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BUDGET LAW IN THE SYSTEM OF RUSSIAN LAW

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Abstract

The main aim of the paper is to define place of budget law in the system of Russian law as well as boundaries of budget law legal scope. Author tries to justify that budget law is a sub-branch of financial law. It regulates just some groups of relations concerning collecting of budget revenues and implementation of budget expenditures. Conclusions of the paper are based on researches of soviet and modern scientists; court practice is used as well.

Key words

Budget law, financial law, scope of legal regulation, budget, revenue, expenditure obligations.

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Introduction

Recently certain discussions in Russian financial law science have been held. They concern a place and boundaries of budget law in the system of Russian law. Some authors consider budget law as an independent branch of law; other include it in the system of financial law. In this paper an attempt will be made to find additional arguments to classify the budget law as a sub-branch of financial law. Furthermore, the author proves that budget law regulates only the distribution of budget revenues within the Russian budget system and the arrangement of budget expenditure administration.

Chapter 1

Budget law is traditionally considered as a sub-branch of financial law in the Russian Federation.

Financial law is an independent branch of law that regulates relations arising in the sphere of public finance activity, i.e. in the sphere of planned collection of financial resources to public financial funds, their distribution and a use. Budget law regulates the same relations but concerning budget funds (federal, regional and local).

At the same time, some scientists assert that budget law is an independent legal branch. In their opinion budget law has its own scope of legal regulation, its own codifying act (the Russian Budget Code).

However, the majority of financiers in the Russian Federation do not support separation of the budget law, tax law and another sub-branches of financial law. In some cases the Constitutional Court of the Russian Federation takes up the same position. For example, in 2001, it invalidated Federal law on sales tax; however, the Constitutional Court took into account that the sales tax was a source of regional and local budget revenues. Therefore, it reserved entry of the decision into the legal force until the end of fiscal year (until 2002) (Constitutional Court of the Russian Federation: Decision no. 2-P (2001)). This decision of the Constitutional Court confirmed that it was impossible to solve tax law problems in isolation from the budget law and that budget law and tax law were integral parts of the financial law.

As a rule, the scope of budget law regulations is defined as a set of provisions concerning collection, distribution and use of federal, regional and local budget funds. However, such definition makes it possible to include the regulations that

belong to another sub-branches of financial law or even to another branches of law in the scope of the budget law. For example, provisions concerning collection of budget funds are regulated by the tax law as well; a use of budget resources could also be regulated by civil law or social security law provisions.

For that reason, it is necessary to set boundaries of budget law regulations especially with regard to the collection and a use of budget funds.

Chapter 2

The first group of regulations concerning the budget funds is the collection of budget revenues. In the Russian Federation there is a sufficient number of studies that discuss the question of the boundary between the budget law and tax law (law of non-tax revenues). Many authors hold the opinion that the budget law regulates relations arising in the process of revenue distribution (Bescherevnykh, 1960: 15); they set a list of revenues and an order of their distribution between budgets (Tsipkin, 1973: 17); they also determine the legal nature, list, and the amount of state budget revenues as well as an order of their coming to budget (Piskotin, 1971: 51). The budget law does not regulate the relations arising in the process of collection of money resources being transferred to the budget funds. These relations are regulated by other branches of financial law (Bescherevnykh, 1960: 16–17).

The above mentioned conclusions were drawn in the Soviet times. However, they still remain relevant. Various authors write that budget legislation does not regulate the relations directly connected with the mobilization of money resources in the budget. Their regulation is carried out by the tax legislation, which is closely connected with the budget legislation (Konyukhova, 2009: 55); the analysis of the tax law and budget law interaction allows the conclusion that the administration of budget revenues goes through two stages: 1) the activity of tax authorities that collect revenue for the budget, which is regulated by the tax law; 2) the activity of the Federal Treasury that distributes received revenues in accordance with the adopted budget that is regulated by the budget legislation (Kuzmina, 2004).

There is a confirmation of that approach in the modern Russian legislation and in the legal practice. For example, the Constitutional Court of the Russian Federation in one of its decision held that tax relations between taxpayers and banks concerning the execution of remittance orders for tax payment were regulated by the tax legislation, whereas the provisions concerning the transfer of the money resources to the budget accounts belong to the budget law regulations

(Constitutional Court of the Russian Federation: Decision no. 24-P 1998). That court decision confirmed that the budget law does not regulate the mobilization of money resources to the budget system. According to the mentioned decision, the budget law comes into effect only when the money resources have been credited to the special budget accounts intended for distribution of revenues between the federal, regional and local budget accounts. In other words, the main task of the budget law is to distribute the received revenues between specific budgets of the Russian budgetary system.

In Russian financial law science there is a debatable question about relations concerning the return of the overpaid (overcharged) taxes and other revenues from budget system. Some rules of the Russian financial legislation show the budget law legal nature of these relations. For example, the Russian Budget Code includes rules for the return of the overpaid (overcharged) revenues and interest for delay of such return, as well as the interest on the overcharged sums concerning the budget revenue administration (the Russian Budget Code, Art. 218). The tax legislation has similar rules. The Russian Tax Code contains norms confirming the budget law nature of the regulations. For example, it prescribes that a remittance order for a return of overpaid taxes issued by tax authority shall be submitted to the Federal Treasury in order to return the taxes to a taxpayer in accordance with the budget legislation of the Russian Federation (the Russian Tax Code, Art. 78, 79).

At the same time, there is an opposite point of view. Some scientists pay attention to Art. 152 of the Russian Budget Code and insist that a payer is a subject of neither budget process nor budget relations; legal nature of the property relations concerning revenue return with the participation of a payer should be defined by the nature of the returned payment (Koustova, 2011: 350). In court practice there are precedents when courts have stated that the Federal Treasury does not bear the budget responsibility to taxpayers (the Russian Budget Code, Art. 167).

On the ground of mentioned points of view it is possible to draw a conclusion that the budget law should regulate only relations connected with the transfer of money resources from federal, regional or local budget accounts to a special budget accounts of the Federal Treasury for the return of overpaid (overcharged) budget revenues. The purpose of these relations is to provide for further return of overpaid (overcharged) sums to payers. At the same time the return of the overpaid (overcharged) budget revenues from the special budget accounts of the Federal Treasury to payers remains in the scope of the tax law (or law of non-tax revenues).

The practical consequence of the drawn conclusion about the scope of budget law regulation of relations concerning budget revenues is reflected in the financial legislation and in practice.

For example, tax legislation regulates paying taxes and fees by payers (the Russian Tax Code, Art. 45) as well as transaction of the paid taxes and fees by banks to the budget system of the Russian Federation (the Russian Tax Code, Art. 60). The Russian Tax Code enacts legal responsibility for violation of the payers and bank duties (the Russian Tax Code, Art. 122, 133, 135). At the same time the budget legislation provides for norms of budget revenues distribution (in per cent) between federal, regional and local budgets (the Russian Budget Code, Chap. 7, 8, 9).

Chapter 3

The second group of budget relations are the relations connected with budget expenditures and the use of budget resources.

The boundaries of relations connected with the budget expenditures have stirred up a debate for a long time. In Soviet period scientists wrote that it was advisable to refer to the budget law just as norms which set the total amount of public expenditure and budget appropriations for certain directions, regulating an order of expenditure distribution between different budgets as well as an order of additional revenue spending, moreover, norms regulating the procedure of the budget appropriations implementation and cash administration of budget expenditures. Other legal norms regulating the spending of the budget resources were advisable to refer to a subbranch of public expenditure (Ivanov, 1967: 51).

In some papers there is an opinion that the regulations concerning the use of monetary funds ... are not of financial-economic nature, and therefore are not the product of public financial activity and are not included in financial regulations. However, at the same time, the regulations concerning the arrangement of the use are included in the scope of financial law (Khudyakov, 2010: 73).

Actually, the budget law regulates the procedure of the budgets expenditure administration as well as interbudget regulations providing for the distribution of the total sum of budgetary system expenditures between different budget levels. In addition, the budget law provides for the allocation of budget appropriations for the budget expenditures implementation by specifying them in laws on budget. At the same time, the legal grounds of the expenditures are defined in special laws,

other statutory acts, contracts and agreements that are the sources of other than financial branches of law.

The aforementioned correspondence of budget law and other branches and institutions of law is reflected in the current Russian legislation. The Russian Budget Code gives the concept of expenditure obligation (the Russian Budget Code, Art. 6). In the framework of expenditure obligation of the Russian Federation, its subjects or municipal units are obliged to pay money resources to another subject. The legal grounds of the expenditure obligations are defined in special laws, other statutory acts, contracts and agreements. It is obvious that these laws, other statutory acts, contracts and agreements can belong to different branches of law. For example, they can be based on the social security law, civil law contracts, etc. The legal nature of the laws, other statutory acts, contracts and agreements determines legal branch belonging of expenditure obligations.

It appears that the majority of expenditure obligations are not within the scope of the budget law (financial law). The Constitutional Court of the Russian Federation pointed out that federal law on federal budget created appropriate financial conditions for the implementation of the norms fixed in other, earlier adopted federal laws, that provided financial obligations of the state, i.e. envisaging for granting money resources as well as necessary expenditures. At the same time, federal law on federal budget neither created nor repealed the rights and obligations (Constitutional Court of the Russian Federation: Decision no. 9-P 2004). That is why the budget law should not create expenditure obligations as a rule. An exception to this rule is expenditure obligations concerning inter-budget transfers. Their bases are the norms of the Russian Budget Code, laws of subjects of the Russian Federation on inter-budget relations and the laws on budget. As a result, the expenditure obligations concerning inter-budget transfers are included in the scope of the budget law.

The practical consequence of the drawn conclusion about the scope of the budget law regulation is that the court decisions concerning the enforcement of money resources from the budgets should be relied not on the budget legislation but on the norms of those branches of law that are the legal grounds of the expenditure obligation.

For example, the Supreme Commercial Court of the Russian Federation explains that public institutions that are budget funds recipients must take financial obligations by negotiating contracts (agreements) within the limits of their budget estimates. However, this rule cannot be considered as grounds for dismissal an action

concerning the enforcement of the debts if they exceed the budget estimate limits (Supreme Commercial Court of the Russian Federation: Resolution of the Plenum no. 23 2006). In other words, courts should implement legislation that is a ground of the negotiated contracts (agreements) not the budget law.

In another case of the Supreme Commercial Court of the Russian Federation was solving problems concerning the return of budget loans. The debtor alluded to expiration of the imitation period. The Russian Ministry of Finance (state representative) paid attention to the fact that the budget law did not prescribe any imitation period. The Supreme Commercial Court explained that when litigation was connected with the budget resources extended on returnable and reimbursable basis, these relations were civil because they were not based on administrative or other kind of power subordination (Supreme Commercial Court of the Russian Federation: Resolution of the Plenum no. 23 2006). In other words, the Court estimated the legal nature of the relation and recognized the civil law belonging to the relations in spite of their connection with the budget funds

Conclusion.

It is possible to draw a conclusion that budget law is a sub-branch of financial law. The budget law regulates just some relations concerning budget revenues and expenditures, i.e. distribution of budget revenues within the budget system (between federal, regional and local budgets) and the arrangement of budget expenditure implementation.

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