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**FINANCIAL ORGANIZATIONS AS SUBJECTS OF RELATIONS  
ARISING FROM THE AUTOMATIC EXCHANGE INFORMATION**

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**Abstract**

The article examines the issue of the appearance in the national tax law of the new subjects of tax legal relations – financial market organizations. The authors highlight the similar features of the tax and legal status of financial market organizations with the rights and obligations of both banks and other tax law subjects, involved in organizing taxpayers' registration and tax control. The main difference between financial market organizations, performing duties according to the standard of international exchange of tax-relevant information and the persons, obliged to provide information about taxpayers is that the former have to carry out the necessary and sufficient set of measures aimed at gathering reliable data about their clients. The incorporation of regulations on financial market organizations in domestic tax law is due to the fulfillment by the Russian Federation of its obligations to implement international standards of automatic information exchange for tax control purposes. The analysis of comments to international reporting standards presented in the article, made it possible to add the thesis that financial market organizations are entrusted with an active function of participating in tax control. The authors also point out that the additional function assigned to financial market organizations requires the involvement of significant material and professional resources, as stated by numerous foreign sources.

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## **1. Introduction**

Taxes are an important element of social relations and are inseparably connected with them. The development of public relations presupposes the appropriate changes in tax regulation. The current stage in the development of society is associated with the so-called digital revolution. Digitalization covers almost all spheres and areas of public life: economic, cultural, spiritual, etc.

The digital revolution involves the taxation rules changing. The current issues are:

- changes of international tax rules,
- changes of digital assets taxation,
- changes of methods and forms of tax control (in particular, the expansion of tax monitoring and other special digital programs for monitoring the tax payment liability, etc.).

Digital and technical changes produce a request for the formation of an effective system of legal regulation. Thus, one of the most important issues is the incorporation of new entities – financial market organizations – in tax relations.

## **2. Problem Statement**

Financial market organizations, participating in the automatic exchange of financial information, have a specific tax and legal status, which may serve as a prerequisite for the formation of a new institution of tax law.

## **3. Research Questions**

The given article studies the following issues:

1. How does the standard of automatic information exchange affect the legal status of banks and other organizations of the financial market?
2. Do the changes in Russian tax legislation allow talking about appearance of new subjects of tax law – information intermediaries?

## **4. Purpose of the Study**

The purpose of research is to verify the suggestion of appearance of new tax law subjects with an independent tax and legal status.

The research objects are the norms of domestic and international tax law, as well as international standards, developed by the Organization of Economic Cooperation and Development in the part of automatic procedure of information exchange for tax control purposes and comments on the above-mentioned standards.

## 5. Research Methods

The main methods of the given research are comparative legal method (comparison of the regulations of international reporting standards and the regulations of domestic tax law; searching common features and differences in the rights and obligations of financial market organizations and banks, as well as other subjects of tax law); analytical methods (the study of various elements of the legal status of financial market organizations) and synthesis method (the study in a systemic unity of the rights, duties and responsibilities of financial market organizations), deductive method.

## 6. Findings

The interaction parties when sending the necessary information are the Federal Tax Service of Russia and the authorized bodies of foreign states (territories). Currently, the established list contains about 80 countries of the near and far abroad and more than 10 territories (Bermuda, Hong Kong, the Faroe Islands, etc.; Order of the Federal Tax Service of Russia dated 03.11.2020 N ED-7-17 / 788 @ "On approval List of states (territories) automatic exchange of financial information is carried out with"). The transfer of the relevant data occurs within the framework of implementation of electronic document management using technical means and software products.

The article 142.1 of the Tax Code of the Russian Federation defines the conceptual apparatus necessary for understanding the essence of the mechanism for automatic exchange of information. So, in particular, the interpretation is given to such terms as the organization of the financial market, the client of such an organization, financial services, the beneficiary, financial assets and others. Financial information includes the following types of information: about transactions, accounts and deposits of clients; about money in the accounts and the value of the property at the disposal of the financial market organization in accordance with the brokerage service agreement or the trust management agreement of the financial market organization, etc.

They submit financial information to the tax authorities. In the clause 1 of Article 142.2 of the Tax Code of the Russian Federation such information may relate to customers, beneficiaries and (or) persons, who directly or indirectly control them and to tax residents of foreign states (territories), identified on the basis of the measures according to the clause 1 of Article 142.4 of the Tax Code, or information available to the financial market organizations. Financial information about these persons, as well as other information relating to an agreement on financial services between a client and a financial market organization, is sent to the tax authority exclusively in electronic form in a document format, established by the Federal Tax Service (Format for Submitting Information by the Financial Market Organization on the financial accounts of clients - residents of foreign states to the authorized body in electronic form). Recommendations on filing electronic documents for submitting information by financial market organizations are given in the regulation approved by the Government of the Russian Federation dated June 16, 2018 N 693 (for the version RU: 5.04). In its essence, this rule contains the obligation of financial market organizations as participants of tax legal relations.

The legislator directly indicates that the provision of such information is not a violation of banking secrecy and does not require the consent of customers, beneficiaries and persons who directly or indirectly

control them. The Central Bank of the Russian Federation also draws attention to the strict fulfillment of this obligation by credit institutions (Information letter of the Bank of Russia dated August 31, 2018 No. IN-014-12 / 58).

If there is an appropriate demand, the clients also must submit to the financial market organization their personal data, the data about beneficiaries and (or) persons who directly or indirectly control them. Along with other powers of the client, this obligation, as indicated in the materials of judicial practice, does not contravene the contractual relationship between a bank and a client, and failure to submit the requested documents is the basis for the bank's refusal to fulfill the client's order to carry out an operation (Resolution of the Arbitration Court of the North-West District from 17.09.2020 N Ф07-6877 / 2020 in case N A56-86956 / 2019). Moreover, paragraph 7 of Article 142.4 of the Tax Code of the Russian Federation provides for the right of the financial market organization to unilateral termination of the financial service agreement concluded with a client, on the basis of the latter's failure to provide information within fifteen days from the date of refusal to carry out operations.

As a rule, such information is a consolidated report of a financial market organization, which is usually a credit institution; it includes accounts of the client with income and expenses within the reporting period (Belitskaya et al., 2019). Information is provided directly by financial market organizations, namely, such as a credit institution, a professional participant in the securities market carrying out brokerage activities, an insurer carrying out voluntary life insurance activities, etc. This may be another organization (structure without the formation of a legal entity) which, as part of its activities, accepts funds or other financial assets from clients for storage, management, investment and (or) other transactions in the interests of the client, directly or indirectly at the expense of the client. The procedure for transmitting financial information and country by country reports are approved by the Decree of the Government of the Russian Federation No. 428 of 09.04.2018.

The imposing of the above-mentioned responsibilities on credit institutions allows specialists to put forward the idea of the possibility of recognizing banks as financial control agents; that is explained by the necessity to collect financial information and send it to the authorized bodies. This contributes to understanding their public functions and strengthening the role in ensuring financial discipline (Korablin, 2015).

It should be noted that the legislator has previously determined the list of persons whose responsibilities included the need to submit the information on the registration of organizations and individuals to the tax authorities. In accordance with article 85 of the Tax Code of the Russian Federation, these include justice bodies, chambers of lawyers, state cadastral registration bodies, etc.

The relations of the tax authorities with the singled out entities and the relations provided for in the Chapter 20.1 of the Tax Code of the Russian Federation have actually similar characteristics: they arise for efficient tax control; providing information is free of charge; when sending information, electronic document management is used; failure to fulfill a prescribed duty gives rise to legal responsibility. Meanwhile, these relations are also characterized by differences.

First, the list of persons who must submit the necessary information to the tax authorities has been expanded in comparison with the range of subjects specified in the Article 85 of the Tax Code of the Russian Federation.

Secondly, financial market organizations in their relations with tax authorities perform not only an intermediary function, expressed in the technical gathering of information and sending it to the tax service. They are also obliged to analyze the collected information whether it is reliable or not.

Thirdly, unlike the subjects of tax legal relations listed in the Art. 85 of the Tax Code of the Russian Federation, financial market organizations have been granted the extended powers in affecting their clients. They have the right to refuse interested parties to conclude an agreement on financial services, to refuse a client to perform transactions in his/her favor or on his/her behalf, and also to terminate the concluded agreement unilaterally (clauses 4, 5, 7 of the Art. 142.4 of the Tax Code of the Russian Federation).

It seems that the main difference between financial market organizations, performing duties according to the standard of international exchange of tax-relevant information and the persons, obliged to provide information about taxpayers is that the former have to carry out the necessary and sufficient set of measures aimed at gathering reliable data about their clients.

The provisions of domestic tax law meet the requirements of the Common Reporting Standard (Organization for Economic Cooperation and Development (OECD); hereinafter referred to as the "Standard"). The information exchange standard implies the active participation of financial market organizations in establishing the tax residency of their clients. For example, there is a "residence address test" (the subparagraph B1 of the Standard), according to which a financial institution is obliged to implement policies and procedures to verify documents proving a person's tax residence.

Thus, the listed peculiarities of the tax and legal status of financial market organizations as optional subjects of tax relations, make it possible to raise the question of identifying an independent category of persons, conventionally referred to as information intermediaries. Domestic legal science already knows such subjects of tax law as information agents. It is proposed to entrust banks with special rights allowing them to implement the function of information support (Grachev, 2009).

Nevertheless, it should be noted that the tax and legal status of financial market organizations differs from the legal status of the persons named in the Art. 88 of the Tax Code of the Russian Federation, as well as from the tax legal status of banks.

The legitimacy of this statement is confirmed by ensuring such subjects with rights and obligations that differ from the rights and obligations of the persons, provided for in the Art. 88 of the Tax Code of the Russian Federation. The independent tax and legal status of financial market organizations is also testified by the establishment of separate tax and legal responsibility for these persons (Articles 129.7, 129.8 of the Tax Code of the Russian Federation). The imposing liability on financial market organizations according to Tax Code of Russian Federation inevitably raises the issue of their guilt if improper implementation of the procedure of establishing the tax residence of their clients and other persons can be observed. Probably, here we can talk not only about the deliberate form of guilt of such an organization, but also about the possibility of committing an offence by negligence.

Some experts note a significant increase of financial market organizations' expenses due to fulfilling their duties to identify the tax affiliation of their clients (Brosseau, 2016). A special burden falls on financial institutions with a wide international network of entities, since the implementation of new international rules by each state has its own peculiarities (Casi et al., 2019). The introduction of national registries of beneficial owners can partly reduce the burden on financial institutions (Noked, 2018).

International financial institutions are currently obliged to ensure the implementation of three standards for the collection and processing of information for tax purposes (Gadzo & Klemencic, 2017).

## 7. Conclusion

Apparently, in the future there will be other prerequisites for the formation of a new institution of tax law. This is the information intermediaries' institution interacting with tax authorities in order to allow them to exercise tax control.

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