

Economic and Legal Aspects of the Tax Administration of Procedures of Bankruptcy

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Abstract

The article is devoted to the economic and legal aspects of tax administration of procedures of bankruptcy. It is proved that all factors of tax administration of procedures of bankruptcy form such an environment, indifferent to the establishment of value-added tax. It has been determined that the tax consequences of bankruptcy of organizations can be effective in the coordination of purposes, legal means of tax and entrepreneurial policy. It has been established that the priority of special legislation over general tax legislation does not exclude the need to synchronize the improvement of legislation. In the process of research, such aspects as the need to develop a general policy of financial recovery of enterprises, conciliation procedures, and responsible selection of arbitration managers have been clarified. It has been determined that this is an intersectoral problem. Therefore, only at the junction of civil, administrative, financial and criminal law, it is possible to discuss the complex of legal means of realization of the tax component of procedures of external management and bankruptcy management.

Keywords: Tax administration; Bankruptcy; Economics; Enterprise; Law; Politics; Finances.



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1. Introduction

Interest in the issues of tax administration of procedures of bankruptcy occurs in the scientific environment cyclically. Interestingly, a number of states are now capturing new trends in the dynamics of bankruptcy. For example, in Poland there is a decrease in insolvency against the equitable economic growth; the absolute numbers of bankruptcies against macroeconomic policy declined by 14%.

Globalization, the growth of foreign economic activity of participants predetermine the increasing interest in the phenomenon of bankruptcy in the comparative legal key under the influence of global processes. The problems of bankruptcy have gone beyond the private framework of individuals and legal entities.

Of course, the topic of tax consequences of bankruptcy is not local, because states more often face the problems of bankruptcy of cities, municipalities, and domestic entities of different levels. Not so long ago, in the theoretical point there was a new scientific problem of state bankruptcy as a form of resolution of the debt crisis, so the term "a failed state", i.e. an insolvent state, was introduced into scientific circulation. These problems are studied at a serious methodological and theoretical level more often.

In this point, the topic of tax administration of procedures of bankruptcy is updated. It goes beyond private law, stimulates the development of not only interdisciplinary research, but focuses on the participants in organizational and legal relations, first of all, on the problem of ensuring the proper performance of their duties by arbitration managers.

The study of economic and legal aspects of tax administration of procedures of bankruptcy is expressed in works of [Gyulmagomedova et al. \(2017\)](#), [Zelenskaya \(2016\)](#), [Makarov and Semin \(2015\)](#), [Cherkasov et al. \(2017\)](#), [Kolupaev et al. \(2017\)](#).

Nevertheless, the conceptual bases of economic and legal aspects are contradictory. The methodology in the framework of development of the theory and practice of tax administration of procedures of bankruptcy is not developed enough; its separate features are not fully regarded. All this does not allow implementing in practice the purposeful provision of tax administration of procedures of bankruptcy in modern conditions.

2. Methods

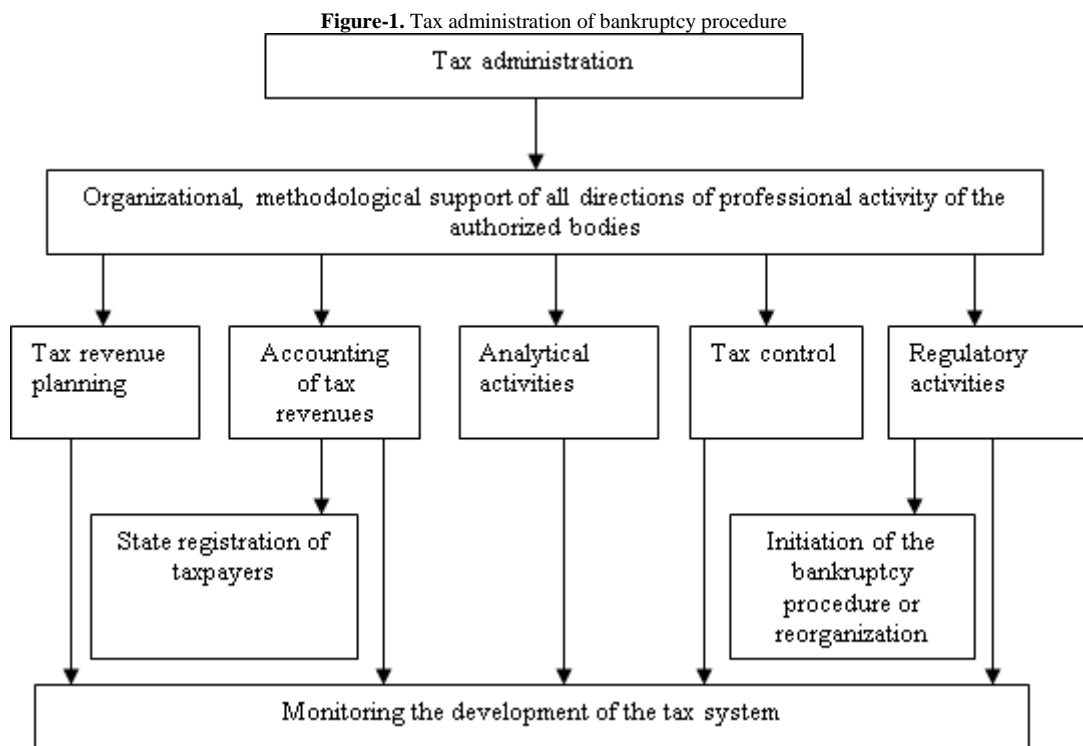
The methodological basis of the study were the following scientific methods: analysis and synthesis in the analysis of existing theoretical and methodological approaches and provisions, scientific developments on the economic-legal aspects of tax administration of procedures of bankruptcy in modern conditions; the structural-logical method in the systematization of factors influencing tax administration of procedures of bankruptcy; factor analysis in determining the impact of indicators on the level of bankruptcy.

The information base of the research was legislative and normative-legal acts, statistical materials of state authorities and local self-government, scientific publications of domestic and foreign scientists on the problems of tax administration of procedures of bankruptcy in modern conditions (Kazachkova, 2009; Kosevich *et al.*, 2016; Zavalko *et al.*, 2017b).

In the process of research, it is planned to rationalize the economic and legal features of tax administration of procedures of bankruptcy in modern conditions, to systemize the features of tax consequences of insolvency of enterprises. Besides, the aim is to rationalize approaches to lowering the level of bankruptcy, to define and formulate the main directions of reducing the tax consequences of insolvency of enterprises.

3. Results

Recently, the issues of tax administration of procedures of bankruptcy have been of particular importance in terms of the anti-crisis regulation of economic relations (Fig. 1). The institute of an arbitration manager was created bearing in mind that the issues of overcoming the insolvency of enterprises would be successfully solved. The regulator not only sees a significant reserve for growth of budget revenues in the solution of this problem, but also records the first positive changes in this direction.



Thus, according to the Department of Procedures of Bankruptcy of the Federal Tax Service of the Russian Federation, it is now possible to effectively counteract abuses in bankruptcy proceedings by improving the quality of representation of interests of state and innovations in bankruptcy law. The analysis showed that in 2016 the Russian Federation documented a record receipt of taxes from bankruptcy: in 2015, 28 billion rubles were collected, in 2016 – 64 billion. Moreover, only for 8 months of 2017, the total revenues amounted to 57 billion rubles. During the same period of 2017, there were more payments received from procedures of bankruptcy by 60%, and in the extra-budgetary funds – by 80%, than in the same period of the last year.

Why did this happen, what administration reserves have been so effective? The answer to this question is in at least two interrelated contexts. First, it is required to more skillfully, professionally break the general principles of tax administration, to continue daily work on the implementation of universal rules of tax administration. The second context is related to the ability to manage a complex system of relations of tax and civil law, to take into account the contradictions between public and private interest in sequential procedures of bankruptcy.

The first point of our attention concerns the principles and focus of changes in tax legislation. In our opinion, the following principles can provide a clear and strong political basis for any changes in the tax system at their implementation. These principles are the principles of equality and fairness, which determine the need to take into account horizontal and vertical equality in the course of change; the perception by the public of the tax system as a democratic public sphere.

This means respecting the equality of international elements as multicultural parity. Moreover, tax rules should not be arbitrary; they should be so clear and understandable to tax payers that taxpayers could foresee in advance the tax consequences of changes and transactions, they should be transparent and clear in the development and implementation of the tax rules.

Of course, in order to improve the efficiency of tax policy, administrative costs should be minimized and tax payments should be simplified as much as possible; the tax must be set at the time and in a manner that is as convenient as possible for the taxpayer. The tax system should not slow down or reduce the production potential of the economy, business decisions should be motivated by economic rather than tax considerations; the neutrality of both the import of capital and its export should be respected.

Finally, the system should collect the right amount of taxes at the right time without imposing double taxation at the national and international levels; the system should be flexible and dynamic in order to ensure the compliance with technological and commercial development, which ultimately gives a higher national competitiveness. As for the administration of procedures of bankruptcy, the potential for active or passive noncompliance with tax discipline in the process of bankruptcy should be minimized while maintaining countermeasures proportionate to the taxpayers' risks.

The main changes we have emphasized in the Russian tax legislation were mainly related to the expansion of the notion of a controlling person, to the irrational process of simplification of proving the status of the beneficiary as the controlling person. At the same time, lenders were given the opportunity to apply for subsidiary liability outside the bankruptcy proceedings, including if the debtor had no assets for bankruptcy, and it was expelled from the Uniform State Register of Legal Entities.

Moreover, the tools of bringing to subsidiary liability of officials of companies and their founders, voluntary repayment of debts on obligatory payments prior to the introduction of the bankruptcy procedure have been developed. These institutional changes stood in contrast to the previous practice. Indeed, in the 1990s, bankruptcy, as well as any of the procedures of reorganization and liquidation of a legal entity, was considered as a way of tax optimization, avoidance and even evasion of tax payments.

Currently, an economic entity faces an increased volume of requirements for the execution of the tax obligation, almost during the passage of each of the bankruptcy proceedings. This is a new tendency which neither the arbitral manager nor the debtor nor the creditors can ignore. And this tendency is connected with the strengthening of the role of the Federal Tax Service on all the points of tax administration, strengthening the information-technological basis of functioning, the possibility of using accumulated professional experience, including tax administration in bankruptcy.

What principle legislative rules characterize taxation of an economic entity in the process of bankruptcy? First, the procedure of calculation and payment of taxes, as well as their enforced collection from organizations that are in the bankruptcy procedure, is established considering the provisions of the insolvency law. In other words, the rules of taxation are adjusted by special rules regulating relations in the bankruptcy of enterprises.

There are no separate articles in the tax legislation which establish the rules of payment of taxes by the organizations which are in the phase of bankruptcy. In this context, it can be mentioned that Chapter 25 of the Tax Code of the Russian Federation allows the organization to take into account losses of previous years; the rules of accounting for losses of previous years constantly undergo changes. That is, the considered issue is also the issue of accounting, proper tax accounting policy.

Second, in the special legislation, the algorithm of execution of the tax duty of the enterprise in the process of bankruptcy is developed. However, due to the lack of popularity of the procedure of financial recovery, a special attention is paid to taxes related to the implementation of the bankruptcy estate, in particular, value-added tax. A huge number of disputes arise in the process of bankruptcy management, when the enterprise conducts economic activity, and accordingly, produces and sells finished products. The question arises whether finished products sold in the given situation are subject to value-added tax. What is the main difficulty in solving these problems?

As shown in special literature, statistical data and lessons of court cases (Bufford *et al.*, 2001; Gerlach, 1998), due to the inconsistency of understanding of overlapping processes, the problem of tax sanctions recovery in the process of bankruptcy remains unresolved, and the judicial practice is controversial. First of all, in theory and in positive law, the issue of the order of tax payment, the expediency and legality of inclusion of taxes in the bankruptcy estate, offset rights and duties of the arbitration managers and tax authorities, is not completely solved.

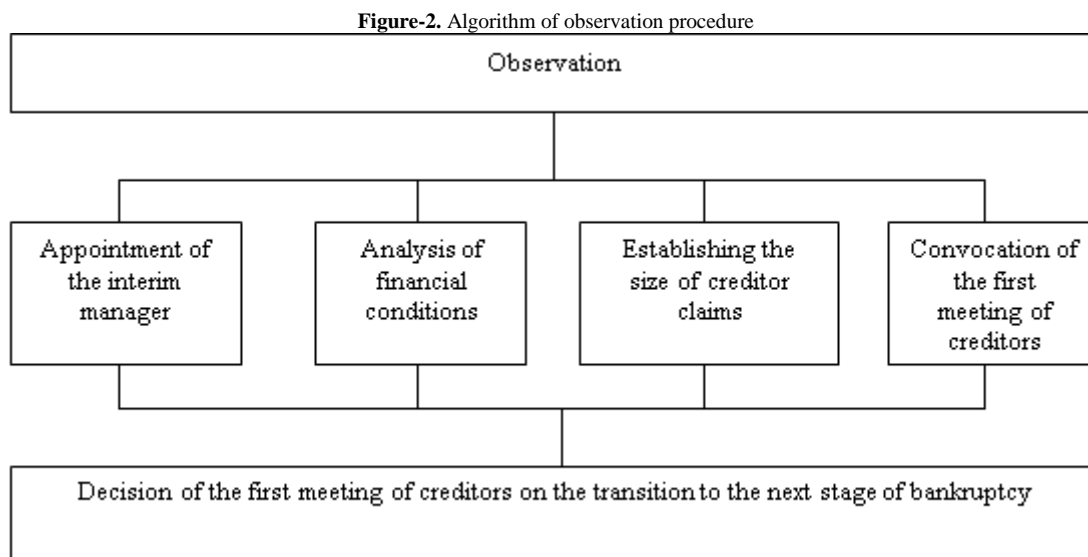
The issues of the immanence of the ways of payment of obligatory payments to the principle of priority of payments according to the register of claims of creditors require thorough elaboration. It is necessary to investigate in detail the potential of the alternative statement of the possibility of attribution of these payments to the level of current payments, which the tax authorities are entitled to undeniably write off.

We shall refer to Articles 2 and 5 of the Federal Law of the Russian Federation dated October 26, 2002 № 127-FZ "On Insolvency (Bankruptcy)", containing concepts of the basic procedures of bankruptcy, the interpretation of differences of the arbitration managers appointed on the given procedure, and introducing the definitions of mandatory and current payments. It is known that the institute of bankruptcy provides five types of procedures, for each of which there are certain objectives.

Thus, the purpose of the first procedure, supervision, is to ensure the safety of the debtor's property, the preparation of financial and analytical generalizations for the elaboration of scenario decisions, the formation of the register of claims of creditors and, as a result, the preparation and holding of the first meeting (Fig. 2).

The essence of the second, the most rarely used procedure of financial recovery, is to solve the main tasks: the recovery of the enterprise, the restoration of its solvency and, accordingly, the repayment of arrears, according to the

special schedule. But the rarity of the application of this procedure eliminates the urgency of restoring solvency and establishing a debt-repayment regime.



The third procedure, the procedure of external management, is formally-legally and organizationally aimed at restoring solvency. The essence of the fifth procedure is that at any phase of bankruptcy certain agreements between the debtor and creditors can be reached, a settlement agreement may be concluded. However, of the highest prevalence is the fourth procedure, the procedure of bankruptcy management, the main purpose of which is to satisfy the claims of creditors in accordance with the proportion of votes reflected in the register.

4. Discussion

The reliability of the presented aspects of tax administration of procedures of bankruptcy is confirmed by the fact that there is not fully clarified conflict related to the determination of the tax fate of funds remaining after the satisfaction of all requirements of the registered creditors (Poland Insolvency Report: Insolvencies Fall amid Fair [Economic growth, 2016](#); [Zavalko et al., 2017a](#)). According to common sense and economic logic, these funds are a profit that could potentially be considered as an object of taxation of profits.

However, in accordance with the Order of the Ministry of Finance of Russia dated May 20, 2003 № 44n, the money, which remains under the supervision of the organization after the end of satisfaction of the claims of creditors under the register, should be credited to the authorized capital. This is not the indicator of profitability, but of further capitalization of the invested funds.

There are also complex issues of calculation of income and expenses, reflection in financial and economic documents, consistent interpretation of the facts of accounting policy in the legal sense, harmonization of the general terms and terms of passing the procedures of bankruptcy and their coordination in terms of compliance with tax discipline. The problem of paying the value-added tax of enterprises in the process of bankruptcy is of the greatest interest.

This process reflects the most difficult moments of coordination of law and economy of calculation and payment of the given tax in connection with implementation of the bankruptcy estate. There are two concepts of this tax, an active and passive role of added value.

The first approach forms the logic, according to which in the course of bankruptcy the added value is not formed; therefore, there is no causal link between the object of taxation and the corresponding amount of taxes. Consequently, value-added tax should not be paid after the sale of the bankruptcy estate. The second approach is based on the fact that the object of taxation is not the added value, but the turnover for the sale of goods. That is, de jure the conditions for the performance of tax duty are formed here.

Thus, it is possible to identify certain problems in calculating value-added tax related to the implementation of the bankruptcy estate. First, there is no economic basis for calculating value-added tax, as we have found that value-added is not created. Second, the budget funds are lost due to the deduction of the value-added tax not paid by the seller. There are also problems of calculating and paying value-added tax by organizations that have not ceased economic activity even in the process of bankruptcy procedures.

5. Conclusion

Summing up, it can be mentioned that all factors of tax administration of procedures of bankruptcy form such an environment, indifferent to the establishment of value-added tax. Besides, the tax consequences of bankruptcy of organizations can be effective in the coordination of purposes, legal means of tax and entrepreneurial policy.

The research has established that the priority of special legislation over general tax legislation does not exclude the need to synchronize the improvement of both aspects of legislation. The strengthening of tax administration in this segment has allowed clarifying such aspects as the need to develop a general policy of financial recovery of

enterprises, conciliation procedures, and responsible selection of arbitration managers. This is an intersectoral problem. Therefore, only at the junction of civil, administrative, financial and criminal law, it is possible to discuss the complex of legal means of realization of the tax component of procedures of external management and bankruptcy management.

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