**Theme: The Electronic accounting**

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**Entry**

That does mean a concept "Presentation of accounting electronically"? Who is under an obligation to present her? Is responsibility which for her presentation? Is it possible to avoid her?

In the epoch of development of information technologies legislators do not stop to correct the order of mutual relations of taxpayers and tax organs. Changes in a tax law, going into effect on January, 1, 2008, extended the list of persons, obliged to present the tax accounting in an electronic kind. Aspiration of tax worker though a bit to simplify to itself life does this list yet wider, thus frequently they exceed the plenary powers. Circumstance that НК РФ is enough avaricious on norms, touching the electronic accounting, adds confusion.

In order that to understand everything, taxpayers have to apply for elucidations in supervisory organs, and at times, defending the interests, and in judicial instances. In this connection, in opinion of author, actuality of this article is unquestionable.

**1 Legislative norms**

In obedience to paragraph 4 of a 1 item 23 NK RF taxpayers are under an obligation to present in accordance with established procedure in a tax organ at the place of account tax returns (calculations), if such duty is foreseen by a tax law. Thus organizations and individual businessmen can present in a tax organ accounting both in an electronic kind (on the set formats) and on a paper transmitter (p. 3 items 80 НК of Russian FEDERATION). Purchase disentitled only those taxpayers, which in accordance with a tax law are in rows "obliged".

Unfortunately, it is necessary to establish circumstance that a tax law does not expose the concept of the electronic accounting; therefore sometimes in practice there are споры between a tax organ and taxpayers. In fact, all disagreements between parties are related to the question: whether a taxpayer can to hand over the electronic accounting, by submitting her in a tax organ on a diskette or another carrier of data (CD -disk, "flash card")?

Tax worker consider that the electronic accounting can be presented in an inspection only by means of telecommunication communication channels. In other cases she ignores electronic. The position official’s ground p. 4 items 80 NK of Russian FEDERATION, in accordance with which the order of presentation of tax return (calculation) and documents in an electronic kind is determined by Ministry of finance. On the basis of the Federal law from 29.06.2004 № 58-FZ in future to approval by Ministry of finance of such document Order of presentation of tax return operates in an electronic kind on telecommunication communication channels[1] (further is Order).

In accordance with p. 5 this document presentation of tax return on telecommunication communication channels is carried out by a taxpayer by means of the specialized operator of connection. Such method of presentation provides the use of electronic digital signature (EDS) in electronic documents, which confesses to the equivalent sign manual in a document on paper transmitter.

It, in turn, protects this electronic document from an imitation, allows to identify the proprietor of certificate of the key of signature, and also to set absence of distortion of information in an electronic document (p. 8 Order).

Moreover, the analogical point of view was wired for sound in mass Medias and by the deputy of director of Department of tax and custom-tariff policy of Ministry of finance of Russia S. V. Razgulin. In opinion of official, presentation of declaration in an electronic kind cannot be produced by a taxpayer by such methods, as handing over on a magnetic transmitter in a tax organ personally or through a representative, by direction as postal mail with the inventory of investment.

However some experts adhere to another, opposite point of view, essence of which is taken to that telecommunication communication (Internet) channels - it only the method of presentation of accounting, and electronic kind, - it, actually, accounting format. Moreover, NK of Russian FEDERATION does not equate these concepts. Consequently, accounting presented in a tax organ on a diskette or another magnetic transmitter (CD -disk, flash - card) is also considered handed over in an electronic kind.

Similar position on this question is expounded by Ministry of finance in Letter from 12.07.2006 № 03-02-07/1-178: for reduction of expenses of time on handing over of accounting taxpayers can send her in tax organs in an electronic kind - on telecommunication communication (on the Internet) channels or on magnetic transmitters.

At the same time, in opinion of author, this letter, rather, exception from rules, than dogma, and such point of view, accepted by a taxpayer, certainly will cause a conflict with a tax organ. In this case to defend the position to the taxpayer will be in a court.

Pay attention: requirements about presentation of accounting in an electronic kind do not spread to the form of 4-FSS [2] (Letter of Ministry of finance of Russia from 12.03.2007 № 05-3-07/46), accordingly, she can be handed over on paper transmitter. It is constrained with that in obedience to an item 80 NK RF the duty of presentation in an electronic kind is set only in regard to tax returns and (or) calculations, however this form does not behave to such.

On the same grounds this requirement does not spread and on accounting control. Moreover, in accordance with p. 6 item 13 Law "On a record-keeping"[3] accounting control is made, kept and appears to the users in proper manner on paper transmitters and only at presence of economic feasibilities can appear organization in an electronic kind. It confirms Ministry of finance is Letter from 15.01.2008 № 03-02-07/1-11.

Thus, requirements of tax worker on presentation of this accounting in an electronic kind on telecommunication communication channels it is necessary to consider as exceeding of plenary powers, and their action - illegal.

**2 Pluses and minuses of the electronic accounting**

We will begin with advantages presentations of the tax accounting in an electronic kind. So, will name basic from them.

1. Economy of time. Endless turns in the closing dates of handing over of accounting, tense situation in the corridors of tax organ, and also time, necessity on a road to the inspection and back, take away much time and nerves. It is special topically, when a taxpayer, by virtue of specific of the activity, is in an account in a few inspections. However, in order that maximally to shorten the amount of visits of tax inspection, organization is necessary to take advantage of the right on presentation also of accounting control on telecommunication communication channels.

2. A duty to present accounting on a paper transmitter absents.

3. Reduction of amount of technical errors at filling of accounting. Before the dispatch of files in a tax organ all accounting passes obligatory control on the rightness of filling in accordance with the requirements of the ratified format.

4. The facts of presentation of the tax accounting are eliminated on the unstated form. The operative updating of software, including. Forms of accounting and controls over the internet, allows a taxpayer always to be in a course the changes of tax law.

5. Presentation of accounting regardless of chart of work of tax organ. A taxpayer can choose on your own optimal time of handing over of the electronic accounting in a tax organ, thus it can be as early, morning clock, so late, evening, up to the 24th clock of closing date of term of presentation of accounting in a tax organ (p. 8 item 6.1 NK of Russian FEDERATION). However to take on an armament the last case extremely undesirable. In theory all must pass smoothly, however in practice by virtue of certain circumstances (an overload of network, failures, is in the program) the set term can be skipped, as a result to avoid tax responsibility succeeded hardly.

6. Confirmation of delivery of accounting.

7. Operation ability and exactness of treatment of information. Unlike accounting, presented on a paper transmitter, data of electronic declarations and calculations set about on the personal accounts of taxpayer in the automatic mode. Probability of appearance of technical errors on the stage of input of information in this case is taken to the zero, besides in practice kameralnaya tax verification of such accounting passes in more short spaces as compared to "paper colleagues". As a result a taxpayer can count on more operative receipt of information about execution of tax obligations before a budget, including. In an electronic kind.

8. Providing of confidentiality.

It should be noted that the above-stated dignities idealize the general picture of presentation of the electronic accounting partly. Without a fly in the ointment costs however. So, to the lacks of presentation of accounting in an electronic kind it is necessary to take:

1. Presence of technical base. For preparation of the electronic accounting the presence of computer, interconnect the Internet, and also specialist (employee), trained to work with corresponding software is needed at least.

2. Dependence on work of the internet Provider and special operator. From the failures of server of the internet Provider a taxpayer can be limited in access in the Internet, as a result are problems with the dispatch of the electronic accounting in good time, bringing in of taxpayer to responsibility. An analogical situation is folded from blanks in-process the special operator. In last case, as a rule, according to an agreement responsibility is born the by an operator, however a fine will be written however on a taxpayer.

3. Failures of software. Programmatic facilities which are used for the transmission of the electronic accounting on telecommunication communication channels are distant from perfection, and from technical errors in their work for taxpayers there can be problems. So, cases are known when data of the tax accounting, given by a taxpayer, differed from information which entered tax organ. Treatment of "illness" is collation of accounting with a tax organ. Also from failures in the program the electronic accounting cannot reach to the tax organ, as a result a taxpayer will not get protocol (confirmations) from an inspection and copy of report, signed by the electronic digital signature of tax organ. Result - again to nobody not necessary trials. At the same time lately quality of work of both the most programmatic providing and tax worker in this direction became better considerably.

4. Not all errors in the tax accounting are caught by the program on the stage of control, therefore a taxpayer can unaware of their existence. However the inspector of department on work with taxpayers would specify on them to the taxpayer at the personal contact (presentation of accounting on paper transmitters).

5. Duplication of accounting with the stamp of tax organ. If a taxpayer plans to get a credit in a bank, then, more credible than all, he will have to notarize an accounting copy on a paper transmitter in a tax organ. The point is that accounting passed in an electronic kind has equal legal force with a paper variant only in case that she is notarized by an electronic-digital signature properly. However credit establishment cannot checkup this fact; therefore in most cases jars require accounting with the stamp of tax organ, but not with protocol of entrance control.

**3 List of "obliged"**

In accordance with p. 4 Orders presentation of tax return in an electronic kind is carried out on initiative of taxpayer and at presence of for him and tax organ of compatible hardware’s and possibilities for her reception and treatment, thus she must correspond to the format of presentation of tax returns.

At the same time p. 3 items 80 NK RF determines a list obliged to present declarations in an electronic kind. The first line in him is occupied by taxpayers, the middling list quantity of workers of which for 2006 - 2007 is exceeded by 250 persons, and from January 1 2008 are 100 persons. Thus this norm spreads on all managing subjects regardless of legal form.

Into consideration: at the decision of middling list quantity of workers taxpayers are necessary to follow rules, set by Decision of Russian mandate from 11.10.2007 № 76 for the fill-out № of 1-Т (information about a quantity and salary of workers on the types of activity) (Letter of FNS of Russia from 26.04.2007 № HD- 6-25/353@). Sending information is needed in a tax organ at the place of the account in a due form, ratified by Order of FNS of Russia from 29.03.2007 № MM- 3-25/174@.

We will remind that organizations which the isolated subdivisions enter in the complement of must determine the среднесписочную quantity of workers on the whole on organization (Letter of Ministry of finance of Russia from 29.12.2006 № 03-02-07/1-364).

Further in a list "obliged" it is necessary to designate taxpayers, subsumed the largest [4], regardless of quantity of workers. The reception of the tax accounting in an electronic kind on telecommunication communication channels from the largest taxpayers is carried out in the order, ratified by Order of FNS of Russia № of ММ- 3-13/708@ [5]. Ministry of finance considers that these payers must present accounting in a tax organ at the place of their account as the largest (Letter from 07.02.2008 № 03-05-04-01/6), thus both a head office and isolated subdivisions can do it on the basis of warrant (letters of Ministry of finance of Russia from 18.01.2008 № 03-02-07/1-21, from 26.12.2007 № 03-02-07/1-509).[6]

Moreover, in Letter of Ministry of finance of Russia it is indicated from 24.05.2007 № 03-02-07/1-256, that to this category of taxpayers from 2007 the specified tax returns must be presented in an electronic kind, but not on a paper transmitter. It should be noted that such requirements supervisory organs can spread and on other taxpayers, included in the indicated list. It is explained that item 80 NK RF does not contain exceptions for presentation of the specified declarations or calculations for past periods. Taxpayers which fall short of to these criteria are right to present in a tax organ tax returns (calculations) on the set form on a paper transmitter. Thus tax worker to say no to them not right (п. 4 items 80 NK RF). Moreover, the analogical point of view on this question is offered by Ministry of finance (letters from 27.02.2008 № 03-04-05-01/34, from 13.02.2008 № 03-02-08/5, from 14.11.2007 №03-02-07/1-472).

**4 Ministry of finance about the fiscal accounting**

For handing over of the tax accounting in an electronic kind, besides a computer, interconnect the Internet, a taxpayer will have to provide oneself corresponding software which can be offered by the specialized operator of connection. Thus in different regions and for the different special operators his cost can considerably differentiate.

How to take into account these charges for the calculation of income tax, explained Ministry of finance in Letter from 13.02.2008 № 03-03-06/1/91. So, in opinion of officials, if cost of software a less than 10 000 rub, then charges on his acquisition it is possible to take into account one-time in composition other charges, related to the production and realization. If the indicated charges exceed 10 000 rubs, then in obedience to п. 2 п. 3 items 257 NK RF they are acknowledged by the object of intangible asset (if the term of their useful use exceeds 12 months), which joins in a depreciation group in accordance with the term of his useful use, and paid off by charging amortization.

Ministry of finance made an effort this letter patch a hole in a tax law. The point is that item 246 NK RF allows taxpayers one-time to copy off in full only expenses on software a cost not higher 10 000 rubs. At the same time п. of a 1 item 257 NK RF provides for as an obligatory condition of confession of asset the amortized property, that a cost exceeded such the sum in 20 000 rubs. As see, drawing conclusion, officials did not begin to change to traditions and preferred interests of the state, than taxpayer.

**5 Order of presentation**

Besides afore-named Order at presentation in the inspection of the tax accounting in an electronic kind on telecommunication communication channels taxpayers are necessary also to take into account Methodical recommendations [7] and Regulation [8]. These documents operate in part, not contradicting p. 3 the article. 80 NK RF.

In accordance with p. 5 Order the tax accounting in an electronic kind appears through the specialized operator of connection [9] (further is the special operator), activity of which is regulated by Law "On connection" [10], By a law "On an electronic digital signature" [11] and by the row of other federal laws (p. 3 division. I of Order).

Information about the local special operators it is possible to know in a tax organ at the place of account or on the sites of regional managements of FNS of Russia, and also in mass Medias. A taxpayer chooses more "cute" and enters into with him a contract, in which it is necessary to provide for that in the case of bringing in of taxpayer to responsibility for ill-timed presentation of the tax accounting through fault of the special an operator (technical defects, failures) the last compensates all costs (penalty approvals) born by a taxpayer. However a taxpayer is necessary to be ready to the judicial trials.

Besides software the special operator gives to the taxpayer of mean of cryptographic privy and keys of ECP, which are needed for authentication of concrete taxpayer, maintenance of confidentiality and defense of transferrable information.

Tax workers take over the special operator the electronic accounting on telecommunication communication channels and checkup authenticity of electronic digital signature. In accordance with p. 3.2 Regulation the date of presentation of tax returns and accounting control the date of their dispatch is considered on telecommunication communication channels, fixed in confirmation of the specialized operator of connection (indention. 3 p. 4 items 80 NK of Russian FEDERATION). A tax return is considered thus presented in a tax organ; if a taxpayer got confirmation, notarized ECP of the special operator (p. is 6.10 Methodical recommendations). Besides it during twenty-four hours a taxpayer must get a receipt about the reception of accounting and protocol of entrance control (p. is 6.7.2 Methodical recommendations) from an inspection. The second copy of receipt about the reception of accounting in an electronic kind is saved in a tax inspection (p. 3.3.3 Regulation).

Further in obedience to p. 6.7.3 Methodical recommendations a taxpayer confirms authenticity of ECP of tax organ on a receipt about the reception of the tax accounting in an electronic kind, which must be saved. Protocol of entrance control after confirmation of authenticity of ECP of tax organ is notarized ECP of taxpayer and also during twenty-four hours sent to them in an address a tax inspection. The second copy of protocol of entrance control of tax return, signed ECP of tax organ and notarized ECP taxpayer, is saved for a taxpayer (p. is 6.7.3 Methodical recommendations).

Pay attention : if in protocol there is information about that, that the tax accounting did not pass entrance control, then a taxpayer removes the errors indicated in protocol and repeats all procedure of handing over of those forms of accounting, which they are fixed (p. is 6.7.5 Methodical recommendations) on.

At the same time a taxpayer can independently find out an error in the already sent tax accounting. In this case it is necessary to correct mistake and repeatedly send accounting. Thus if it will be done to expiration of term of handing over of accounting, that faithful it will be considered last from the sent files. If the set term of handing over of accounting passed already, then it is necessary to present the specified tax returns, not forgetting here to specify the number of adjustment on the title page of accounting.

If a taxpayer did not get from a tax organ in the set time a receipt about the reception of the tax accounting in an electronic kind or protocol of entrance control, he must declare about it to the tax organ and special operator and if necessary to repeat procedure of handing over of the electronic accounting.

It is necessary also to mark that in accordance with p. 6 Order, if a taxpayer sends in an inspection a tax return (calculation) on telecommunication communication channels, then a duty to present paper copies for him does not arise up.

**6 Responsibility**

On general rules tax returns (calculations) are subject to presentation in tax organs in a timely manner (p. 6 item 80 NK of Russian FEDERATION), for violation of which the Internal revenue code foresees responsibility on an item 119 NK of Russian FEDERATION.

We will remind, in accordance with п. of 1 this article the size of penalty approvals can make the to 30% sum of tax from 5, to subject to payment (to the additional charge), depending on the amount of months (complete and incomplete) of expiration. If the sum of tax is small or absents quite ("zero" declaration), then from a taxpayer will exact a minimum fine - 100 rubs. In the case of delay more than on half-year (more than 180 days) into an action п. enters 2 items 119 NK of Russian FEDERATION, which more hard fines are set, namely 30% from the sum of tax, to subject to payment, plus on 10% for every month (complete and incomplete) of delay. However a minimum fine (100 rubs) this norm does not foresee, therefore if to present a "zero" declaration later 180 days from the set term, then a fine will not be in general. Undoubtedly, certain interest for a taxpayer Letter of Ministry of finance of Russia will cause from 24.12.2007 №03-01-13/9-269. In particular, in this document did officials answer a question: is it possible to attract a taxpayer, obliged to present declaration in an electronic kind (on telecommunication communication channels), to tax responsibility on an item 119 НК of Russian FEDERATION, in case if declaration was presented on a paper transmitter?

The separate categories of taxpayers according to a tax law must present declarations (calculations) in an electronic kind. This duty they carry out by communication of corresponding data through telecommunication communication channels. In opinion of Ministry of finance, presentation of tax return in the improper kind or by the unstated method must be examined as a nonperformance of duty on her presentation. At the same time to bring a taxpayer to the account, handing over declaration with violation of requirements of item 80 NK of Russian FEDERATION, in opinion of officials, it is needed taking into account right applied practice. For example, if a taxpayer disturbed handing over of declaration on an income tax, then tax organs must take into account judicial practice, folded through this question in a concrete region.

In opinion of author, by conclusions, done in a letter, officials acknowledge that now the internal revenue code does not contain the special norms, settings responsibility of taxpayer for presentation of tax returns (calculations) in an electronic kind. From here reasonable advice to observe carefulness the inferiors at making decision - oriented on judicial instances.

Now arbitrage practice is folded so that a taxpayer can bring to the account on an item 119 NK RF only for presentation of declaration in the term set by a law. Disturbing of her presentation of responsibility does not draw. As an example we will present Decision FRONT of ВСО from 16.10.2007 № А58-2710/07-Ф02- 7689/07, a next situation is considered in which. Organization in good time presented in a tax organ declarations in an electronic kind on a diskette with confirmation on paper transmitters. In turn, налоговики said no in the reception of accounting, specifying on the duty of firm to present declarations in an electronic kind on telecommunication communication channels. Firm long did not argue and went under the thumb of inspectors, but the date of dispatch of declarations on telecommunication communication channels appeared outside the set terms. In the total organization was brought to the account on п. of a 1 item 119 NK of Russian FEDERATION. However judges decided that налоговики in this case had extended the sphere of action of norms of НК РФ about tax responsibility and, alluding to the Informative letter YOU Russian FEDERATION from 17.03.2003 № 71, specified on absence of grounds for bringing in of taxpayer to responsibility. Result of "battles" - the decision of tax organ is acknowledged by illegal. Moreover, grounds for the overvalue of conclusions of court on this dispute YOU Russian FEDERATION did not find (Decision from 14.02.2008 № 1475/08).

It should be noted that arbitrage practice, more clearly reflecting the problem of presentation of the tax accounting in an electronic kind, while not folded. How налоговики will operate in regard to taxpayers, not observing the requirement of p. 3 items 80 NK of Russian FEDERATION, to predict enough difficultly. According to elucidations of Ministry of finance all will depend on arbitrage practice on this question in every region.

In addition, in the case of presentation of declaration a taxpayer in a tax organ during 10 days upon termination of the set term inspectors can avail to the item 76 NK of Russian FEDERATION which gives a right to halt the operations of this taxpayer on his bank accounts to them. Also for violation of the terms of presentation of the tax accounting set by a tax law in a tax organ at the place of account of violator can bring to the administrative account on an item 15.5 KoAP of Russian FEDERATION. We will remind, in accordance with this norm the public servants of organization can be fined on a sum a from 300 to 500 rub.

**List of literature**

1. Order of presentation of tax return in an electronic kind on telecommunication communication channels.

2. Requirements about presentation of accounting in an electronic kind: Letter of ФНС of Russia from 12.03.2007 № 05-3-07/46.

3. Law "On a record-keeping"

4. Letter of Ministry of finance of Russia from 29.12.2006 № 03-02-07/1-364.

5. Order of ФНС of Russia № of ММ- 3-13/708

6. Letter of Ministry of finance of Russia from 18.01.2008 № 03-02-07/1-21, from 26.12.2007 № 03-02-07/1-509

7. Methodical recommendations

8. Regulation

9. Order the tax accounting in an electronic kind appears through the specialized operator of connection

10. By a law "On connection"

11. By a law "On an electronic digital signature"