

Implementing the Principles of the Social State in Tax Law within the Context of the Digital Economy

Olga Yuryevna Bakaeva*

FSBEI HE Saratov State Law Academy, Volskaya St., 1, Saratov, 410056, Russia

Eugeniy Gennadyevich Belikov

FSBEI HE Saratov State Law Academy, Volskaya St., 1, Saratov, 410056, Russia

Elena Vacheslavovna Pokachalova

FSBEI HE Saratov State Law Academy, Volskaya St., 1, Saratov, 410056, Russia

Vasily Valeryevich Popov

FSBEI HE Saratov State Law Academy, Volskaya St., 1, Saratov, 410056, Russia

Margarita Byashirovna Razgildieva

FSBEI HE Saratov State Law Academy, Volskaya St., 1, Saratov, 410056, Russia

Abstract

The article deals with the specific features of implementing the social state principles in the tax law of Russia and other countries, first of all, the European Union, within the context of the digital economy development. In particular, the article focuses on the manifestations of the principles of social justice and social and economic equality in forming and implementing the state tax and legal policy, including during the periods of economic crises. The following methods were used in the research: the statistical and comparative legal methods, as well as the method of legal modeling implemented in applying the general theoretical model of using legal means in tax and legal regulation. We made the conclusion that tax, and legal stimuli were the most important social- and innovation-oriented legal means in implementing the state tax and legal policy within the context of the digital economy. Besides, developing the stimulating function of taxation will encourage further implementation of citizens' social and economic rights and innovative activity in the age of digitalization.

Keywords: Social state; The principle of justice; The principle of social and economic equality; Tax law; Digital economy; Individual income tax; Tax and legal policy; Tax and legal stimuli; Progressive taxation.



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1. Introduction

Currently, most developed and developing countries are or claim to be social states. Almost all constitutions adopted after the World War II contain, to a certain degree, social provisions and the social fundamentals of state and law regardless of the political regime, the form of government, or the state religion. Within the context of the social state, creating the conditions that ensure decent living standards and free development of an individual in many respects depends on the state's financial activity, its territorial entities, and their bodies. Legal regulation of taxation and tax and legal policy play a specific role within this process as they should be developed in accordance with the principles of a social state (social justice, building socially-oriented economy, social and economic equality of individuals and social, national, and other communities, social responsibility, social solidarity, and social security). Within the context of ongoing powerful integration processes of the 21st century (for example, development of the European Union, or creation of the Eurasian Economic Union), periodic world and regional economic crises, as well as the development of the digital economy, the issues of tax law evolution and formation and implementation of social states' tax and legal policies are becoming more and more important.

The article aims to study the specific features of implementing the social state principles in the tax law and tax and legal policy of Russia and other countries, first of all, the European Union, within the context of the digital economy development. The following were used in the research: the general theoretical model of using legal means in tax and legal regulation (Belikov, 2016; Laychenkova, 2007; Malko, 2003; Miroshnik, 2003), and the statistical and comparative legal methods. Justification of the leading role that tax and legal stimuli play in implementing the socially- and innovation-oriented policy in Central and East European countries is based also on the results of developing the concept of financial and legal policy (Belikov, 2016; Karaseva, 2003; Khimicheva and Pokachalova, 2006; Shaukenov, 2011). The issues of implementing the principles of a social state in tax law within the context of digital economy development have not been considered in scientific papers.

2. Digital economy and Socially-Oriented Tax and Legal Policy

In recent years, rampant development of information technologies in various spheres of social life has led not only to an increase in the volume of information in the social space, but also to the transformation of the legal regulation of using information flows, including in the sphere of public financial relations. In particular, the state, by developing and implementing information technologies and systems, aims to solve several very important tasks of social and economic development (improving the quality of life, increasing labour productivity, improving the conditions of business activity, stimulating the economic growth, innovative activities, etc.). Thus, due to digitalization of tax bodies' activity, the possibility to provide state (municipal) services in electronic form arises, and the openness of the results of their activity for people is ensured. Active usage of information systems created on the basis of legislative and regulatory acts of public authorities provides certain influence on social relations, including the extent of legal capacity of participants within such relations. Implementing information technologies in tax relations requires changing the content of legal capacity of their various participants (authorities and subjects) due to the necessity to establish additional rights and obligations.

Creating conditions that ensure development of the digital market economy in many respects depends on the legal policy and the activity of public-law entities in taxation, including those aimed at establishing and implementing authority of corresponding bodies, as well as rights and obligations of other participants in tax relations followed by using information technologies. For the purposes of the research, we understand tax and legal policy as the activity of the state carried out in cooperation with civil society institutions aimed at forming and implementing (using legal means) conceptual ideas and programs oriented to ensuring effective legal regulation in taxation. Forming the concepts of tax and legal policy should be based on clearly stated priorities arising out of the constitutional principles, in particular, the principle of a social state. It is understood that social orientedness of the tax and legal policy should include the state justly distributing tax load among population and business and stimulating those for responsible and, consequently, socially important behavior, increasing their interest in active productive work that leads to social stability and increasing well-being of the whole society, as well as ensuring that tax legislation takes social factors into account (Belikov, 2015).

The most important stimulating factor that influences the development of innovations, the economic growth, and social well-being is forming the state legal policy, including in taxation, which takes into account challenges and consequences of digitalization. Regardless of the negative consequences of the latest world economic crisis that influenced, among other things, reduction of the added value share in the information and communication technology (ICT) sector in the total added value share in the OECD countries, this sector remains the main driver of innovations as it accounts for the biggest share of R&D expenses of businesses in the OECD countries and for more than one third of total patent applications in the world (OECD, 2017). Within the context of digital economy development, several European countries, beside the measures of direct state financing, use measures of indirect innovation activity support, including R&D, by establishing appropriate tax and legal stimuli aimed, in particular, at attracting foreign investment to the sphere of innovation.

According to the OECD data, in 2013-2015 the biggest share of tax and legal stimulation of business to carry out R&D to the GDP was in Ireland (0.29% to the GDP), Belgium and France (0.28%), Korea (0.18 %), Australia (0.17%), Russia and Hungary (0.15%), Austria and the Czech Republic (0.14%), and Slovenia (0.12%) (OECD, 2017). For instance, in Slovenia all businesses have the right to deduce the most part of the R&D expense amount from the taxable income. In the Czech Republic, one of the trends in the tax and legal policy is to strengthen the tax stimulation of investment and innovation activity. The legal means of achieving the above target are tax deductions of R&D expenses from the taxable income (by way of exception) or tax deductions of sponsor support of R&S institutions (Dmitrov *et al.*, 2014).

One of the tasks of the modern tax and legal policy and legal science, correspondingly, can be regarded as developing the issues of legal capacity of participants in tax relations within the context of digital economy development. In particular, one of the issues to be researched is the authority of representative government agencies to establish taxes, the objects of taxation being related to the digital technology market (for example, in the area of electronic commerce, using the blockchain technologies). Besides, it is important to evaluate and determine the possible legal capacity of such taxpayers as commercial organizations and individual entrepreneurs that carry out activity in the sphere of digital technologies (including granting the rights to use tax stimuli to Russian software developers and Internet companies).

Carrying out the socially and innovation-oriented policy by the state significantly influences the implementation of the social state principles and the law principles that are interconnected and interdependent, as, for example, the concepts of state and law. In their turn, such principles may and do, to a certain degree, impact the formation and implementation of the above policy.

3. Implementing the Principle of Social Justice in Tax Law

In scientific literature, there exists a well-grounded opinion that justice is the main idea that defines the content and development of tax law and its principles. The taxation justice is considered as the principle of principles, from which all other principles of tax law are derived, including the social justice, and through which its content is revealed (Smirnov, 2011). Taking into account that social justice is one of the main principles of social state and derives from the general legal principle of justice, the idea of just taxation can be used as the most important reference of the socially-oriented development of tax law as a whole and its principles in particular.

The principle of justice is very important for tax law as the main subject regulated by this subindustry of the finance law is public relationships that arise due to establishing and collecting taxes from organizations and individuals, that is, relationships related to disposing of a part of their property to the benefit of public-law entities. In this regard, the critical approach of some authors to the very idea of just taxation and its evaluation as the ideological slogan of the state that unilaterally established taxes for population (Shaukenov, 2011) is seen as unsubstantiated. The requirements of taxation justice developed by the great economists of the past (Petty, 1993; Smith, 1962) and worked out by modern foreign tax researchers (Alm, 1996; Atkinson and Stiglitz, 1995; Due, 1960; Mirrlees, 1971; Musgrave, 2009) are still successfully implemented by many countries and should be taken into account to the utmost degree in the Russian tax legislation.

Despite the fact that the term "justice" is not mentioned in the tax legislation directly, the principle under consideration, including social justice, manifests itself in certain Russian tax law provisions and is essential to the relations it regulates. Thus, in Article 3 of the Tax Code of the Russian Federation, elements of social justice manifest themselves in several principles of the Russian tax legislation: generality, legal equality, actual capacity of a taxpayer to pay taxes, nondiscriminatory nature, and economic rationale of taxation.

Thus, social justice in tax law means, in general, who should be a taxpayer and what should be a subject of taxation. Besides, the legislation of several foreign countries (for example, Spain or Italy) considers progressiveness as one of characteristic features of just taxation, beside generality and legal equality. That is why the method (nature) of taxation used for imposing taxes on the taxpayer's income and property, progressive or proportional, is also an important element of social justice in tax law (Smirnov, 2009).

It is beyond argument that the principle of justice should fully apply to such tax law institution as legal regulation of individual income taxation. Using this institution, almost all traditional tax functions can be implemented – fiscal, regulating, and control functions. Yet the scope of application of the above functions differs substantially in implementing legal regulation of individual income taxation.

In particular, the fiscal function prevails in legal regulation of individual income taxation in Russia and of the total Russian tax system as a whole, which is stated both by economists (Shvetsov, 2012) and by legal scientists (Gritsenko, 2013). In the tax income of regional and local budgets, the proceeds from this tax have been quite a stable source for the last 17 years, which is achieved mainly at the expense of payments of good faith taxpayers with low or average income. Among the many factors that influence the volume of individual income tax proceeds to budgets of various levels, one of the main factors, according to the right opinion of economists, is per capita income (Tyurina, 2013).

In spite of gradual growth of the level of life and income in Russia for the last decade, the social differentiation remains quite high. In the estimation of specialists, per capita income of 20% of well-to-do citizens exceeds per capita income of 20% of the poorest citizens almost by an order of magnitude (9 times) (Tyurina, 2013). In this regard, the necessity to strengthen the regulating function of individual income tax in order to implement the principle of justice and overcome the nonequal distribution of income among various social groups becomes even more obvious.

As is known, by taxation the state can have significant regulating influence on such social and economic processes in the country as production, consumption, demographics, and other social phenomena. These processes can be regulated, for instance, by introducing the system of reliefs, exclusions, and preferences. Besides, taxes include the possibility of regulating population income. In particular, the individual income tax can be aimed at restricting high income or providing support to the poor or reflect the state's acknowledgement of special services toward the society of certain categories of citizens (Khimicheva and Pokachalova, 2017). In this regard, this tax is justly defined in the economic literature as "the social regulator of public well-being and ensuring the economic balance among the main population groups, regions, and municipal entities" (Tyurina, 2013).

Certain regulating impact of the individual income tax is already implemented by the Russian law-making bodies using such legal means as tax and legal stimuli that are described in Article 23 of the Tax Code of the Russian Federation as tax deductions (Clauses 218-221) or excluding certain classes of income from taxation (Clause 217). As previously said, many of these stimuli are socially-oriented.

Within the context of the global financial and economic crisis of 2007-2009 and the European debt crisis of 2010-2014 that led to substantial slowdown of economic dynamics, social states took various independent measures in the sphere of tax and legal policy regarding both direct and indirect taxation. During that time, each European country tried in its own manner to adhere to the selected way of economic and social development aimed, in particular, at saving and increasing the human capital (Ayzinova, 2013). The main legal means to implement the above policy aimed at supporting real economy and standards of living were tax and legal stimuli. They included, for example, tax rate reduction, reconsideration of tax scale, or providing tax deductions on income tax.

In the European countries in 2009-2010, relieving the tax burden on households (first of all those with smaller income) became the main means to increase their income and support the purchasing power. In ten European countries (including Hungary, Lithuania, Latvia, Poland, and Romania), individual income tax rates were reduced. In Hungary, for example, reduction of individual income tax rate was accompanied by changing the taxation scale. In many EU countries (in particular, in Bulgaria, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia), the tax base of the considered tax was reduced. Most of the new tax deductions were related to taxation of income of vulnerable social groups (senior citizens, noncapable persons, women on maternity leave, etc. In some countries, for example, in Bulgaria, in order to support the real estate market, interest expenses related to repairing or purchasing houses were deducted from the tax base. At the same time, in several EU countries individual income tax

rates were increased with regard to taxpayers with high income (Slovenia) or tax base (Hungary or Estonia) (Ranchinskaya, 2011).

Legal regulation of corporate taxation in EU countries during the 2008-2009 financial crisis was characterized by using similar legal means: tax rate reduction and optimization of tax administration. In some countries (Hungary, Slovenia, and the Czech Republic), general tax rates were reduced, while in other countries (Lithuania) tax rates for certain types of activity were reduced. In Romania, changes in tax administration were related to increasing the tax payment period, while in Slovakia and the Czech Republic, for example, such changes were related to simplifying the tax regime for medium- and small-scale businesses. During the period of the crisis, the changes in corporate taxation were mainly temporary, and optimization of individual income tax is a long-term goal of all EU countries. In some Central and Eastern European countries (Hungary, Romania, Serbia, and Montenegro) income tax reliefs are investment-oriented.

Beside tax stimulation aimed at more just individual income taxation in Russia, many authors propose to introduce progressive tax rates (based on taxpayers' income level) instead of proportional tax rates (13%, 30%, etc.). Many economists and legal scientists (Alm, 1996; Due, 1960; Gritsenko, 2013; Knyazev, 2012; Musgrave, 2009; Smirnov, 2009; Tyurina, 2013) believe that progressive individual income taxation is the most fair as it is used to effectively redistribute income of the rich to the benefit of the poor. In particular, in Russia paying taxes at the rate of 13% by those taxpayers, whose income level varies by several and even ten times, is more tangible in monetary terms within the personal and family expenses of the poor. Besides, the practice of progressive taxation in many Western countries also confirms the reasonability of establishing progressive individual income taxation in Russia.

Thus, progressive individual income taxation is used in those Western and Northern European countries where the highest tax rates were established in 2017, as compared to other EU countries – Sweden (57.1%), Portugal (56.2%), Denmark (55.8%), and Belgium (53.2%). In these countries, citizens with low income either are relieved of income tax or pay it at the lowest rates. It should be noted that classical individual income tax remains in Slovenia (50%) and Croatia (42.4%) that declared themselves to be social states. Regarding the average level of individual income tax in EU countries, the maximum tax rate in 2017 was 39.2% and it reduced by 3.7% compared to 2002. The lowest rates are in the Eastern and Central European countries where the proportional individual income taxation is implemented – Bulgaria (10%), the Czech Republic, Lithuania, and Hungary (15%) (European Commission, 2017).

Currently, in Russia the gap between the very poor and those below the poverty line remains colossal. Among the measures aimed at solving this problem, the media often name changing the tax and legal policy. Some believe it necessary to introduce progressive individual income tax rates as in most other countries, to relieve the poor of paying income taxes, and even to introduce "the wealth tax". Others (mostly representatives of the Russian Ministry of Finance) are opposed to this idea and instead propose to take step-by-step measures on improving the general standard of living. They believe that this will shake the confidence of the emerging middle class in the state and will lead to a new wave of tax avoidance and decrease in the country's general investment attractiveness. Yet, the problem of inefficient tax administration should not be solved at the expense of the poor. In this regard, Knyazev's opinion that insurance contributions to state nonbudgetary funds calculated from the company's total wage and salaries fund effect greater influence on paying "grey" salaries than the individual income tax itself is rather interesting (Knyazev, 2012).

From the point of view of legal instruments, establishing progressive taxation of income and property of individuals is a legal restriction towards the rich and is absolutely justified regarding income levelling. Here we should also agree with Smirnov who states that this issue should be handled with special care using a complex taxation scale so as not to make tax policy harmful to the economic stimulation (Smirnov, 2009). Thus, progressive taxation scale should be introduced gradually, without creating high tax burden for individuals with middle income and at the same time nontaxable minimum for poor taxpayers should be established.

Thus, the principle of justice in legal regulation of individual income taxation should be implemented by achieving optimal ratio between the fiscal and the regulating functions of corresponding taxes. Strengthening the regulating function by improving the system of tax stimuli, using progressive tax rate and income tax, accordingly, and creating a more efficient tax administration system will ultimately contribute to stable reimbursement of state and municipal treasuries and achieving the tasks of a social state.

4. Implementing the Principle of Social and Economic Equality in Tax Law

The principle of legal equality of citizens towards the law and court is one of the most important general legal principles that is closely connected to the idea of a social state and that is used in tax law. Thus, it is no coincidence that in legal literature the social and economic equality of individuals of social, national, and other communities is singled out as a variety of this principle, such social and economic equality being one of the main principles of a social state, implementation of which can be ensured using tax law, among others.

As we said before, the principle of taxpayers' equality is enshrined in Article 3 of the Russian Tax Code. This is a variety of principle of the legal equality of citizens towards the law and court, but it has its own specific features manifesting in the fact that, according to Articles 11 and 19 of the Russian Tax Code, taxpayers are not only individuals (Russian citizens, stateless persons, foreign citizen) but also Russian and foreign companies, and in some cases (stipulated by the Russian Tax Code) also unincorporated foreign entities. In accordance with the Russian Tax Code, the legal status of these categories of taxpayers differs substantially, first, with regard to rights and responsibilities, second, with regard to types of payable taxes and charges, and third, with regard to the procedure of collecting tax levies, penalties, and fines.

From the formal point of view, both organizations and individuals as taxpayers have equal rights under Article 21 of the Russian Tax Code. Individuals may exercise the right to use tax reliefs more often than organizations as, in accordance with the Russian tax legislation, there are fewer grounds for tax reliefs and other tax stimuli regarding taxes paid by organizations (corporate income tax, property tax, etc.) than taxes paid by individuals (personal income tax, and property tax). In many cases, there is a simplified procedure for individuals of exercising their rights and fulfilling their obligations.

For example, when exercising the possibility (provided for by Clause 11.2 of the Russian Tax Code) of using the Taxpayer's Personal Account to submit electronic documents to a tax authority, individuals must provide only a nonqualified electronic signature, and the documents will be accepted as electronic documents equivalent to paper documents signed with the taxpayer's personal handwritten signature. Yet, this provision does not apply to organizations, individual entrepreneurs, or individuals engaged in private practice with regard to data related to their entrepreneur or professional activity. In the latter case, they need a qualified electronic signature.

Besides, in addition to the responsibilities provided for by Clause 1, Article 23 of the Russian Tax Code, a company bears other responsibilities stipulated by Clause 2, Article 23 and other articles of the Russian Tax Code. Under the Russian Tax Code, individual entrepreneurs are separated among individual taxpayers and in many cases are treated as companies regarding their legal status: they bear additional responsibilities, pay taxes similar to those paid by companies (VAT, excise duties, etc.), tax arrears, penalties, and fines are collected from them without recourse to court, etc.

Thus, in some cases the principle of taxpayers' equality in accordance with the Russian Tax Code fails to apply to all taxpayers and considers only separate categories of taxpayers. In this regard, we believe that Smirnov is right when he states that equality is not always presented successfully in the Russian tax legislation regarding certain categories of taxpayers, in particular, with regard to property taxes that differ depending on taxpayer's organizational and legal form and the form of property ownership. In accordance with Article 30 "Corporate Property Tax" and Article 32 "Individual Property Tax" of the Russian Tax Code, property of individuals is taxable on a smaller scale than property of companies. In this regard, in order to oppose tax avoidance by transferring property from corporate ownership to individual ownership, the author advocates not equal, but equally-stressed tax burden of property (Kucheryavenko and Perepelitsa, 1997), which may be encouraged by establishing uniform property tax for all taxpayers and forms of ownership (Smirnov, 2009).

Introducing a uniform property tax that the Russian Government planned to do more than 29 years ago, first as an experiment and then on a constant basis, can contribute to unification of property taxation in Russia and ensuring the full implementation of the principle of equality. Nevertheless, the provisions of Article 32 of the Russian Tax Code regarded only individual immovable property taxes, while the land tax paid by both individuals and companies remained. Introducing the provisions of this article regarding some other elements (for example, establishing as the tax base cadastral value, the calculation of which should be improved) brought closer the procedure and conditions of individual and corporate property taxation. At the same time, there remain some issues on individual property related to implementing general principles of law, for example, justice.

5. Conclusion

Thus, implementing the principles of the social state (creating a socially oriented market economy, social justice, social and economic equality, etc.) in the tax law within the context of digital economy requires forming and pursuing the state socially- and innovation-oriented tax and legal policy, taking into account challenges and consequences of digitalization. Active and sequential application by the state of various socially- and innovation-oriented legal means in the course of pursuing tax and legal policy will contribute to implementing the principles of the social state and improving people's well-being, including during the periods of global economic crises. Developing the stimulating function of the national tax system will help further implementation of citizens' social and economic rights within the context of digitalization. In particular, the principle of justice in legal regulation of individual income taxation should be implemented by strengthening the regulating function by improving the system of tax and legal stimuli, suing progressive tax rate, and creating a more efficient tax administration system.

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