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**EXCEEDING THE FINANCIAL PLAN IN TERMS OF COSTS
IN LOCAL GOVERNMENT BUDGETARY ENTITIES
AND BUDGET INSTITUTIONS AS A VIOLATION
OF THE PUBLIC FINANCE DISCIPLINE****Introduction**

The provision of art. 11 sec. 1 [Journal of Laws 2017, item 1311] stipulates that making public expenditures without authorization (as specified in the budgetary act, a budgetary resolution or a financial plan), or exceeding the scope of this authorization, or making them in violation of the regulations regarding individual types of expenditure – is a violation of the public finance discipline. The aforementioned regulation stipulates that expenditures should be made up to the amount determined in the financial plan. The basis for the financial management of local government budgetary entities and budget institutions is the annual financial plan [Journal of Laws of 2017, item 2077, art. 15 sec. 2, art. 24 sec. 2]. The plan of a local government budgetary entity includes revenues, including subsidies from the budget of a local government unit, costs and other burdens, current assets, receivables and liabilities at the beginning and at the end of the period, and settlements with the budget of a local government unit [Journal of Laws of 2017, item 2077, art. 15 sec. 2]. The financial plan of a budgetary economy institution includes [Journal of Laws of 2017, item 2077, art. 24]: operating revenues, state budget subsidies, cost statements (functioning of such a budget institution, implementation of separate tasks – detailing wages and premiums charged on them, interest payments resulting from liabilities incurred and purchase of goods and services, funds for property expenses), financial result, balance of receivables and liabilities at the beginning and at the end of the year, cash balance at the beginning and at the end of the year. In the abovementioned provisions concerning the structure of annual financial plans of local governmen-

tal budgetary entities and budget institutions, the concept of expenditure was used only once, i.e. art. 24 sec. 2 point 4 [Journal of Laws of 2017, item 2077], i.e. „funds for property expenses”. A literal interpretation of art. 11 sec. 1 [Journal of Laws of 2017, item 1311] indicates that this provision does not apply to exceeding the financial plans of local government budgetary entities, as the provision of art. 15 sec. 2 [Journal of Laws of 2017, item 2077] does not include the term „expenditures”, while in budget institutions it would only refer to exceeding the capital expenditures, as the only expenditures listed in art. 24 sec. 2 point 4 [Journal of Laws of 2017, item 2077]. The provision of art. 44 sec. 1 point 3 [Journal of Laws of 2017, item 2077] provides that public expenditures may be incurred for the purposes and in the amounts determined in the financial plan of the public finance sector entities, i.e. a local government budgetary entity [Journal of Laws of 2017, item 2077, art. 9] and a budget institution [Journal of Laws of 2017, item 2077, art. 9 point 6]. There are costs in the financial plans of the local government budgetary entities and the budget institutions which do not appear in art. 11 sec. 1 [Journal of Laws of 2017, item 1311]. It may happen that the total costs in the financial plan will be exceeded. However, it is not obvious whether there is a breach of public finance discipline in such cases, i.e. art. 11 sec. 1 [Journal of Laws of 2017, item 1311], despite the fact that the Public Finance Act uses the terms „expenditures” and „costs” interchangeably.

The aim of the article is to analyze whether exceeding cost limits in the annual financial plan of the local government budgetary entities and the budget institutions may be considered a violation of public finance discipline, basing on art. 11 sec. 1 [Journal of Laws of 2017, item 1311].

The study uses a logical and linguistic research method for the analysis of provisions of law. Moreover, the analysis of the judgments of the Chief Adjudicating Commission was carried out. To a limited extent, the literature of the subject was analyzed due to the lack of studies closely related to the theme of the article.

The concept of expenditures and costs

The Public Finance Act and the Act on liability for violation of public finance discipline do not define the terms „expenditures” and „costs”. This was noticed in the judgment of the Chief Adjudicating Commission of 6 September 2007 [Decision No. DF/GKO-17/18/RN-5/07/856], where the lack of definition of „expenditure” was indicated. In this judgment, it was assumed that „the term «expenditure» may be applied in the sense of cash (on cash basis), according to which the expenditure takes place at the time of payment of the obligation”. This

approach is used in budgetary units. Other entities of the public finance sector, including budgetary entities, use accrual accounting in planning, recording and reporting, which means that the key reference is revenue (recorded mainly at the moment when receivables arise) and costs (recorded mainly at the moment when liability arise), and not income and expenditures.

In the absence of a definition of costs and expenditures in the Public Finance Act and the Act on liability for violation of public finance discipline, definitions of these concepts should be derived from other acts of law, as well as from the Polish language dictionary [the Polish Language Dictionary]. Provisions of art. 3 sec. 1 points 31-32 of the Accounting Act [Journal of Laws of 2016, item 1047] define the „costs” as follows:

- 1) costs and losses – probable decreases, in a certain reporting period, of economic benefits, with a reliably determined value, in a form of a decrease in the value of assets, or an increase in the value of liabilities and reserves, that will lead to a decrease in equity capital or increase of its shortfall in a different way than withdrawal of funds by shareholders or owners;
- 2) other operating costs and revenues - costs and revenues indirectly related to the operating activity of the entity, in particular costs and revenues related to:
 - a) social activities,
 - b) the sale of fixed assets, fixed assets under construction, intangible assets, as well as immovable property and intangible assets included in the investment,
 - c) maintaining real estate and intangible assets included in the investment, including updating the value of these investments, as well as their reclassification to fixed assets and intangible assets accordingly, if the market value or otherwise determined fair value was used to assess the value of the investment,
 - d) write-off of receivables and liabilities which are barred, cancelled, and uncollectable, with the exception of receivables and liabilities of a non-payable public nature,
 - e) establishing and terminating the reserves, with the exception of the reserves related to financial operations,
 - f) write-offs updating the value of assets and their adjustments, except for write-downs incurring financial costs,
 - g) damages and penalties,
 - h) the transfer or receipt of assets free of charge, including donations, and including cash for other purposes than subsidies for selling prices, acquisition or production of fixed assets, fixed assets under construction or intangible assets,
 - i) random events.

Annex No. 1 to the Accounting Act indicates that the expenditures are: deliveries and services, net remuneration, social and health insurance, and other benefits, taxes and fees of public nature, and other operating expenses.

The provision of art. 25b sec. 2 of the Act on personal income tax [Journal of Laws of 2016, item 2032] indicates that the expenditure is the value of assets accumulated in the tax year or the amount of funds spent in the tax year when it is not possible to determine the tax year in which the funds were collected. In the Act on corporate income tax, the concept of „expenditure” occurs in the context of indicating which expenses constitute tax-deductible costs, e.g. art. 15 sec. 1d [Journal of Laws of 2018, item 1036], i.e. the costs of earning of the revenue are also expenses incurred by the employer to ensure the correct implementation of the employee pension scheme within the meaning of the provisions on employee pension schemes and, among others, in the following sections: 1e, 1f, 1h, 1n of the art. 15 of the Act on corporate income tax [Journal of Laws of 2018, item 1036].

According to the Polish language dictionary [The Polish Language Dictionary]:

- 1) an expenditure is „a sum to be spent or a sum spent on something”,
- 2) public expenditures are „cash disbursed by the state and local governments for the implementation of their tasks”,
- 3) a cost is „a sum of money spent on buying or paying for something”,
- 4) costs are „expenditures incurred by an enterprise to produce a specific product”,
- 5) a tax deductible cost is „a specific type of costs that can be deducted by a taxpayer from earned income”.

The budget institution obtains its legal personality, i.e. it becomes a legal person, upon being registered in the National Court Register [Journal of Laws of 2017, item 2077, art. 23 sec. 5]. The provision of art. 6 of the Act on corporate income tax [Journal of Laws of 2018, item 1036], concerning corporate exemptions from corporate tax, does not indicate the budget institution as an entity exempted from paying the tax in question. This means that the budget institutions will be subject to the provisions of the Act on corporate income tax, regarding the eligibility of expenditures as tax-deductible expenses. The same applies to the local government budgetary entity, that, as another organizational unit without legal personality, is a taxpayer of corporate income tax, on the basis of art. 1 sec. 2 of the abovementioned Act [Journal of Laws of 2018, item 1036]¹. The provisions of the Act on corporate income tax, i.e. art. 15 sec. 1d, 1e, 1f, 1h, 1n, [Journal of Laws of 2018, item 1036] conclude that there is a connection between expenditures and costs of earning of the revenue, which means that not every expenditure is tax-deductible. In a budget institution, as in other entities with legal personality and organizational units without legal personality, i.e. local government budgetary entities, not every expenditure will be a tax-deductible

¹ Also [Letter of 13.03.2017].

cost. The provisions of the Accounting Act, the Act on personal income tax, the Act on corporate income tax and dictionary definitions indicate that „expenditures” and „costs” are not identical concepts. In the budget institution and in the local government budgetary entity, expenditures and costs can not be equated. Expenditures can be considered as costs when they constitute tax deductible costs.

Relying on the judgment of the Chief Adjudicating Committee of 6 September 2007 [Decision No. DF/GKO-17/18/RN-5/07/856], in the literature there was an opinion expressed that incurring costs over the limit specified in the financial plan of the public finance sector unit means also exceeding the scope of the authorization to make expenditures [Kościńska-Paszkowska, 2012]. In view of the above considerations, this view should be considered as not fully correct.

Penalizing cost overruns in annual financial plans *de lege ferenda*

The cases of violation of the public finance discipline in local government budgetary entities are considered by the regional adjudicating commissions at the regional accounting chambers [Journal of Laws of 2017, item 1311, art. 51]. Budget institutions can be created by [Journal of Laws of 2017, item 2077, art. 23 sec. 2]:

- 1) the minister or the Chief of the Chancellery of the Prime Minister, with the consent of the Council of Ministers, given at request,
- 2) the body or the head of the unit referred to in art. 139 sec. 2 of the Public Finance Act [Journal of Laws of 2017, item 2077], i.e. the Sejm Chancellery, the Senate Chancellery, the Chancellery of the President of the Republic of Poland, the Constitutional Tribunal, the Supreme Audit Chamber, the Supreme Court, the Supreme Administrative Court together with regional administrative courts, the National Judicial Council, common courts, Ombudsman, Ombudsman for Children, The National Council for Radio and Television Broadcasting, the Inspector General for Personal Data Protection, the Institute of National Remembrance - the Commission for the Prosecution of Crimes against the Polish Nation, the National Electoral Office and the National Labor Inspectorate.

For the budget institution, in cases concerning violation of public finance discipline, the following bodies are competent: the interdepartmental adjudicating commission [Journal of Laws of 2017, item 1311, art. 48-49a] and the adjudicating commission at the Head of the Chancellery of the Prime Minister [Journal of Laws of 2017, item 1311, art. 50].

The provisions of acts of law, on the basis of which a penalty may be sentenced, should be interpreted strictly in accordance with the literal wording. This

means that only exceeding the funds for property expenses in the annual plan of the budget institution [Journal of Laws of 2017, item 2077, art. 24 sec. 2 point 4] may be, on the basis of art. 11 sec. 1 of the Act on liability for violation of public finance discipline [Journal of Laws of 2017, item 1311] in conjunction with the art. 44 sec. 1 point 3 of the Public Finance Act [Journal of Laws of 2017, item 2077] recognized as a violation of public finance discipline. According to the rules of *nullum crimen sine lege* (no crime without a legal provision), *nulla poena sine lege* (no penalty without a legal provision; criminal liability is subject to the person only on the basis of applicable law), *nullum crimen sine lege penali anteriori* (no crime without prior criminal law; there is no crime if a deed was committed before the entry into force of the criminal law), cost overruns in the annual financial plan of the local government budgetary entity and the budget institution can not be considered a violation of public finance discipline, since art. 11 sec. 1 of the Act on liability for violation of public finance discipline [Journal of Laws of 2017, item 1311] penalizes only making of expenditures (and not costs) without authorization or exceeding the authorization in the financial plan.

Lack of precision when formulating the provisions of the Act on liability for violation of public finance discipline and its subsequent amendments can not be a justification for adjudicating commissions to use the expansive interpretation of the art. 11 sec. 1 of the Act on liability for violation of public finance discipline [Journal of Laws of 2017, item 1311] and finding the accused guilty of exceeding the costs in the annual financial plans of the local government budgetary entities and the budget institutions. If the national legislature wants that the exceeding the costs specified in the annual financial plan of a budget institution and a local government budgetary entity was a violation of the public finance discipline, then the provision of art. 11 sec. 1 [Journal of Laws of 2017, item 1311] should be changed and it could have the following wording: „the breach of public finance discipline is cost overrun or making expenditure from public funds without authorization specified by the budgetary act, budgetary resolution or financial plan, or exceeding the scope of this authorization, or in violation of the provisions regarding particular types of expenditures or costs”. Without indicating in the Act on liability for violation of the public finance discipline that the violation is the execution of costs greater than those specified in the annual financial plan of a local government budgetary entity and a budget institution, persons accused of violating art. 11 sec. 1 of this Act, due to the execution of costs greater than those specified in the financial plan, should be acquitted on the basis of art. 78 sec. 1 point 2 in conjunction with sec. 3 [Journal of Laws of 2017, item 1311].

Summary

The conducted analysis of the terms „expenditures” and „costs” indicates that they are not identical. There is a relationship between them when the expenditure can be considered a tax-deductible cost. Not every expenditure based on the provisions of the Act on corporate income tax, to which the budget institution and the local government budgetary entity is subject, may be considered as a tax-deductible cost. The provision of art. 11 sec. 1 of the Act on liability for violation of public finance discipline [Journal of Laws of 2017, item 1311] indicates that the violation of the public finance discipline is making public expenditure without authorization, as specified in the budgetary act, budgetary resolution or financial plan, or exceeding the scope of this authorization, or in violation of the provisions concerning the individual types of expenditures. The above-mentioned provision does not regulate the exceeding of costs in annual financial plans. In the budget institution, a violation of art. 11 sec. 1 of this Act [Journal of Laws of 2017, item 1311], can take place only in the scope of property expenditures, which, as the only expenditures in the art. 24 sec. 2 point of the Public Finance Act [Journal of Laws of 2017, item 2077], are listed in the annual financial plan. The financial plan of the local government budgetary entity does not contain any expenditure items [Journal of Laws of 2017, item 2077, art. 15 sec. 2], therefore in the local government budgetary entities there can be no violation of public finance discipline, regulated in art. 11 sec. 1 [Journal of Laws of 2017, item 1311]. Penalizing provisions should be interpreted strictly, while all doubts should be pronounced in favor of the accused, in accordance with the *in dubio pro reo* principle (*iudicandum est*) (in doubt, the case should be ruled in favor of the accused) and *in dubio pro libertate* principle (in doubt, the case should be ruled in favor of the defendant), and the expansive interpretation is unacceptable, as it is an overinterpretation.

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The Act of 27 August 2009 on public finance, consolidated text Journal of Laws of 2017, item 2077.

Summary

The text concerns the analysis of the possibility of recognizing, as a violation of the public finance discipline, exceeding costs in the financial plan by certain public finance sector units, i.e. local government budgetary entities and budget institutions. The Act on violation of public finance discipline penalizes expenditure overdrafts. The conducted analyzes showed that the concepts of „costs” and „expenditures” are not identical. It was found that in the budget institution there may be a violation of the public finance discipline in the scope of property expenditures, which are the only ones listed in the annual financial plan.

Keywords: expenditure, cost, public finance discipline

PRZEKROCZENIE PLANU FINANSOWEGO W ZAKRESIE KOSZTÓW W SAMORZĄDOWYCH ZAKŁADACH BUDŻETOWYCH I INSTYTUCJACH GOSPODARKI BUDŻETOWEJ JAKO NARUSZENIE DYSCYPLINY FINANSÓW PUBLICZNYCH

Streszczenie

W artykule przeanalizowano możliwości uznania za naruszenie dyscypliny finansów publicznych przekroczenia przez niektóre jednostki sektora finansów publicznych, tj. samorządowe zakłady budżetowe i instytucje gospodarki budżetowej, kosztów w planie finansowym. Ustawa o naruszeniu dyscypliny finansów publicznych penalizuje przekroczenie wydatków. Przeprowadzone analizy wykazały, że pojęcia kosztów i wydatków nie są tożsame. Stwierdzono, że w instytucji gospodarki budżetowej może nastąpić naruszenie dyscypliny finansów publicznych w zakresie wydatków majątkowych, które jako jedyne wymienione są w rocznym planie finansowym.

Słowa kluczowe: wydatek, koszt, dyscyplina finansów publicznych