

НАЛОГОВОЕ ПРАВО

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INNOVATIVE FINTECH PROJECTS AS AN INCENTIVE FOR DEVELOPMENT OF TAX LEGISLATION IN RUSSIA (USING THE EXAMPLE OF INVESTMENT PLATFORMS)

Annotation:

Russia has come a long way in establishing an entrepreneurial culture. But, despite this, the short history of the country's market economy requires continuing the course of transformation of legislation related to the innovation economy. Recently, the number of projects in the financial and technological sphere operating at all levels of financial activity has been growing rapidly. The most striking examples include the creation of various services: banking, investment (including cryptoexchanges), and tax services that provide their functions through mobile applications and provide more opportunities to use them, thereby replacing outdated ways of interacting with customers.

In this article, the author examines how the rapid development of new forms of economic relations has affected the legal regulation of financial technologies in the domestic legal system. The author used the method of content analysis to solve these problems, and as a subject considered local legislative gaps that arise in the activities of innovative financial intermediaries.

Keywords: fintech projects, investment platforms, tax regulation, crowdlending, tax agent

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РЕСЕЙДЕГІ САЛЫҚ ЗАҢНАМАСЫН ЖЕТІЛДІРУ ҮШІН СТИМУЛ РЕТІНДЕГІ ИННОВАЦИЯЛЫҚ ҚАРЖЫЛЫҚ-ТЕХНИКАЛЫҚ ЖОБАЛАР (ИНВЕСТИЦИЯЛЫҚ ПЛАТФОРМАЛАР МЫСАЛЫ НЕГІЗІНДЕ)

Аңдатпа:

Ресей кәсіпкерлік мәдениетті дамытуда ұзақ жолдан өтті. Бірақ, соған қарамастан, елдің нарықтық экономикасының қысқаша тарихы инновациялық экономикаға қатысты заңнаманы трансформациялау бағытын жалғастыруды талап етеді. Соңғы уақытта қаржылық қызметтің барлық деңгейінде жұмыс істейтін қаржылық технологиялар секторындағы жобалардың саны қарқынды өсуде. Ең жарқын мысалдарға әртүрлі қызметтерді құру жатады: банктік, инвестициялық (соның ішінде криптовалюта), салық қызметтері, олар өз қызметтерін мобильді қосымшалар арқылы ұсынып, оларды пайдалану үшін көбірек мүмкіндіктер береді, осылайша клиенттермен өзара әрекеттесудің ескірген әдістерін ауыстырады.

Бұл мақалада автор экономикалық қатынастардың жаңа формаларының қарқынды дамуы отандық құқықтық жүйедегі қаржылық технологияларды құқықтық реттеуге қалай әсер еткенін қарастырады. Бұл мәселелерді шешу үшін автор контент-талдау әдісін қолданды және зерттеу пәні ретінде инновациялық қаржылық делдалдардың қызметінде туындайтын жергілікті заңнамалық олқылықтарды қарастырды.

Түйінді сөздер: қаржылық және техникалық жобалар, инвестициялық платформалар, салықтық реттеу, краудлендинг, салық агенті.

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ИННОВАЦИОННЫЕ ФИНАНСОВО-ТЕХНИЧЕСКИЕ ПРОЕКТЫ КАК СТИМУЛ РАЗВИТИЯ НАЛОГОВОГО ЗАКОНОДАТЕЛЬСТВА В РОССИИ (НА ПРИМЕРЕ ИНВЕСТИЦИОННЫХ ПЛАТФОРМ)

Аннотация:

Россия прошла большой путь в становлении предпринимательской культуры. Но, несмотря на это, недолгая история рыночной экономики страны требует продолжения курса на трансформацию законодательства, связанного с инновационной экономикой. В последнее время число проектов в финансово-технологической сфере, действующих на всех уровнях финансовой деятельности, стремительно растет. Наиболее яркими примерами можно назвать создание различных сервисов: банковских, инвестиционных (в том числе криптобирж), налоговых, которые предоставляют свои услуги через мобильные приложения и предоставляют больше возможностей для их использования, тем самым заменяя устаревшие способы взаимодействия с клиентами.

В данной статье автор рассматривает, как стремительное развитие новых форм экономических отношений повлияло на правовое регулирование финансовых технологий в отечественной правовой системе. Для решения этих проблем автор использовал метод контент-анализа, а в качестве предмета исследования рассмотрел локальные законодательные пробелы, возникающие в деятельности инновационных финансовых посредников.

Ключевые слова: финансово-технические проекты, инвестиционные платформы, налоговое регулирование, краудлендинг, налоговый агент.

Introduction

For the state to achieve success in the development of the innovation environment, several fundamental factors are identified:

- efficient financing;
- appropriate infrastructure;
- demand for innovation;
- necessary competencies and innovation

cultures.

But it is important to note, that modern realities and constantly changing conditions are transforming the role of the state in this area. For example, if earlier it was enough for the state to effectively fulfill this task to create attractive investment conditions and develop scientific developments, now it has to respond more often and with the help of various tools. This is due to the rapid changes in the situation and the growing mutual influence between the sphere of this activity.

A circumstance that can accelerate the speed of innovation progress in certain areas is the participation of the state. The state has the ability to control the development of industries and influence them through a competent policy for creating and implementing an innovative development strategy in the country. And not only in the military-industrial field and the field of science, as it

was before, but in various financial and promising areas. The authorities have huge opportunities to provide comprehensive support to the relevant actors. From the position of a participant with legislative and executive competencies, the state can remove barriers, that hinder effective intersectoral cooperation, thereby creating conditions for synergistic interaction both between business participants from different fields of activity, and attracting the scientific community. In addition, in cooperation with economic entities in potentially promising sectors, it is able to find and eliminate other causes that hinder innovative progress in a timely manner.

Method

Due to the fact that the level of development of the crowdfunding market in the Russian Federation is at an initial level compared to European countries, we cannot neglect the necessary actions in this area. This implies an even greater relevance of the study of the activities and development of fintech projects for our country. We propose to use the content analysis method to solve these tasks, and as a subject to consider the main global proposals for changing the current legislation for the development of this area.

Results

We can see, how the financial sector has changed in recent years. This happened, among other things, due to the introduction of relevant changes in the legislation, regulating the provision of various financial services, and the regulation of the activities of entities, engaged in them. Such services will also include investment activities carried out through financial intermediaries in the form of banks, brokers, insurance companies and other professional participants. However, informatization and digitalization of all sphere of society, including financial activities, makes its own adjustments, creating additional tools for participation in investment, insurance and other areas of financial activity. This creates new areas of the financial market, that exclude traditional intermediaries and create more convenient, understandable and effective ways for various entities to participate in financial activities and receive credit, investment, payment and other services xLetter of the Department of Tax and Customs Policy of the Ministry of Finance of the Russian Federation No. 03-04-05/71478 of 4th October 2018].

Of course, it is not news that today there are such forms of innovative intermediaries as cryptocurrency exchanges that work with digital financial instruments; Insuretech-companies that offer automated products; neobanks that replace classic banking products. But even more significant differences between traditional legal institutions in the financial sector and new ones that have undergone digitalization can be seen in the example of crowdlending. The origin of this term is associated with the English words crowd – crowd and lending – lending, providing a loan. This tool is used to attract borrowed funds by entities, belonging to the categories of small and medium-sized businesses. Interaction with potential lenders takes place through specialized online platforms. Despite its novelty for the Russian economy, in 2019 crowdlending was fully regulated at the legislative level by the adoption of No. 259-FL of 02.08.2019, and is now quite widespread [Federal Law No. 259-FZ of 2nd August 2019, On Attracting Investments using investment Platforms and on Introducing Changes to Certain Legislative Acts of the Russian Federation].

At the moment, more than 40 investment platform operators are already registered in Russia, and the market volume for 10 months of 2021 is 7 billion rubles. These figures cannot be compared with the volume of state support for large businesses, since for the small and medium segment, this is indeed a significant amount of money. At the same time, at the moment, many existing problems of legal regulation of loan relations

arising in the activities of investment platform operators (hereinafter referred to as IPOs) have not yet been effectively solved. For example, such problems include a complex mechanism for implementing the duties of a tax agent in conditions of multiple lenders in crowdlending, which acts as a barrier to large-scale attraction of borrowed funds using this tool.

Clause 1 of Article 809 of the Civil Code of the Russian Federation establishes the lender's right to receive interest on the loan amount from the borrower in the amounts and in accordance with the procedure established by the agreement [The Civil Code of the Russian Federation of 30th November 1994 No. 51-FZ]. These percentages, i.e. income received for and by a taxpayer, are subject to personal income tax. 226 of the Tax Code of the Russian Federation obligations to calculate, withhold and transfer personal income tax from income (hereinafter referred to as personal income tax) in the form of interest received under the loan agreement, they are assigned to the organization or individual entrepreneur (hereinafter referred to as the "company"). Individual entrepreneurs from which or as a result of relations with which the taxpayer received income, i.e. to the borrower under the investment agreement. This provision has been repeatedly confirmed by Letters from the Ministry of Finance of the Russian Federation.

The fact is that this legislative structure is intended to regulate traditional loan relations, where one participant most often acts on the lender's side. From this point of view, there is no reason to change the legislation and these norms are logically linked. However, if we project existing regulations on crowdlending, where a different situation most often occurs, and, conversely, there are multiple participants on the lender's side. Moreover, each of them has separate civil relations with the borrower.

There is a situation in which the borrower acts as a tax agent in relation to the income of a large number of taxpayers at the same time (in some cases, up to several hundred people) as a source of income payment. It is not difficult for large organizations to leave the relevant tax returns and perform other duties of a tax agent, but for micro-business it is obviously difficult, costly and burdensome.

The solution to the problem is possible when making changes to the legislation and redistributing the tax agent's duties from the borrower to the IPOs within the framework of crowdlending. In support of this idea, we can cite the following circumstances that contribute to its implementation. The first circumstance is related to the fact

that the IPOs has at its disposal the capabilities and tools to obtain all the necessary data required for the calculation and payment of taxes and fees. In addition, many processes in their activities are automated, and in combination with the first circumstance, they do not have any difficulties in automatically fulfilling the obligation to form and pay the corresponding tax payments. Moreover, some IPOs already provide such services to borrowers. Another important factor will be the fact that, unlike IPOs borrowers, as a rule, they have large labor and financial resources, so performing the duty of a tax agent will not create additional problems for them, and the costs associated with it, will be insignificant in the total amount of expenses. Also, settlements between the borrower and the owners are made through a nominal account, which is managed and operated by the IPOs, which allows it not only to calculate, but also actually withhold and transfer personal income tax to the budget, as well as to draw up and send the relevant tax returns to the tax authorities.

There are two ways to solve the problem. The most obvious one is the introduction into the tax legislation of a special rule for establishing a tax agent in the crowdlending market, according to which the duties of a tax agent are assigned not to the borrower as a source of income payment, but to the IPOs as a person who promotes investment in accordance with Federal Law No. 259. This solution is the simplest, since there is no additional differentiation of the IPOs.

There is also another solution, such, as that proposed by the Association of Investment Platform Operators, which is to expand their powers in the framework of outgoing transactions on a nominal account, which are enshrined in the legislation regulating IPOs activities. This list is currently closed. It is proposed to add rules to it that allow IPOs to increase the types of relevant operations.

If the possibility of paying personal income tax from a nominal IPOs account is introduced, tax amounts will be withheld by the IPOs at the expense of the taxpayer's own funds, since the money in the nominal account belongs to beneficiaries, including individual investors. Thus, the IPOs will calculate and generate the necessary accounting documents for paying taxes, and the

borrower will submit them on its own behalf. The specified obligations of the IPOs will be formalized both in the agreement on assistance in attracting investments and in the agreement on assistance in investing.

Such an approach to solving the problem under study is fundamentally inconsistent with the general provisions of tax law, which is based on the principles of public law methods of regulating public relations. The use of this method will lead to a destabilization of law enforcement practice. Moreover, it is worth mentioning an increase in the burden on tax control authorities, which will be forced to additionally consider and differentiate crowdlending entities within the framework of paying the corresponding taxes. Summarizing all the above, we add that the application of private law norms in the field of distribution of tax responsibilities will lead to a negative result.

Conclusion

As long as small businesses that act as borrowers on investment platforms are tax agents when paying interest income in favor of numerous investors, their motivation and desire to use new ways to attract financing for their business, so actively spread abroad, will definitely be small. Such a legal structure contradicts the economic content, form and essence of legal relations that arise during the interaction of subjects on investment platforms. That is why it does not meet the modern challenges and needs of the developing digital economy, including in the field of crowdlending, and therefore requires further improvement and development of tax legislation in terms of determining the legal status of IPOs tax agent.

A sudden breakdown of the usual models of interaction of subjects in the financial market can lead to a change in the very paradigm of public regulation of economic relations. Innovative fintech projects encourage changing legislation, finding new ways to apply classical financial law institutions in the context of digitalization of the economy and the formation of completely new models of services provided on the market. The legislative gap with the tax agent presented in this article is just a demonstration example of how much modern legal regulation needs constant attention, change and addition.

List of legal acts

The Civil Code of the Russian Federation of 30th November 1994 No. 51-FZ (ed. of 3rd August 2018) (Collection of Legislation of the Russian Federation of 5th December 1994 No. 32 - Article 3301).

Federal Law No. 259-FZ of 2nd August 2019, On Attracting Investments using investment Platforms and on Introducing Changes to Certain Legislative Acts of the Russian Federation (Sobranie zakonodatelstva RF, 05.08.2019, No. 31 - Article 4418).

Letter of the Department of Tax and Customs Policy of the Ministry of Finance of the Russian Federation No. 03-04-05/71478 of 4th October 2018 (EZH-Accountant Accounting application, 2018, N 42).