

PUBLIC PROPERTY: INCOME OF MUNICIPALITIES BUDGETS IN LITHUANIA

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Abstract

One of the ways to purchase public property – formation of municipalities' budgets' income – is analyzed in the article. Also the authors analyze a structure of municipalities' budget income. Income of municipalities is the most significant part of municipalities' financial property which makes the financial foundation of a local municipality. Collection of municipalities' budgets' funds is based on local significance necessity of financing programs implementation. Principles of financial independence of local municipal organs established in European local municipal charter are presented to the readers: subsidiary, proportion, limitation of appointing objective subsidies, fiscal independence, variety and flexibility of income, solidarity, consultations, a right to participate in financial market, and implementation of these principles in Lithuania is analyzed

Key words

Public property, municipalities' property, financial property of municipalities, finances of municipalities, income of municipalities, fiscal decentralization.

Property of municipality is considered to be any property that is necessary for territorial administration unit and which according to law provisions are assigned to ownership of municipalities. Property of municipalities of the Republic of Lithuania consists of fixed tangible and intangible assets, current tangible and financial assets. Fixed tangible assets of a municipality is such property that participates in production or service processes many times and does not wear in one year preserving its natural barter form and value of its purchase is not smaller than established by the Government, that are: buildings and constructions of municipality, equipment and other objects of real estate belonging to a municipality by property rights; pieces of land of non-agricultural purpose transferred to the ownership of a municipality according to the order established by laws; movable and immovable cultural values and monuments of local significance belonging to a municipality by the property rights; other movable fixed intangible assets. Intangible property of municipalities is a right to use heraldry objects of municipalities; patents and licenses obtained on behalf of companies, institutions and organizations of a municipality, also rights gained from patents and marks of certification of licenses, technical design documents, programs for processing information and results of intellectual activity; other intangible property. Current tangible assets of municipalities are a property intended to be used or sold in one year or a purchase value of which is smaller than a value established by the Government for fixed tangible assets. Financial assets of municipalities are income of a municipality's budget; securities belonging to municipalities according to property rights and interests gained from these securities; net income, which is not included into a municipality's budget, received while managing and using fixed tangible assets of a municipality or disposing them; a claim to loans granted by municipalities; capital of municipality's companies and their net profit.

The property can become a public property by general civil legal means and by special means that are not common for legal relationship of private property.

General means for purchasing public property are regulated by norms of the Civil code of the Republic of Lithuania (purchase of derelict, transference of a found thing to the ownership of the state, the state's and a municipality's property right to inherit the property), whereas special means, for example, when collecting taxes, fees, taking a chose for needs of society or confiscating property, are regulated by norms established in separate acts on public law (public purchase, fees and other compulsory payments and confiscation of property).

Taxes, fees and other compulsory payments are distributed to budgets of the state and municipalities and are considered as fixed financial assets of the state and municipalities.

Property right of the state and municipalities to the collected taxes, fees and other compulsory payments is caused by duly performance of functions to collect taxes from private and public legal and natural persons and taxpayers that are assigned by legal acts on taxation to the authorized institution – State Tax Inspectorate.

Order of assigning, collecting and distributing taxes, fees and other compulsory payments is established by the Republic of Lithuania law on tax administration which also regulates other related questions.

In this article the authors analyze income of municipalities' budgets and how they are administrated and used. Moreover other peculiarities of formatting income of municipalities' budgets and implementation of municipalities' budgets are revealed in the article.

Lithuanian budgetary system is composed of independent state budget of the Republic of Lithuania and independent budgets of municipalities. State budget of the Republic of Lithuania is a plan of state budget income and assignments for a fiscal year approved by the Parliament. Budget of municipalities is a plan for a municipal's budget income and assignments for a fiscal year ratified by a council of the municipality¹. Funds from the state budget are used for financing co-state needs. In municipalities' budgets funds for financing social, economic and other programs of local significance and for maintaining local municipal establishments and institutions are accumulated. Collection of municipalities' budgets' funds is based on a necessity to finance implementation of programs of local significance.

Part 1 of art. 127 of the Constitution² of the Republic of Lithuania provides that Lithuanian budgetary system is made of independent state budget of the Republic of Lithuania and independent budget of local municipalities. Each of 60 municipalities forms and approves its budgets every year. This right (as well as duty) is established in art.121, part 1 of the Constitution of the Republic of Lithuania. Budgets approved by local municipalities together with the state budget of the Republic of Lithuania become a constituent part of Lithuanian budgetary system.

Municipalities have to follow the established order while preparing, approving and executing their budgets. The order has to be understood not only as actions the purpose of which is to prepare and approve a budget (as a document having legal operation) but also as requirements for the content and form of this document. The same classification of income and assignments and the same principles of preparing accounting and accountability are used while

¹ The Republic of Lithuania law on formation of a budget, 30 July, 1990, No. I-430 (Valstybes zinios., 1990, No. 24-596; 2003, No. 117-5321).

² Constitution of the Republic of Lithuania// Valstybes zinios. 1992, No.33-1014.

implementing publicity and transparency principles of public finances, including the ones of municipalities, and while preparing and approving budgets of municipalities.

Finance departments of municipalities' administration when preparing projects of municipalities' budgets follow these main regulations³ of preparing and approving budgets of municipalities:

- Executive institutions of the municipalities organize a preparation of projects for budgets of municipalities. Until 2003 projects for budgets of municipalities were prepared according to the order established by the board of municipalities. Currently because of absence of board institutional management level, an administration of a municipality is responsible for preparation of budget projects.
- Projects for municipalities' budgets are prepared according to financial indexes of the municipalities' budgets approved by the Parliament of the Republic of Lithuania, data of state statistics and social, economic and other programs approved by a council of a municipality. It is recommended for municipalities while forming budgets of municipalities to apply principles of strategic planning and forming a budget according to programs provided in Methodology of Strategic Planning⁴, supplemented accordingly to own needs.
- Administrators for assigning budgets of municipalities following the order of preparing projects for budgets of municipalities established by a director of municipalities' administration prepare projects of their statement of costs and organize preparation of projects of statements of costs of subordinate institutions. Administrators for assigning budgets of municipalities are responsible for correct preparation of their and subordinate institutions' statements of costs.
- Administrations of municipalities check whether calculations presented in projects of statements of costs are correct, economy mode is kept and whether assignments for covering current debts are intended and specify and include assignments into projects of municipalities' budgets if necessary.
- Administrations of municipalities present the prepared projects of municipalities' budgets to councils of municipalities. Councils of municipalities consider budget projects considering notice of administration of municipalities, suggestions and conclusions of committees of municipalities' councils.

In Lithuania municipalities prepare budget projects according to the laws of the Republic of Lithuania, financial indexes of municipalities' budgets approved by the Parliament of the Republic of Lithuania, data of official statistics, social and economic programs approved by

³ The regulations are excluded considering the resolution issued by the Government of the Republic of Lithuania No. 751, 15 June, 2004 "Regarding approval of rules for forming and executing the state budget and municipalities' budgets of the Republic of Lithuania"// Valstybes zinios. 2004, No. 96-3531.

⁴ The resolution issued by the Government of the Republic of Lithuania No.902, 16 July, 2004 "Regarding adjustment of the resolution issued by the Government No. 827, 6 June, 2002 "Regarding approval of methodology of strategic planning""//Valstybes zinios, 2004, No. 112-4187.

councils of municipalities as well as programs prepared by administrators for assigning budgets of municipalities and their estimation projects.

It is recommended for municipalities while forming budgets of municipalities to apply principles of strategic planning and forming a budget according to programs provided in Methodology of Strategic Planning⁵, supplemented accordingly to own needs

While analyzing practice of municipalities for preparing projects of municipalities' budgets in Lithuania, we can exclude two different orders of preparing projects of municipalities' budgets.

The first order of preparing projects of municipalities' budgets. Projects of municipalities' budgets are prepared according to programs of administrators for assigning municipalities' budgets and their estimate projects, which can but do not have to be approved by councils of municipalities (whether councils of municipalities approve programs of assignment administrators and their estimate projects or not depend on the budget preparation order established by each municipality according to which projects of municipalities' budgets are prepared). Assignment administrators present their prepared programs and estimate projects to executive institutions of municipalities which considering the programs and their estimate projects prepare a budget project. Such order exists in Vilkaviskis district municipality, Marijampole district municipality and in others.

The second order of preparing projects of municipalities' budgets. Municipalities apply principles of strategic planning and budget forming according to programs provided in Methodology of Strategic Planning⁶, supplemented accordingly to own needs while forming budgets of municipalities. Assignment administrators, as in the case of the first order, prepare their programs and their estimate projects but these programs and their estimate projects are based on principles of strategic planning and budget formation according to programs, i.e., general plans of municipalities, long-lasting development plans of municipalities and average length plans of municipalities' activity (three-year plans). This order is more modern (newer) in our country and it is only of recommended nature still. Such order exists in Vilnius town municipality, Klaipeda town municipality, etc.

Municipalities while preparing projects of municipalities' budgets have to provide in them not only assignments but budget income as well.

Directors of municipalities' administrations present the prepared projects of municipalities' budgets to councils of municipalities according to the order of established by the regulations of municipalities' councils.

Councils of municipalities discuss projects of municipalities' budgets considering notices of executive institutions of municipalities, suggestions and conclusions of committees of municipalities' councils.

⁵ The resolution issued by the Government of the Republic of Lithuania No.902, 16 July, 2004 "Regarding adjustment of the resolution issued by the Government No. 827, 6 June, 2002 "Regarding approval of methodology of strategic planning""//Valstybes zinios, 2004, No. 112-4187.

⁶ The resolution issued by the Government of the Republic of Lithuania No.902, 16 July, 2004 "Regarding adjustment of the resolution issued by the Government No. 827, 6 June, 2002 "Regarding approval of methodology of strategic planning""//Valstybes zinios, 2004, No. 112-4187.

Committees of municipalities' councils are composed of council members by the decision of a municipality's council. Representatives of society, experts and public officials can participate in the work of committees as advisors according to the order established by the regulations of activity of a municipalities' council. It is obligatory to form Control committee in every municipality. Other committees are formed according to a decision of municipalities' councils. While forming committees a principle of proportional representation of majority and minority has to be followed. Councils of municipalities determinate numbers of committees and their members and their powers, except the Control Committee. Work order of committees is established by the regulations of activity of a municipality's council.

Committees according to their competence make advisory decisions.

Thus projects prepared by municipalities' administrations are firstly considered by an appropriate committee of a municipality's council and only then budget projects are considered in the councils of municipalities considering decisions and conclusions made by this committee.

Councils of municipalities approve budgets of municipalities. The budget is approved by the decision of a municipality's council. In a decision the following should be indicated:

1. total sum of income and its distributions according to a type of income;
2. total sum of assignments and their distribution to budgetary institutions or to departments of municipalities' administration for implementing programs. Assignations for costs (including salary) and purchasing property.

Councils of municipalities approve budgets within two months from approval of state budget and financial indexes of municipalities' budgets. If budgets of municipalities are not approved on time, assignments at the beginning of year until approval of budgets cannot exceed 1/12 assignments of the last year budgets every month. In this case, assignments of every administrator for assignments cannot exceed 1/12 funds provided for this administrator for assignments by the last year appropriate budget and are intended only for financing continuous activity and commitments provided in laws (except programs of European Union financial support and of general financing, for which assignments are transferred according to concluded agreements) and for covering debts.

Thus approval of municipalities' budgets is directly related with approval of state budget and financial indexes in the Parliament.

The Parliament has to pass a law on approval of state budget and financial indexes of municipalities' budgets every year until the beginning of new fiscal years (art.131 of the Constitution⁷ of the Republic of Lithuania), i.e. until 1 January.

Art. 132 of the Constitution⁸ of the Republic of Lithuania for state budgets (as well as for municipalities' budgets) provide that if the state budget is not approved on time, its costs at the beginning of the fiscal year every month cannot exceed 1/12 costs of the last year state budget.

⁷ Constitution of the Republic of Lithuania // Valstybes zinios. 1992, No.33-1014.

⁸ Ibid

Councils of municipalities have to approve budgets within two months from approval of state budget and financial indexes of municipalities' budgets, not from their pronouncement or enactment. Municipalities encounter a problem that they have to observe work of the Parliament constantly, when it ratifies the law on approval of state budget and financial indexes of municipalities' budgets. Moreover, not all laws passed by the Parliament are signed by the president of the Republic of Lithuania, a part of them is reasonably returned to the Parliament for retry. Considering the fact that municipalities are liable to subscribe "Valstybes zinios" in order to know what legal acts are passed and when they come into force, therefore it is suggestable to change the first sentence of art. 26, part 5 of the law⁹ on Budget formation and to state it in this way: "Councils of municipalities have to approve budgets within two months from announcing law on approval of state budget and financial indexes of municipalities' budgets in "Valstybes zinios".

If councils of municipalities do not approve budgets within two months from approval of state budget and financial indexes of municipalities' budgets, at the beginning of the year until approval of budgets every month they cannot exceed 1/12 assignments of the last year municipalities' budgets. Moreover, if a municipality do not approve budget until the determined time, funds from state budget to a particular municipality are not transferred temporary until the approval of budget.

While analyzing base of legal acts regarding approval of municipalities' budgets, we noticed a legal problem (ambiguity). Art. 37, part 1 of the law on Local municipal government¹⁰ provides that a budget of a municipality is formed and approved for a fiscal year and procedure of preparation, consideration and approval of municipalities' budgets is established by the law on Budget formation and regulations approved by the decision of the Government.

Art. 26, part 5 of the law on Budget formation¹¹ provides that councils of municipalities approve budgets within two months from approval of state budget and financial indexes of municipalities' budgets. If projects of municipalities' budgets are not approved on time, budgets are executed according to the order established by art.29 of this Law, i.e. assignments at the beginning of year until approval of budgets cannot exceed 1/12 assignments of the last year budgets every month. In this case, assignments of every administrator for assignments cannot exceed 1/12 funds provided for this administrator for assignments by the last year appropriate budget and are intended only for financing continuous activity and commitments provided in laws (except programs of European Union financial support and of general financing, for which assignments are transferred according to concluded agreements) and for covering debts.

Thus, it remains legally unclear from what moment consequences provided in art. 29 of the law on Budget formation¹² are applied: whether a budget is not approved, as it is provided in law on Budget formation, within two months from approval of state budget and financial indexes of municipalities' budgets, or, as it indirectly indicated in art. 37, part 1 of the law on

⁹ Law on Budget formation of the Republic of Lithuania // Valstybes zinios. 2004, No. 4-47; 2005, No. 144-5237.

¹⁰ Law of local municipal government of the Republic of Lithuania // Valstybes zinios. 2000, No. 10-12.

¹¹ Law on Budget formation of the Republic of Lithuania // Valstybes zinios. 2004, No. 4-47; 2005, No. 144-5237.

¹² Ibid

Local municipal government¹³, that a budget of a municipality is formed and approved for one fiscal year, and according to Constitution of the Republic of Lithuania a fiscal year starts on 1 January, thus a conclusion can be made that consequences provided in art. 29 of the law on Budget formation¹⁴ arise if municipalities do not approve budgets until 1 January of a fiscal year.

Councils of municipalities while approving income of municipalities' budgets intend funds from state budget according to sums (provided in laws on approval of state budget and financial indexes of municipalities' budgets) approved by the Parliament and while approving distribution of assignments for programs they indicate how much it is intended for special programs.

Budgets of municipalities are approved without deficit, i.e. difference between income and assignments of the budget cannot be negative.

Directors of municipalities' administrations present the approved budgets of municipalities to the Ministry of Finances.

Thus, preparation and approval of municipalities' budgets are directly related with approval of state budget in the Parliament, because only after the Parliament passes the law on approval state budget and financial indexes of municipalities' budgets for a particular fiscal year, municipalities can approve their budgets. Both state budgets and municipalities' budgets have to be approved until the beginning of a fiscal year, i.e. until 1 January, otherwise – every month budgetary costs cannot exceed 1/12 assignments of the last year budget.

Both state budget income and income of municipalities' budgets are financial resources which are a property of state or municipalities and are transferred to budgets of the state or municipalities. These resources are used for executing functions and tasks of municipalities (state). Thus we can classify budgetary income into income of state budget and into income of municipalities' budgets according to which budget they go.

Despite the fact that income of state budget and municipalities' budgets is a complicated phenomenon, this income makes an integrated system. Income of municipalities' budgets can be considered as a part of national income which during a distribution process becomes a property of municipalities and creates a financial base of municipalities' activity.

A structure of municipalities' budgets is caused by the purpose of preparing budgetary document which is to accumulate funds (income) necessary for executing functions of municipalities.

Income of municipalities' budgets is made of tax and non-tax income and subsidies of state budget. Such income is the following:

- a. income from taxes, received by budgets of municipalities according to the laws and other legal acts;

¹³ Law of local municipal government of the Republic of Lithuania // Valstybes zinios. 2000, No. 10-12.

¹⁴ Law on Budget formation of the Republic of Lithuania // Valstybes zinios. 2004, No. 4-47; 2005, No. 144-5237.

- b. income from a property of municipalities (except income received according to the law on Privatization of State's and municipalities' property);
- c. income of municipalities' budgetary institutions for provided services;
- d. fines collected according to the order established by laws;
- e. local fees;
- f. income received from leased or granted for use public land, water bodies of public internal waters fund and from distributing funds for sold public lots of not agricultural purpose according to the order established by the Government;
- g. subsidiaries from state budget and other transferred funds;
- h. benefactions (pecuniary means);
- i. income for balances of municipalities' funds in current accounts;
- j. loans;
- k. other income provided by laws;
- l. payments included into income of municipalities' budgets for realization of fixed tangible and intangible assets;

Just as state budget is an attribute of state's sovereignty, so budgets of municipalities are a guarantee of their independence. In budgets of municipalities there are fund which are disposed by municipalities at their own discretion, to be more precisely, which are used for satisfying needs of a particular community. Budgets of municipalities are the main element of both the state's and municipalities' financial activities. Thus financial resources in budgets of municipalities belong not to one institution of a municipality, but to a municipality itself. Institutions of municipalities only administer funds belonging to a municipality within the limits of their competence.

Thus, although the Constitution¹⁵ of the Republic of Lithuania establishes that budgets of municipalities are independent, the state limits their independence by determining the value of income to budgets of municipalities.

Every year the Parliament by ratification the law on approval of state budget and financial indexes of municipalities' budgets determines values of income and assignments of the state budget. By this law a part of citizens' income tax falling on all budgets of municipalities from income to the national budget is approved to municipalities.

Special objective subsidiaries of the state budget and general subsidiaries of the state budget and their compensations are approved by the law on approval the state budget and financial indexes of municipalities' budgets. While approving the state budget, compensation values of returnable general subsidiaries are determined in the Parliament.

¹⁵ Constitution of the Republic of Lithuania // Valstybes zinios. 1992, No. 33-1014.

If the Parliament or the Government make decisions in a fiscal year or plans to make decisions that change income and costs of municipalities' budgets the next year, changes of income and costs are compensated, except those changes by which budgets of municipalities decrease because of land rent for public land in a territory of free economical zone used for buying out land from land owners. In a fiscal year a state budget general subsidiary compensation of a sufficient value should be allocated in relationship with changes of income and costs of the municipalities' budget or necessary sums should be taken from budgets of municipalities and the next year a part of citizens' income tax per all budgets of municipalities should be corrected.

If during a fiscal year according to data of annual account of a municipality a smaller amount of income (without subsidiaries of the state budget) was received than it has been prognosticated to receive according to financial indexes of municipalities' budgets of that year, these not received income can be compensated until the end of the fiscal year. Calculating the sum of this not received income, income received by municipalities is enlarged with calculable payments which were not received because of tax concessions made by decisions of a council of a municipality.

If executing the state budget the received excess income and assignments that have lost their purpose are not enough to cover tax income not received by budgets of municipalities, not more than 30 per cent of municipalities' budgets, prognosticated income and exceed income from citizens' income tax of which have been received, can be used for compensating them. A separate municipality's exceed sum of citizens' income tax allocated for compensation of not received income cannot exceed 50 per cent of the general exceed income of that municipality. If the mentioned funds are not sufficient for covering not received income of all municipalities, they are distributed to budgets of municipalities up to the equal level of not received income.

After the end of a fiscal year, the Government passes a resolution until 1 April and indicates sums of funds which municipalities have to transfer to the account of the State's treasury and sums of funds that are to be distributed for municipalities for compensating their not received income.

The Government or its authorized institution has a right to take to the state budget those sums that are to be transferred but have not been transferred from municipalities' budgets to the state budget as it has been indicated in the resolution passed by the Government.

Thus a fair part of municipalities' budgets is made of amounts of income and assignments received from the state budget, the value of which is calculated according to the order established by the legal acts.

A significance of municipalities' budgets in a budgetary system of the state decreases every year. During the last several years municipalities' budgets in Lithuanian national budget made only approximately 15 per cent, despite the fact that each year municipalities have to execute more and more functions.

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