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TÍTULO: Ciudadanos independientes: regulación legal internacional.

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RESUMEN: El artículo aborda los temas relacionados con la necesidad de sacar «de las sombras» los ingresos de los ciudadanos autónomos, estimulando a estos últimos a pagar impuestos y pagos sociales. Se muestran formas de resolver el problema que se aplican en varios estados postsoviéticos, se hace referencia a la experiencia internacional en regulación legal.

PALABRAS CLAVES: ciudadanos autónomos, empresarios individuales, impuestos y pagos sociales, patentes, régimen fiscal especial.

TITLE: Self-employed citizens: international legal regulation.

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ABSTRACT: The social and legal status of the self-employed population should take the legislative form, as required by the realities of today. The main subject of discussion is the problem of legalization of the legal status of this category of citizens in Russia; while in many foreign countries already have such experience. This encourages systemic changes in this area. The main idea of future reforms should be not to increase tax revenues to the state budget, but to provide the legal and social basis for small private businesses.

KEY WORDS: self-employed, legal status, entrepreneurship, patent, taxes, preferential treatment.

INTRODUCTION.

The legal regulation of the status of self-employed citizens in the Russian Federation is one of the most pressing problems, not only in terms of determining the legal characteristics of their position in society, in relations with other economic entities and the state, but also in the financial and economic regulation of their activities.

To date, there is already a positive experience of international legal regulation in this area, and the discussion of this issue in the Russian Federation and the need to legislatively establish the status of self-employed citizens has begun relatively recently, although this issue is still relevant not only for Russia but also for foreign countries. Moreover, the attitude to the activities of self-employed entrepreneurs by state bodies in different countries is very ambiguous: from positive to sharply negative.

DEVELOPMENT.

Research methodology.

Theoretical and methodological provisions were presented by the ideas of Russian and foreign scientists on organizing the activities of self-employed citizens, practices, conclusions and

suggestions received in the course of fundamental and applied research in this area in modern realities, as well as related problems.

The study used general scientific methods of cognition (systemic, structural-functional, historical, sociological), general logical methods (analysis, synthesis, generalization, modeling), private scientific methods (comparative law, concretization, interpretation).

Study results.

In Russia, Belarus, Kazakhstan, and other post-Soviet countries, self-employed citizens are defined as people who deliberately evade paying taxes to the state, but who make a profit through their illegal activities. In Western countries, on the other hand, entrepreneurship of this kind is welcomed because it helps solve the problem of unemployment. At the same time, the level of self-employment is much lower in developed than in developing countries [7].

So, in the EU and the USA, the self-employed population provides business, social, real estate, intermediary, consulting and advertising services, as well as carries out retail sales, franchising activities and others (over 400 types of activities). Moreover, a self-employed entrepreneur can provide paid services to public and private organizations on a certain range of issues, demonstrating their professional qualities, either in the prospect of possible employment in these organizations as a specialist, consultant or contractor, or by remaining a specialist in a free profession [8].

Now self-employment, as a phenomenon, in one form or another is found in all countries of the world space and its widespread dissemination requires government agencies to take decisive measures to resolve and control the situation.

In this case, the urgent question will be how to streamline the activities of self-employed entrepreneurs in the legal field, so that on the one hand the state receives taxes, and self-employed citizens protect their business rights and social security.

Successful steps have already been taken in Europe, Asia, the United States, and Latin American countries to regulate state relations with the self-employed population, and now such a problem in the West is already considered relatively resolved and is not so acute. In other countries, it is solved in different ways.

In the Republic of Azerbaijan, social mechanisms were employed against unemployment and poverty, in particular, a self-employment program implemented in accordance with the order of President Ilham Aliyev, which is highly regarded at the international level. In particular, the International Social Security Association awarded the self-employment program a special award, "Good Practice". According to the unanimous opinion of the jury, the self-employment program is considered one of the most successful practices in the European region.

The Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan in 2018 attracted 7896 people to this program, which is 6.5 percent more compared to 2017. In particular, 7267 citizens who successfully defended their business plans took part in the program. Most of them were persons with disabilities, internally displaced persons, citizens receiving targeted state social assistance, war veterans, members of large families, and other socially vulnerable categories of the population. In the framework of the program, at the expense of the assets provided, the program participants created small family farms. In support of this program, the regional development public association, based on the Social Gardens project, has created gardening and horticultural farms in 41 districts of Azerbaijan [14].

In Belarus, the solution to this problem, which is under discussion, is carried out quite strictly by the state. Chairman of the Council of the Republic of the National Assembly of the Republic of Belarus, M.V. Myasnikovich came up with an initiative to separate self-employed citizens into a separate category, where artisans, owners of subsidiary farms who earn income from the sale of agricultural

products will fall. These citizens will have to acquire a patent for running their business and in this case may not be registered as an individual entrepreneur.

However, M.V. Myasnikovich suggests that “the fiscal effect will be low, but it overlaps in importance with the social effect. The self-employed will not receive social benefits, but he does not degrade, he provides himself with work, feeds his family, provides significant services or produces goods in demand. In social terms, he is not unemployed, which is also important for a person” [9].

It turns out that a self-employed entrepreneur will be forced to buy a patent, pay taxes to the state, but he will not receive any social guarantees from the state. Obviously, such a position infringes on the rights of this category of entrepreneurs and this situation is unacceptable in a rule of law state. It should be noted that regardless of the circumstances and ultimate goals, the state should first of all take into account, develop and protect the social and legal basis of the activities of its citizens, including entrepreneurs.

In the Russian Federation, a preferential treatment for self-employed citizens has been introduced. So, at a meeting of the Council for Strategic Development V.V. Putin said that self-employed citizens should be exempted from taxes for 2 years, giving them the opportunity to legalize their activities. “Self-employed citizens should be offered an understandable and convenient tool for interaction with the state” [13], to exclude any possibility of recognizing the activities of self-employed citizens as illegal business.

In this regard, it should be noted the fact that V.V. Putin instructed the Government of the Russian Federation in order to support small businesses to ensure that the legislation of the Russian Federation is amended to provide for the use of the patent system of taxation by self-employed citizens, the possibility of paying them (depending on the duration of the patent) tax in connection with the application of the patent system of taxation and mandatory payments insurance premiums

simultaneously with their registration as individual entrepreneurs on the principle of "one window" [1].

According to the Ministry of Economy, in Russia there are approximately 16 million self-employed citizens who are not self-employed and are not unemployed but are not registered as individual entrepreneurs [2].

In July 2017, amendments were made to paragraph 1 of Art. 23 of the Civil Code of the Russian Federation, which allowed individuals to carry out entrepreneurial activity without state registration as an individual entrepreneur [3].

Also, according to Art. 83 of the Tax Code of the Russian Federation, self-employed citizens must be registered with the tax authority. Such a procedure is carried out by the Federal Tax Service of Russia, however, on August 1, 2017, this executive body published statistical data, according to which there are only 295 self-employed citizens in Russia. "The Republic of Crimea is in the lead - there were 29 who wanted to legalize their activities. Among registered activities, tutoring is the leader (130), the least of them were nannies (58). Cleaning announced 71 times. The number of activities does not coincide with the number of registered self-employed persons, since one person can declare more than one type of activity. The idea of registering self-employed people can be considered completely failed. The proposed tax preferences could not convince citizens to "get out of the shadows" [4].

Determining the legal status of self-employed citizens in the legal space faces a number of difficulties. Firstly, with the establishment of a formal attribute by which this category of citizens will differ from others. Secondly, with the consolidation of their legal status. Thirdly, with the legalization (legal regulation) of their business and, as a result, the collection of taxes.

In the scientific community, different opinions were discussed regarding the establishment of status, for example, whether they should be ranked among precarious workers [5] or persons with free

professions, or among self-employed citizens, or maybe self-employed entrepreneurs. Perhaps the most accurate of the above definitions is the latter.

In order to understand why, it is important to consider that this entity carries out entrepreneurial activity, as it is directly associated with economic risks and is aimed at the systematic receipt of profits from the production and sale of goods, the provision of services and the performance of work. He, like other entrepreneurs, has no guarantees that the money spent will pay off in the future. There is a risk of losing all or part of his own property.

However, unlike a businessman in the usual sense, a self-employed entrepreneur does not use the labor attracted by people, as well as other assets that contribute to an increase in production and maximization of profits. One way or another, it turns out that this is still an entrepreneur, but with a special status, as soon as he alone solves the issues of his entrepreneurial activity, that is, he is independently engaged in this activity (hence the name "self-employed").

The above arguments allow us to define a self-employed entrepreneur as an individual engaged in individual entrepreneurial activities for profit, as a means of subsistence, using their own assets and means without attracting hired labor [15].

The provision on the self-employment of these entrepreneurs, as their main distinguishing feature, distinguishing this type from other subjects of economic activity, raises another question - who can be this subject: is it only a citizen or any person (citizen, foreign citizen, stateless person).

The Constitution of the Russian Federation in Art. 34 stated that “everyone has the right to freely use their abilities and property for entrepreneurial and other economic activities not prohibited by law” [6; 12, p. 76-77], therefore, any person can engage in this type of business. However, making a profit, “everyone is obliged to pay the legally established taxes and fees” [6; 12, p. 134-137], which means that a self-employed entrepreneur is not exempted from this obligation. It is this aspect, in particular

its financial and economic component, that is the most controversial moment in relations between the state and the self-employed population.

As already noted, self-employed entrepreneurs do not resort to the help of unauthorized persons, to the hiring of labor for more efficient conduct of economic activity, hoping only on their own in this matter. Now such an individual entrepreneur is not formally involved in any material production, that is, he is unemployed. On the other hand, through his economic activities, he manages to get the necessary funds, and he simply does not need to get a job.

This situation of the self-employed population in some countries is becoming a precedent for reckoning it among persons who knowingly avoid work, which may, in some cases, cause them to apply the appropriate sanctions for parasitism.

Another feature of this layer of entrepreneurs is their illegal position. The reluctance to officially register your business is explained by the fact that the costs of registration, as well as the payment of subsequent state duties and taxes, are often not commensurate with their income. The bureaucratization of the registration procedure, which requires a significant investment of time, is not an attractive factor for self-employed entrepreneurs. Meanwhile, their economic activity is very extensive and finds its demand in various areas of society.

Home seamstresses, nannies, housekeepers and governesses, tutors and home teachers, photographers and videographers, drivers, journalists, jewelry repair people, home appliance repair craftsmen and many others are willing to create and run their own private business on an illegal, individual basis. One way or another, the mass distribution of this type of small business poses a serious question for many states about its legalization and withdrawal from the shadow economy. Like any participants in economic activity, self-employed entrepreneurs must, on equal terms with other entrepreneurs, pay the state legally established taxes.

In November 2016, amendments were made to the Tax Code of the Russian Federation [10], according to which incomes of the self-employed population received in the tax periods of 2017 and 2018 are not subject to taxation if they are registered with the tax authority in accordance with Art. 83 of the Tax Code of the Russian Federation. There are so-called tax holidays.

In Russia, the issues of introducing a simplified registration of self-employed citizens and approving a list of those who will be included in this category were discussed. Thus, the Ministry of Finance of the Russian Federation insisted on limiting the list of professions to three positions: tutor, room cleaner, repairman. Nannies, hairdressers and cosmetologists should not qualify for a patent. The media and the public, on the contrary, argued that the list of professions would be quite wide - 36 positions: representatives of creative professions — designers, photographers, choreographers, etc., could come out of the “shadow”.

Today in the Tax Code of the Russian Federation (paragraph 70 of article 217) there are only three professions that self-employed citizens can engage in:

- For the supervision and care of children, sick persons, persons who have reached the age of 80 years, as well as other persons in need of constant outside care at the conclusion of a medical organization.
- For tutoring.
- Cleaning of premises, housekeeping.

However, subjects of the Russian Federation can expand this list of professions with their legislative acts. Many constituent entities of the Russian Federation have already included in the lists of professions such as hairdressers, photographers, specialists in the repair of household appliances, sewing clothes, repair and decorating, etc.

Moreover, it is proposed to cancel scheduled inspections and establish a single payment in the amount of 20 thousand rubles. (\$ 300), of which 10 thousand rubles. (\$ 150) will go to the Pension Fund of Russia, and the rest - to the regional budget. In this case, the legal regime will be valid from one month to one year.

According to experts, if such a convenient and low-cost mode of operation is introduced and its application is guaranteed for at least 10 years, approximately 11.3 million self-employed citizens can be legalized during this period, who will be able to form pension savings and receive consumer loans etc. [11].

It seems that the sale of patents (permits) for entrepreneurial activity, as a way to solve the problem of self-employment of the population, is the most correct. Only a fixed amount of the value of a given patent (permit) is embarrassing, since the self-employed entrepreneurial activity is very diverse and brings different incomes, which means that 20 thousand rubles should be paid alone. (\$ 300) will be easier than others. Such a situation will not contribute to a rational settlement and stabilization of the situation of the self-employed, but will only cause new problems, which will have to be solved sooner or later. Therefore, it is worth approaching the issue of setting the price of a patent (permit) differentially, then citizens will be really interested in taking their business out of the “shadow”.

Without a doubt, the problem of self-employment of citizens should be solved. Certain results can be achieved by eliminating omissions and miscalculations of state policy, which left such a wide layer of entrepreneurs without legal and social support for their activities. However, when starting to legalize the legal status of self-employed citizens, the state, first of all, should change its attitude towards them, because the goal is not only to increase tax revenues due to self-employed entrepreneurs to the country's budget, but also to provide them with social guarantees and firm legal foundations of their small private business.

CONCLUSIONS.

Thus, the legal regulation of the status of self-employed citizens and citizens differs in different countries of the world, therefore, the optimization of the solution of this absolutely practical task for all states of the world, for the realization of their joint goals, including the implementation of a coordinated social policy regarding various categories of the population, is a necessary condition ensuring a decent life and free development of man.

Conflict of interest.

The authors confirm the absence of a conflict of interest.

BIBLIOGRAPHIC REFERENCES.

1. See: paragraph 1.27 of the List of instructions of the President of the Russian Federation dated December 27, 2013 No. Pr-3086 // <http://www.kremlin.ru/acts/assignments/orders/20004>
2. See: <http://www.mk.ru/economics/2016/09/21/putin-predlozhit-vremenno-osvobodit-samoza-nyatykh-grazhdan-ot-nalogov.html>
3. See: Federal Law of 26.07.2017 N 199-ФЗ "On Amendments to Articles 2 and 23 of Part One of the Civil Code of the Russian Federation" // SZ RF. 2017, N 31 (Part I), Art. 4748.
4. See: <http://www.assessor.ru/notebook/biznes/samozanjatye-grazhdane/>
5. Gimpelson V., Kapelyushnikov R. (2005). Precarious work and the Russian labor market. Preprint WP3 / 2005/05. - M.: HSE. – S. 3.
6. See: Art. 57 of the Constitution of the Russian Federation. - M., 1993.
7. See: Current problems of social policy in Russia, 2004 // Almanac of the Association of Independent Centers of Economic Analysis. http://www.budgetrf.ru/Publications/Analysis/arett/arett200702081014/arett200702081014_p_008.htm

8. See: Bondarenko V.A. “Development of self-employment in the countries of the European Union and the USA” http://www.vneshmarket.ru/content/document_r_A4F92072-2395-4116-96E5-EE76169118C7.html
9. See: Every parasite will become self-employed. August 31, 2016 http://udf.by/news/main_news/144717-vsyakiy-tuneyadec-stanet-samo-zanyatym.html
10. See: Federal Law of 30.11.2016 No. 401-ФЗ “On Amendments to Parts One and Two of the Tax Code of the Russian Federation and Certain Legislative Acts of the Russian Federation” // Collection of Legislation of the Russian Federation. - 2016. - No. 49. - Art. 6844.
11. See: B. Titov, “The easiest way to create a self-employed institution is as a special type of individual entrepreneur” <http://www.garant.ru/news/892915/#ixzz4WCr8KKm3>
12. See: Commentary on the Constitution of the Russian Federation / ed. S.A. Komarov. - 3rd ed., Revised. and add. - M.: Yurayt Publishing House, 2018.- 333 p. - (Series: Professional Commentary).
13. See: Putin instructed to exempt self-employed from taxes. URL: <http://www.interfax.ru/>
14. URL: <https://news.day.az/economy/1120858.html>
15. Krylova E. G. On the issue of legalizing the legal status of self-employed in Russia // Bulletin of the public research laboratory “Interaction of the penal system with civil society institutions: historical, legal and theoretical and methodological aspects”. - 2016. - No. 7. - S. 32–35.

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