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ALTERNATIVE PROCEDURES FOR SETTLING TAX DISPUTES

Abstract

The article discusses an alternative way to settle a tax dispute through mediation. For the Russian law enforcement practice, this format of interaction is new, since the current law on mediation only since 2019 has established the possibility of its implementation in the public sphere of activity. At the end of 2020, the first precedent for considering a tax dispute through mediation appeared, which gave a positive result. The author discusses the pros and cons of using mediation in public legal relations and gives his vision of this process.

Key words: mediation, tax mediation, alternative dispute resolution methods.

JEL Classification: K34

1. Introduction

The active development of social and economic relations, stimulated by the widespread digitalization of all spheres of life, which gained particular value in connection with the COVID-19 pandemic, entailed the reform of certain areas of financial and legal regulation and, in particular, such an area as the administration of tax processes, its legal settlement and the formation of a new conceptual apparatus in this field.

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The doctrine is increasingly using the category of “tax mediation”, which no one could have imagined a few years ago. Moreover, there are calls for the inclusion of this mechanism as an independent institution within the framework of the Russian tax law.

Nevertheless, before expressing one's own position on this issue, it seems necessary to analyze the current state of the phenomenon of alternative dispute resolution and its relevance in the national law enforcement practice.

And in this regard, it is proposed to refer to the work of C. Besemer, in which the author emphasizes that mediation literally means agency work. Mediators help disputants find mutually acceptable solutions to their problems [Besemer 2004: 14].

Indeed, the mediator's task is not just making an optimal decision for the parties, as the subjects of this process themselves take part in developing the right way out of the situation for them. Of course, the parties cannot do this on their own, since they are very much immersed in their questions, problems and, in general, are unfriendly towards each other in, considering the current situation to be a conflict. However, thanks to the skills of a mediator and special techniques used by the professional, it becomes possible to resolve the conflict constructively.

At the same time, it should be noted that the mediation technique is manifested in the presence of some of its components, namely:

- the mediator-agent himself;
- genuine desire of the parties to the process to take part in mediation;
- an informal dialogue that is built during mediation.

However, an important aspect, within the framework of the mediation procedure, is the sincere and voluntary (without involving other participants) participation of the parties in the procedure itself and self-determination in relation to resolving the disputed situation, i.e. when the participants in the process themselves "work" to form a solution acceptable to both parties.

Thus, mediation is actively used in resolving disputes where participants are individuals. In such a situation, the problem is more pronounced, each side has a set of solutions, towards which they are moving. However, the technique of mediation began to spread to cases of conflict situations among business partners. And in this direction (when desires, goals and decisions often do not depend on one specific subject) conducting sessions becomes more difficult, since the final mutually beneficial decision is made using the so-called collective mind. Evidently this is the case that refers to the situation of resolving conflict, disputable

situations, where one of the participants in the process is a public authority, in particular, the tax service.

The situation is obvious, since the decision-making process in the tax office is associated with the preliminary coordination of individual agreements reached during the procedure with higher officials and/or higher tax authorities within the existing hierarchy. This approach can also be justified, since, in most cases, we are talking about large amounts of funds that have not been received in the budgets of the budget system.

A number of Russian experts in the field of law define negotiations as "a discussion carried out directly, which means without participation of a third party, agent or mediator, aimed at making a joint decision that can resolve existing disagreements" [Erohina 2014: 165].

Other authors note that "negotiations as an alternative way of resolving disputes and conflicts is a form of implementing a specific task by establishing trusting relationships formed as a result of mutual understanding of the situation and mutual desire for a positive outcome" [Alekseeva 2015: 184].

According to M. Starchikov, by exchanging opinions on various ways of interaction (ways of solving certain issues), members of society solve problems that arise in the process of life [Starchikov 2018].

Thus, the issues of conflict-free dispute resolution in Russia have long become ripe, as evidenced by the official statistics offered by the tax authorities.

In particular, in the first six months of 2020, the number of complaints against acts of tax authorities of a non-normative nature, actions (inaction) of officials amounted to 54, and in 2019, over the same six months, the number of complaints filed was 23.9% higher (71 complaints).

However, here one should take into account the fact that throughout 2020 the state provided certain exemptions in the field of taxation, including deferrals in the payment of taxes, filing declarations, and there was also a regime of remote interaction with the service. In this regard, the percentage of reduction in the number of appeals of taxpayers is quite justified [www.nalog.ru].

In the first half of this year, the number of satisfied complaints from taxpayers, compared to the same period in 2019, increased by 69.2% and amounted to 22 complaints (9 – in full and 13 – in part).

Moreover, according to the Federal Taxation Service of Russia, 29 complaints reviewed by the Directorate were left without satisfaction (36 complaints during 6 months of 2019),

and the ratio of the number of complaints, following the results of consideration of which, the claims of taxpayers were satisfied, in the reporting period, compared to the corresponding period of the past year, increased by 16.6 percentage points from 26.5% to 43.1% [Russian Federal Tax Service website].

The given data inspire confidence that the procedure for pre-trial settlement of disputes in our country has become an order of magnitude higher, and has been qualitatively revised. However, the percentages indicated above should be considered taking into account the situation of the country at that moment and the relative preferences given to payers of taxes, fees and insurance premiums.

Here you can refer to the data on disputing the amounts of claims initiated by taxpayers. So, compared to the corresponding period of 2019, the percentage of such applications increased in 2020 by 22.2 times or by 176.3 million rubles and amounted to 184.6 million rubles.

More than 41 times, or 46.1 million rubles the amount of satisfied claims increased in the reporting period compared to the 1st half of 2019 and amounted to 47.3 million rubles.

The ratio of the amounts of satisfied claims to the amounts appealed increased by 11.8 percentage points from 13.8% in 2019 to 25.6% in the reporting period.

The number of court cases considered in the reporting period for disputes that passed pre-trial settlement was 12, of which 50% or 6 cases were in favor of taxpayers (14 out of 29 cases or 48.3% during 6 months of 2019) [Russian Federal Tax Service website].

Thus, in the first half of 2020, the courts of first instance, based on the statements (claims) of taxpayers presented to the tax authorities, issued 10 decisions, all of which went through pre-trial settlement. In this part, we note that the system of pre-trial settlement of disputes, which is currently in force, creates conditions for its formal observance, with subsequent appeal to the courts for real contestation of the issued acts. In part, this can be justified by the fact that the body considering such a dispute in the course of the pre-trial procedure is a higher tax authority. In this regard, the principle of neutrality and independence is lost in the understanding that is the basis for constructing a mediation procedure, when a mediator is an absolutely disinterested person who does not make decisions on a case and whose task is only to create comfortable conditions for participants in order to discuss the current situation and the development of a convenient way out of the situation for each of the parties.

One should support the position according to which the opportunity for mediation of the dispute is determined according to the principle of meeting certain criteria, in particular:

- there is a chain of interrelated claims between the disputing parties, and a decision in one of the cases will not resolve the general problem;

- the parties are ready or express their intention to agree, but cannot independently work out a mutually beneficial solution;

- the parties demonstrate a willingness to reconsider their attitude to the events that have occurred or possible options for resolving the dispute;

- time is valuable for the participants in the trial, and the parties (or one of them) strive to resolve the dispute as quickly as possible;

- the benefit potentially achievable as a result of the adjudication is disproportionately less than the harm caused during the proceedings (this is especially true for corporate disputes that threaten the existence of a business, etc.);

- the parties want to maintain confidentiality and prevent the dissemination of information about the disagreements that have arisen between them;

- it is important for the parties to maintain partnership or friendly relations with each other (usually, such disputes include cases involving close relatives, ex-spouses, neighbors, business partners);

- the parties understand that a formal legal decision does not help to eliminate the true causes of the conflict and does not guarantee the realization of their interests, i.e. will not allow the final settlement of the conflict;

- the parties have reached such an escalation of the conflict in which they do not want to see and communicate in the courtroom, while mediation allows the procedure to be carried out separately with each of the parties;

- the relationship of the parties is emotionally tense, and this factor does not allow reaching mutual agreement precisely within the framework of court proceedings;

- the parties need to work out a solution on several issues in a particular situation, and a legal dispute covers (or is able to cover) only a part of the problem (this refers to complex, multidimensional cases in which traditional law enforcement and decision making will not bring the desired result) [Gumenjuk 2020].

So, having identified the problem areas of the current system of pre-trial appeal of tax disputes, armed with up-to-date statistics, one can proceed to a detailed analysis of the regulatory framework that fixes the procedure and conditions for mediation and the prospects for its use in the tax area.

2. Practice of using mediation abroad

Using the example of a number of countries that are considered advanced in the field of mediation, it is proposed to analyze the existing experience of using the alternative dispute resolution procedure.

So, in particular, in the United States, development of an effective mechanism for resolving tax disputes was reduced to the constant improvement of the procedure for their consideration at the pre-trial stage to develop effective procedures to ensure voluntary cooperation of the parties, taking into account the interests of the fiscal authority and the taxpayer.

By virtue of the Internal Revenue Service Reform Act 1998, the US Internal Revenue Service (hereinafter - the IRS) has developed a set of procedures for the use of alternative methods of resolving tax disputes at the stage of their administrative consideration. The main purpose of such procedures is to promptly resolve disputes between the taxpayer and the tax authority with the participation of an authorized person who ensures a fair and impartial consideration of the dispute [Egorov 2012].

In the framework of American practice, an authorized representative must be impartial both in relation to the tax authority and in relation to the taxpayer.

The authorized representative, acting as a mediator in this process, contributes to the settlement of the dispute. He has the right to exercise his powers of authority only upon reaching a compromise solution and with the consent of all interested parties. During mediation, the mediator is tasked with monitoring compliance with the law in the actions of the tax authority.

The advantage of mediation procedure is the timing of its implementation, as well as the suspension of procedures for the collection of arrears until the completion of the conciliation procedure.

The final agreement that the parties have agreed upon in the mediation process is not subject to appeal and judicial review. The exception is cases of fraud and forgery of documents, as in this regard, the legality of the actions of officials when signing an agreement is subject to mandatory intradepartmental verification.

Note that, based on the results of the procedure, the authorized representative (mediator) prepares an opinion for the IRS Complaints Office, which reflects an analysis of the possible risks of litigation, refers to the substantive law by which he was guided, and also makes recommendations on the use of this experience when considering similar disputes.

In the United Kingdom, for a long time, the institution of mediation has been used to resolve commercial disputes, and since 1999, when large-scale reforms, known as the "Wolfe Reforms", aimed at simplifying civil litigation came into force, the parties to the dispute had to consider alternative methods for resolving disputes both at the beginning and throughout the dispute.

If one of the parties did not resort to it, then the court may, at its discretion, order that this party pay some or all of the legal costs of its opponent, regardless of whether it won in the main claim.

It was this approach that led to the active use of mediation, which later became a routine phenomenon and entered into law enforcement practice.

3. Problem statement and proposed solutions

At its inception, mediation was an informal procedure that the parties resorted to only on their own initiative. In the United States since the mid-70s of the XX century the term “alternative dispute resolution” appeared and the situation began to change dramatically. This attitude towards mediation was promoted by representatives of the judicial and legal system, among whom a prominent reformer in this field, Frank Sander, is pointed out. It was he who proposed the concept of "Multidoor Court House", which became one of the founders of the Harvard School of Negotiation.

Prominent Russian representative in the field of mediation T. Shamlikashvili notes that mediation is a path to a meaningful mutually acceptable solution based on consensus between the parties involved in the dispute. Mediation is a form of participation of a neutral person – mediator – in the dispute resolution procedure [Shamlikashvili 2013: 4].

In the development of the expressed thought, it should be emphasized that the procedure is characterized by the fact that the disputing parties voluntarily participate in it and jointly (without the active intervention of the mediator) develop some solutions to the situation in the negative context.

One should point out that the motivator and the driving force for the process of establishing communication, is the desire of the parties, and in some cases the need, to resolve the conflict, and the agent (mediator) acts as a conductor who actively contributes to the recreation of a comfortable dialogue between the participants in the procedure.

Analysis of the current Russian procedural legislation establishes the following provisions. So, in Art. 153.5 of the Civil Procedure Code of the Russian Federation, the parties have

the right to settle the dispute by resorting to the mediation procedure. Such an expression of the will of the parties is the basis for the postponement of the trial. In such a situation, the parties are given time to try to resolve the dispute peacefully.

A similar procedure and consequences of mediation are established in Art. 138.4 of the Arbitration Procedural Code of the Russian Federation (APC RF) [CL RF 2002: Art. 3].

However, the fact of the appearance of these norms in the legislation has not yet led to a greater number of appeals to the mediation procedure for the disputing parties.

Nevertheless, in the domestic legal reality there is a legislative act regulating the practice for applying to the procedure for alternative settlement of the dispute.

Such a document is the Federal Law of July 27, 2010 No. 193-FZ [Federal Law no. 193-FZ 2010: Art. 4162] (hereinafter “The Law on Mediation”), which in clause 1 of Art. 1 fixes that the goal to create conditions for the use in Russia of an alternative dispute settlement procedure with the participation of an independent person as a mediator is the promotion of the development of business partnerships and the formation of business ethics, as well as the harmonization of social relations.

It should be noted that in the domestic version, the legislator did not formulate the definition of mediation, but only stated the purpose of its creation and the scope of application. This method of dispute settlement refers to relations arising from civil, administrative and other public legal relations, including in connection with the implementation of entrepreneurial and other economic activities, as well as disputes arising from labor legal relations and family legal relations (clause 2 of article 1).

Moreover, as can be seen from the very name of the law, mediation can be traced only in part, the legislator carefully named the law as an alternative procedure for resolving a dispute. In this regard, it seems that the time has become ripe to more clearly formulate in the title of the legal act itself the essence and its purpose, which will give a clearer understanding of both the document itself and attract the attention of a potential audience.

At the same time, when reflecting the purpose of the law, the phrase "administrative and other public" legal relations is used, which was introduced only in 2019 in accordance with amendments to the current legal act, namely, Federal Law of July 26, 2019 No. 197-FZ [Federal Law no. 197-FZ 2019: Art. 4099 (subclause “a” clause 1 article 7)], which entered into force on October 25, 2019. Thanks to these clarifications, the scope of the Law on Mediation includes financial and, in particular, tax and legal regulation.

So, before the adoption of the relevant amendments, the Law did not apply to public law relations, despite the fact that in foreign practice there is already a positive experience from the use of alternative to judicial procedures mechanisms for the settlement of tax disputes.

In other words, such a category of cases as tax disputes was removed from the jurisdiction of alternative (via mediation) dispute resolution. If we proceed from the fact that out-of-court protection of one's rights has always been recognized as an alternative, then for some time the possibility of pre-trial settlement of a dispute by appealing not to the courts, but to higher tax authorities was considered an alternative. Once upon a time, such an opportunity was truly alternative, due to the fact that the taxpayer made an independent decision whether to appeal to the court or go through the pre-trial instance in the form of filing a complaint with the tax authority. At the same time, the appeal to the tax authority did not exclude the parallel possibility of filing an application with the court. However, in such conditions, the right of final decision-making was vested in the court, which made the work of the tax authority absolutely unproductive.

Subsequently, the corresponding norm in the Tax Code of the Russian Federation [CL RF 1998: Art.3824] was revised and the procedure for pre-trial settlement of the dispute became mandatory, without recourse to which the court was not entitled to consider the dispute. However, at the first stages of its introduction, it also did not give a positive effect and the number of taxpayers' appeals to the court did not decrease.

At the same time, it is proposed to refer to the legislative experience of post-Soviet states, which at the level of laws consolidate the concept of mediation.

In particular, by the Law of the Republic of Kazakhstan dated January 28, 2011 No. 401-IV “On Mediation”, mediation is considered as a procedure for resolving a dispute (conflict) between the parties with the assistance of a mediator (mediators) in order to achieve a mutually acceptable solution by them, implemented by voluntary agreement of the parties (subclause 5 of article 2) [Bulletin 2011: Art. 27].

It is also interesting that the above document reflects that the mediation procedure is not applicable to disputes in which one of the parties is a state body (clause 3 of article 1).

While Russia has taken the path of providing the opportunity to be a participant in the mediation process for state authorities and municipalities, both on the side of the initiator of the conflict resolution and the invited participant in the process.

Of course, it is important to emphasize that such an approach, namely, the involvement of the state (municipalities) in the process of peaceful voluntary settlement of disputes, is

important to recognize as positive, since it is aimed at simplifying both the procedure for resolving the conflict situation as a whole and will demonstrate the real (and not formal) equality of all subjects of mediation.

Despite the fact that the Law on Mediation is already 10 years old, there are not so many practices of its application in the territory of the Russian Federation.

Moreover, there is no full-fledged and realistic statistics that would make it possible to draw conclusions about the results of the Law, the number of disputes that were prevented (not brought to trial) or settled (already in the process of litigation) through the use of mediation mechanisms.

In part, the mediation system that existed in our country for several years (until 2019) also contributed to this fact, since those categories of disputes that fell under the legal framework of legislative requirements were initially the subject of consideration of the courts, which recommended contacting mediators for resolution of disputes, and after the parties came to a certain agreement, the courts confirmed their decision by the court order. Thus, a positive result was counted by the courts in their favor, although it was not the court, but the course of mediation that encouraged them to make such a decision.

It is possible to explain the desire of the parties to return to court and already there approve the amicable agreement by the legal illiteracy of citizens who did not understand the legal consequences of agreements concluded as a result of mediation. It should also be admitted that only during the last year a lot of explanatory work has begun in the field of mediation, the procedure for its implementation and the positive effect of the agreement concluded in this way. Perhaps it is the large-scale self-isolation, the truncated mode of work by the court and the need to negotiate that made it possible to pay more attention to this institution and use it as a legal mechanism when it is necessary to resolve arising conflicts and disputes.

For mediation, it seems, the main thing is the process of establishing communication between its participants, learning the skills of listening, being heard and hearing, and not how exactly the relationship between the parties will be formalized based on the results of the agreements received. Therefore, there is no rigid fixation of each case of dispute settlement and maintenance of a register for concluded mutually beneficial agreements due to the mediation procedure. In this regard, mediation can be defined as a special case of establishing high-quality communication between the disputing parties.

However, returning to mediation in the tax sphere, it should be emphasized that in the current time period, representatives of the tax authorities have noted positive dynamics even in this seemingly absolutely static direction.

Thus, representatives of the tax authorities emphasize that "...one of the new mechanisms of control and analytical work may be the pre-trial mediation procedure. The essence of the mediation mechanism is to involve a third party (mediator) – an independent expert who helps the parties to develop a certain agreement on the dispute (in this case, on the claims of the tax service regarding the economic activities of the organization), while the parties fully control the decision-making process on the settlement of the dispute and conditions for its resolution" [Mediation is a new word in tax control].

The first official case of settling disputed relationships between the tax authority and taxpayers was the experience of St. Petersburg, which took part in a pilot project of building a new system of relations between tax authorities and business representatives by concluding a mediation agreement.

In particular, between the RF Federal Taxation Service Interdistrict Tax Inspectorate (MIFNS) of Russia No. 21 and OOO "Rif", an agreement was reached on clarifying the tax obligations of the taxpayer and paying the corresponding amounts of taxes at a convenient time for the payer. Such an agreement between the parties was preceded by several mediation sessions and consultations of the parties with the mediator.

Thus, the mediation procedure made it possible to eliminate all the eventual and related risks arising between the tax authority and the taxpayer, including time, financial, emotional costs and labor resources.

The available (so far, however, the only one) experience of such interaction allows us to state that the agreement reached between the parties (the fiscal authority and the payer) within the framework of the mediation procedure allowed:

- Firstly, to replenish the state budget with missing amounts due to the late payment of certain types of taxes and;

- Secondly, to reduce the costs associated with conducting an on-site tax audit and measures aimed at collecting the lost amounts of taxes, penalties to the regional budget, resorting to the judicial procedure for resolving the dispute.

Moreover, the likelihood of replenishment of the budget with taxes increases, due to the conscious and voluntary decision of taxpayers to pay taxes, as well as the exclusion of unfair actions for their part during the period of initiation of judicial procedures by the fiscal authority.

Turning to the theory of tax law, it should be noted that the mediation mechanism is traditionally attributed to the pre-trial procedure for resolving a dispute, with which it is not possible to agree for the following reasons:

Firstly, mediation can also be used at the stage of litigation of a dispute, in contrast to the traditional pre-trial settlement of a conflict situation, which is applicable only before the start of the trial.

Secondly, in accordance with paragraph 1 of Art. 138 of the Tax Code of the Russian Federation, the right to pre-trial appeal against acts of tax authorities of non-regulatory nature, action or omission of their officials is legally enshrined.

At the same time, in the mediation procedure, in contrast to the pre-trial appeal procedures established by Ch. 19 of the Tax Code of the Russian Federation, an intermediary (mediator) is an independent person, which directly determines his legal status in accordance with Art. 3 of the Law on Mediation.

In the procedure for pre-trial appeal of a tax dispute, the interested person is a tax authority that is directly involved in resolving the conflict.

Thirdly, an additional argument is that the mediation procedure is carried out subject to the mutual expression of the will of the parties, which are also guided by the principles of voluntariness, confidentiality, cooperation and equality of the parties, impartiality.

These principles should serve as guidance both for the mediator himself and for the parties to the process, i.e. all participants, which allows each of the parties to leave the procedure at any of its stages, if the procedure for conducting mediation does not satisfy any of the participants or the principles of mediation are violated, and also if, for example, the mediator understands that the parties to the conflict do not intend resolve the dispute, and the procedure they implement is used only for protraction of the dispute or for other purposes contrary to the settlement of the situation that has arisen. The parties to pre-trial settlement of a tax dispute do not have such capabilities within the framework of the procedure described in the Tax Code of the Russian Federation.

The pre-trial procedure is more reminiscent of a mandatory claim procedure preceding the initiation of a trial, which is enshrined in domestic procedural legislation, often used formally, only to comply with regulatory requirements.

Of course, within the framework of the stage preceding the trial, the parties can resolve the disputed situation, however, the practice of resolving tax disputes, including the number of judicial acts in this category of cases, demonstrates the opposite.

Since the above were the principles that serve as guidance for all the three parties of the mediation process, it is proposed to settle a little more upon each of them for a clearer understanding of the distinctive features of mediation from other forms of pre-trial settlement of disputes:

a) Thus, the principle of voluntariness assumes that the parties to the process, like the mediator himself, of their own free will and without coercion, enter the dispute settlement process.

This principle allows each of the parties to refuse to further build a dialogue at any time, without explaining the reasons that served as guidance for the parties when making this decision. Neither at the stage of pre-trial settlement of the dispute, nor, moreover, in the trial, such an alternative is not provided. There is only an opportunity of rejection of the claim (statement, complaint), which allows the judge to make an order on the termination of the proceedings. However, such a refusal (which does not need a clear justification) does not allow the party who has declared it to re-apply to the court with a similar claim. Finally, the right of refusal belongs to the applicant.

The defendant (interested person) also has an identical right to terminate the proceedings in the case of recognition of the claim. But the judge is deprived of such a right to withdraw from the process.

b) Confidentiality, as a principle of mediation, demonstrates that each of the parties, including the mediator, has no right to disseminate information received during the procedure to third parties.

This requirement is enshrined in each of the mediation standards published in the countries where this procedure is applied. Moreover, this principle is an integral part of the professional ethics of a mediator, in view of the fact that a person who observes neutrality is endowed with special trust.

While the trial, in most cases, is public in nature, and as listeners, any person can be present and information on the case can become public. At the same time, no one will bear any responsibility for the disclosure of such data (with the exception of those stipulated by laws).

c) Cooperation and equality of the parties is one more important principle that regulate mediation. In contrast to the pre-trial procedure, which in the tax sphere is reduced to the control activities of tax authorities, during mediation, each of the participants together with the mediator is in constant interaction and contact. The mediator leads the parties to positive communication climate between them based on equality of the

parties, within which the participants will be able to express their claims and needs to each other, the difficulties they face and, thanks to such close cooperation, to agree on all disputable situations.

d) The transparency of the procedure means that its participants during the entire period of mediation remain "owners" of the conflict and were responsible for what is happening in the process, as well as the consequences of the decision. In order to obtain such a result, it is necessary to inform the parties about the mediation procedure, the role of the participants and the mediator in negotiations. It is recommended that the mediator bring to the attention of the parties information about what exactly mediation is, what goals and objectives it pursues, designate the transition to each new phase of the process, with the obligatory summing up of individual stages of work, if necessary.

4. Conclusion

The conducted research allows us to formulate some conclusions and proposals:

It is proposed to turn to the definition of mediation, which is considered as a way to comprehend a mutually acceptable solution. The mediation procedure is a structured process that ensures constructive negotiations between the parties involved in a dispute in order to resolve the problem and possibly reach an agreement on the settlement of the dispute. The procedure is carried out by a neutral impartial person - a mediator [Shamlikashvili 2013: 10].

An important condition for mediation is the orientation of the parties to the peaceful settlement of the dispute and the search for solutions from the current conflict situation. In other words, it is necessary for each participant to join efforts to resolve the dispute and reach agreements on the basis of consensus and mutual agreement.

So, mediation is not based on the adoption of a compromise solution, since a compromise always presupposes certain concessions by one party so that there is an opportunity to cooperate in the future, i.e. conditions are acceptable not for both participants.

In the course of consensus, namely conditions that correspond to the interests of both parties, full interaction and cooperation is possible.

In this regard, the condition for the implementation of the agreements reached, their realistic implementation, is always a consensual rather than a compromise solution. And in this part, the mediator's task is to track the stages of decision-making and the comfortable state of each of the participants in the process.

The study allows to formulate a proposal to the legislator to rename the current Law on Mediation, namely, Federal Law No. 193-FZ of July 27, 2010, the words “On mediation”, which will emphasize the procedure itself and exclude an ambiguous understanding of mediation as an alternative opportunity to resolve a dispute.

Another equally important factor is the lack of sufficient law enforcement practice, including data on agreements concluded as a result of tax mediation, which undoubtedly complicates the research process of this institution.

It is important to recognize that it is very problematic to obtain adequate statistics, in view of the fact that some of the agreements that were reached during the mediation are formalized through the issuance of court rulings on the approval of amicable agreements, the other part - through the certification of agreements with notaries without indicating in the content of the mediation. Moreover, to date, there is no unified register of registration of mediation carried out and agreements concluded as a result of their implementation.

At the same time, it should be recognized that mediation in the tax area can be considered as an institution of the Russian tax law, which is included in its general part, containing the main provisions and system of taxes and fees, participants in tax legal relations, tax control and appeal of decisions, actions (omissions) of tax authorities, as well as liability for tax violations.

It is premature and unreasonable to say with certainty that tax mediation is an institution of pre-trial settlement of a dispute for several reasons: firstly, pre-trial settlement of a dispute is an institution of a sub-branch of tax law, and in this case, tax mediation should be recognized as a sub-institute, and secondly, neither in meaning nor in content, mediation can be attributed to this institution. More detailed argumentation has been presented above.

At the same time, it is important to understand that the phased digitalization of all public relations leads to the simplification of many legal procedures (which we faced in 2020). A striking example of such a process is mediation, which is focused on minimizing legal costs and obtaining a mutually acceptable result in the shortest possible time.

It is undeniable that active use of alternative dispute resolution procedures in the public law field will help creating a climate of trust between the participants in these relations, reduce the level of tension that often arises between the state (municipalities), on the one hand, and the business community and citizens, on the other, in controversial situations.

In this part, it is proposed to formulate an algorithm for the actions of a mediator, who:

- creates comfortable atmosphere for the participants in the process;
- adheres to neutrality, impartiality and impartiality in his/her judgments;
- supports each of the parties to the process and gives them the opportunity to express their position;
- thus, ensures equal participation of each of the participants in the mediation process;
- organizes the negotiation process;
- assists the parties in finding solutions, while not imposing his/her own point of view;
- assists the parties to the process in formulating the solutions.

At the same time, it is possible to formulate actions that the mediator should refrain from in the framework of the negotiation process. In particular, the intermediary should not:

- make decisions within the process;
- determine the guilt of the party in the process;
- exert pressure on the parties to the dispute when they develop agreements;
- maintain confidentiality with respect to information received by him/her in the course of resolving the conflict;
- do not consult the parties on legal issues;
- do not conduct psychological sessions for the parties to the process.

All these actions exclude the possibility of conducting "correct" mediation and do not contribute to the resolution of the conflict situation between the disputing parties.

Moreover, the most important quality for a mediator is the ability to listen and hear, show interest and demonstrate concernment to the participants in the process and the disputable situation in which they find themselves.

Regardless of the subject of the dispute, the mediator must adhere to the above rules, including when conducting negotiation techniques within the framework of resolving tax disputes.

Thus, the first experience of tax mediation, officially covered in press, will make it possible to introduce these techniques into the negotiation process as a whole at the stage of control measures by tax inspectors, as well as to popularize mediation as a qualitatively new negotiation process.

Of course, in this regard, it will be necessary to think about including in the tax legislation – the Tax Code of the Russian Federation – the relevant norms enshrining the procedure for conducting mediation, while not regulating the entire procedure in whole in order to leave

room for maneuver and freedom of action for the parties to the process. Since strict detailing of mediation will only alienate potential participants from it and turn it into a banal mechanism for the pre-trial stage of settling tax disputes.

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