

Секция «Юриспруденция»

On holding a taxpayer liable for third parties' activities

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On holding a taxpayer liable for third parties' activities

It wouldn't be an exaggeration to say that almost every company faces a problem of choosing a contractor. A great number of fly-by-night companies existing, it is getting more and more complicated to choose a fair contractor. Fly-by-night or short-lived companies, as they say, are known to be legal entities, created not with the aim of conducting real economic activity, but with the aim of obtaining unjustified tax benefit.

Let's imagine the simple situation. There are three companies A, B and C. The firm B buys certain goods from the firm A and then sells it to the firm C at a higher price. However the firm A turned out to be an unfair contractor. And here the question arises: whether must be any legal consequences for the firm B, as a taxpayer, connected with a lack of conscientiousness of his contractor?

Having analyzed current legislation and judicial practice, I found out that Tax Code of the Russian Federation doesn't contain any information relevant for this issue. The issue is regulated by the resolution of The Supreme Arbitration Court of the Russian Federation № 53 of October 12, 2006. According with it, there are two basic legal consequences of a contractor's activity for taxpayer, the first being increased of the tax obligation size, the second being tax offense liability [3].

Speaking of the first point, it's vital to note that tax obligation increase is possible in the situation when taxpayer's tax benefit has been declared unjustified. Tax benefit can be considered unjustified, if tax authorities prove taxpayer to be complicit in the scheme, aimed at avoiding tax payment; or if tax authorities prove that taxpayer and his contractor are familiar with each other hence taxpayer knew or could know his contractor to be fly-by-night company.

Let's consider the second possible consequence of contractor's lack of conscientiousness for taxpayer. Holding a taxpayer liable for a tax offense, by obliging him to pay fines and penalties, is possible if tax authorities prove that this taxpayer wasn't duly diligent when choosing a contractor. Methods of revealing contractor's dishonesty can be different, namely a taxpayer can:

- obtain a copy of contractor's tax registration certificate;
- verify the fact of entering information about the contractor in the Unified State Register of Legal Entities;
- use information from the official sources concerning activities of the contractor and so on.

The problem is that these two possible legal consequences of a contractor's activity for taxpayer are the result of judicial lawmaking to the full extent. To our mind, it contravene article 10 of The Constitution of the Russian Federation that declare the concept of separation of powers [1]. Moreover, according with the article 1 of Tax Code of the Russian Federation,

the legislation of the Russian Federation on taxes and fees shall consist of this Code and other federal laws on taxes and fees adopted in accordance therewith [2]. It means that ground for holding a taxpayer liable can't be set by the resolution of The Supreme Arbitration Court.

Because of the fact that a taxpayer wasn't duly diligent when choosing a contractor, very often he has to pay fines and penalties. We consider, this ground for holding a taxpayer liable should be fixed at Tax Code of the Russian Federation. Thus, tax authorities, making a decision, will be guided by law, but not by judgment.

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