



CONSCIENTIOUSNESS IN THE IMPLEMENTATION OF STATE CONTROL AND ENTERPRISES-PARTICIPANTS OF FOREIGN ECONOMIC ACTIVITY

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Abstract

The modern reform of control and surveillance activity determines the main direction of verification measures addressed to persons engaged in unscrupulous entrepreneurial activity, thereby reducing the administrative weight on conscientious entrepreneurs. The modern essence of the principle of conscientiousness is set out in paragraphs 3 and 4 of Art. 1 of the Civil Code of the Russian Federation: in establishing, exercising and protecting civil rights and in the performance of civil duties, participants in civil relations must act in conscientiousness. No one has the right to take advantage of his illegal or unfair behavior. The application of the "conscientious" criterion in relation to enterprises engaged in foreign economic activity is due to the transition of customs authorities to the implementation of a subject-oriented model of a risk management system. In October 2017, the Charter of Conscientious Participants in Foreign Economic Activity was signed in Russia, where Russian and foreign legal entities and individual entrepreneurs conducting their business in the field of foreign economic activity, said on the establishment of bona fide forms of carrying out their foreign economic activity, as well as interaction with partners, contracting parties and government bodies. The categorization system of the Federal Customs Service of Russia is set up in such a way, that the fewer violations the organization makes, the higher the probability of classifying it as a low-risk category. At present, the categorization of participants in foreign economic activity is carried out in the industry and automated form.

Keywords: conscientiousness of entrepreneurial activity, control and surveillance activity of state bodies, factors of an enterprise's conscientiousness

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1 INTRODUCTION

The modern reform of control and surveillance activity determines the main direction of verification measures addressed to persons engaged in unscrupulous entrepreneurial activity, thereby reducing the administrative weight on conscientious entrepreneurs.

In the current legal field of the Russian Federation, there is no clear definition of the concept of "conscientious entrepreneur," however, signs of conscientiousness are described in sufficient detail in various documents. The modern essence of the principle of conscientiousness is set out in paragraphs 3 and 4 of Art. 1 of the Civil Code of the Russian Federation: in establishing, exercising and protecting civil rights and in the performance of civil duties, participants in civil relations must act in conscientiousness. No one has the right to take advantage of his illegal or unfair behavior. (Putin, 2019) From this provision, it follows that, firstly, the principle of good faith applies to all stages of behavior of participants in civil relations (applies to establish, exercise and protect rights), and, secondly, acts as a limiter to the manifestation of the autonomy of the participants' will in civil legal relations, the form of expression of which is the prohibition of such illegal or unfair behavior that may lead to the benefits arising from this behavior.

Also, in GOST R 57676-2017 "The conformity assessment. Ensuring conscientiousness in the production of goods, the provision of services, the performance of work. Qualitative indicators of assessment" (GOST, 2017) clearly defined signs of conscientiousness in the field of labor relations, in the field of tax legislation, in the field of ensuring responsibility to clients and customers.

The transition from comprehensive control (supervision) to differentiated inspection planning, as previously noted, will increase the coverage of potential violators of mandatory requirements that pose a direct threat of harm to legally protected values, and at the same time reduce the weight on legal entities and individual entrepreneurs who do not represent real threats to harm such values.

2 ANALYSIS

The introduction of a risk-based approach in the implementation of state control should lead, according to international experience, to a decrease in the number of inspections for bona fide market participants whose activities do not pose a significant threat to the values protected by law. At the same time, the preservation or even increase of the level of protection of values protected by law in the field of public administration should be ensured (figure 1).

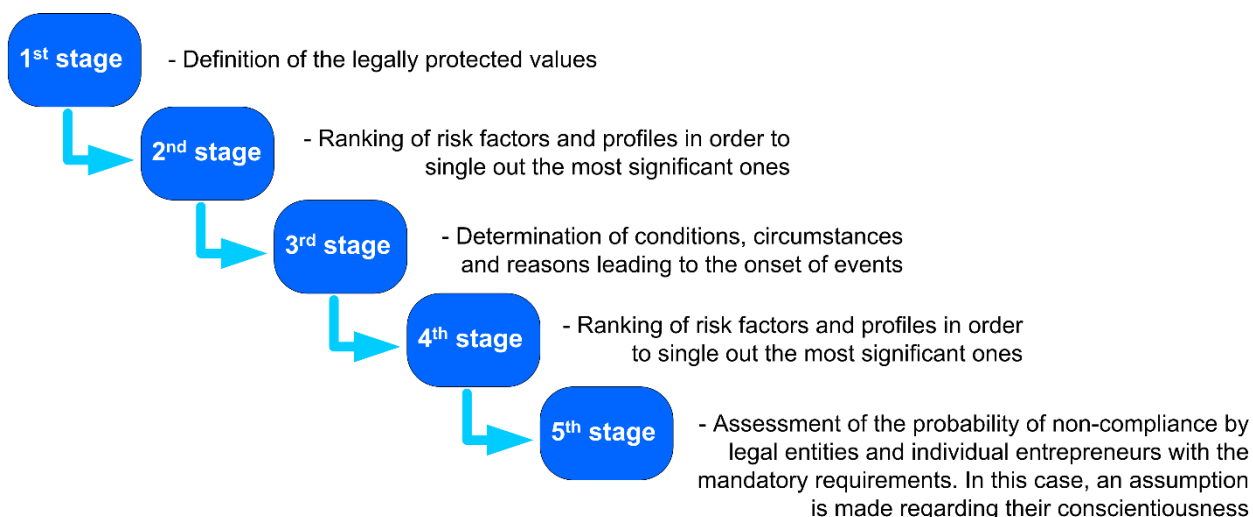


Figure 1. The main stages of the implementation of the risk-based approach to the implementation of control and surveillance activity.

The legally protected values are understood as the life and health of citizens, the rights, freedoms and legitimate interests of citizens and organizations, their property, the preservation of

animals, plants, other environmental objects, objects of historical, scientific, cultural significance; maintaining public morality and ensuring the established order the implementation

of state administration and local governments, ensuring the country's defense and state security, stability of the financial sector, unity of economic space, free movement of goods, services and financial resources, support for competition and freedom of economic activity.

For each type of state control (supervision), the values should be determined, the protection of which the implementation of these powers is directed. In determining the legally protected values, it is necessary to strive for a quantitative determination of the units by which the amount of harm caused is recorded, including the intangible nature (i.e., the measurement of the harm done).

The application of the "conscientious" criterion in relation to enterprises engaged in foreign economic activity is due to the transition of customs authorities to the implementation of a subject-oriented model of a risk management system. The basis of this system is the distribution of participants in foreign economic activity into three categories of risk level (low, medium and high) depending on the assessment of the probability of violation of customs legislation with the differentiated application of customs control measures to them. In their activities, customs authorities most often do not proceed from the category of "conscientious", but from the category of "participants in foreign economic activity with a low risk of violation of customs legislation". Conceptually, the implementation of this approach means that for companies located in the "green corridor", i.e. working in risk-free zones, the forms of actual control will be minimized or eliminated by shifting the emphasis to control after the release of the goods.

In October 2017, the Russian Union of Industrialists and Entrepreneurs, the Chamber of Commerce and Industry of the Russian Federation, the All-Russian Public Organization "Business Russia" and the All-Russian Public Organization of Small and Medium-sized Enterprises "OPORA of Russia" signed the Charter of Conscientious Participants in Foreign Economic Activity (hereinafter - the Charter), where Russian and foreign legal entities and individual entrepreneurs conducting their business in the field of foreign economic activity (hereinafter FEA), said on the establishment of bona fide forms of carrying out their foreign economic activity, as

well as interaction with partners, contracting parties and government bodies (Shokhin, Repik, Kalinin, & Katyryn, 2017).

In the Charter, as in many documents used in customs business, there is no clear definition of the category "conscientious participant in foreign economic activity". Most often, it is a question of determining the signs of good faith. Within the framework of this document is meant:

1. the veracity of the declaring and the incentive to maximize the veracity of the declaring by other participants in foreign economic activity who are not members of the Charter;
2. the assistance to the implementation of effective customs control and the desire to minimize the number of customs violations up to their complete elimination.

Six basic criteria are applied, when identifying at least one of which a participant in foreign economic activity cannot be classified as a low level of risk, regardless of the results of calculation of indicators by other criteria:

1. Business entities that, without giving reasons, evade the submission to the customs authority of documents and information necessary for conducting a customs inspection after the release of goods.
2. Arrears in the payment of customs duties and taxes (taken into account on the tenth day after the expiration of the period of voluntary payment. This period is set in the customs payment notification and is 20 days from the date of its receipt. Thus, the person is given an additional 10 days to resolve possible objective factors of non-payment debt in a timely manner (for example, a postal item arrived late, an error in the details of a payment document, etc.).
3. As a criterion, the non-payment an administrative fine is triggered after 70 days from the date of entry into force of the decision of the customs authority. That is, in this case, the person is also provided with an additional 10 days. At the same time, the amount of arrears of customs payments and fines is not considered in any way.
4. The presence of a foreign economic activity participant in the phase of liquidation or termination of his activity.

5. The presence of a final conviction of a court under Article 194 of the Criminal Code of the Russian Federation
6. The assignment of a foreign economic activity participant to a high level of tax risk according to the categorization of the Federal Tax Service of Russia.

If there are no factors in the organization's activity that determine the identification of blocking criteria, then the category of risk level for this organization will be determined by the analysis of its activity according to the remaining 29, the so-called analytical criteria.

Such criteria are divided into 2 groups: positive and negative ones. Positive criteria evaluate the positive aspects of a foreign economic activity participant's working, such as:

- the size of the authorized capital;
- the period of foreign economic activity;
- the size of customs payments;
- the using of the services of the Personal Account;
- the classification by the tax service as a low level of tax risk;
- the export orientation.

Negative criteria, in turn, assess the presence of negative aspects in the organization's activity, including:

- the share of turnover with offshore zones;
- significant deviations of the main indicators of customs declaring (weight, cost) from the average values for similar goods;
- volumes of goods supply from a country that is not a country of origin;
- violations founded out by the results of customs control before and after the release;
- the taking to administrative responsibility, as well as the initiation of criminal cases.

Positive and negative criteria are evaluated exclusively in combination. That is, none of these criteria alone can be the basis for classifying the organization as a specific risk category.

The categorization system of the Federal Customs Service (hereinafter FCS) of Russia is set up in such a way, that the fewer violations the organization makes, the higher the probability of classifying it as a low-risk category. At the same time, a complete absence of violations or not exceeding a minimum of its value is not required.

It all depends on the share of these violations in the total volume of goods delivered, as well as on the timeliness and completeness of the organization's actions aimed at minimizing the negative consequences of such violations and preventing them from happening again.

A special place among the factors affecting the assignment of the status of "conscientious participant in foreign economic activity" is occupied by tax risks.

The taxpayer's conscientiousness is determined by the degree of tax risk associated with its activities. Tax risk can arise if reduced tax rates, tax benefits, tax exemptions, favorable conditions of international treaties are applied, and the business is fragmented to apply special tax regimes. In these situations, the tax authority will assess whether the conditions for their application are artificially created in order to reduce taxes, and in this regard, the tax authority must provide evidence that the taxpayer is unscrupulous (FNS, 2017).

The tax authorities apply the procedures for collecting, recording and evaluation of the evidence, which are established by the tax and fees legislation (Article 54. of the Tax Code of the Russian Federation), and which make it possible to assess whether there was an abuse of the right or not (Putin, 2000).

The abuse of the right is the performance of business operations, the totality of deals or actions (inaction), the main purpose of which is the failure to fulfill (incomplete fulfillment) of the obligation to pay taxes and fees, as well as the unlawful receipt of the right to reimburse (refund, offset) taxes and fees (Putin, 2000).

According to the results of tax audits, tax authorities should correctly qualify the identified circumstances and, at the same time, refer to a specific paragraph of Art. 54.1 of the Tax Code of the Russian Federation.

The taxpayer distorts information about facts of economic activity, that is, receives unjustified tax benefit for the following purposes:

- reduction of the tax base and (or) the amount of payable tax,
- incorrect application of the tax rate,
- improper application of tax benefits,
- improper application of the tax regime,

- manipulation of taxpayer status, etc.,
- as well as circumstances indicating intentional actions by the taxpayer.

When analyzing the situation with the taxpayer, it is important to understand the manifestation of what signs even the most conscientious taxpayer can fall into the zone of increased attention from the tax authorities.

Based on the current arbitration practice in the Russian Federation, an additional list of criteria that tax authorities apply to prove the counterparty's "problematicity" is highlighted:

- the minimum amount of authorized capital, which is formed by property contributed by the founder;
- state registration is carried out on invalid or lost passports;
- a permanent executive body is absent at the location (place of state registration) of a legal entity;
- reporting to the tax authorities is not submitted;
- there is no staff capable of performing work (services) provided by the organization;
- the founder, the head and the chief accountant are the same person;
- there is no property which is necessary for doing business;
- systematically on an ongoing basis, the company claims for VAT refund, while declaring disproportionately the minimum amount of revenue.

Apart from the results of the analysis of the organization's activities according to the criteria established by the FCS of Russia, there are other two basic conditions for classifying as a low-risk category.

The first condition is the presence in the analyzed period, which is 2 years, at least 100 issued goods declarations. This meaning expresses the minimum volume of a statistical sample of information to be analyzed in order to recognize the result of such analysis as correct.

The second condition is the minimum period of foreign economic activity, which is 2 years; but for organizations that have a positive reputation with the tax authorities and are classified by the Federal Tax Service of Russia as a low level of tax risk; this requirement is reduced to 6 months.

Currently, the categorization of participants of foreign economic activity is carried out in the industry and automated form.

Industry categorization provides for the analysis of information to determine the level of risk and allows for the differentiated application of customs control in respect of industrial enterprises, car manufacturers, importers of fish and meat products, as well as exporters of domestic products. In this case, it is a question of the declarative nature of the categorization: an analysis of compliance with the established criteria is carried out based on documents and information submitted by the participant of FEA on his initiative. For each industry, the number of criteria varies, but a substantial part of the criteria is common. These criteria include:

- the size of the authorized capital;
- the value of the net assets of the organization;
- the main type of economic activity;
- number of staff;
- applicable tax system;
- volumes of foreign economic activity;
- fulfillment of obligations to pay customs duties, fines, and taxes administered by tax authorities;
- facts of taking to administrative responsibility.

Customs officials, on the grounds of the appeal of the Person, carry out the information collection and analysis. The date of the beginning of the information analysis is the date of registration of this appeal by the FCS of Russia.

The total period for the information collection and analysis should not exceed 30 calendar days from the date of registration of the Person's appeal. Based on the results of the information analysis, if the Person's activities comply with the above criteria, the FCS of Russia decides to classify the Person as a low-risk category. On the strength of this decision, the FCS of Russia issues an order to classify the Person as a low-risk category, indicating its name and TIN.

As of October 1, 2019, the list of persons classified as low risk by industry form includes 374 organizations, which accounted for about 10% of goods declarations and 13% of customs payments in respect of goods transported over the 9 months of 2018 (FTS, 2019)

However, most foreign trade activity's participants at low risk are determined using an automated

categorization form. Within the framework of automated categorization, regardless of the transported goods type, the information analysis on the FEA participants' activities is carried out in accordance with the Procedure for Automatically Determining the Category of Risk Level of Participants in Foreign Economic Activity, approved by order of the Federal Customs Service of Russia dated December 1, 2016 No. 2256.

The automated risk categorization procedure provides for the analysis of the FEA participants' activities for the two calendar years preceding the month of its conduct. This procedure defines 35 criteria characterizing a FEA participant's activity on the basis of various aspects, including the presence of trade with offshore zones, changes in the dynamics of key indicators customs declaration, results of customs control, administrative liability, level of compliance with currency legislation, export orientation, the results of categorization by the Federal Tax Service of Russia.

The risk categorization is carried out quarterly by the customs bodies' regular software using the information resources of the Unified Automated Information System's central database of the customs authorities, the Federal Tax Service and the Central Bank of the Russian Federation.

As a result of the risk categorization for the IV quarter of 2019, the number of low-risk organizations amounted to 9,841, of which 4,067 organizations carried out import operations, 1,625 - export operations, 4,149 – import and export

operations. The Unified Register of Small and Medium Enterprises includes 5,303 organizations classified as low risk (FTS, 2019).

3 CONCLUSION

The aspect of conscientiousness in the implementation of entrepreneurial activity is the most important characteristic of the organization. In the implementation of control and surveillance measures, it is precisely this aspect that is most often used in making decisions on conducting verification activities. In the field of customs business, at present, the categorization of participants in foreign economic activity is carried out in the industry and automated form. Industry categorization provides for the analysis of information to determine the level of risk and allows for the differentiated application of customs control in respect of industrial enterprises, car manufacturers, importers of fish and meat products, as well as exporters of domestic products. However, the majority of foreign trade activity's participants in low-risk are determined using an automated categorization form.

Finally, it can be said that at present, both the enterprises-participants in foreign economic activity and the customs authorities of Russia are actively using conscientiousness criteria in their practice. The first ones do this to obtain some relief from the state control and surveillance in relation to their activities and the second ones do this to increase the effectiveness control and supervision measures.

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