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Separation of Powers
-Questionnaire-

1.1. Does your Government have legislative competence on tax matters?

Legislative competence of the Government of the Russian Federation in tax sphere is defined in the Constitution of the Russian Federation, concretised in the Federal Constitutional law from April, 11th, 1997 «On the Government of the Russian Federation». The order of exercising of that competence is defined in Regulations of the Government of the Russian Federation, approved by the Decision from June 1, 2004 № 260.

Legislative competence of the Government of the Russian Federation in tax sphere is consisted in the following:

First, according to item 104 of the Constitution of the Russian Federation the Government of the Russian Federation has right of the legislative initiative in Federal Assembly (Parliament of the Russian Federation). This right is exercised, in particular, by introducing the tax bills into the State Duma (the lower house of Parliament of the Russian Federation).

Secondly, the Government of the Russian Federation has the right to make the amendments to the tax bills which are on consideration of the State Duma (art. 36 FCL «On the Government of the Russian Federation»).

Thirdly, the Government of the Russian Federation can submit to the State Duma and the Federation Council (Houses of the Federal Assembly) official opinions on the tax bills which are considered by these Houses.

Fourthly, according to art. 104 of the Constitution of the Russian Federation the Government of the Russian Federation is obliged to draw the written conclusions on tax bills submitted to the State Duma. This legislative competence of the Government of the Russian Federation has appeared for the first time in the Constitution of the Russian Federation in 1993. Its purpose is official informing of the State Duma on possible budgetary consequences of acceptance tax bills.

¹ According to art .104 of the Constitution of the Russian Federation the power to initiate legislation besides the Government of the Russian Federation belongs to the President of the Russian Federation, the Federation Council, members of the Federation Council, deputies of the State Duma, legislative (representative) bodies of subjects of the

The conclusion of the Government of the Russian Federation under the tax bill should be received by the subject of legislative initiative before bringing tax bill in the State Duma.¹

The Constitutional Court of the Russian Federation in the Decision from November, 29th, 2006 «On business about check of constitutionality of point 100 of Regulations of the Government of the Russian Federation» has come to conclusion, that the negative conclusion of the Government of the Russian Federation under the bill, including tax bill, is not an obstacle for bringing tax bill to the State Duma.

1.2. Does your Government draft tax bills proposals and present them to Parliament?

The right of the legislative initiative belonging to the Government of the Russian Federation, assumes possibility of the Government of the Russian Federation to carry out preparation of projects of the tax laws and to represent them to Federal Assembly (Parliament of the Russian Federation).

The Government of the Russian Federation some times per year brings in the State Duma (the lower House of Parliament of the Russian Federation) projects of federal bills about introduction of changes to the Tax Code of the Russian Federation.

The order of exercising of the right to initiate legislation of the Government of the Russian Federation, including in tax sphere, is defined in «Regulations of the Government of the Russian Federation», approved by the Governmental of the Russian Federation from June, 1st, 2004 № 260. According to Regulations the project of the federal tax law about introduction of changes to the Tax Code of the Russian Federation should be representtd to the Government of the Russian Federation by the Minister of Finance.

1.3. In case your answer to 1.1 and 1.2. positive:

1.3.1. Does your Government usually exercise that competence?

The Government of the Russian Federation constantly exercise the legislative competence in the tax sphere. It is enough to tell, that in 2008 the Government of the Russian Federation about 5 times brought projects of the tax bills in the State Duma.

1.3.2. Does your Parliament passively accept the draft bills provided by tax authorities or does it discuss them in detail and introduce changes to them?

Russian Federation, and also the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation concerning their conducting.

The Parliament of the Russian Federation considers projects of bills on taxes in essence.

According to the State Duma Regulations, tax bill projects introduced by the Government of the Russian Federation to State Duma should be sent to preliminary consideration. The last serves one of guarantees of adoption of the effective tax law.

Preliminary consideration of the tax law is carried out as follows:

1) the Chairman of the State Duma directs the tax bill project, brought by the Government of the Russian Federation in Committee of the State Duma on the budget and taxes.

2) the Committee of the State Duma on the budget and taxes makes decision about conformity of the tax bill project to requirements of art.104 of the Constitution of the Russian Federation and art.105 of Regulations of the State Duma. In other words, the Committee on the budget and taxes defines, whether there is on the tax bill project a conclusion of the Government of the Russian Federation, and also – whether all demanded documents are enclosed to the bill.

3) Under the offer of Committee on the budget and taxes Council of the State Duma makes the following decision:

a) Appoints State Duma committees responsible under the tax bill project. As a rule that is the Committee on the budget and taxes.

b) Includes the tax bill project in the lawmaking program

c) Directs the tax bill project to Committees and Commission of the State Duma, to President of the Russian Federation, in the Federation Council, to Public Chamber, to the Constitutional Court of the Russian Federation, to the Supreme Court of the Russian Federation and to the Supreme Arbitration Court of the Russian Federation for representation of amendments and offers under the bill.

Besides, under the decision of Committee on the budget and taxes the tax bill project can be directed for expert opinion. Bill examination can be scientific, legal, linguistic.

On the terminations of preliminary consideration of the tax bill project, presented by the Government of the Russian Federation, Committee on the budget and taxes send the bill to State Duma consideration.

Tax bill consideration in the State Duma is rather careful. The consideration order is settled by State Duma Regulations.

Consideration of the tax bill presented by the Government of the Russian Federation, is carried out in three readings.

In the first reading the tax bill concept is discussed.

By results of the first reading the State Duma can approve the tax bill project and continue work on it taking into account amendments to the bill, or dismiss the project. In some cases the State Duma can submit tax bill project, accepted in the first reading, for national discussion.

In case of a tax bill deviation in the first reading, it comes back to the Government of the Russian Federation to completion.

In case of tax bill project acceptance in the first reading, it goes to all subjects possessing the right to initiate legislation. These subjects have the right to make amendments to the tax bill, accepted in the first reading. Amendments are made in the form of tax bill addition with new articles, change of edition of articles, the offer on exception of concrete words, points, bill parts.

Committee of the State Duma on the budget and taxes studies and generalises all amendments made on the tax bill. It has the right to spend an independent expert appraisal on conformity of the brought amendments to the Constitution of the Russian Federation and to constitutional laws.

The Committee on the budget and taxes groups the amendments according to articles of the tax bill.

By results of consideration of the brought amendments on the tax bill, Committee on the budget and taxes constitutes three tables of amendments on the bill. In the first table those amendments which are recommended by Committee on the budget and taxes to acceptance are considered. In the second table amendments which are recommended by Committee to a deviation are considered. In the third table amendments on which it is not accepted decisions are considered.

Discussion of amendments represents difficult procedure. From the very beginning State Duma votes amendments to the tax bill project against which there are no objections. Then it votes amendment to the bill on which there are objections. The results of consideration of the tax bill project in the second reading is reflected in the decision of the State Duma of the Russian Federation.

If in the second reading the tax law project has not been approved, it is considered dismissed and comes back to the Government of the Russian Federation.

The tax bill project, accepted in the second reading, goes to Committee on the budget and taxes for legal updating, i.e. for an establishment of correct interrelation of articles and editorial updating.

By results of the third reading the tax bill project should be accepted as the law.

1.4. How does the literature in your country and your domestic Courts interpret the situation as you described it in 1.3.?

Problems of mutual relations of the Government of the Russian Federation and Parliament in tax sphere did not involve till now special attention of scientists in Russia. However, there are the scientific works devoted to the general problems of interaction of Parliament and the Government of the Russian Federation. In particular, monographic research *Chuvalov's "The Government of the Russian Federation in legislative process" 2004 is worthy*. Besides, problems of interaction of Parliament and the Government of the Russian Federation are mentioned in scientific books devoted to separation of powers. Among these works, in particular, the following: "*Separation of powers" Under the editorship Marchenko M, 2004, "Problems of the parliamentary law of Russia". Under the editorship of L.Ivanov M, 1996. Uvachev V. A. The mechanism of separation of powers in lawful state M, 2003.*, Etc.

As to judicial interpretation of mutual relations of Parliament and the Government of the Russian Federation in tax sphere it took place in the Decision of the Constitutional Court of the Russian Federation from November, 29th 2006 № 9-II «On check of constitutionality of point 100 of Regulations of the Government of the Russian Federation». In this decision the Court has noticed, that the Government is obliged to draw the conclusions on tax bills project according to art. 104 of the Constitution of the Russian Federation. Besides, the negative conclusion of the Government of the Russian Federation on the tax bill project is not an obstacle for entering of this bill by the subject of law into the State Duma.

5. Relationship between different legal sources (legal pluralism):

5.1. How do you Parliament, tax Administration and Courts react before the different legal sources in tax matters (tax treaties and other treaties, EC Treaty, secondary law, soft law)?

As a rule, in practice tax administration and courts the Tax Code of the Russian Federation, the decision of superior courts (the Constitutional Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation) are taken into consideration, first of all. In special cases international tax treaties are taken into consideration, first of all double tax treaties.

5.2. How is the hierarchy of different tax legal sources recognized by the constitution and the different domestic powers (Parliament, Tax Administration and Courts)?

The Constitution of the Russian Federation recognises a priority of the conventional principles and norms of international law, international treaties over the domestic tax law (art. 15 of the Constitution of the Russian Federation).

The hierarchy domestic tax legal sources is defined in art. 1 and 4 Tax Codes of the Russian Federation. The priority in the hierarchy has the Tax Code of the Russian Federation. Federal laws about taxes and charges and tax laws of members of the Russian Federation must correspond to the Tax Code of RF. Besides, legal acts of municipal unions about local taxes must correspond to the Tax Code of the Russian Federation.

Tax legal acts of executive power (secondary law) in taxation sphere are accepted in special cases according to Tax Code of the Russian Federation and cannot change and supplement tax laws.

5.3. Does the taxpayer have access to different legal remedies that assure him/her effective protection of his/her rights granted by tax treaties, TC law and domestic law, or are those legal remedies in fact limited to protection of rights granted by domestic law?

The taxpayer has access to different legal remedies under the domestic tax law.

Tax Code of RF includes some rights of taxpayer which allow saying about taxpayer protection.

1) Taxpayer has right to present in tax department written objections on the tax audit protocol.

2) Taxpayer has the right to participate in tax proceedings personally or through the representative

3) Taxpayer has the right to give an explanation in tax proceedings. That rights of the taxpayer are essential conditions of the tax procedure. The Tax Code of the Russian Federation establishes that violation by tax department of essential conditions of procedure of consideration of materials of tax check is the basis for a canceling higher tax department or court of the decision of tax department about the responsibility of taxpayer

4) The taxpayer can appeal against action of the tax department, actions or inactions of its staff.

5) The Russian legislation provides the taxpayer with the right of submission of the complaint for revision by way of supervision of the judicial act which has entered into force

6) Besides all noted, the Russian legislation supposes revision of judicial acts in the field of the taxation on again opened circumstances. It is extraordinary measures against final tax decisions.

7) The Russian Tax Code establishes that the taxpayer can apply for return of the overpaid taxes within a period of three years after the day of the overpayment.

1. Relationship between the Parliament and the Tax Authorities: The influence of the tax authorities on tax legislation

1.1. Does your Parliament control tax authorities in an efficient way? no

1.2. Do tax authorities influence tax legislation to a major degree? yes

1.3. Does your Parliament

- a) usually accept the bills provided by tax authorities? Yes
- b) refuse the bills provided by tax authorities? sometimes
- c) improve the bills provided by tax authorities? sometimes

1.4. Is your Parliament able to discuss the bills thoroughly? yes

1.5. Is there sufficient knowledge of tax law in Parliament? yes

1.6. Are tax rules often so vague, that tax authorities have to fill the gaps themselves by administrative regulations? never

1.7. Have tax authorities the competence to typify and fill out the legal gaps without control by the Parliament? never