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THEORETICAL FOUNDATIONS OF SOURCES OF LEGAL REGULATION OF BUSINESS FINANCING

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Abstract

The article examines the theoretical foundations of the sources of legal regulation of business financing. Their essential characteristics are revealed and the definition of such sources is given. A comparative analysis of the sources of financial law in the field of business regulation in Russia, the USA, Germany and Uzbekistan has been carried out.

Keywords: sources of law, financing, business activities

Introduction

One of the key elements of the financial and legal regulation of entrepreneurial activity is its regulatory framework, which consists of various sources of financial law. The unity of the content of a public financial and legal regulation objectively necessitates its implementation through a system of sources of law, suggesting the choice of the optimal form of expression of state will.

In the general theory of law, concepts such as the source of law and the form of law are widely used, which are closely interrelated and therefore very often used as synonyms. Some authors note that the concept of the source of law "reveals those factors that bring to life and determine legal norms. In other words, the sources of law are the circumstances that determine the appearance and operation of legal norms." According to other researchers, "the source (form) of law should be understood as an objective form of expression of a legal norm. The very existence of law, its practical manifestation in public life, is confirmed



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by its definite external expression, i.e., its form. In essence, we are talking about the external form of law, which means the expression of the content of law from the outside."

In the general theory of law, the "source of law" is most often understood as the form of expression of a norm - it is a formal legal understanding applicable in practice, teaching and law-making. Therefore, the second definition is considered to be more universal and legally significant, especially in the framework of positive law. However, the first definition also retains scientific value, especially in the framework of social analysis of law, when studying the causes of legal norms, their legitimacy and sustainability.

Understanding the sources of law, and especially in the narrow field of financial and legal regulation of entrepreneurial activity, affects a fundamental aspect of the theory of financial law. It is no coincidence that the issues of the essence of sources of financial law and their types in modern financial and legal science are the subject of close attention of many researchers.

According to A., A. Tedeev, the sources (forms) of financial law should be understood as "officially defined external forms that contain norms governing relations arising in the process of financial activity, that is, forms of the external content of financial law." This approach corresponds to the traditional positivist understanding of sources as externally fixed forms of law in which norms are objectified. It is suitable for both theory and practice, since it clearly indicates that the source of law is where the applicable norm is contained.

A.V. Andreeva interprets sources of financial law as external forms of expressions of norms regulating financial relations. In fact, this position is identical to Tedeev's approach and continues the positivist tradition. It is brief, but methodologically correct. This is a neutral, well-established formulation, applicable both in theoretical research and in law enforcement.

N.N. Seregina defines sources of financial law as normative legal acts containing norms regulating financial relations, including not only laws and by-laws, but also contracts, as well as decisions of the Constitutional Court of the Russian Federation with precedent significance in the financial and legal sphere. This is an expanded and adaptive approach that takes into account the specifics of the Russian legal system: hybridization of sources (law + judicial practice),



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recognition of financial and legal contracts as forms of expression of norms (for example, agreements on budget transfers), etc. This approach is closest to practice, especially in the context of modern transformation of financial law.

For the theory and practice of legal regulation of business financing, it is most advisable to use the expansionary approach of N. N. Seregina, because it: corresponds to the modern realities of the development of sources of financial law; includes not only laws, but also contracts and judicial acts, which is especially relevant for the legal regime of business financing (government programs, individual financing agreements, etc. It allows for flexible consideration of the variety of forms in which financial and legal norms affecting entrepreneurship are expressed.

Given the complexity and multilevel nature of regulation in the field of business financing, an integrative approach combining formal, legal and functional criteria seems reasonable. In this regard, it is advisable to propose the following definition: Sources of financial law in the field of business regulation are officially recognized external forms of expression of financial and legal norms that establish the rules, principles and mechanisms of financial activity of the state in relation to business entities, including regulatory legal acts, individual financial and legal agreements, as well as acts of judicial jurisdiction that have regulatory or a precedent value.

This definition allows us to take into account both traditional forms of law-making (laws, by-laws) and current trends (the development of financial and legal contracts, judicial rulemaking), which are especially relevant in the context of the implementation of state financial support for entrepreneurship. Thus, the sources of financial law in this area appear as a dynamic system reflecting the transformation of public law mechanisms of influence on the economy.

In international practice, the sources of financial law in terms of business regulation have a broader composition. For example, Germany has a well-established system of legal forms: Gesetze (laws), Verordnungen (by-laws) and öffentlich-rechtliche Verträge (public law contracts), especially in the context of supporting small businesses and innovations. Financial contracts (Zuschussverträge, Förderverträge) between the state and private entities have been recognized as legal sources.



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In the United States of America, the sources are: federal laws (for example, the Small Business Act, 1953), agency regulations (in particular, the Code of Federal Regulations regarding SBA programs), judicial precedents, including decisions of the Supreme Court on fiscal policy.

Consequently, in international practice, there is a departure from an exclusively normative approach and the recognition of mixed forms of expression of norms: from law to judicial and contractual sources. This trend is particularly significant for emerging legal systems, such as that of Uzbekistan, where the legal framework for financing entrepreneurship is in the process of institutional formation.

A comparative analysis of the sources of financial law in the field of business regulation shows that Uzbekistan is moving towards a mixed model, in which, along with regulatory acts, contractual forms (subsidies, investment agreements) are strengthened, and decisions of the Constitutional Court are becoming significant for the formation of legal positions. In Germany, the sources of financial law are still predominantly normative, but contractual elements are institutionalized. The United States demonstrates the most flexible approach: case law and law-making by federal agencies (SBA, IRS) play a key role along with law and contract.

The comparative analysis also indicates the presence of both common and specific features in the systems of sources of financial law.:

In all three countries, regulatory legal acts remain the main source regulating business activities.

Germany and Uzbekistan demonstrate the development of contractual forms, but they are not yet officially recognized in Uzbekistan in full.

The United States stands out for its high degree of influence from case law and agency rulemaking, which allows for a more flexible response to changes in the business and financial environment.

It is advisable for Uzbekistan to adapt certain elements of German and American practice, including: legislative consolidation of the status of a public law contract; recognition of judicial decisions with normative significance; development of administrative regulations as subordinate sources.

Thus, within the framework of the legal regulation of business financing, it is



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necessary to form a flexible, multi-level system of sources based on the best international practices, but taking into account the specifics of the national legal system.

The scientific community does not yet have an unambiguous approach to the issue of the types of sources of financial law.

According to E.Y. Gracheva, "the sources of financial law are laws and other normative acts of representative and executive bodies of state power, local self-government, as well as international treaties and agreements." From the point of view of A.A. Tedeev, the (system of) sources of financial law, for example, in the Russian Federation, look like this: the Constitution, decisions of the Constitutional Court, generally recognized principles of international law, federal constitutional laws, financial legislation with its elements, subordinate regulatory legal acts on financial issues, internal treaties of the Russian Federation, local acts containing norms S.V. Zapsolsky refers to the sources of financial law as the Constitution of the Russian Federation, federal laws and laws of the subjects of the Russian Federation, decrees of the President of the Russian Federation, resolutions of the Government of the Russian Federation, departmental regulations, and a regulatory financial agreement.

The arguments presented by these researchers about the types (systems) of sources of financial law from the point of view of the linguistic approach give grounds to assert that all the definitions presented have a different form, but are the same in content.

Some authors believe that the traditional source of law in general, including financial law, is custom, "which has been transformed into a generally binding rule of conduct and has acquired a formal legal expression, that is, an authorized custom," provided that "such customs are authorized by the state, have legal content and guarantee an appropriate state reaction in case of their violation."

This point of view has a right to exist, since, as this author notes, a number of financial and legal regulations, such as frequency or stability in regulating the movement of public funds, originated precisely as customs (budget period, tax period), which later received a legislative basis in the Budget Code and the Tax Code. ,

In recent years, a regulatory financial agreement has been considered as a source



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of financial law, which is defined as a mutual agreement between two or more parties containing financial law norms. Examples of such agreements are the international agreements of the Republic of Uzbekistan with other countries, concluded in order to avoid double taxation in respect of certain taxes.

Resolutions of the Plenums of the Supreme Court of the Republic of Uzbekistan have a significant impact on the application of financial and legal norms. It is generally accepted that these judicial acts are not sources of law in general and financial law in particular. At the same time, in the theory of law and legal practice, judicial precedent is increasingly being pointed out as a source of law. And there is a rational grain in this, since the acts of judicial authorities really affect financial relations, bring certainty to their subsequent application in law enforcement practice. Thus, the higher courts, not being legislators, have a significant impact on the substantive side of certain financial relations.

N.A. Povetkina points to four main types of sources of financial law: 1) a normative act; 2) a normative contract; 3) a precedent, that is, a court decision; 4) a legal custom. At the same time, according to this author, each of these sources has three characteristics, such as formal certainty, general obligation and well-known.

This position reflects a modern doctrinal trend characteristic of an approach in which sources are recognized not only by official regulations, but also by other forms of expression of legal norms, including contractual and judicial ones. Such an understanding of the sources of law allows us to take into account the real mechanisms of formation and application of norms governing financial relations with the participation of business entities.

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