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Assessment of Tax Risks Arising from Personal Income Tax Agents

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ABSTRACT

Personal income tax (PIT) is one of the budget-forming taxes in the Russian Federation, therefore, an important direction of tax planning is the assessment of risks arising from both tax agents (at the micro level) and the state represented by tax authorities (at the macro level). The **subject** of the study is tax risks on personal income tax, and the **purpose** is to develop proposals for their assessment and reduction. **Objectives:** to classify tax risks according to personal income tax; to clarify the quantitative characteristics of tax risks; to identify directions of their decline. The **relevance** of the study is dictated by the need to study theoretical issues and practical aspects of the emergence of tax risks on personal income tax. The main **methods** of study are systemic, logical, theoretical cognition, scientific abstraction. The **results** of the study include the following: identification of the main types of tax risks for personal income tax and the development of a tax risks matrix for their assessment depending on residence, type of contract, amount of payment, court decisions, taking into account the possibility of identification, determination of amount of risk (arrears and penalties as well as intention). **Conclusions:** in the paper developed proposals for the assessment and reduction of tax risks under personal income tax: on the basis of the classification of tax risk (by subject, by basis of occurrence, by elements of taxation, by connection with tax checks, by types of risks, by the time of identification of tax risk, as well as taking into account the regional specifics) the amount of possible tax risk is calculated on the example of specific income (premium, financial assistance, gift) a tax risk matrix has been developed for practical application, which will enable to assess and rank tax schemes aimed at reducing tax obligations under personal income tax.

Keywords: taxes; tax benefit; tax gaps; tax risk; personal income tax; income; contracts; tax agents

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INTRODUCTION

Tax risks arise for all operators and may affect different taxes, including those paid by tax agents (PIT — personal income tax, VAT — value added tax, CIT — corporate income tax).

In the economic literature, there is no unity of the concepts of “tax risk”. It should be agreed that, as an economic category, “risk” is an event that may or may not occur. In the case of such an agreement, the economic results are possible: negative (loss, damage, costs), zero, positive (win, benefit, profit) [1, p. 15]. Interesting classification of tax risks by A. D. Berezina, L. P. Grundel [2, p. 200], which note as a possible consequence of tax risk the increase in tax burden. At the same time, tax risk management is an important part of corporate management in the company [3, p. 162]. Some authors identify potential tax risks, which should replace the objects of the study that have already occurred [4, p. 88]. At the same time, a compulsory condition for reducing or even preventing tax risks is called tax compliance, which allows to exclude discussion issues in tax calculations [5, p. 625], justifies the relationship with the blurring of the tax base [6, p. 1158]. Tax risk assessment is important, regardless of the level of economic development, even in developing countries where tax evasion is widespread [7, p. 122].

Many questions also arise when determining approaches to the calculation of the amount of tax risk and its measurement in terms of the financial losses of the subject [8, p. 166].

It should be noted that the absence of legislative fixation on the concept of “tax risk” provides for different interpretations and approaches to the definition of its value.

It is advisable to identify *direct negative effects*, which can be measured in quantitative terms:

- amount of taxes, fines and penalties calculated at the event;
- refusal to refund PIT (in case of misuse of tax deductions);

- compulsory debt recovery by PIT.

Indirect effects are not clearly quantified:

- possibility of appointment of on-site tax audit;
- get an individual to criminal or administrative responsibility;
- loss of business reputation as a result of the publication of information on tax offenses.

It is important to highlight a “risk-oriented approach to tax control”, which aims to identify and mitigate (i.e. reduce the impact of occurrence) tax risks [3, p. 13]. It applies both at the taxpayer level and at the state level, along with the “sectoral” approach (the emphasis is placed on the identification of tax risks that are more inherent in the conduct of activities in certain industries or types of economic activity).

CLASSIFICATION OF TAX RISKS

As a rule, the probability of tax subordination resulting from the use by tax agents (taxpayers) of tax schemes aimed at unlawful reduction of tax liabilities is referred to as PIT tax risks. Similarly, the economic literature also identifies adverse outcomes as: increased tax burden [9, p. 120]; suspension of company activities; prosecution of the management of the company [10, p. 30]; and uncertainty of the state’s tax system as a cause of occurrence [11, p. 65].

The consequences of the occurrence of tax risk are the addition of taxes and penalties as a result of tax checks on the above-mentioned taxes and fees, grouping is given in *Table 1*.

Note that the majority of tax risks are related to the occurrence of unjustified tax benefits under PIT, when it is possible to detect underestimates calculated by the tax agent under PIT. As a rule, this is followed by a responsibility under Article 123 of the Tax Code of the Russian Federation in the form of a penalty in the amount of 20%.¹ If the liability is attracted by the taxpayer himself, an individual (including an individual entrepreneur), Article

¹ Tax Code of the Russian Federation. Part One. SPS ConsultantPlus.

Table 1

Classification of Tax Risks by Personal Income Tax

Classification criteria	Types of tax risks
According to the subject – the risks of the taxpayer (organization, individual entrepreneur)	<ul style="list-style-type: none"> – On corporate income tax (in terms of inclusion in salary or other expenses); – on insurance contributions (in respect of payments made in favor of individuals); – on personal income tax (in terms of income categories, including non-taxable, in whole or in part)
According to the origin – when	<ul style="list-style-type: none"> – Errors caused by misinterpretation of tax legislation are permitted; – transactions are made with interdependent persons; – the supporting documents are incorrectly issued or they are missing; – late to react to changes in the legislation on taxes and fees (apply the invalid edition of the Tax Code of the Russian Federation); – circumstances that lead to the re-qualification of the contract (from the Civil-legal contract to the labour contract or from the contract of donation to the labor contract) are identified [12, p. 11]; – use the unambiguous judicial practice on tax disputes.
According to the elements of taxation	<ul style="list-style-type: none"> – Risk of incorrect or incomplete determination of the tax base (bases for calculating insurance premiums); – risk of incorrect application of tax rates (insurance rates), including 13% instead of 30% [13, p. 60], including taking into account the incorrect definition of residence; – risk of late payment to the budget (including due to incorrect date of occurrence); – risk of excessive tax deductions (standard, social, property, etc.).
According to the tax inspections	<ul style="list-style-type: none"> – Risk of inclusion of an entity in the plan of tax checks; – risk of conducting “deep” camera tax inspection (with the demand of documents, explanations, information)
According to the main risks	<ul style="list-style-type: none"> – Conclusion of contracts with individual entrepreneurs and self-employed persons; – compensation in kind; – use of a rotational method; – payment of material assistance; – consequences of disclosure of shortcomings, issuance of accountable amounts, including on travel expenses; – conclusion of apprenticeship contract; – discount and interest rate reduction on borrowing; – issuance of gifts, gift certificates; – compensation payments to households or the provision of “social package” (for food, travel, payment of mortgage, when using personal property, sanatorium and resort services, medical services, corporate events).
According to the identification of tax risk – when conducting	<ul style="list-style-type: none"> – Chamber tax verification of the reporting of individuals (tax declarations in 3-PIT form), including those who are individual entrepreneurs, as well as the reports of tax agents (calculation in 6-PIT form); – tax inspection of tax agents paying income to individuals, as well as verification of taxpayers – individuals, including individuals who are entrepreneurs (in respect of income derived from the conduct of business activities and not taxed in connection with the application of special tax regimes).

Source: Compiled by the author.

122 of the Tax Code of the Russian Federation applies, according to which it is possible to apply a 40% penalty when proving the fact of intent.

ANALYSIS OF TAX RISKS – REGIONAL ASPECTS

Consider regional aspects of tax risks that are specific to:

- judicial practitioners established in the region (on the basis of circumstances that are taken into account in the decision-making on tax checks);
- indicators calculated at the level of the subject of the Russian Federation, influencing management decisions (by the size of the average wage in the subjects of the Russian Federation, the established value of the minimum wage);
- composition of the tax revenues of the territories and the role of PITs in their structure (the surplus of the PIT revenues in comparison with corporate income tax and other taxes or a significant lag in amounts);
- territorial and sectoral specificities (by the main types of economic activities carried out, by urbanizing enterprises by gender and age composition of the working population).

PIT plays a significant role in the revenue of regional budgets, but its share varies: in the Kaliningrad region — 12% in tax revenues for 2022, 20% in Krasnodar region, 35% in Moscow, 38% — in Primorsky region, 53% — in Chechen Republic. As a rule, in more developed regions, corporate income tax enters the regional budget more, while in less developed regions, PIT provides the majority of tax revenues along with taxes paid in connection with the application of special tax regimes. The more attention the tax authorities pay to the PIT, the more various activities are being carried out to identify reserves in terms of budget revenues. Of course, this is also due to the indicators calculated at the level of the subject of the Russian Federation influencing management decisions (in terms of the size of the average wage in the subjects of the

Russian Federation and the established value of the minimum wage). For example, for educational activities in Moscow, compared to the Moscow region, the salary of one employee differs twice (96 thous. rubles versus 48 thous. rubles). This affects both migration and the changing age of teachers.

The territorial and sectoral specificity of the occurrence of tax risks is related to the fact that, depending on the main types of economic activities carried out by gender and age composition of the working population, it is possible to identify specific incomes of individuals (for example, in connection with the use of the rotational method in certain areas, additional payments to large-child families in regions aimed at increasing fertility, compensation payments for persons who moved to a new place of work as part of government programs, including teachers). An example of tax risk is payments to taxpayers. Non-taxable payments include a special allowance for working conditions (Article 302 of the Labour Code of the Russian Federation), and housing for workers (Article 297 of the Labour Code of the Russian Federation).

TAX RISK: TRANSFERABILITY

It should be noted that tax risk transfer is widely used under PIT. This is due to the fact that tax agents can transfer risks to taxpayers, allowing them to pay their own expenses (e.g. tax deductions) or recommend registering as an individual entrepreneur or self-employed to fulfill tax obligations on their own. Such a scheme is used when an organization contracts with self-employed persons who provide services instead of those who provide them in accordance with their official duties, so as not to pay insurance premiums and PITs [15, p. 224].

A separate issue faces the employer, in which case the tax risk is greater: if you pay the employee for the costs of treatment, training, insurance, or provide tax deductions when paid by an employee. In the first case, the individual does not generate taxable

income. In the second case, the individual carries out the costs for certain purposes and can get a PIT refund. The tax authority confirms the accuracy of the receipt of the deduction, i.e. the tax agent does not check the correctness of the registration of documents and only has to correctly calculate the PIT taking into account the tax deducts.

Note that tax risks are identical (but arise from different taxes), so the priority question is as follows: how appropriate it is for an organization to make payment of such expenses for a specific individual (employee) as an option — if this is included in a social package that is provided for the purpose of keeping an important employee in the job for a long time. It is also possible to talk about transferring tax risk to the taxpayer who claims to receive a tax deduction; therefore, the tax agent completely minimizes the tax risk because the tax authority checks all documents, essentially carrying out preventive tax control. At the same time, preventive control allows for the elimination of possible shortcomings without the emergence of tax disadvantages.

If an individual is carrying out transactions with property to avoid tax risks under PIT, it should be guided by Articles 217, 217.1, and 220 of the Tax Code of the Russian Federation. We must answer the following questions: what contract is concluded (lease, sale, donation, estate), what type of property is involved (mobile, real estate, vehicles, etc.), is the transaction with a family member, what is the value (and whether there are confirmed expenses), what period of ownership of the property (3 or 5 years), is it possible to apply tax deductions (can they be distributed if family members participate in the transactions), and whether to submit a tax declaration.

Table 2 provides examples of the calculation of tax payments when choosing different options for issuing a cash amount (800 thous. or 2 million rubles) for an employee of the organization to identify the size of the possible tax risk.

Consequently, it is necessary to decide on the general change of tax obligations because it is not enough for the employer to decide only on PIT. However, the option of the issuance of material assistance is not so unambiguous because it should justify its need, as in the case of the award; therefore, it is necessary to be guided by the existing judicial practice to reduce tax risks. Note that the tax authorities should also be guided by judicial practice when reviewing the results of tax inspections, as the Ministry of Finance of Russia indicates in its letters, starting from 2010 (see Letter of the Ministry of Finance of Russia dated 02.07.2010 No. 03–04–08/10–136).

It is also recommended that an order for the promotion and notification of gifts be drawn up in an arbitrary form with the full name of the persons to whom the gifts have been handed over, the names and the cost of the presents (a separate column is selected in which the recipients of the gift will be registered upon handing over the gift).

TAX RISK ANALYSIS – MATRIX APPLICATION

For the analysis of tax risks arising in a PIT organization, it is recommended to use a tax risk matrix (examples are given in *Tables 3–5*) depending on residence, type of contract, amount of payment, court rulings (taking into account the possibility of identification — during chamber tax audit (CTA) or on-site tax auditing (OTA), tax control measures (TCM) — including conducting inquiries outside the framework of tax checks), and determination of the amount of risk (default and penalties). Given the continuous decrease in the number of on-site tax audits, the risk is less likely, but larger than the chamber audit. Note that some schemes can be detected only when conducting an OTA, if the tax agent does not reflect any transactions in the reporting to carry out a control ratio analysis. The more factors that arise, the more effort that needs to be made to eliminate them. If “–” is indicated,

Table 2

Tax Consequences of Issuing Funds to an Employee of an Organization

Calculation of indicators	Wages*	Award	Gift	FA**	0% loan
Amount charged to an individual = A	800 000	800 000	800 000	800 000	800 000
Unencumbered amount = A – UA	0	0	4 000	4 000	800 000
Tax by PIT = TP	800 000	800 000	796 000	796 000	0
Personal income tax rate = PR	13	13	13	13	–
Personal income tax	104 000	104 000	103 480	103 480	0
Insurance contributions = 30% (IC)	240 000	240 000	0	238 800	0
Inclusion in corporate income tax (CIT) costs	1 040 000	1 040 000		238 800	0
Corporate income tax reduction at tax rate = 20%	–208 000	–208 000		–47 760	0
Change in the organization's payments	32 000	32 000		191 040	0
IC in excess of A = 1 917 000	587 633	587 633		587 029	–
Payments in excess of A = 1 917 000	2 000 000	2 000 000	2 000 000	2 000 000	2 000 000
Inclusion in CIT costs	2 587 633	2 587 633		587 029	0
Reduction of CIT tax rate = 20%	–517 526.6	–517 527		–117 405.8	0
Change in the organization's payments = IC + CIT	70 106.4	70 106.4		469 623.2	0

Source: Compiled by the author.

Note: * wages, ** financial assistance.

the risk is absent or minimal (1 point), “+” is moderate risk (2 points), “++” is high tax risk (3 points). The number of points is then summed up and deduced depending on the amount. If the number of points is from 1 to 7, it is sufficient to use two stages of tax planning (checking the completeness and correctness of documentation of transactions in accounting, as well as developing proposals for optimization of tax payments). However, if the number of points exceeds 7 points, additional steps need to be taken (the preparation of documentation taking into account the adjustment of tax consequences,

as well as the assessment of planned changes on the basis of existing judicial practice).

The eradication of “envelopes” is the main goal of the Federal Tax Service of the Russian Federation in current time, because it is the most common “scheme” of tax evasion used by tax agents and the riskiest. As in the past, tax risk arises when wages are paid only partially through the settlement account and the rest is paid in cash or from accounts of third companies through payment systems and banks to accounts opened in them by employees. In this case, it is possible to appoint a tax auditor.

Table 3

Personal Income Tax Risk Matrix – Payment of Wages in “Envelopes”

Tax Risk Factors	Tax Risk Level		Total Points
Point of discovery of the tax scheme	CTI –	OTA, TCM ++ (interrogation of employees)	1–3
Residency of employees	Russian resident+	Not a Russian resident ++	2–3
Benefits per employee	Above industry average +	Below industry average ++	2–3
Proof of intent (penalty of 40%)	No similar tax disputes in which the tax authority won the court +	Existence of similar tax disputes in which the tax authority won the court ++	2–3
Main types of contracts concluded with individuals	Employment contracts prevail +	The contracts of the GPC, include individual entrepreneurs ++	2–3

Source: Compiled by the author.

In order to reduce tax risks, we need:

- have an economic justification that it is impossible to attract an employee, because the analysis of vacancies in the labour market did not identify such professionals in the given region or with a similar amount of income;

- clearly indicate the parties in the contract (in addition, the individual must understand that he works under the contract independently, not as an employee under the employment contract, therefore, is responsible for the payment of insurance contributions and has other obligations);

- include in the contract with an IE or a self-employed person a term on a specific result of work or services (e.g., “compilation of an analytical report for a calendar year”);

- not to re-contract on the same terms over a long period of time;

- do not pay monthly, including on the days of pay (it is advisable to pay for completed stages);

- not require submission to local regulations of the customer, as well as the performance of work or service only within the working hours of the organization-customer.

The main tax schemes that are revealed on the basis of the application of unjustified tax benefits — the use of “one-day”, “salary schemes”, fictitious documentation turnover, “fragmentation” of business [16, p. 76] — these concepts are not in the Tax Code of the Russian Federation, but in judicial practice they are very actively used, and they are often recommended as safe for implementation in practice [14, p. 281]. Interestingly, the concept of “one-day” is absent in the Tax Code of the Russian Federation and other normative legal documents, but in the practical work of the tax authorities, it is treated as a legal entity that does not have actual autonomy and was created without the purpose of conducting business activity. “Salary schemes” can be defined as an undue reduction in the tax burden by

Table 4

Personal Income Tax Risk Matrix – Payment of Material Assistance Without Tax Withholding

Tax Risk Factors	Tax Risk Level		Total Points
Point of discovery of the tax scheme		OTA, TCM ++ (interrogation of employees)	3
Residency of employees	Russian resident +		2
Benefits per employee	Above industry average +		2
Proof of intent (penalty of 40%)	No similar tax disputes in which the tax authority won the court +		2
Main types of contracts concluded with individuals	Employment contracts prevail +		2

Source: Compiled by the author.

unjustified change in the amount of wages accrued and paid to part or all employees of the organization. Fictitious document management occurs when issuing documents on an alleged or false transaction, and “fragmentation” is considered in essence an unlawful reorganization (allocation, separation, etc. according to Article 50 of the Civil Code of the Russian Federation), which is carried out in the absence of an economic purpose and is aimed solely at obtaining unjustified tax benefits.

We contest this matrix if the tax agent does not retain (and does not calculate) PIT when issuing material assistance to an employee-resident of the Russian Federation, if on the grounds can only apply exemption in the amount of 4 000 rubles for the tax period (i.e. this is not related to the birth of a child or the death of a family member).

In this case, the risk is lower due to the fact that the issuance of material assistance (if the operation has not been reflected in the calculation of insurance contributions) can be identified only on the OTA when analyzing all orders (including orders for the issue of

material aid) and the information about the transfer of this payment to the employee to the bank card (or the issue from the cashier).

There is quite often a situation where an employee (especially the manager) is issued a sub-reporting amount, but he cannot properly confirm its use or does not provide documents supporting costs. This is also revealed when conducting an OTA, but, as a rule, is associated with the replacement of part of the wage for the issuance of sub-reported amounts, so the average wage level will be lower than in the previous scheme, and the risk is greater.

PIT tax risks also arise when amounts are issued to accountable persons:

- if the amount received is not returned (there is a possibility that the tax agent will forgive the debt, in which case the tax risk will arise if the PIT is not withheld from the amount of the forgiven debt);
- if the employee has not accounted for the costs incurred, including if the supporting documents are inappropriate or they were received from an organization that has already been liquidated or is “one-day”.

Table 5

Personal Income Tax Risk Matrix – Issuance of Accountable Amounts

Tax Risk Factors	Tax Risk Level		Total Points
Point of discovery of the tax scheme		OTA, TCM ++ (interrogation of employees)	3
Residency of employees	Russian resident +		2
Benefits per employee		Below industry average ++	3
Proof of intent (penalty of 40%)		Existence of similar tax disputes in which the tax authority won the court ++	3
Main types of contracts concluded with individuals	Employment contracts prevail +		2

Source: Compiled by the author.

The employer may decide to withhold the salary debt. If the employer did not want or could not forcibly refund his money, the amounts are treated as income from which the PIT must be charged.

In order to reduce tax risks, it is recommended to prepare an instruction for employees (separate — on business trips), in which you need to clearly highlight:

- what documents confirm costs and how they should be issued with examples;
- in which period to report on the costs incurred;
- which costs will not be reimbursed (e.g. payment for an entertainment program at the hotel);
- which costs may be reimbursed by the head of the organization, but will be withheld PIT and insurance contributions (e.g. compensation for food costs);
- how a business trip is scheduled and on what day to go to work;
- consequences of the use of forged documents (e.g. cheques) or documents

confirming transactions paid by another person.

The tax authorities often consider the person a beneficiary because the amounts received are not returned and are used for their own purposes. For example, out of 45 verified persons in 31 cases among the debtors, real beneficiaries were identified from the composition of managers, founders, chief accountants (68.9%) [17, p. 8].

In order to reduce tax risk, particular attention should be paid to eliminating or minimizing the following [18, p. 46]:

- payments to employees of high charges minus PIT (analysis of movement on bank accounts and calculation of 6-PIT);
- identified discrepancies in payments to be paid (compare assessments on insurance premiums and 6-PIT);
- PIT income decreases by more than 10% compared to the previous tax period;
- a significant percentage of non-taxable income — gifts and material assistance (e.g. more than 20%) — a situation is possible

where these amounts will be treated as an unregistered part of the salary.

COORDINATION OF TAX AUTHORITIES TO IDENTIFY TAX RISKS

The main trend in the fight against tax schemes is the introduction of the ACS-PI automated control system (analog ACS-VAT) in industrial operations from 2019 onwards. A letter from the Federal Tax Service of the Russian Federation explains that ACS-PI is being introduced in order to organize work on identifying the facts of the payment of “shadow” wages and reducing the tax gaps on PIT and insurance premiums [19, p. 253]. However, now that it works in a test format, the mechanism is not sufficiently elaborated.

ACS assigns minimum, low, medium, high and critical risk levels to audited persons, depending on the amount of insurance premiums and PIT according to the reporting data (compared to industry and minimum wage indicators, the values received are compared to actual payments, and the difference is treated as a gap, i.e. a potential deficit).

The share of the gap is then determined as the ratio of the sum of the tax gap to the amount of the difference and the calculated tax. For example, at a critical level of tax risk, the share of the gap is set at 50% or more of the total amount of tax and insurance payments — more than 3 million rubles. It is recommended to ask for explanations from

the person being verified and to analyze the possibility of an appointment for an exit tax check. The Federal Tax Service of the Russian Federation notes that more than 78% of persons with a risk level not below the average have ensured increases in wages to average industry indicators and an increase in the payment of insurance premiums. However, other indicators influencing the amount of tax receipts are not fully taken into account (the amount of the PIT calculated in the analysis of the sub-reported amounts will not be the subject of study unless it is reflected by the tax agent in the form 6-PIT as the income of the individual).

CONCLUSION

The application of the proposed matrix will be useful not only for tax agents to assess tax risks, but also for tax authorities to improve the ACS-PI program (to increase budget tax revenues) given that the above-mentioned tax schemes are very common but difficult to identify. It is advisable to integrate into the program an algorithm for verifying the presence of tax schemes in the part of testing on the developed matrices, which will clarify the methodology of determining the critical level of tax risk for use in control and analytical work. When identifying persons whose number of points is maximum or 1 point less, it is necessary to assign a critical level of tax risk, if the number of scores is zero, the minimum level of fiscal risk is established.

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