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THE EXPERT-ACCOUNTANT'S PROFESSIONAL JUDGMENT IN THE ARBITRATION PROCEEDINGS

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The purpose of the research is to study and identify the genesis of the concepts of “professional judgment of an accountant”, “professional judgment of an auditor” and “special knowledge”, which serve as the basis for the formation of an author’s approach to the interpretation of the concept of “professional judgment of an expert accountant” based on the synergy of knowledge, skills, competencies, principles and theories of economic sciences, international auditing standards, international financial reporting standards, national accounting standards, Tax and Civil Code of the Russian Federation.

The results of the research determined that the greatest attention of domestic authors is given to the disclosure of the interpretations of “professional judgment of an accountant” and “professional judgment of an auditor.” However, in spite of the urgent need in recent years to develop the theoretical foundations in the field of forensic accounting expertise, there are no approaches to defining the concept of “professional judgment of an expert accountant”, which negatively reflects the formation of the opinion of an expert accountant in the framework of the Arbitration Procedure.

The research used general scientific methods of cognition (observation, comparison, analysis, synthesis, generalization, induction, deduction, modeling, historical and logical methods, systematization of theoretical and practical material), special methods (method of documentary and actual verification, inspection, request, confirmation, analytical procedures, etc.).

Keywords: *professional judgment; expert accountant; arbitration proceedings; forensic accounting expertise.*

ПРОФЕССИОНАЛЬНОЕ СУЖДЕНИЕ ЭКСПЕРТА-БУХГАЛТЕРА В АРБИТРАЖНОМ СУДОПРОИЗВОДСТВЕ

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Целью научного исследования является изучение и идентификация генезиса понятий «профессиональное суждение бухгалтера», «профессиональное суждение аудитора» и «специальные знания», служащие основанием для формирования авторского подхода к трактовке понятия «профессиональное суждение эксперта-бухгалтера» на основе синергии знаний, навыков, компетенций, принципов и теорий экономических наук, Международных стандартов аудита, Международных стандартов финансовой отчетности, национальных стандартов бухгалтерского учета, Налогового и Гражданского кодекса РФ.

***Результаты.** Полученные результаты исследования определили, что наибольшее внимание отечественных авторов уделяется раскрытию трактовок «профессиональное суждение бухгалтера» и «профессиональное суждение аудитора». Однако, несмотря на назревающую в последние годы необходимость в развитии теоретических основ в области судебно-бухгалтерской экспертизы, подходы к определению понятия «профессиональное суждение эксперта-бухгалтера» отсутствует, что негативно отражается формировании мнения эксперта-бухгалтера в рамках Арбитражного судопроизводства.*

***В ходе исследования** использованы общенаучные методы познания (наблюдение, сравнение, анализ, синтез, обобщение, индукция, дедукция, моделирование, исторический и логический методы, систематизация теоретического и практического материала), специальные методы (метод документальной и фактической проверки, инспектирование, запрос, подтверждение, аналитические процедуры и др.).*

***Ключевые слова:** профессиональное суждение; эксперт-бухгалтер; арбитражное судопроизводство; судебно-бухгалтерская экспертиза.*

Introduction

According to Article 82 “Appointment of Expertise” of the Arbitration Procedure Code of the Russian Federation, when considering a case in court, questions may arise which require special knowledge to clarify, as a result of which the arbitration court appoints an examination at the request of the person participating in the case or with the consent of the persons participating in case [23]. In the investigation of economic and financial offenses, specialists are involved who are able to study and make an objective, competent and independent conclusion about information on assets, liabilities, income and expenses reflected in the accounts of accounting and in the financial statements formed by continuous, continuous, documentary reflection of all facts economic life in primary accounting documents and accounting registers. Such experts are most often employees of expert institutions, which listing in the corresponding register on the websites of arbitration courts. According to the website of the arbitration courts, limited liability companies, federal budgetary institutions, autonomous non-profit organizations, chambers of commerce and industry of the constituent entities of the Russian Federation, non-profit partnerships and other organizations, represent expert institutions [25], [26].

The reason for attracting one or another expert institution is the presence of employees with experience as an independent expert, auditor, auditor, appraiser, tax officer, as their special knowledge is broader and related to the ability to work with regulatory sources, the availability of information processing and analysis skills, as well as the formulation of brief, comprehensive and evidence-based conclusions. It should note that the arbitration proceedings should comply with such principles as legality, publicity, comprehensiveness, comprehensiveness and objectivity of research into the circumstances of the cases; therefore, to fill the deficit of knowledge of the judge and comply with the above principles, the involvement of a specialist in accounting is a necessity. In addition, an important condition for drawing conclusions by an expert involved in arbitration proceedings and for forming his professional judgment is to re-evaluate each new case, despite existing precedents for similar deci-

sions in other similar trials. Thus, the competence of an expert accountant should be limited by the scope of the procedural legislation and the level of his special knowledge, otherwise the results of a forensic accounting examination can be regarded as “doubtful and the conclusion will not have evidence” [9, p. 144].

Research results

In the law on state forensic science, the concept of “special knowledge” is interpreted as “rendering assistance to courts, judges, bodies of inquiry, investigators in establishing circumstances to be proved in a particular case, by resolving issues requiring special knowledge in areas of science, technology, art or craft” [24]. The Russian Federal Center for Forensic Expertise under the Ministry of Justice of the Russian Federation “Special knowledge of a forensic expert-economist” is described as the theoretical basis for solving the expert tasks of this class of expertise, that is, the basis on which the competence and competence of a forensic expert is formed” [7]. Moreover, the regulatory legal acts on accounting do not contain the interpretation of the concept of “special knowledge”. This situation negatively affects the decision of the judicial authorities regarding the involvement of an expert.

In the economic and legal literature, different authors interpret the definition of “special knowledge” differently. Some authors associate it only with the theory of accounting, maintaining records by type of activity and carrying out an analysis of economic activities or related economic sciences, while others believe that an expert, in addition to accounting knowledge, should have the skills to conduct control, audit or audit.

Eisman A.A. the term “special knowledge” means “knowledge that is professionally owned only by a narrow circle of specialists, those that are not among the well-known, generally available, with mass distribution” [6, p. 91].

Alibekov Sh.I. interprets the concept of “special knowledge” as “economists, whose activities may be related to participation in criminal, civil or arbitration processes, must have special economic knowledge. The “specialty” of this knowledge lies precisely in the ability to

recognize in accounting information the signs of unlawful acts, violations and abuses” [1].

Prokhorova N.A., Sokolova I.A. “special knowledge” means “professional knowledge in accounting, conducting economic analysis, the implementation of the control and audit process, and in other related sciences in finance, law, taxes and taxation and audit” [13, p. 75].

According to the opinion of Stepanov V.V., Shapiro L.G. “Special knowledge is non-legal knowledge in various fields of activity obtained within the framework of higher professional education, including knowledge of theory, skills and abilities and used by participants in civil, arbitration, administrative and criminal proceedings in order to establish the circumstances to be proved in a particular case, in the manner prescribed by the relevant procedural legislation of the Russian Federation” [21, p. 69].

Dukhno N.A., Korukhov Yu.G., Mikhailov V.A. under special knowledge in a broad sense represent theoretical and practical knowledge in a particular area, certain skills and abilities for the implementation of this knowledge [5].

Romanov V.V. it proceeds from the interpretation of the concept under study as special accounting knowledge, which is a combination of knowledge and skills in accounting, which allows us to investigate the processes and events in the activities of economic entities for their application in the legal sphere” [16].

Thus, the analysis of the points of view on the concept of “special knowledge” conducted by the authors of the study showed that “special knowledge means special knowledge in various areas of professional activity, requires an understanding of the formation of accounting and analytical information, as well as the availability of relevant skills and abilities of an expert accountant in the field of arbitration proceedings” [10, p. 61].

When forming opinions and answers to the judge’s questions, the expert accountant must express professional judgment in relation to the object of forensic accounting expertise. The economic literature does not provide the interpretation and characteristics of the professional judgment

of an expert accountant. The term “professional judgment” disclosed only in relation to either an accountant or an auditor.

As a result of the study of points of view on the term “professional accounting judgment” used in judicial practice, the authors of the article revealed that “an accountant, making a professional judgment, firstly, must have knowledge, experience and qualifications; secondly, with the uncertain rules in accounting, he expresses his professional judgment on facts of economic life that require identification and cost measurement” [10]. In particular, interpretations of the concept of “professional accounting judgment” disclosed in the studies of the following authors: Askeri O. [2], Druzhilovskaya T.Yu. and Korshunova T.N. [4], Melnik M.V. [8], Pankova S.V. and Satalkina E.V. [12], Pyatova M.L. [14], Rasskazova-Nikolaeva S.A. [15], Sadykova T.M. and Predeus Yu.V. [17], Sokolov Ya.V. [20], Tuyakova Z.S. [28], Tchaikovskaya L.A. [22], Shaposhnikov A.A. and Sinitsyna T.V. [18], Stefan M.A. and Kovinoy A.K. [19] and others.

According to Baranov P.P., the concept of “professional audit judgment” is a logically substantiated version of the solution to a professional problem, fixed in the working documentation, formed by the auditor in the face of uncertainty as a result of a study based on the implementation of professional competencies and practical experience while observing professional ethics ”[3, p. 24].

After analyzing the approaches to the concepts of “professional accounting judgment” and “professional audit judgment” available in the economic literature, the authors propose to adhere to an audit approach that is based on the knowledge, experience and qualifications of a specialist, take into account the specifics of International Auditing Standards, and under the “special knowledge of an expert accountant »To understand an independent, objective professional judgment in order to answer questions posed by a judge based on practical experience and difficulties previous practice in respect of the recognition of the facts of economic life according to accounting regulators, and the obtained findings of the economic analysis with regard to the examination of objects under conditions of uncertainty, ambiguity created by the existing

interpretations, or the complete absence of rules on the examination object “[11, pp. 118–119].

Thus, by the term “professional judgment of an expert accountant”, the authors understand the logically substantiated conclusion recorded in the expert accountant’s opinion on the professional issues put before him by the judge, where the expert accountant’s judgment regarding the object of the forensic examination is expressed not only on the facts of economic life, which have regulated accounting rules, but also on facts that have options for choosing to recognize them in the accounting or in the absence of such rules [27], [29].

In addition, for a more complete formation of the concept of this definition, it is necessary to highlight “qualities that characterize the professional judgment of an expert accountant:

- Objectivity is an expression of a professional point of view based on a set of subjective assessments of similar situations;
- Independence is independence, lack of subordination and dependence;
- Clarity is an understanding of the terminological apparatus, as well as its successful interpretation;
- Unambiguity is the accuracy and lack of other options when expressing an opinion regarding the recognition of facts of economic life;
- provability is a confirmation of the conclusions made by an expert accountant with primary accounting documents, regulatory legal acts, as well as information contained on the official websites of economic entities” [11, p. 119].

The most complex and controversial quality of professional judgment of an expert accountant is objectivity. If we proceed from the philosophical concept of the categories under study, then “subjectivity is an internal, essential property of the real-practical way of human life, and it itself is an objective phenomenon that is part of the processes of the world. The border between subjectivity and objectivity runs not along the line of separation, but inside it as a whole. This border runs along the line of opposition of man as an object and him as a subject. It is pre-

cisely because of its opposition to the world of objects that subjectivity is fundamentally unknowable as an object. ”

The real problem of the social sciences and humanities always contains explicit or implicit evaluative statements and consists in developing reliable criteria for the validity and, therefore, objectivity of such statements, and exploring the possibilities of excluding unreasonable estimates. Evaluation is always subjective. At the same time, without this kind of subjectivity, and thus a departure from objectivity, the activity of a person as a whole, and an expert accountant in particular, is impossible.

When starting a forensic accounting examination, an expert should check only those credentials and analyze only those actions of employees of the accounting service of an economic entity that fall into its subject area. At the same time, the professional judgment of the expert accountant will be formed under the influence of the analysis of the procedure for reproducing committed business transactions and a reliable personal view of the object of examination. To achieve this goal, an expert accountant must have knowledge of accounting for the reflection of facts of economic life; ability to work with primary documentation, registers of analytical and synthetic accounting; know the process of forming indicators of financial statements; be able to identify deviations, establish the reasons for their formation and develop measures to eliminate them; be able to investigate the facts of economic life to prove situations determined by court order.

When forming the professional judgment of an expert accountant, the subject area of his research is related to the facts of economic activity that have already been implemented and the accounting procedure that was in effect at that time, as a result of which the expert identifies the mistakes made in accounting and evaluates the consequences of their identification or non-identification. As a result, a special place is given to the identification of ambiguous accounting and analytical information related to the ambiguous interpretation of accounting regulations or their complete absence.

After the expert accountant determines the economic content of the investigated fact of economic life and compares it with the normative documents valid at that time, he begins to complete the set of grounds for professional judgment, and on its basis to form a reasonable and

objective evidence base. The opinion of the expert accountant and the opinion of the accountant of the business entity may coincide, then this indicates the integrity of the accounting service, and may not coincide – then errors in the organization of accounting observed.

As studies have shown, the professional judgment of an expert accountant mainly depends on the specifics of the questions raised by the arbitral tribunal before him.

In order to form an objective professional judgment of an expert accountant, it is necessary to observe the relationship and adequacy of the developed methodology for conducting forensic accounting expertise with the objective reality of accounting and logic that cannot be questioned. This is possible only if there is a complete and sufficient information base, which includes a methodology for accounting the facts of the economic life of a particular subject of examination, a methodology for conducting a specific forensic accounting examination, as well as legislative, regulatory and other regulations (Figure 1).

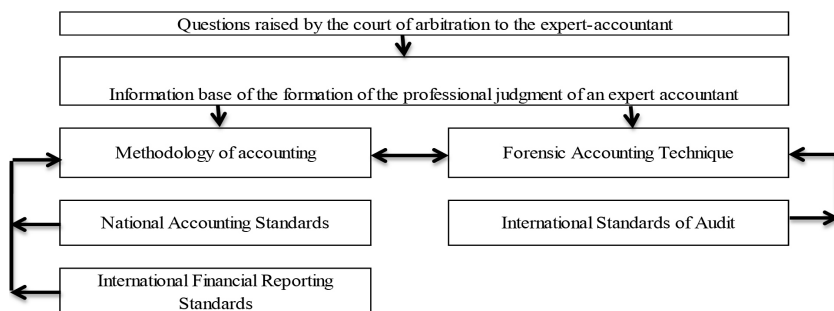


Fig. 1. The information base of the process of forming an objective professional judgment of an expert accountant

Sources: [11, p. 122]

The authors of the article proposed to formulate the objective professional judgments of the expert accountant by challenging and analyzing the completeness, sufficiency and reliability of the materials of the arbitration proceedings by assessing the accounting and audit methods used in the subject area of the examination. It is in this way that the expert accountant has the opportunity to form a consistent and provable profes-

sional judgment that cannot be called into question, which will provide a high-quality evidence base for the specific professional judgment of the expert accountant and enhance the quality of the examination.

As a result, the authors proposed to carry out the process of forming a professional judgment by an expert accountant through the seven stages presented in Figure 2.

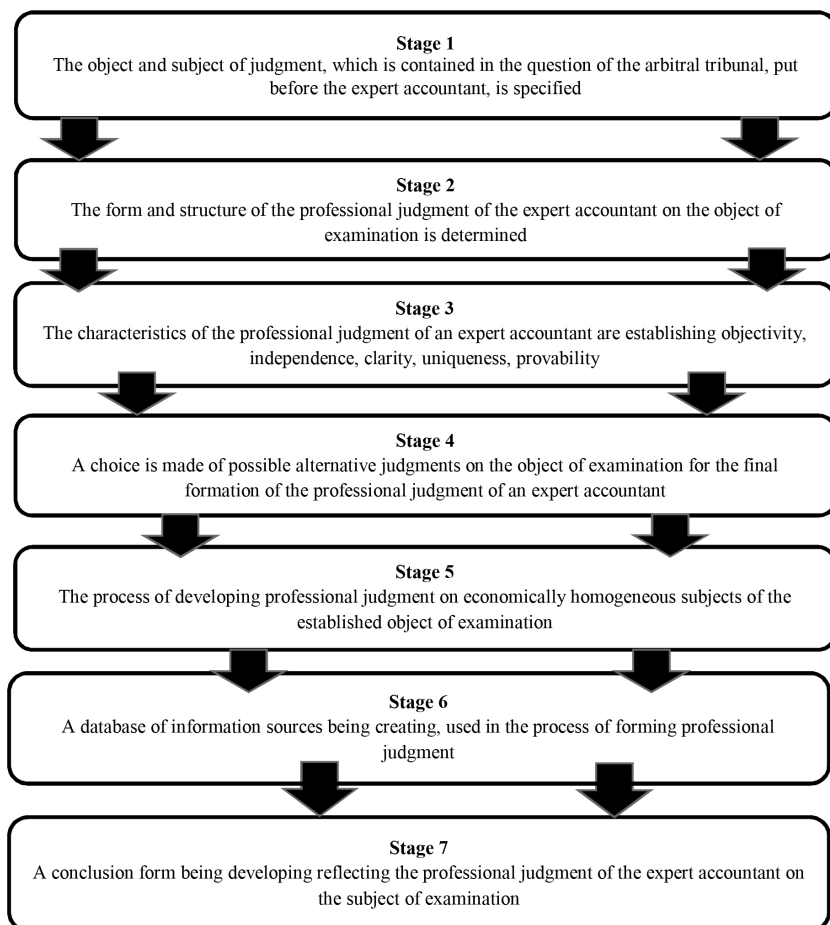


Fig. 2. Stages of forming a professional judgment of an expert accountant during a forensic accounting examination

Sources: [11, p. 124]

Conclusions

As a result of this research, the author's wording of the concept "professional judgment of an expert accountant" is proposed, which is understood as an objective and independent professional judgment based on, on the one hand, sufficient practical work experience and established practice with regard to the recognition of economic life in accordance with accounting and tax laws, regulatory legal acts, and on the findings of the economic analysis in relation to the objects of examination in order to form Councils to put the arbitral tribunal issues under conditions of uncertainty existing interpretations of accounting objects, on the other hand.

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