ADAPTATION OF BUDGETARY LEGISLATION OF UKRAINE TO THE REQUIREMENTS OF THE EUROPEAN UNION AND THE IMPACT OF ECONOMIC RISKS ON THE STATE BUDGET INDICATORS

Abstract. Ukraine is on the way budget relationships reform realization, one of which tasks is adaptation of current legislation to EU legislation in order to create European conditions of development in country and in budget system particularly.

Budget control is the type of state finance control, integrated and telic system of economic and legal measures of authorized control subjects, aimed on providing of eligibility and effectiveness of budget process parties while drafting, reviewing, adoption of budgets, fulfillment, amending, considering reports on budgets’ fulfillment, which compose the budget system of Ukraine. From that point of view the title of Chapter 17 of Budget Code of Ukraine (hereinafter BCU) “Control on maintenance of budget legislation” means not the essence of state finance control but its aim. The powers of controlling subjects which are established by this chapter have mostly duplicative character while current Chapter 5 of BCU determines types of budget legislation violations and means of influence for such violations still contains inaccuracies and gaps in expression of legal norms concerning budget control.

Lack of budget control principles implementation on the regulatory level causes commitment of budget violation. On Accounting Chamber reports while fulfilling the controlling measures concerning the effectiveness of budget funds usage for ensuring activities and performing powers of public authorities more than 23 million UAH have been identified as used with violation of the requirements of the current legislation, and almost 313 million UAH were used inefficiently According to the calculations, the state budget short received income of almost 0.6 million UAH and also 10.3 million UAH were transferred to budgets exceeding the established deadlines/ Thus, the system of budgetary control requires improvement by defining a modern concept of its organization and implementing appropriate amendments to the current legislation. With this aim the authors have studied international experience, which shows the necessity of integrating new contemporary concept of budgetary control, which should be oriented to preliminary and current budgetary control.

Keywords: budget law, adaptation, budget control, amenability, controlling subjects, violations, public funds, financial control.

JEL Classification: H61, K3

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АДАПТАЦІЯ БЮДЖЕТНОГО ЗАКОНОДАВСТВА УКРАЇНИ ДО ВИМОГ ЄВРОПЕЙСЬКОГО СОЮЗУ ТА ВПЛИВ ЕКОНОМІЧНИХ РИЗИКІВ NA ПОКАЗНИКИ ДЕРЖАВНОГО БЮДЖЕТУ

Анотація. Україна перебуває на шляху проведення реформи бюджетних відносин, одним із завдань якої є адаптація чинного законодавства до законодавства Європейського Союзу (ЄС) із метою створення європейських умов розвитку країни і бюджетної системи зокрема.

Бюджетний контроль — це вид державного фінансового контролю, комплексна і цілеспрямована система економіко-правових заходів уповноважених суб’єктів контролю, спрямована на забезпечення законності та ефективності дій учасників бюджетного процесу під час складання, розгляді, затвердження бюджетів, виконання, внесення змін та ухвалення звітів про виконання бюджетів, що становлять бюджетну систему України. З цих позицій назва глави 17 БКУ «Контроль за дотриманням бюджетного законодавства» визначає не сутність державного фінансового контролю, а його мету. Повноваження суб’єктів контролю, які встановлюються цією главою, мають переважно дублюючий характер, а чинний розділ 5 БКУ, хоч і встановлює види порушень бюджетного законодавства і заходи впливу за ці порушення, містить неточності та пробіли у формулюванні правових норм щодо проведення бюджетного контролю.

Нереалізованість на нормативному рівні принципів бюджетного контролю спричиняє вчинення бюджетних правопорушень. За звітами Рахункової палати під час проведення контрольних заходів щодо ефективності використання бюджетних коштів на забезпечення діяльності та виконання повноважень державними органами було виявлено понад 23 млн грн використаних із порушенням вимог чинного законодавства, а імай 313 млрд грн — неефективно. За розрахунками, державним бюджетом недотримано надходжень на суму майже 0,6 млн грн і перераховано до бюджетів із перевищенням установленних термінів — 10,3 млн гривень. Отже, система бюджетного контролю потребує вдосконалення шляхом визначення сучасної концепції його організації і внесення відповідних змін у чинне законодавство. З цією метою було вивчено досвід зарубіжних країн, який свідчить про доцільність упровадження нової сучасної концепції бюджетного контролю, орієнтованої на попередній і поточний бюджетний контроль.

Ключові слова: бюджетне право, адаптація, бюджетний контроль, відповідальність, суб’єкти контролю, порушення, громадські кошти, фінансовий контроль.

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АДАПТАЦІЯ БЮДЖЕТНОГО ЗАКОНОДАТЕЛЬСТВА УКРАЇНИ
К ТРЕБОВАНИЯМ ЄВРОПЕЙСЬКОГО СОЮЗА
І ВЛИЯННЯ ЕКОНОМІЧЕСЬКИХ РИСКІВ
НА ПОКАЗАТЕЛІ ГОСУДАРСТВЕННОГО БЮДЖЕТА

Аннотація. Україна знаходиться на шляху проведення реформи бюджетних
относин, однією з яких є адаптація діючого законодавства до
законодавства Європейського Союзу (ЄС) з метою створення європейських умов розвитку
старів і бюджетної системи в частині.

Бюджетний контроль — це вид державного фінансового контролю,
комплексні та цілеспрямовані дії уповноважених контролюючих суб'єктів,
напрямлені на забезпечення законності і ефективності діяльності
учасників бюджетного процесу в часі створення, розгляду,
утвердження бюджетів, їх виконання, зміни та прийняття
відомості про виконання бюджетних планів, формування бюджетної системи України.
С цих позицій зазвичай передбачається мінімізація
зовнішньої співпраці контролюючого суб'єкта,
якість дій у рамках структурного планування,
аналізу, узгодження бюджетних планів, їх виконання, зміни та прийняття
відомості про виконання бюджетних планів, формування бюджетної системи України.

Нереалізованість на нормативному рівні принципів бюджетного контролю влече
своєчасну об'єктивну непереглядну дію, яка вимагає
урахування її впливу на становище в бюджетній сфері.

Ключові слова: бюджетне право, адаптація, бюджетний контроль,
зверненість, контролюючі суб'єкти, нарахування, основні недоходи, фінансовий контроль.

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and usage of public financial resources accumulated in the country’s budgetary system. Comparative and legal analysis of the financial legislation of Ukraine and the EU countries shows that in case of state financial control agencies presence the system of budgetary process control organization and its provision legal mechanism differ significantly.

The main part. According to the Budget Code of Ukraine (hereinafter — BCU), the budgetary process is the regulated by budgetary legislation process of drawing up, reviewing, approving, executing budgets, reporting on their implementation, as well as monitoring the observance of budgetary legislation. While determining the need for control in budgetary process, current legislation does not contain the notion of "budgetary control", does not establish in the system of budgetary system construction principles (Article 7 of BCU) the principle of control and legal responsibility [2].

Fully sharing the opinion that budgetary control is a kind of state financial control, integrated and telic system of economic and legal measures of authorized control subjects, aimed on providing of eligibility and effectiveness of budget process parties while drafting, reviewing, adoption of budgets, fulfillment, amending, considering reports on budgets’ fulfillment, which compose the budget system of Ukraine [3, p. 39], seems to be necessary to introduce this definition into the law. From that point of view the title of Chapter 17 of Budget Code of Ukraine “Control on maintenance of budget legislation” means not the essence of state finance control but its aim. The powers of controlling subjects which are established by this chapter have mostly duplicative character while current Chapter 5 of BCU determines types of budget legislation violations and means of influence for such violations still contains inaccuracies and gaps in expression of legal norms concerning budget control.

According to the Law of Ukraine “On the Basic Principles of the Implementation of State Financial Control in Ukraine”, control measures are carried out to identify the actual state of affairs regarding the lawful and effective usage of state or municipal funds and properties, to identify the violations of legislation, to consider citizens’ letters, complaints and appeals on legislation violations in a controlled institution [4]. The Strategy of Reforming the Public Financial Management System for 2017-2020 notes that the public financial management system in Ukraine is aimed on expenditure controlling, which makes responsible persons to focus on requirements compliance, rather than on the quality of public services [5]. So, budgetary control is carried out mostly as current or subsequent, documenting the violations and without affecting the quality of the budgetary process.

From our point of view, in order to timely establish the possible deterioration of the economic indicators of the state budget, within the budget control, a regular assessment of economic risks should be carried out in two main directions: a) formation of the revenue part of the state budget; b) use of state budget funds.

The determination of the impact of fiscal risks on the activities of business entities of the state sector of the economy on the indicators of the state budget is possible by regarding the Methodology for assessing the fiscal risks associated with the activities of business entities of the state sector of the economy, hereafter: the Methodology No. 7. According to Clause 3 of this Methodology: “Fiscal risks related to the activities of business entities are possible deviation of the forecast indicators of financial and economic activity of business entities from the planned level, which may lead to a decrease in budget revenues and / or require additional budget expenditures. Such risks are expressed in absolute figures or as a percentage of gross domestic product” [6].

In according with Clause 4 of the Methodology No. 7, fiscal risks include: 1) reduction of tax and non-tax revenues, in particular the part of the net profit (income) deducted to the state budget by state unitary enterprises and their associations, dividends (income) accrued on shares (shares, actions) of corporations the authorized capital of which includes the state property (in comparison with the planned volume); 2) the fulfillment by the state of guarantee obligations in case of impossibility of business entities to fulfill their obligations to creditors and the guarantor; 3) provision of additional state assistance to business entities to cover loss-making activities according to the Law of Ukraine “On State Aid to Business Entities”; 4) other risks that may lead to financial and other losses or problems with the entity’s liquidity, which entail the expenditure of centralized funds of the state [6].

Factors that can lead to fiscal risks include: 1) adoption of regulatory acts related to the activities of business entities that may have an impact on the income and / or expenditure part of the state budget; 2) loss-making activity of business entities; 3) exchange rate losses of business entities that arise while performing obligations under foreign and economic agreements or while performing
foreign currency borrowings; 4) decrease of demand and, accordingly, volumes of sales of goods, works and services, which are produced (provided) by business entities; 5) quasi-fiscal operations, which include operations that result in a net transfer of public funds through non-budget channels; 6) failure to receive receivables or losses in banks recognized by the National Bank as insolvent; 7) contingent liabilities assumed by business entities, which include the obligations that have been taken, but the terms and amounts of which depend on the occurrence of uncertain future events; 8) default charges, penalties; 9) losses resulting from gaps in the management and internal control system or through fraudulent actions; 10) negative effects of hostilities, terrorist acts or civil disturbances, as well as natural disasters and other circumstances of force majeure; 11) other factors [6].

According to Clause 6 of the Methodology No. 7, sources of information for the analysis of fiscal risks include: approved in accordance with the established procedure the dilution strategy and the investment plan of the entity in the medium-term perspective (three to five years); financial plan of business entities for the reporting period and a report on its implementation with explanatory notes to them; financial statements at the latest reporting date of the current year in the form defined by the National Accounting Standards 1 “General Requirements for Financial Statements”, approved by the Ministry of Finance of Ukraine, in particular, the balance sheet (statement of financial position) (form No. 1) (with the deciphering of the articles balance sheet representing more than 10 percent of the currency of the balance sheet), statement of financial results (statement of comprehensive income) (form No. 2), cash flow statement (form No. 3), statement of equity (form No. 4); notes to the annual financial statements (form No. 5), approved by the Ministry of Finance of Ukraine; financial statements prepared in accordance with international financial reporting standards; information from the State Fiscal Service of Ukraine on payment of taxes, duties and other payments to the state budget, availability of the corresponding debt and excess of paid payments; information from the Ministry of Economic Development and Trade of Ukraine on performance of indicators of financial plans of business entities prepared in accordance with paragraph 13 of the Procedure for the preparation, approval and control of the implementation of the financial plan of the economic sector entity of the state sector of the economy approved by the Ministry of Economic Development and Trade of Ukraine and information on the efficiency of management of objects of state property, carried out in accordance with the Procedure for monitoring the implementation of functions concerning the management of state property objects and criteria for determining the effectiveness of management of state property objects, approved by the Resolution of the Cabinet of Ministers of Ukraine dated from June 19, 2007 No. 832 (Official Bulletin of Ukraine, 2007, No. 45, p.1839); other information received in accordance with the law [6].

The risk is determined according to the results of the analysis of the assessment, namely: 1st rank of risk — very high level of risk, which is established when an entity has a very high debt burden (the indicator “Leverage net debt” is greater than 5, and loss-making activity (net loss) or negative value of EBITDA, 2nd rank of risk — high level of risk, which is established when an entity has a high debt load (the indicator “Leverage net debt” is greater than 3) and coefficient by the exact liquidity (coverage) at the level, less (or equal) to 1; 3rd rank of risk — a significant level of risk, which is established when an entity has a high debt load (the indicator “Leverage net debt” is greater than 3 ) and current liquidity ratio (coverage) at the level from 1 to 2 (including 2); 4th rank of risk — a moderate level of risk that is established when an entity has the meaning of the indicator “Leverage net debt” at the level of more (or equal) to 2; 5th rank of risk — low risk [6].

The Ministry of Finance of Ukraine on the basis of received information: conducts analysis and monitoring of indicators of activity of business entities; analyzes the size of risk identified by the management agencies related to the activities of business entities, their possible impact on the indicators of the state budget and measures to minimize such risks in order to take them into account when compiling and executing the state budget; provides to the management agencies and business entities, whose functions are administered by the Cabinet of Ministers of Ukraine, mandatory propositions and recommendations for the measures to be taken to minimize the impact of fiscal risks on the state budget, as well as receive from the said sub-information on the consideration of such propositions and recommendations and the state of their implementation; determines the annual amount of the reserve necessary to cover unforeseen expenditures that are not permanent and could not be foreseen, when drafting the state budget related to the materialization of fiscal risks; makes an annual report on fiscal risks related to the activities of business entities, which
is published on the official web-site of the Ministry of Finance of Ukraine by May 31, the reporting
year, and is used by the participants of the budget process at all stages of compilation and execution
of the state budget for the relevant year [6].

The possible approach to the impact of economic risks on the indicators of the state budget
is to determine the level of tax, inflation, deflation and currency risks.

While conducting the research of calculations with the budget, it is necessary to understand that
the tax system of Ukraine is a collection of taxes, fees, other obligatory payments and contributions to
the budget of Ukraine and state target funds that operate in accordance with the procedure established
by the law. Ukrainian taxation system operates on the basis of the Tax Code of Ukraine. There are two
systems of taxation: simplified and general. The entire tax system consists of national taxes and local
taxes and fees [7, p. 139]. Tax (general economic) risks are considered from two positions (entrepreneur
and state). The tax risk of the entrepreneur is related to the possible changes in the tax policy (reduction
of tax privileges), as well as changes in the size of tax rates and terms of charging (paying) taxes.
Instability of tax legislation increases the level of tax risk. The tax risks of the state are the possible
reduction of budget revenues as a result of ill-considered changes in tax policy and / or the size of tax
rates. At the same time, the reduction of tax revenues may be caused both by a decrease in the level of
tax rates and their growth (Curve Lafer), [1, p. 39-40]. Tax risks also take into account the timeliness
and completeness of proceeds to the execution.

Inflation risk is the risk that, with the growth of inflation, the cash flows of business entities,
depreciating in terms of purchasing power rather than increasing. Under such conditions, the entrepreneur
and the state have real losses. Inflation is a depreciation of money and, accordingly, an increase in prices.
Deflation risk is the risk of a fall in price levels, a deterioration of business conditions and a decline in profits,
when deflation is rising. Deflation — is a process that turns into inflation, it manifests itself in lowering
prices, and, accordingly, in increasing the real purchasing power of money [8, p. 33].

The problem of currency risk in economic theory and practice first appeared in the late 70’s of
the XX century, after the signing of the Jamaican Agreement (Kingston, Jamaica, 1976) by the
Member-States of the International Monetary Fund. One of the main principles of this agreement was
the introduction of a free-exchange rate regime based on floating exchange rates — flotation. The
greatest acuteness of this problem has gained in the 80’s and 90’s of the XX century and remains
relevant for the future. First of all, this is due to the sharp increase in volumes of international trade and
financial transactions, unpredictable fluctuations in exchange rates, and the growth of volumes of
currency speculation, which causes a sharp increase in the dependence of the financial results of
enterprises and financial and credit institutions on currency risk. From purely economic point of view,
such a risk is the result of imbalances in assets and liabilities for each currency in terms and amounts [9,
p. 67-72].

The level of violations of budget legislation is the evidence of unsatisfactory state of the
execution of the state budget. According to the results of check-outs says that budget delinquencies are
repeated year on year, acquiring the systematic character. On Accounting Chamber reports while
fulfilling the controlling measures concerning the effectiveness of budget funds usage for ensuring activities and performing powers of public authorities more than 23 million UAH have been identified as used with violation of the requirements of the current legislation, and almost 313 million UAH were used inefficiently. According to the calculations, the state budget short received income of almost 0.6 million UAH and also 10.3 million UAH were transferred to budgets exceeding the established deadlines [10, p. 80]. While auditing the effectiveness of the budget funds usage by the state financial control bodies, the auditors of the Accounting Chamber adjudged the excess of State Treasury, State Fiscal Service (SFS) employees number and improper work organization on planning the expenses for their maintenance, as well as the need to improve the internal control in these bodies system [5, p. 92-105]. On the results of the inspection was recognized the need to improve the legal and regulatory framework governing the control organization, since violations of budget legislation are reproduced annually, systematically and indicate the imperfection of control measures. The Accounting Chamber annual reports analysis leads to the conclusion about the typical nature of budget legislation violations, namely: 1) usage of state budget funds with budget legislation violation; 2) the State Budget of Ukraine losses as a result of illegal management decisions; 3) ineffective usage of budget funds provided for the implementation of government programs, as well as illegal allocation of funds from the reserve fund of the state budget; 4) absence of internal control system at public sector of economy enterprises; 5)
planning of state budget expenditures with violation of the current legislation and in absence of legal
grounds; 6) diversion of state budget funds into accounts receivable; 7) implementation of expenditures
for budgetary institutions financing from different budgets simultaneously; 8) budgetary violations
related to the usage of inter-budgetary transfers and so on.

An important part of the research on general issues of committing offenses is the definition
of the real state of accounting. Such verification involves determining the reliability of reporting
and accounting, its completeness and compliance with applicable law. To this end, it is advisable to
check the completeness and accuracy of the display of data on the main types of business
transactions. Examination of acts of inspection of the State Fiscal Service of Ukraine provides
information on compliance with the company’s tax legislation [7, p. 150].

Budgetary legislation of many countries uses the notion “violation of budgetary legislation”
instead of “budgetary delinquency”. For example, according to Art. 281 of Budget Code of Russian
Federation budgetary legislation violation is non-fulfillment or improper fulfillment of established
by Budget Code order of drawing up and adoption of budget drafts, adoption of budgets, budget
substantial notion of budgetary legislation violation is given in Budget Code of Republic of
Belarus: “non-fulfillment or improper fulfillment of requirements imposed by this Code and other
budgetary legislation acts on drawing up, reading, adoption, execution of budgets, receiving and
usage of public funds are vindicated as budgetary legislation violations and entail the of coercive
measures to offender for budget legislation violation under this Code and other legislative acts”
[12].

Nevertheless there is a question which notion is better to use “violation of budgetary legislation”
or “budgetary delinquency”? Different points of view on this notions correlation exist among financial
law specialists. One of them insists on notions identity [13, p. 233], others stay on position of its
correlation as general and particular adducing next arguments: any budgetary delinquency violates
budgetary legislation but not every budgetary legislation violation is budgetary delinquency [14, p. 114].

From our point of view this notions are not identical. The first is broader in scope, since it
includes budget offenses and specifically crimes, administrative and budgetary minor offences and
also wide range of violations that do not have the signs and composition of the offense.

National legislation uses the concept of a "budget law violation" which, in accordance with Art. 116 of
the Budget Code of Ukraine is defined as a violation of the norms established by this Code or other budgetary
legislation by the participant of the budgetary process regarding the drawing up, reviewing, approval,
modification, budget execution and reporting on its execution. The analysis of this article shows that they
concern: first of all, budgetary procedures (for example, violation of deadlines for budget requests submission
or their failure to submit, identification of public funds unreliable amounts while planning budget targets, time
limits and reporting requirements violation, etc.), the second, the budgetary funds usage order (for example,
misuse of public funds, or provision of loans from the budget in violation of the law requirements), and thirdly,
violation of the budgetary funds accounting requirements. Thus, the legislator provides budget offenses types,
since they are united by the object of the offense - budgetary funds, subjects - participants in the budgetary
process and legal responsibility in the form of financial measures of influence. Enforcement measures for
committed budget offenses are established in the Art. 117 BCU and except for such an event as a warning on
improper performance of budgetary legislation have material content, in other words, financial and legal
responsibility is applied, which is another argument in favor of determining a budget delinquency.

At the same time, even direct non-fulfillment of budget assignments can’t be regarded as a
budget delinquency, since it is not stipulated in Art. 116 of the BCU. This inconsistence is to some
extent settled by the Criminal Code of Ukraine (hereinafter — CCU) and the Code of Ukraine on
Administrative Offenses (hereinafter - CUAO), which establish responsibility not for a budget
offense, but for violation of budget system legislation, which is interpreted more broadly than in the
Budget Code. Despite the different names in the Criminal Code, Code of Ukraine on Administrative
Offenses and the Budget Code, Yu. A. Prudov argues that the notions of "budget delinquency" and
"violation of the budget system legislation" (CCU and CUAO) are essentially identical notions [15,
p. 32-33]. Not sharing this view, it should be noted that for budgetary legislation violation are
provided various types of legal liability, depending on the corpus delicti of the offense or a crime,
and it does not abolish the financial responsibility for purely fiscal offenses.
In the scholars’ opinion the notion “budget delinquency” alternatively to “budgetary legislation violation” is characterized by object features — public funds and subjects, participants of budgetary process [16]. Ya. R. Dehtiar determines budget delinquency as guilty, unlawful (violation of budget legislation) act of person, connected with the order of drawing up and examination of budget drafts, adoption, fulfillment and control on budget fulfillment, for which the CCU establishes budgetary responsibility imposed by the state financial authorities [17, p. 21]. Sharing this opinion, we believe that the procedure for its application and punishment belongs to the peculiarities of a budget delinquency which has financial nature and lays in the disposes of budget control authorized subjects.

The EU countries experience of budgetary control organization shows that it’s aimed on execution of control measures at the stage of preliminary consideration of the requirements for budget programs state financing. The state finance control system in France is made in such way that the General Directorate of State Accounting under the Ministry of Finance is charged with servicing the movement of budgetary funds, like the Treasury in Ukraine, and also, in fact, fulfilling the functions of the preliminary financial control over the compliance of approved budgets and other financial standards by budget managers.

One more agency in budgetary control subjects system in France is the Budget Office. The main method of financial controller work is approval of billing or other financial documents. The visa of the financial controller is put down before the budgetary funds manager places his signature and its absence blocks their right to dispose funds. Unblocking costs is possible only with a written order of Minister of the Economy, Minister of the Finance. The provision of advisory service to fund managers is also the function of financial controllers.

Another agency of state financial control is the General Inspectorate of Finance, a body that contributes to the legal and effective management of public finances with the help of its control activities. The General Inspectorate controls public financing of the public legal sector in the whole by conducting audits, inspections, studies and other control measures. In the end of any inspection, the head of the mission draws up a report, which resembles the form for withdrawal to objections to the audit or verification act in structure, used in Ukraine: in the first part, inspectors note deviations from the norm; the second part of the report, if necessary, fills the management of the controlled entity; the third part, if there are objections to the inspectors’ conclusions, are filled again by the inspectors. The second form of control that inspectors use is audit. While it’s held, the activities of one controlled entity is being analyzed, the implementation of one budget program or even the implementation of a separate procedure for using budget funds could be analyzed. By nature, this audit can be called financial and administrative (in the understanding of Ukrainian lawyers - mixed), because under its results is made an assessment both on the reliability of financial reporting and the effectiveness of budgetary funds usage. The third form of control, which in France is called the research mission, is used by the General Inspectorate of Finance, mainly on appeals to its ministerial leadership. This form of control, in fact, pursues the same goals as performance audit in Ukraine: assessment of the budget program implementation, the establishment of its weaknesses and making sound proposals to improve the quality of services. The fourth form of control (giving the advisory service) is that upon the appeals of the directorates of the Ministry of Finance, the General Finance Inspectorate sends inspectors for 2 to 6 months period to provide the assistance to directorate [18].

In the budgetary funds control system while dividing control functions the presence of controlling subjects’ activity harmonization is necessary. Scientific literature proposes to create Interdepartmental Council under the Ministry of Finance which will coordinate the activity of state financial control special bodies [18]. As a whole, the experience of French budgetary control organization indicates the strict division of responsibilities between specially created state financial control bodies which have powers to control the budgetary funds and powers provided by the law that are methodologically defined for each authority.

Likewise to French budgetary governing board, Great Britain has Office for Budget Responsibility (hereinafter OBR) — board which prognoses the development of budgetary financing, makes propositions to government concerning budgetary planning, taxes policy, creates conditions for stable financing and state sector development and permanently controls state
expenditures to make additional financing for social security services. OBR has also the power to block non-effective expenditures [19, p. 31-34].

It should be noted that participants of budget relations bear civil, disciplinary, administrative or criminal liability for budget legislation violation in accordance to law, as it’s stipulated in Art. 121 of the BCU. However, in this legal definition, the principle of legal responsibility concretization for budget legislation violation is not taken into account, as it gives the impression of applying several types of responsibility for one punishment. Consideration of other impact measures which are established in Art. 117 of the BCU also leads to the conclusion that the principle of legal responsibility individualization is not taken into account, inasmuch as for the implementation of expenditures with violation of budget requirements, which can be done only by the budgetary funds administrator, an unobjectionable expunging of budget the penalty is prescribed.

Nowadays Ukraine has the situation, when the implementation of control by the controlling entities over the observance of the budget legislation is not legally justified, as there is no defined control procedure and powers of controlling entities for the application of financial measures of influence. In case of detecting budget violations, controlling entities have the right to apply such measures as suspending budget allocations and stopping operations with budget funds, as well as imposing administrative fines on a guilty person of budget violations. However, the first two measures have negative consequences for employees of budget institutions, all recipients of budget funds, that is, consumers of public goods. But, the latter may not be guilty of violations such as submission of false reports and information on the implementation of local budgets, or failure to comply with accounting requirements, or late or incomplete submission of reports on budget execution, etc., for which the specified punishment is imposed. The application of administrative penalties for guilty officials for these budget violations, the procedure and amount of these penalties is not set by the norms of the Budget Code of Ukraine [20, p. 207].

Budget legislation violation as a rule is accompanied by financial legislation violations responsibility for which is written in Art. 164 of the CUAO — “Financial legislation violations”. Budgetary system of Ukraine violation cases (Art. 164) are heard and decisions are taken by judges of district (city) courts (p.1, Art. 221 of the CUAO).

Criminal liability in budgetary relationship sphere is prescribed by Art. 210 of the CCU for next offences: inappropriate use of public funds, making budget expenses or extension of credit from budget without establishing budgetary obligations or with its exceeding. It’s also prescribed in Art. 221 of the CCU: promulgation of regulations which decrease of budget revenues or increase budget extensions in disregard of law. The perpetrator of the crime in both cases is an official. At the same time, the target of this crime should be budgetary funds on a large scale (the amount is a thousand or more exceeding the non-taxable minimum of citizens’ incomes) or on especially large amount (the amount is three thousand times or more exceeding the non-taxable minimum of citizens’ incomes). The common in bringing to administrative or criminal responsibility for budget legislation violation is that is known that the subject of the violation or the offense is an official, and also is known the punishment entry. In contrast to financial and legal responsibility, types of legal liability are specified in court.

Recently, an increased interest in the problem of responsibility of subjects of budgetary legal relations appears in the financial law science. Transformation of the system of financial and legal regulation, intensive development and accumulation of financial legislation in Ukraine contributed to the allocation of this type of legal responsibility as a financial and legal [21, p. 111]. Today, in the legal science, the issue of formalization of the budgetary responsibility in legislation is also being raised. The current legislation does not directly point to the existence of such a liability, as the BCU does not show directly the possibility of applying budgetary liability measures to budget legislation violators, but after analysis of its norms can make a conclusion about its induction [20]. Thus, implementation of budgetary responsibility measures as a kind of financial and legal responsibility for commitment budget offenses is quite appropriate.

The main financial plan of the country is the state budget of Ukraine for one year. Offenses committed in this sphere are the most harmful and have a specific nature and so agreeably the financial and legal responsibility for its commission has certain features.

E. Yu. Hrachova believes that among coercive measures applied for budget legislation violation can be identified, measures; protection measures and measures of responsibility. Preventive measures are applied with the aim of stopping unlawful actions and removing their harmful consequences. They include: the
blocking of expenses, the suspension of operations on accounts with credit institutions. Protection measures, in her opinion, are aimed at compensating for harm caused by a wrongful act (for example, payment of compensation, withdrawal of budget funds, etc.). Responsibility measures are embodied in the creation for the offender of an additional obligation to suffer adverse consequences (for example, prevention, removal of budgetary funds, etc.) [22, p. 61-62].

I. A. Sikorska does not agree with this viewpoint, on the author’s idea the scientists contradict themselves, because the measures of protection formulated by them, are applied already with the fact of damage, and therefore, there was a law violation, and accordingly, it is necessary to speak about the measures of responsibility, used for their realization. The same applies to the preventive measures. In her opinion, this is the peculiarity of financial and legal responsibility for the budget legislation violation, which is a coercion method imposed to prevent the new offenses committing [23, p. 110].

V. D. Chernadelchuk determined the signs of fiscal responsibility as follows: firstly, a limited range of subjects, represented by the obliged subject (subject of budget offense) and the authorized subject (subject, empowered by the budgetary legislation and the right to carry out proceedings concerning the budget violation offences and to make decisions concerning the penalties (measures)) imposition. The range of subjects of budget offense is limited only by the part of participants of budget process, namely: administrators and recipients of budget funds and the local councils in the field of budget planning. The authorized subjects are the persons, representing the subject realizing the control and investigation of the budget offense fact and subjects who take the decision concerning the penalty imposition for the budget offense. The first are the officials, and the other are the heads of the local councils. Secondly, the rights and obligations of subjects in legal relationships of the proceedings are determined exclusively by the budget legislation acts. Thirdly, the limited application period: penalty (measure) can be imposed only during the relevant budget period and can not be applied in the next budget period [24, p. 46].

Taking into account the above-mentioned provisions, it is possible to determine a number of fiscal responsibility features as the final result of budget control: 1) fiscal legislation as the legal basis for prosecution, based on the relevant principles which is necessary to introduce in Art. 7 of BCU; 2) the basis of liability is a committed budget offense; 3) for the offender it has some negative consequences of property and personal non-property character, due to the fiscal sanctions specific character; 4) the subjects of this type of responsibility are the participants of budget process; 5) it is implemented in a specific procedural form, differing from the other types of liability; 6) purpose of the budgetary responsibility is punitive and preventive; 7) system of the controlling entities is authorized to implement measures aimed to influence the violators of budgetary legislation.

Conclusions. Procedure of the financial measures applications for the budget violations is not regulated by the BCU and other normative-legal acts. The prosecution right for the budget violations on the basis of the inspection certificate previewed by the Art. 26 of the Budget Code of Ukraine as the control method is not established. In practice, the prosecution procedure for budget violations is carried out on the basis of report about the budget offenses or the audit certificate and documents attached thereto. The content of all these documents is not defined. In the document, consisted of the audit or the inspection results it is important to determine the type of budget offense, the amount of budget funds covered by the budget offense, and measures to impose it, that is, to take into account the consequences of budget offense commission [25, p. 37].

The punitive function of budget-legal responsibility is the direction of legal action on the violator. The enforcement actions applied for the budget violations consist in negative consequences occurrence of the property or personal character for violator.

The restorative function is aimed at the damage elimination which has been caused to the public interest. Broadly defined, the object of the restorative influence are the relations existing in the process of public budget activity. As the offenses in the specified sphere can cause damage not only to the property relations, but also to destabilize the organizational and administrative relations, and therefore to disturb the economic interests of the state in general, by the budget system destabilizing, it is necessary to give a great importance to the restorative function of budgetary responsibility.

The educational function of budget responsibility consists in the high level forming of legal awareness, admissible and desirable stereotypes of behavior, respect of law. It should consolidate the value-based ideals and to have the reverse effect on the legal consciousness of the subjects of legal relations. Thus, the educational function is manifested through the legal culture formation among the subjects of budgetary relations.
Scientific literature suggests that the budget responsibility can be divided into three separate stages, namely: formation (budget offense committing), specification (determining of specific measure and the amount of budget-legal responsibility), and implementation (the use of specific influencing means on the offender or punishment). The specificity of the financial and legal responsibility in the field of budgetary legal relations is that the special influence measures application is realized within its limits, which have a negative significance for the budget process. In these legal relations, the right of state represented by the amount of budget-legal responsibility, and implementation (the use of specific influencing means on the parts of the state budget of Ukraine.

Fiscal risks and a wide range of market, financial and other factors of their occurrence determine, from our point of view, the direction of action within the fiscal control to identify possible changes in the state budget within the framework of fiscal control is of personal value. Timely identification of risk gives an opportunity to estimate the cost impact of economic risks on the indicators of the state budget. At the same time, in order to determine the size of the impact of fiscal risks on the indicators of the state budget, the availability of the necessary data for the analysis of the relevant indicators is provided.

Thus, carrying out economic analysis and estimating fiscal (economic) risks within the framework of fiscal control will promote the development of economic activity of state enterprises and budgetary institutions and will strengthen control measures on effective formation and use of revenue and expenditure parts of the state budget of Ukraine.

Література


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