taxation should follow the four principles of fairness, convenience, efficiency, and certainty [8, p. 226]. However, some scholars expressed certain ideas regarding the principles of taxation before the classification proposed by Adam Smith. For example, Pietro Verri in his work “Reflections on Political Economy” [9], as well as F. Yusti [10, p. 194] formulated ideas about the possibility of the tax burden reduction, the need for a certain convenience and equitability of taxation for the taxpayer. Similar ideas were mentioned by such theorists as Victor Riqueti, Marquis of Mirabeau (“The friend of men”) [11], and François Quesnay (“Economic table”) [12].

Adam Smith not only formulated but also scientifically substantiated these principles,

<sup>1</sup> SOAS University of London: Understanding Public Financial. URL: <https://www.futurelearn.com/courses/public-financial-management/0/steps/14705> (accessed on 01.06.2020).

laying the foundation for the theoretical development of the basics of taxation [13].

Based on the theory of collective needs, the German economist Adolf Wagner developed the classical theory of Adam Smith, combining nine basic rules of taxation into four groups of principles: ethical, economic, financial, and principles of tax administration [14].

Consequently, the works of such economists as Adam Smith and Adolph Wagner laid the foundation for a system of principles in tax theory that would unite the mutual interests of both taxpayers and the state. Over time, new principles of taxation appeared, old ones were revised, financial science developed and improved with the development of the tax system [15].

Now the principles of taxation are being formed into an established system that considers the modern realities of the economy [16]. However, in a global context, the content of this system is not generally accepted.

The state is obliged to consider the specific development scenarios of society, as well as be guided by such basic principles of taxation as universality, efficiency, fairness, etc. Deviation from one principle or another can negatively affect the socio-economic situation. Therefore, in order to ensure the progressive and sustainable economic development of the state, it is necessary to consider and observe these principles.

#### ANALYSIS OF THE PRINCIPLES OF TAXATION ENSHRINED IN THE CURRENT LEGISLATION

Such principles as fairness, certainty, convenience, economy, neutrality, one-off taxation, unity, moderation, budgetary federalism are best known to science. When analyzing them, questions arise: should they be enshrined in legislation? should only the fundamental principles be enshrined? should only those be enshrined that are controlled?

There is no generally accepted approach to the subject among members of the scientific community. For example, as noted in the most significant publication on the theory of tax-

ation, the principles of taxation cannot exist, in legal terms, outside the legal framework that regulates them. Therefore, the main condition for the existence and recognition of the principle is that it must be determined by the law [17].

The author analyzed the practice of consolidating the principles of the tax system in Russia using the Tax Code of the Russian Federation (hereinafter referred to as 'the Code'). Article 3 of the Code "Basic principles of legislation on taxes and fees" establishes several principles that are very important both for the development and for the functioning of the tax system in Russia. Three basic principles are:

- ability to pay;
- legislative establishment of taxes and fees;
- universality and equality of taxation.

The principle of legislative establishment of taxes and fees can be considered as the most important principle. The relevant article of the Code focuses on the obligation of entities to pay statutory taxes and fees, rather than on the legitimacy of taxation charges. In other words, the keyword is "obligation", not "legitimacy".

Consequently, Article 3 of the Code does not indicate that taxes and fees are imposed by law. Unfortunately, the priority of tax legislation over norms in other branches of law is not emphasized anywhere. At the same time, this is one of the fundamental principles, and it cannot be left unnoticed in the norms of tax legislation. This principle, as well as the principle of priority of legislation, should be included in the relevant article of the Tax Code.

The next principle — universality and equality of taxation — is considered fundamental in the legislation. We are referring to the recognition of universality and equality, not the universality and equality of taxation as such. In this case, we agree with the opinion of V.G. Panskov, noting that "... this was not done by chance" [18, p. 20]. Indeed, it is impossible to achieve absolute universality

and equality of taxation, since the concept of “equality” in taxation is practically indefinable, and universality is equal to the fact that there are no persons who are exempt from certain types or all taxes imposed by the state. Therefore, students must pay tax on scholarships, retirees on pensions, etc. A number of critical questions about equality need to be answered, such as whether taxpayers must pay taxes in the same amount or at different rates in relation to the tax base? what to do with the need to differentiate between tax rates and benefits? Analyzing these issues, the author concluded that tax legislation does not quite successfully demonstrate the need to comply with the principle of equality and universality as an established goal when building a tax system.

The next principle of the ability to pay is even less specific in legislation. In this regard, several urgent questions arise. Firstly, how to measure the actual ability of a taxpayer to pay taxes? Of course, each taxpayer is individual and has different values, which are reflected in his needs, marital status, and lifestyle. However, what is a criterion or a set of those that determine the real ability of a taxpayer, or a group of taxpayers or even all taxpayers to pay taxes? It is interesting that the legislator, introducing this principle, emphasizes the need to comply with it and does not indicate exactly what goal should be achieved when building the tax system of the state.

The meaning of the principle of certainty of taxation, which was formulated by Adam Smith, is that legislative acts should be formulated in such a way that each taxpayer knows exactly what taxes (fees, insurance premiums), when and in what order should be paid. Consequently, the procedure, terms, and tax calculation procedure should be set out in the Code in such a way that any taxpayer could understand them [19].

Taxes affect our lives on a daily basis. Almost every country has a complex tax system that only qualified tax advisors/attorneys can understand. Nevertheless, the state expects citizens to comply with the tax requirements

imposed on them in full. Citizens have difficulties understanding taxation rules, tax calculations, and terms of payment [20, p. 37–38]. Taxes are complicated [21, p. 102], which is confirmed by domestic [22] and foreign practice<sup>2</sup>. Only trained professionals with relevant qualifications can understand all the intricacies of tax legislation. In this regard, the tax consulting industry has become widespread [23].

A taxpayer, in accordance with Article 21 of the Code, has the right to receive free information/advice from the tax authorities on current taxes, the rights, and obligations of the taxpayer, the procedure for calculating and paying taxes, etc., including in writing, at the local revenue office. Since it is impossible to fulfill the requirements of the principle of certainty, all contradictions, doubts, and ambiguities in the legislation are interpreted in favor of the taxpayer. We believe that it would be reasonable to expand this wording by specifying that the taxpayer has the right “to receive ... information ... provided by a tax authority employee with sufficient qualifications in the field of taxation and tax legislation.” In this regard, we conclude that the above principle should be formulated not as a necessary given, but as a goal to strive for.

It is also worth noting that the fundamental and most important principle of fairness is missing from the legislation. Interestingly, in the original version of the Code, this principle was applied in combination with the principle of the taxpayer’s ability to pay, arising from good taxation. However, then this rule was excluded and, according to the developer of the code S.D. Shatalov, this provision was removed “not because the legislator does not like fairness but because it is practically impossible to assess the fairness of a particular tax system; the same applies to the ability to pay tax based on the principle of fairness, without any fairness criteria” [24].

<sup>2</sup> INVESTSA Magazine (November 2014): From the editor. URL: [https://issuu.com/cosa/docs/investsa\\_nov\\_issuu/4](https://issuu.com/cosa/docs/investsa_nov_issuu/4). (accessed on 01.06.2019).

However, the absence of this principle in legislation should not mean that taxation should not seek to achieve fairness. Based on the above, we believe that a provision of fair taxation should be included in the Code as a primary objective.

Analyzing the Code, we conclude that the principles of taxation can be classified into legal and economic. As I.A. Maiburov noted, these principles should be legislatively enshrined in the norms of tax law [25]. However, the problem is that, except for the clearly defined principles mentioned above, in accordance with Article 3 of the Code, many of the principles are unclearly formulated and distributed among the various chapters and articles of the Code.

For example, the principle of identifying the elements of tax, which determines its legality in the law, is mentioned in Paragraph 6 of Article 3. It clearly states that all elements of taxation must be identified when taxes are established. The principle of priority of legislation, on the contrary, is not directly formulated as a principle of taxation, and, more importantly, is formulated broadly and in general terms. Also, in Articles 6 and 17 it is said that tax is established only if both the elements of taxation and taxpayers are identified. This principle is not explained.

The principle of neutrality is set out in Article 3 of the Code but it does not have a clear structure and integrity, being in various paragraphs of this Article of the Code. For example, Paragraph 2 states that taxes should consider various social criteria and not be discriminatory, differentiated rates or personal tax benefits are unacceptable. Further, Paragraph 4 prohibits taxes and fees that would in any way restrict the free movement of finances or goods (services, works), as well as violate the single economic space of our country, etc. In Paragraph 5 it is said that no one can be charged with the obligation to pay taxes that do not have their characteristics, etc. Thus, there is no integral consolidation and explanation of this principle.

### **PROPOSAL TO INTRODUCE A SPECIAL CHAPTER ON THE PRINCIPLES OF TAXATION INTO THE TAX CODE OF THE RUSSIAN FEDERATION**

Therefore, we assume it is appropriate to consider introducing a special chapter on the principles of taxation into the Code which should be factored in the development and implementation of both tax policy and the formation and development of the tax system.

We believe that the special chapter should contain two parts.

The first part should introduce principles that have a direct impact, for example, unity of the tax system, publicity, diversity, and differentiation of taxes, the presence of tax elements in legislation, and, of course, the priority of legislation over other legal branches.

The second part should include principles that will guide the development of tax legislation and define the long-term goal towards which both legislative and executive authorities should strive to improve the tax system. For example, such principles as mobility (flexibility), efficiency, and, most importantly, fairness. In our opinion, violation of the above principles by tax and other legislation at all levels should be the basis for protesting such acts.

Thus, we believe that the special chapter may be distinguished as Chapter 1.1. "Principles of Taxation". For example, the proposed Article 12 (or another) will be called "Basic ..." or "Fundamental ..." "... principles of taxation in the legislation on taxes and fees". Further articles should be located in accordance with this title and have a direct impact. Articles 12.1. "The principle of unity of the tax system", 12.2. "The principle of priority of legislation on taxes and fees over other legal branches", 12.3. "The principle of transparency of taxation", 12.4. "The principle of diversity and differentiation of taxes", 12.5. "The principle of elements of tax in legislation", 12.6. "The principle of universality and equality of taxation". Article 12.7. "The principle of fairness of taxation" should introduce a second part



of the chapter, which, as noted, would guide the development of tax legislation. This is followed by Articles 12.8. “The principle of mobility (flexibility) of taxation” and 12.9. “The principle of tax efficiency”.

As an alternative to the special chapter, we propose to supplement Article 3 of the Code, which would contain all the above-mentioned principles of taxation.

## CONCLUSIONS

Based on the above, we conclude that it is necessary to amend the current tax legislation to fully reflect the fundamental principles of taxation.

At the same time, it is necessary to distinguish the principles that determine the long-term goal towards which the tax system should strive to improve the tax system [the principle of mobility (flexibility), efficiency and, most importantly, fairness], and the principles that the

state should strictly adhere to when conducting the tax policy (the principle of the unity of the tax system, transparency, diversity, and differentiation of taxes, the presence of elements of tax in legislation, as well as, the priority of legislation over other legal branches). A clear and precise definition of the principles of taxation and their corresponding consolidation in legislation will contribute to political stability in the country, increase the authority of the state, as well as strengthen the legal tax discipline and correct tax thinking among taxpayers. In our opinion, the tax system in Russia will become more progressive and efficient and will be used by law enforcement agencies as a guide in the implementation of state tax policy. Thus, it is necessary to introduce the special chapter on the principles of taxation into the Code, which should be incorporated in the development and implementation of both tax policy and the formation and development of the tax system.

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