

There is a right, but how to use it? About how a gap in tax law can stand in the way of shipowners.

Everyone knows the rights and freedoms declared by the Constitution of the Russian Federation¹, including the rule that "everyone has the right to own property, to possess, use and dispose of it both individually and jointly with other persons" (Clause 2, Article 35). However, it is not always sufficient to provide for the existence of subjective law (the ability to act in a certain way), it is important to determine the mechanism for the implementation of such a right, that is, provide for a procedure for how to "bring law to life».

Sea vessels (in principle, like other vessels, regardless of navigation areas) are real estate subject to state registration. In accordance with paragraph 1 of Article 33 of the Merchant Shipping Code of the Russian Federation² (hereinafter referred to as the MSC of the RF) a vessel is subject to state registration in one of the registers of vessels of the Russian Federation: State Ship Register, Register of Small Size Boats, Bareboat Charter Register, the Russian International Register of Ships, the Russian Open Register of Ships, Register of Ships under Construction.

The presence of a problem. The current legislation of the Russian Federation regarding the registration of vessels in the Russian International Register of Ships (hereinafter - RMRS) does not prevent the registration of vessels with a gross tonnage of less than 80 units in RMRS (shipowners are not always interested in having a "large" fleet, small vessels are also very popular, and registering them in RMRS also gives the shipowner certain advantages). However, in practice, when the shipowner expressed a desire to register a vessel with a gross tonnage of not more than 80 units in RMRS, he might be faced with the refusal of the port authorities to register.

At the same time, the list of vessels that can be registered in RMRS is given in paragraph 7 of Article 33 of the MSC of the RF, is formulated based on the purposes for which the vessel will be used in the future, and not its technical characteristics. The requirements for the minimum volume of the vessel's capacity established in paragraph 4 of subparagraph 7 of Article 33 MSC of the RF, are related exclusively to non-self-propelled vessels.

The MSC of the RF established that the registration of vessels, including those in RMRS, is carried out in accordance with the "Rules for the state registration of vessels, rights to them and transactions with them in seaports and for the centralized registration of registered vessels", approved by the federal executive body in the field of transport³.

One of the conditions for registering vessels in RMRS and the subsequent annual renewal of the registration of the vessel in the indicated register is the provision of confirmation of the payment of the state duty (Article 36 of the MSC of the RF). In accordance with paragraphs 108 Part 1 Article 333.33 of Part 2 of the Tax Code of the Russian Federation⁴ (hereinafter - Tax Code) for the state registration of a vessel in RMRS, the state fee is paid based on the gross tonnage of the vessel and the calculation of the state duty is calculated for the gross tonnage of the vessel from 80 units or more:

"108) for registering vessels in The Russian International Register of Ships:

- with the gross tonnage from 80 gross tonnage units up to and including 3,000 gross tonnage units, 85,000 rubles plus 9.4 rubles for each gross tonnage unit;
- with the gross tonnage of the vessel exceeding 3,000 gross tonnage units up to and including 8,000 gross tonnage units, 87,000 rubles plus 8.8 rubles for each gross tonnage unit;
- with the gross tonnage of the vessel exceeding 8,000 gross tonnages up to 20,000 gross tonnages inclusive - 155,000 rubles plus 5.0 rubles for each gross tonnage unit;
- with the gross tonnage of the vessel exceeding 20,000 gross tonnage units - 215,000 rubles plus 3.2 rubles for each gross tonnage unit".

Thus, we see that the current tax legislation simply does not provide for the size of the state duty for registering vessels in RMRS with a gross tonnage of less than 80 units. The establishment of such restrictions at the time of the establishment of the RMRS was due to the existing international maritime practice in the field of vessel registration and corresponded to the realities of the creation of the RMRS in Russia, however, to date, the existing legal conflict significantly complicates the activities of shipping companies, because there is a demand for such registration.

What happens in practice? Due to the lack of a normative legal settlement of this problem, in practice, various seaports that register ships in RMRS operate differently: it is possible to register a vessel with gross tonnage of less than 80 units at one port, and a payment order must be submitted confirming payment the state duty for registration action in the minimum amount (calculated as for the registration of the vessel 80 units of gross tonnage), in other ports

¹ The Constitution of the Russian Federation (adopted 12/12/1993) // Meeting of the legislation of the Russian Federation, 04/08/2014, N 31, Art. 4398.

² Merchant Shipping Code of the Russian Federation of 30.04.1999 N 81-Φ3 (as amended on 27.12.2018) // Collection of the legislation of the Russian Federation, 03.05.1999, N 18, Art. 2207.

³ Order of the Ministry of Transport of the Russian Federation of May 19, 2017 N 191 "On approval of the Rules for state registration of vessels, rights to them and transactions with them in seaports and centralized registration of registered vessels" // Official Internet portal of legal information <http://www.pravo.gov.ru>, 31/10/2017.

⁴ The Tax Code of the Russian Federation (part two) of 08/05/2000 N 117-FZ (as amended on 29/09/2019) // Collection of the legislation of the Russian Federation, 07/08/2000, N 32, Art. 3340.

when calculating the state fee proceeds from the real gross tonnage of the ship, in some, they refuse to register at all.

Meanwhile, according to the explanation of the Department of Tax and Customs Policy of the Ministry of Finance of the Russian Federation⁵, "the absence of state duty for registration in RMRS for vessels of less than 80 units does not prevent registration itself". This wording is quite lengthy. So, according to the Ministry of Transport of the Russian Federation⁶, "this letter not only does not establish the potential applicant's right to pay a state duty in the amount of registration of a vessel with a gross tonnage of 80 units but does not contain any recommendations for resolving this issue".

Attempt to fix it. As the famous British economist, John Maynard Keynes said: "Demand creates its own supply." So, in order to fill the gap in tax legislation, the Ministry of Transport of the Russian Federation developed a draft federal law "On Amending Article 333.33 of Part Two of the Tax Code of the Russian Federation"⁷, which stipulates the establishment of a state fee for registering vessels with a gross tonnage of less than 80 units in the RMRS. Section 1 of the draft of the federal law provides:

"In the first paragraph of Article 333.33 of the second part of the Tax Code of the Russian Federation:

a) the first paragraph of subparagraph 108 of paragraph 1 shall be worded as follows

"108) for registration in The Russian International Register of Ships:

- self-propelled vessels with main engines with a capacity of at least 55 kilowatts or non-self-propelled vessels with a gross tonnage of the vessel from 80 gross tonnages to 3,000 gross tonnages inclusive - 85,000 rubles plus 9.4 rubles for each gross tonnage unit "; ...

c) the first paragraph of subparagraph 109 of the Article shall be stated as follows:

"109) for annual confirmation of registration in the Russian International Register of Ships:

- self-propelled vessels with main engines with a power of at least 55 kilowatts or non-self-propelled vessels with a gross tonnage of the vessel from 80 gross tonnages to 8,000 gross tonnages inclusive - 25,000 rubles plus 22.4 rubles for each gross tonnage unit;..."

Thus, the Ministry of Transport of Russia for the registration of self-propelled vessels with a gross tonnage of less than 80 units in RMRS is proposed to establish a state duty of 85,000 rubles plus 9.4 rubles for each gross tonnage unit, and for the annual confirmation of registration of such a vessel in RMRS in the amount of 25,000 rubles plus 22.4 rubles for each unit of gross tonnage.

Today the draft of federal law is under development and has not yet been submitted to the State Duma of the Federal Assembly of the Russian Federation, but we hope that it will be done in the near future. Bridging the gap in tax legislation will allow shipowners to freely register in RMRS self-propelled vessels with a gross tonnage of less than 80 units (of course, subject to the requirements of the registration rules), which, without a doubt, will favourably affect the entrepreneurial activity of shipping companies and the country's economy as a whole. In the meantime, the necessary changes have not been adopted, we believe that the absence of a state fee should not impede the exercise of the shipowner's right to register self-propelled vessels with RMRS with a gross tonnage of less than 80 units.

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⁵ Letter of the Ministry of Finance of the Russian Federation dated 16.01.2019 N 03-05-05-03 / 1436.

⁶ This position of the Ministry of Transport of the Russian Federation was expressed in a letter of reply to our appeal.

⁷ Draft Federal Law "On Amendments to Article 333.33 of Part Two of the Tax Code of the Russian Federation" (prepared by the Ministry of Transport of Russia) // The text of the document is given in accordance with the publication on the website <http://regulation.gov.ru/> as of 14.03.2019.