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**SELF-EMPLOYED PERSONS IN THE RUSSIAN FEDERATION:
LEGAL BASES AND PROBLEMS OF FUNCTIONING**

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Abstract

The present research article deals with a new type of business entrepreneurship in Russia – a self-employed citizen who carries out business activities for use of property, sale of goods, provision of work and services without the wage labour and state registration as a sole proprietor (hereinafter referred to as a sole proprietor). It is noted that the Russian Federation for the first time provides for the possibility of systematic profit-making without state registration. The article analyses the legal framework of self-employment, as well as the features of its legal status: which category of persons belongs to the self-employed, the criteria for such correlation and the registration procedure with tax authorities. The taxation issues of self-employed persons, including professional income tax (independent business activity without employees working under an employment contract and not exceeding a certain amount of income for the previous calendar year) are also considered. The research reveals the disadvantages of this tax system, in particular, when tax base calculation does not consider the taxpayer's expenses. The article also makes a comparison between self-employed persons and sole proprietors. Author investigates the liability issues, as well as the possibility to apply consumer protection laws to self-employed persons. It also notes that the high-level responsibility typical to all types of business activities unprofitably burdens the self-employed, leading to their reluctant legalization in this sphere. The research paper gives the definition of the term "self-employed" and its specific usage; pointing the necessary changes in self-employed status and improving legislation in this area.

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1. Introduction

In October 2017, a new form of entrepreneurship appeared in the Russian Federation – self-employed persons who became equal subjects of entrepreneurial activity along with legal entities and sole proprietors. This innovation is due to the state's attempt to lift people not registered as sole proprietors but engaged in making a profit from the shadow economy, for example, hairdressers, photographers, tutors, landlords, nannies and other self-employed ones. The legalization of self-employed people will stimulate entrepreneurial activity and increase the budget system revenue at tax deduction expenses. The official status of self-employed entails certain advantages for a citizen: the confirmed income necessary for obtaining a loan or visa; participation in state programs; improvement of business reputation and image in the consumers' eyes.

2. Problem Statement

Despite the legal framework renewal in self-employment sphere, a number of legal issues remain unresolved. For example, the issue of extending the legal status of sole proprietors to self-employed citizens, as well as the requirements of the Consumer Rights Protection Act (On Consumer Protection, 1992), is still unclear. Another difficult aspect is the conflict conciliation between the self-employed and his/her client as there is no written contract between these two parties.

3. Research Questions

The concept of self-employed person (worker) is not a novel in Russian legal system (Popkova, 2017). However, there was no unified approach to it, both at legislative and scientific level. The self-employed, as a rule, included individual entrepreneurs, as well as notaries in private practice, lawyers establishing law offices. Currently, self-employed people are classified as a separate entrepreneurial business type.

The legal basis for doing business as self-employed person originates from the amendments to subparagraph 3, paragraph 1, Article 2 of the Civil Code of the Russian Federation (hereinafter referred to as the Civil Code of the Russian Federation) (Civil Code..., 1994). The new wording of the Civil Code of the Russian Federation is as follows: "Entrepreneurial activity is an independent activity carried out at its own risk, aimed at gaining profit on a regular basis from the use of property, the sale of goods, provision of work and services. Persons engaged in entrepreneurial activity must be registered due to the procedure established by law, unless otherwise provided for by this Code".

The specification of this provision is in subparagraph 2, paragraph 1, Article 23 of the Civil Code of the Russian Federation, which stipulates that the law may provide for certain conditions in certain types of entrepreneurial activity allowing citizens without state registration to act as sole proprietors. Thus, if earlier state registration was a prerequisite for legal entrepreneurship in the Russian Federation, now it is not required for self-employed persons. It is worth pointing that the introduction of registration provisions beyond the definition of entrepreneurial activity, as well as its non-binding nature in cases

established by law, negate the recognition of state registration as a sign of entrepreneurial activity, even in its formal aspect.

The initial list of business activities that do not require state registration as sole proprietorships was enshrined in § 70, Article 217 of the Tax Code of the Russian Federation (hereinafter – the Tax Code of the Russian Federation) (Tax Code of the Russian Federation, part 2, 2000). It includes the services for personal, domestic and / or other similar needs: nannies, nurses, tutors, cleaners and household assistants. The subjects of the Russian Federation had the right to supplement this list with other types of services. The emphasis on personal labour involvement in self-employed activities is also given in scientific works of different researchers (Grabova & Suglobov, 2017).

The law enactment "On conducting an experiment to establish a special tax regime "Tax on professional income" (2018), shows that any individual (photographer, designer, hairdresser, trainer, etc.) using special tax regime – professional income tax (hereinafter – the SET) can become self-employed. In this case, it is necessary to meet the following criteria: 1) not to have employees engaged in employment relationship with the owner; 2) income in the current calendar year should not exceed 2.4 million roubles. Thus, the legislation does not contain a complete list of activities and professions provided for self-employment.

The SET is paid from an individual income from activities having no actual employer and other employees under labour contracts, as well as from the use of property. The SET provides for the following deductions (Article 10): 4 % – from an individual income and 6 % – from sole proprietors and legal entities.

It should be noted that the SET, in comparison with other tax systems, creates a number of advantages for the self-employed person. Thus, the SET exempts from personal income tax other types of income taxed under this regime; mandatory insurance premiums and VAT (value added tax) are not paid. All operations are performed through an APP, so self-employed persons are exempt from their tax self-calculation (unlike sole proprietors), the use of cash registers, filing a tax return.

One of the SET tax significant drawbacks is that it is paid from all funds received from the customer, without taking into account the self-employed expenses for their own activities (for example, the purchase of a camera, scissors and other equipment).

In order to get the status of a self-employed person and start paying the corresponding tax, one need to be registered with tax authority using special above mentioned mobile app.

The Civil and Tax Codes do not contain the term "self-employed person". This term is mentioned in public correspondence of the Federal Tax Service of Russia and the Ministry of Labour and Social Protection, as well as on their official websites information. The institution of self-employment is being actively reformed trying to find legally correct term for such business activity. Currently, the "self-employed" in the Russian Federation is a person who works for him/herself without other employees, having no registration as a sole proprietor but being a SET taxpayer.

An interesting idea regarding the status of a self-employed person was proposed by Pokida and Zybunovskaya (2019), noting that it is an intermediate link between an employee and an entrepreneur. Burlak (2016) states that a self-employed person combines the characteristics of a capital owner, an employer and a manager.

The category of self-employed persons is similar in its legal status to sole proprietors: they are both individuals and conduct individual entrepreneurial activities. But if to compare, it becomes obvious that their legal status is different. For example, the legalization of entrepreneurial activity as a sole proprietor is only after the state registration procedure as this legal entity. In addition, sole proprietors have an opportunity to choose a tax system and use employees.

In the process of selling goods, providing services or performing any kind of work, a sole proprietor has the right to attract employees (the limit on their number is established only by the relevant tax system). Thanks to this, the sole proprietor has the opportunity to open more outlets, serve more customers and, as a result, increase the profit.

As a general rule, a sole proprietor has the right to be involved in any type of activity. The most common one is the sale of goods purchased from other sellers or manufacturers. As for the self-employed person, he has the right to sell products only of his own manufacture. An individual wishing to carry out entrepreneurial activity and choosing between the statuses of a sole proprietor or self-employed one should take into account that some licensed activities (for example, the provision of passenger and cargo transportation services) require registration only as a sole proprietor.

In some case there can be disagreements and misunderstanding between the self-employed and the counterparty, for example, when parties have not discussed the terms and payment procedures. The situation is complicated by the fact that such relations, as a rule, are not settled by a contract. If such situations are not resolved in the course of oral negotiations or written correspondence, the general provisions of the Civil Code on each particular contract may become the basis for dispute resolution. To prevent such conflicts, a self-employed person is recommended to draw up rules for services provision and send it to the counterparty for acknowledgement.

One of the most problematic issues is the self-employed liability. As this aspect is still not legally bound in the Russian Federation it should be assumed that as a business entity it is the subject to the sole proprietor liability rules. Thus, for example, if there is a compensation for damages case, a self-employed person must be liable to the full extent of his assets, except of the property that cannot be legally foreclosed. There is also a separate legal norm of paragraph 3, Article 23, in the Civil Code of the Russian Federation, according to which a sole proprietor, with some exceptions, is subject to legal entity rules and regulations.

It is worth agreeing that the sole proprietor legal status can't be easily applied to self-employed persons as it unprofitably burdens the latter, principally contradicting the idea of their legalization (Kryukova & Ruzanova, 2018).

It should be kept in mind that clients of a photographer, yoga instructor, or nail artist are all service customers, so self-employed business activity should be fully covered by the legislation on consumer's protection, as well as the relevant standards of any other commercial activity.

Recently, there has been an increase in the process of Internet trade which also involves self-employed people. There are Internet platforms where a person working as a self-employed can put an ad about his or her own services and goods and find a potential client. This opportunity will certainly play a positive role in the growth of the self-employed population. At the same time, due to the insufficient legal regulation of the studied aspect there are still a number of problems. For example, there is a fear that the

electronic platform may be regarded as an employer by the Labor Inspectorate, and the self – employed as its employees, with all the ensuing consequences.

The self-employed integrity and the quality of their services are also important issues. The electronic platforms themselves, which place advertisements for the self-employed are concerned about their business reputation due to the massive incompetence of self-employed specialists. The truth is that the activity of a self-employed person is practically uncontrolled, unlike an employee controlled by an organization. And here again it is necessary to get back to the question of the self-employed liability, which remains open.

The issue related to the self-employed pensions is also unresolved. It can be assumed that the introduction of mandatory pension contributions will slow down the development of the self-employment institution in Russia, and voluntary pension contributions and savings because of the small amount of earnings will be unpopular among the self-employed.

4. Purpose of the Study

A modern form of entrepreneurial activity requiring no state registration is an absolute new round in economic relations development. The person's ability to work for profit individually without other employees is clearly enshrined in the Civil Code of the Russian Federation. However, the conditions for such activities are "pilot" causing problems and implementation difficulties. So, for example, the terminology is unclear, the problems of self-employed liability are not worked out, and much more. Detailed regulation of self-employed status from the viewpoint of tax legislation does not solve the problems of civil law regulation. This makes it necessary to study the legal status of self-employed people and its further legislative improvement.

5. Research Methods

This article analyses the legal acts in the Russian Federation, tax authority explanations, as well as the other scientific research papers. The following methods have been used: dialectical materialism, synthesis, induction and deduction, system, comparative-legal and formal-legal analysis.

6. Findings

The study of self-employed legal status in the Russian Federation leads to the following conclusions. The institution of the self-employed is a new phenomenon for Russia. Since its official introduction, the Russian Federation legislation first-time ever provides for the possibility of doing business without its state registration.

A self-employed person in the Russian Federation is understood as an individual who independently, at his/her own risk, carries out entrepreneurial activities for the use of property, the sale of goods, the provision of work and services without the wage labour, as well as without sole proprietor registration.

As there are no separate rules on self-employed liability, at present they are, as well as any other business entities, subject to the rules of high-level liability, consumer's protection laws, as well as other various business activity standards.

The reason for self-employed shadow business is not the fear of a sole proprietor status, but mostly the consequences of such a status acquisition. Despite all the state efforts to simplify sole proprietor legal activities, its increasing liability is one of the reasons for unwillingness in getting official self-employed registration.

7. Conclusion

In conclusion, it should be noted that currently the self-employed legal status in Russia is undergoing a reform process and is subject to adjustment at the legislative level. At the same time, the legal opportunity of business activities in the Russian Federation without state registration, using a favourable tax rate, will certainly have a positive impact on the country's economy.

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