



The legal nature of the ombudsman's activities to protect the rights and interests of taxpayers

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ARTICLE INFO

Article history:

Received January 2021

Received in revised form

15 January 2021

Accepted 20 February 2021

Available online

7 March 2021

Keywords:

Business ombudsman

Tax ombudsman

Taxpayer

Tax audit

Tax authority.

ABSTRACT

This article analyzes the legal basis of the business ombudsman in the system of protection of the rights and legitimate interests of business entities, its main powers, as well as organizational and legal activities, as well as its powers in the processes of tax audits are not fully regulated by law. The role of the business Ombudsman in protecting the rights and interests of taxpayers was also assessed on the basis of judicial practice and statistics. The article interprets the world models of the business ombudsman's activity, examines the role of legal protection of the activities of economic entities and taxpayers. In addition, the procedure for forming the institution of the Ombudsman is characterized by historical and legal grounds. Proposals and recommendations for improving the legal regulation of the business Ombudsman have been developed.

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Солиқ тўловчиларнинг ҳуқуқ ва манфаатларини ҳимоя қилишда омбудсман фаолиятининг юридик табиати

АННОТАЦИЯ

Калит сўзлар:

Бизнес омбудсман

Солиқ омбудсман

Солиқ тўловчи

Солиқ текшируви

Солиқ органи

Мазкур мақолада тадбиркорлик субъектларининг ҳуқуқлари ва қонуний манфаатларини ҳимоя қилиш тизимида Бизнес-омбудсман фаолиятининг ҳуқуқий асослари, унинг асосий ваколатлари ҳамда ташкил-ҳуқуқий фаолияти таҳлил қилинди ҳамда унинг солиқ текширувлари жараёнларида ваколатлари тўлиқ ҳуқуқий тартибга солинмаганлиги аниқланди. Шунингдек, Бизнес-омбудсманнинг солиқ тўловчиларнинг ҳуқуқ ва манфаатларини ҳимоя қилишдаги ўрни суд амалиёти ва

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статистикаси асосида баҳоланди. Бизнес омбудсман фаолиятининг жаҳон моделлари тафсифланиб, тадбиркорлик субъектлари ва солиқ тўловчиларнинг фаолиятини қонуний ҳимоя қилиш механизмидаги ўрни кўриб чиқилган. Бунақа ташқари, омбудсман институтининг шаклланиш тартиби тарихий-ҳуқуқий асослар билан тавсифланган. Бизнес-омбудсман фаолиятини ҳуқуқий тартибга солишни такомиллаштиришга қаратилган таклиф ва тавсиялар ишлаб чиқилган.

Правовая природа деятельности омбудсмана по защите прав и интересов налогоплательщиков

АННОТАЦИЯ

Ключевые слова:

Бизнес-омбудсман
Налоговый омбудсман
Налогоплательщик
Налоговая инспекция
Налоговый орган

В данной статье анализируются правовые основы деятельности бизнес-омбудсмана в системе защиты прав и законных интересов субъектов предпринимательства, его основные полномочия, а также организационно-правовая деятельность, а также его полномочия в процессах налоговых проверок не в полной мере регламентированы законом. Также на основе судебной практики и статистики была дана оценка роли бизнес-омбудсмана в защите прав и интересов налогоплательщиков. Интерпретируются мировые модели деятельности бизнес-омбудсмана, рассматривается роль правовой защиты деятельности хозяйствующих субъектов и налогоплательщиков. Кроме того, порядок формирования института омбудсмана характеризуется историко-правовыми основаниями. Разработаны предложения и рекомендации по совершенствованию правового регулирования деятельности бизнес-омбудсмана.

INTRODUCTION.

Increasing the effectiveness of the state financing function in the Republic of Uzbekistan, in turn, requires adaptation of the tax policy to international standards and improvement of tax administration. After all, the financing function of the state relies on the appropriateness of the state budget revenues. The main task of tax administration is the organization of timely payment of taxes and fees to the budget. In this process, special importance is attached to the institution - tax audits, which require the introduction of a direct relationship with taxpayers. In the process of tax audit, the tax authority will be able to touch the taxpayer's rights, interests, property, territory, premises, goods, work, services and savings in the bank account from the point of view of taxation.

In this place, the head of State Sh.Mirziyoyev noted, from 1 January 2020 more than 120 new rules were introduced in the tax system of our country, these rules should be applied correctly, all aware of the changes to ensure the rights and interests of the population, having understood the essence of the tax code, it was noted that it is possible to ensure its qualitative implementation, the new code also imposed a lot of tasks on tax authorities, for their qualitative

implementation it is necessary to sharply increase the knowledge and level of tax personnel, radically change their attitude to entrepreneurs[1].

From this point of view, as one of the main directions of improving the Institute of tax audits in the Republic of Uzbekistan, we will touch on the issues of improving the activities of the Institute of representative for the protection of the rights and legitimate interests of business entities (business ombudsman).

In 2017, the Institute of the representative for the protection of the rights and legitimate interests of entrepreneurs was established to improve the protection of the rights and interests of entrepreneurs in our country[2]. This representative Institute organized its activities on the basis of the law “on the representative for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan” on August 29, 2017. According to this law, the representative (Business Ombudsman – is an official who provides guarantees of protection of the rights and legitimate interests of business entities, observance of these rights and legitimate interests by state bodies, in particular law enforcement and supervisory bodies[3].

METHODS.

The research used such methods as historical, system-structural, comparative-legal, logical, sociological, complex study of scientific sources, induction, deduction and analysis of statistical data.

DISCUSSION.

The representative for the protection of the rights of entrepreneurs in the field of audits in world practice (Business Ombudsman) Institute is represented in two different models. The first model-a general representative representative (Business Ombudsman) - is authorized to coordinate the legality of the activities of all bodies (in particular, tax, customs, sanitary, licensing bodies and others) authorized to check the activities of business entities. This model is typical of the following countries: USA,[4] New Zealand,[5] Ireland,[6] South Korea,[7] Belgium[8] and others.

The second model-a specially authorized representative (Tax Ombudsman) - is authorized only to coordinate the activities of tax authorities authorized to check the activities of business entities. This model is typical for the following countries: Canada,[9] Georgia,[10] Australia,[11] Spain,[12] Pakistan[13] and others.

The main tasks of this representative were: implementation of control over compliance with the rights and legitimate interests of entrepreneurial subjects by state bodies; legal support for the activities of entrepreneurial subjects during the audit; study of the practical implementation of the norms and requirements of the legislation on guarantees of freedom of entrepreneurial activity. However, this law did not provide for the powers of the representative to exercise control over the legality of audits. This authority was obtained from the powers of the prosecutor's office and assigned to this representative in 2019.

The issue of coordination of tax audits was initially established in accordance with the decree of the president of the Republic of Uzbekistan dated August 8, 1996 “on improving the Coordination of audits and activities of supervisory bodies” DP-1503, the Republican Council for coordination of activities of supervisory bodies was established in order to regulate the audit of economic entities regardless of the form of ownership. The task of coordinating these works is assigned to the state tax office. It was also noted that the audit of financial and economic

activities of economic entities will be carried out in coordination with this Council and annual plans for coordination of audits will be developed[14]. The state tax administration carried out the task of coordinating tax audits in business entities for 1996-2018 years.

The task of coordinating tax audits in business entities was transferred to the task of the prosecutor's office by decree DP-5308 “on the state program on implementation in the year of support for active entrepreneurship, innovative ideas and technologies”, in 2018, 22 January[15].

Also, following the decree DP-5490 “on measures for further improvement of the system of protection of the rights and legitimate interests of business entities” dated July 27, 2018, The Prosecutor General's Office of the Republic of Uzbekistan approved the “temporary regulation on the procedure for coordination and conduct of audits carried out by supervisory bodies in the activities of business entities”[16] and “regulation on the procedure for maintaining the unified system of electronic registration of audits”[17].

Through these regulations, the procedure for agreeing on the conduct of tax audits in business entities, as well as the procedure for entering information on the results of audits and the applied impact measures into the electronic registration system were established. In addition to, According to the decree DP-5690 “on measures to radically improve the system of protection of entrepreneurial activity and optimize the activities of the prosecutor's bodies” dated March 15, 2019, coordination of audits carried out in the activities of business entities and control over the legality of audits conducted by supervisory bodies were entrusted to the representative for the protection of the rights and legitimate interests of business entities, the single system of electronic registration of audits was transferred from the prosecutor general's office to the jurisdiction of the representative[18].

At the same time, the representative established the powers to review the orders of the supervisory bodies to conduct audits in the activities of business entities, to give consent to or refuse to conduct audits, as well as to impose or move their deadlines, to prosecute guilty officials who have violated the procedure for audit, to ensure the enforcement of the practice of applying the uniform right to audits have been established.

The analysis of the current legislation shows that the control over the legality of audits carried out by the representative for the protection of the rights of entrepreneurs in the subjects of entrepreneurship is ensured by the following methods: first, before the checks are made, the checks are agreed or notified to the representative on the basis of the order; and secondly, before the checks are made, the registry of the checks is filled in[19]; thirdly, the results of the examination are entered into a single system of electronic registration of checks no later than three days; from four, responsibility measures are taken by the representative to persons who violated the procedure for conducting the examination. For example, since the authority to establish control over the legality of audits to the representative for the protection of the rights of entrepreneurs was established, in 2019, 3202 appeals were received from entrepreneurs, of which 12% are calculated on the activities of controlling bodies and 7% are on the legislative acts related to the tax sphere. Also, in 2019, 1248 orders were received by the supervisory authorities, 529 of them (42%) were rejected because of the lack of documents substantiating the conduct of the audit, 719 of them (58%) agreed to conduct the audit[20].

In addition, a number of measures have been taken by this representative on the legality of tax audits. For example, in 2020, the tax authorities on the desk tax audit considered additional taxes in the amount of 4,211,473,028 sum in relation to the LLC “Z” and issued an incasso payment order, as well as clarifying reports submitted by the entrepreneur were not

accepted. In this case, the incasso assignment on the basis of illegal actions of tax authorities by employees of the business ombudsman was canceled.

In addition, in 2019, when monitoring the results of a short-term tax audit conducted by employees of the Tax Authority of the Zangiota district in agreement with the business ombudsman of the activity of the LLC "T", the status of a violation of the law was determined, in particular, the Tax Authority did not introduce the business entity with service certificates. In this case, the declarations on administrative offenses to tax employees under Article 2412 of the current Code of administrative responsibility were formalized and increased to the court and the responsibility was established by the court[21].

CONCLUSION

Proceeding from the above, we can conclude that despite the legal basis, organizational structure and material and technical base of the activity of the representative for the protection of the rights of entrepreneurs are regulated with Law "on the representative for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan", "On measures to radically improve the system of protection of entrepreneurial activity and optimize the activities of prosecutor's bodies" DP-5690-issue decree, "On measures for the effective organization of Representative activities for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan" 584-issue decree, documents defining the procedure for ensuring control over the legality of audits by this representative have not been adopted.

At present, the processes of coordination of the unified system of coordination of audits, coordination and notification of audits in business entities and registration of audits by this representative are carried out on the basis of regulations approved by the order of the Prosecutor General of the Republic of Uzbekistan. The issues of coordination and authorisation of audits in these regulations have been strengthened by the bodies of the prosecutor's office and the powers of the business ombudsman have not been established.

From this point of view, it is proposed to develop a regulation "on the procedure for coordination and conduct of audits carried out by supervisory bodies in the activities of business entities", which determines the procedure for coordination and notification of audits with the business ombudsman, and to approve by the decision of the Cabinet of Ministers of the Republic of Uzbekistan.

In addition, it is proposed to develop a regulation "on the procedure for maintaining the unified system of electronic registration of audits", which determines the procedure for mutual electronic exchange of information on the processes of verification and to approve it by the decision of the Cabinet of Ministers of the Republic of Uzbekistan.

References:

1. On January 8, 2020, under the chairmanship of the President of the Republic of Uzbekistan Shavkat Mirziyoyev, a speech at the video-projector meeting dedicated to the implementation of state budget parameters and priority tasks for the development of entrepreneurship in the regions. <http://uza.uz/oz/politics/shavkat-mirziyeev-yagona-y-limiz-tadbirkorlar-sonini-k-payti-08-01-2020>

2. On 5 May, 2017 Decree of the President of Uzbekistan "On the establishment of the representative Institute for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan" DP-5037 // Collection

of legislation of the Republic of Uzbekistan, 2017, 19-th, Article 333; 16.03.2019 y., 06/19/5690/2772-number

3. On 29 August, 2017 Law “On the representative for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan” // Collection of legislation of the Republic of Uzbekistan, 2017, Article 35, article 915; national database of legislation data, 13.11.2019 y., 03/19/583/4016-issue

4. US Small Business Administration <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>.

5. New Zealand Ombudsman. <https://www.ombudsman.parliament.nz/>

6. Ireland Ombudsman <https://www.ombudsman.ie/about-us/what-we-do/>

7. South Korea Foreign Investment Ombudsman. <https://ombudsman.kotra.or.kr/eng/index.do>

8. Belgian federal Ombudsman. <http://www.federaalombudsman.be/content/what-does-office-federal-ombudsman-do>

9. Canadian Taxpayers Ombudsman. <https://www.canada.ca/en/taxpayers-ombudsperson/corporate/about-us/order-council.html>

10. Tax Code of Georgia. <https://www.refworld.org/cgi-bin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=548f00b54> (2015 йилгача Солиқ омбудсман сўнгра Бизнес омбудсман)

11. Australian Tax Ombudsman. <https://www.ato.gov.au/About-ATO/Commitments-and-reporting/Our-scrutineers/Inspector-General-of-Taxation-and-Taxation-Ombudsman/>

12. Consul on taxpayers in Spain. https://www.agenciatributaria.gob.es/AEAT.sede/en_gb/procedimientos/PZ00.shtml

13. Tax Ombudsman of Pakistan. <https://www.fbr.gov.pk/federal-tax-ombudsman/81166/71155>

14. On 8 August, 1996 Decree of the President of Uzbekistan “On improving the Coordination of the activities of regulatory and supervisory bodies for inspections” Decree № DP-1503 // Bulletin of the Oliy Majlis of the Republic of Uzbekistan, 1996. 06/18/5490/1584 (practically lost its power)

15. On 22 January, 2018 Decree of the President of Uzbekistan “On the state program for the implementation of year of support for active entrepreneurship, innovative ideas and technologies” № PF-5308 // National database of legislation data, 23.01.2018 y.

16. On 6 September 2018, The Prosecutor General's Office of the Republic of Uzbekistan. Order № B-55 “on approval of the temporary dispute on the procedure for the agreement and conduct of inspections carried out by supervisory bodies in the activities of business entities” // National database of legislation data, 08.09.2018 y., 10/18/3067/1854

17. On 30 November 2018, The Prosecutor General's Office of the Republic of Uzbekistan. Order № 205 “on approval of the dispute on the procedure for maintaining the unified system of electronic registration of inspections” // National database of legislation data, 01.12.2018 y., 10/18/3093/2255-issue

18. On 15 March 2019 Decree of the President of Uzbekistan Decree “On measures to radically improve the system of protection of entrepreneurial activity and optimize the activities of prosecutor's bodies” DP-5690 // National database of legislation data, 16.03.2019 y., 06/19/5690/2772-number

19. On 7 November, 2011 Ministry of Justice Order “On the confirmation of the form of the registry of checks and the procedure for filling it out” 246 // Collection of legislation of the Republic of Uzbekistan, 2011, 45-46-th, article 480; 2017 y. Article 481

20. Official website of the representative for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan <https://biznesvakil.uz/ru/news/20>

21. Official website of the representative for the protection of the rights and legitimate interests of business entities under the president of the Republic of Uzbekistan <https://biznesvakil.uz/uz/news/63>