Budget Investments in Russia: Not Investment 
but Transformation of Public Property

According to the Russian legislation, the budget investments refer to a type of budget expenses allotted on the grounds of economic substance of a debit transaction.

The legislation and doctrinal sources refer to different definitions for investment. In the large sense of the word, investment is understood as all types of assets (funds) putted in economic activity with a view to obtain an income. One

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should distinguish the notions of investment and investment activity, which means the act of transformation of investment resources in investments\(^5\).

In economics, investment can be considered as a conscious renunciation to increase the current consumption in favour of relatively large income in the future (or future saving of expenses), which will ensure larger total consumption\(^6\). In other words, investment is “a part of income for this period, which was not used for consumption”\(^7\).

The sources of investments can be, first, savings and also borrowings and a variety of assets measurable in monetary terms. In connection with such a broad approach to investments, there is a notion of investing that is the act of putting the above-mentioned assets into objects of investments\(^8\).

There are many definitions for investment\(^9\) but all of them have the semantic meaning of the notion, which derives from Latin “invest” – to put something and what is more to put something with the expectation of obtaining a future worthwhile result. However, the other interpretations of this term are possible: from English “in vest” or (in most translations) from English “investments”\(^10\).

The last meaning (investments) is historically the first for the Russian reality. O.A. Akopyan notes that before 1991 “when the domestic investment legislation began its forming, the notion of “investment” was subordinated to the notion of “capital investment”\(^11\). Initially, “investment”, “capital investments” and “fixed assets” were used in legal and economic literature, and regulatory normative

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\(^6\) Investments. Textbook for Bachelors / under the editorship of V.V. Kovalev, V.V. Ivanov, V.A. Lyalin–M. 2014. P.9


\(^9\) The review of approaches to the notion of investment is given in Investments. Textbook for Bachelors / under the editorship of V.V. Kovalev, V.V. Ivanov, V.A. Lyalin – M. 2014. P.20-22.


acts as very close in meaning, as different sides of the same event.

Today “capital investment” can be considered as a form of investment activities when an object of investment is fixed assets. In international relations, the cross-border investment is a special event and an object of special regulation\(^\text{12}\). This state of affairs is fixed in the domestic legislation. The RSFSR law dated June 26, 1991 No 1488-I “On Investment Activity in RSFSR”\(^\text{13}\) was actually transformed into two laws, which determine two different approaches to the notion of investment. The Federal Law dated February 25, 1999 No 39-FZ “On Investment Activity in the Russian Federation in the Form of Capital Investments”\(^\text{14}\) refers, as appears from its title, to the investment in the form of capital investment that is fixed asset investment. The federal law dated July 9, 1999 No 160-FZ “On Foreign Investments in the Russian Federation”\(^\text{15}\) regulates the commercial activity of foreign investors, which consists in putting money into unlimited number of objects of entrepreneurial activity in the territory of the Russian Federation.

The last approach to investments is determined in the other regulatory legal acts. For example, the Federal Law dated November 28, 2011 No 335-FZ “On Investment Partnership”\(^\text{16}\) and the Federal Law dated November 29, 2001 No 156-FZ “On Investment Funds”\(^\text{17}\) clearly determine securities as a possible object of investment including for foreign issuers. Such investment cannot be determined as capital investment.

Consequently, the notion of investment is diverse, and depends on in which form there are investments (only expenses, that is money or any other property and non-property assets) and what object the investment activity is directed for (for


\(^{16}\) RF Code of Laws. 2011. No 49 (Section 1) Article 7013.

capital investment or acquisition of unlimited number of assets).

The budget legal relations reflect both above-mentioned approaches to investment. Firstly, certain budget expenses for capital investment are directly determined as budget investments. Secondly, budget funds can be invested in different assets. In that case, we have dealings with sovereign funds, which are the Reserve Fund and the National Welfare Fund (articles 96.9 – 96.11 of the Budget Code of the Russian Federation). These funds are formed owing to a part of budget income; their funds are placed in foreign currency and financial assets. Placement of sovereign funds is made in order to save it and to obtain an income that is, in actual fact, a type of investment, which is provided, for example, by the Federal Law “On Investment Funds”. The Federal Treasury carries out the similar activity while managing the rest of money on a single budget account (BCRF Article 166.1). This activity, however, is not determined as investment, and the act of putting temporarily available budget funds into financial assets is not determined as investments.

Then we consider in detail the contents of budget investments according to the budget legislation based on the legal definition. Budget investments distinctly differ from other investments, firstly, in a source and a form of investments, and, secondly, in an object of investment. Most training courses do not even consider budget investments as a type of investments. In such training courses, the notion of investment is essentially related to management of multiple assets acquired in the equity and financial derivatives markets. The specifics of budget investments become clear after analysis of their definitions.

The Budget Code of the Russian Federation (hereinafter referred to as BCRF) determines that the budget investments are budget funds allotted to create or to increase, owing to budget funds, the cost of public (municipal) property (BCRF Article 6). Thus, an object of budget investments practically always is

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fixed assets\textsuperscript{19}, and money allotted from the budget stands as investment. At the same time, the legislator does not hint that the target of budget investments is a future benefit (income, profit or saving). This (absent of future benefit) distinguishes fundamentally the notion of budget investments from the economic notion of investment in commerce.

The legal notion of budget investments refers to that its target direction is \textit{public (municipal) property cost increase}. In other words, increment of a property part of the treasury is carried owing to decrease of its monetary part (budget). We can say in general: under the definition, the budget investment is one of procedures of treasury transformation.

The notion of property and monetary parts of the treasure shall be considered in detail. According to clause 4 of article 214 and clause 4 of article 215 of the Civil Code of the Russian Federation (hereinafter referred to as CCRF) the state (municipal) treasury consists of funds of appropriate budget and other public (municipal) property not secured to public enterprises and institutions. This implies that the state (municipal) treasury can be divided into two parts: budget and undistributed property, or into monetary and non-monetary parts.

The truth is that non-monetary part of the treasure consists of all public property (that is property referred to public or municipal property). The notion of “undistributed property” introduced to the Civil Code of the Russian Federation has rather practical task to separate registered and distributed public property from other public property. The Civil Code of the Russian Federation only regulates certain legal relations regarding a legal status of participants of civil commerce\textsuperscript{20}. At the same time, the relations, developed with regard to public assets or public property, are not always characterized by equality, autonomy of will and property autonomy of their participants.

\textsuperscript{19} The notion of capital is widely interpreted; capital investment herein refers to the act of investing in fixed assets.

\textsuperscript{20} CCRF Article 2.
Beyond the civil law, the relations are regulated by land, forest, water, environmental, budget, public material reserve, mineral resources, precious metals and precious stones, wildlife, fishery and water biological resources, cultivated biological resources, continental shelf, cultural heritage objects legislation, and etc. The above-mentioned list of public relations connected with the treasury is not secret as technical development and other global processes offer new objects to be putted into circulation. Thus, after adoption of the United Nations Framework Convention on Climate Change 1992\textsuperscript{21} the greenhouse gas and precursor quotas appeared. The development of biotechnologies raises an issue of preservation and protection of gene pool of not only agricultural cultures but also a human (nation). Success in research and use of outer space can eventually raise an issue on ownership of space bodies\textsuperscript{22}. Development of the private law necessitated the evaluation of good name and reputation\textsuperscript{23}.

The term “\textit{undistributed property}” used in the Civil Code of the Russian Federation can have different meanings. Actually, “undistributed” implies a certain state as the same property can transfer from undistributed property in distributed property (and vice versa when it is possible). Division of public property for undistributed and other (distributed) is very conditional, and does not meet the

\begin{itemize}
  \item[1996.] RF Code of Laws No 46, article 5204.
  \item[2022] It is necessary to note that today outer space is a territory of common use, which is open for free research by all states. Activity in space is referred in clause i, article 71 of the Constitution of the Russian Federation, Law of the Russian Federation dated August 20, 1993 No 5663-1 in vigor “On Space Activity”, a number of international agreements are adopted with regard to principles governing the activities of states in the exploration and use of outer space, and international liability for damage caused by space objects, and activities of states on the Moon and other celestial bodies, etc.
  \item[2023] It is referred, inter alia, to evaluation of intangible assets (goodwill), which is made according to the International Financial Reporting Standards enacted by the Order of the Ministry of Finance of Russia dated November 25, 2011 No 160п, and to commercial use of the name of Russia and the Russian Federation and their derivates, which use is regulated today by the decree of the Government of the Russian Federation dated February 3, 2010 No 52 “On Approval of the Rules of inclusion in a trade name of a legal entity of the official name “Russian Federation” or “Russia” and their derivates, formerly regulated by the Law of the Russian Federation dated April 2, 1993 No 4737-1 “On Fees for Use of the Names “Russia” and “Russian Federation” and derived words and phrases”.
\end{itemize}

requirement of legal certainty as there is its transient state, and it is difficult to establish a border, beyond which a thing acquiring a particular status ceases to be undistributed or distributed, or withdraws the treasury. It is not clear, whether withdrawal from the treasury means its automatic exclusion from public property.

Thus, the treasury consists of the following parts: undistributed public property, distributed (or registered) public property\(^{24}\) and budget of appropriate public and legal unit. In other words, the treasury is public property and budget funds\(^{25}\).

The analysis of notion and treasury structure has become necessary to make clear a role of budget investments in treasury transformation.

The budget investment is a type of budget expenses, whereby the transfer of budget investments decreases the monetary part of the treasury. At the same time, based on its determination the budget investments finish by increasing non-monetary part of the treasury that is public property (it is mentioned above that there is of no importance whether the property is distributed or not). Consequently, the budget investment is a procedure of internal treasury transformation, while which a proportion of its monetary and non-monetary parts changes\(^ {26}\).

To cover in detail the content of budget investments it is expedient to examine in brief their classification and registration according to the budget legislation.

\(^{24}\) The draft of the federal law No 47538-6 “On Amendments to Section One, Two, Three, Four of the Civil Code of the Russian Federation, and to Certain Legislative Acts of the Russian Federation” (version adopted by the State Duma at the first reading on April 27, 2012) has referred to an article, according to which the public property secured to institutions and enterprises is a distributed treasury (this version has not been adopted).

\(^{25}\) More details see Treasury and Budget – M.: Science. 2014. Chapter 1

\(^{26}\) The notion of “internal transformation” of the treasury arises in comparison of budget investments with other procedures, which represent “internal transformation”. This is privatization (decrease of non-monetary part of the treasury), nationalization (increase of the treasury). In reference to such large legal procedures as budget process and purchasing for public needs, they represent an internal transformation of the treasury exactly in case of exercise of budget investments.
First, as it is mentioned above, the budget investments are budget expenses that are “money paid out of budget” according to BCRF Article 6. Real estate investments and long-term investments refer to capital expenses. According to the Budget Code of the Russian Federation (articles 21, 79), subgroups “Budget Investments” and “Budget Investments in Other Legal Entities” are included in group “Capital Investments in Object of Public (Municipal) Property” of the Unified Classification of Budget Expenses in the Budget System of the Russian Federation. In addition, there are investments at the expense of the Investment Fund of the Russian Federation made in the framework of public-private partnership (BCRF articles 69, 69^1, 79, 80).

Budget investments in objects of public or municipal property according to the list of codes of the budget expenses classification are capital investment in real estate objects of public (municipal) property (code of expense group 400)^27 of the following types:

- budget investments in acquiring real estate objects of federal property in the state defense order (type of expenses 410);
- budget investments in acquiring real estate objects of public (municipal) property (type of expenses 412);
- budget investments in capital construction objects in the state defense order (type of expenses 413);
- budget investments in capital constructions objects of public (municipal) property (type of expenses 414);
- budget investments according to the concession agreements (type of expenses 415).

That is to say that depending on object, we can distinguish budget investments in public (municipal) property aimed to increase the existing objects of the public (municipal) property, and budget investments aimed to create (to

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^27Instruction for procedure of use of budget classification approved by the Order of Ministry of Finance of the Russian Federation dated July 1, 2013 No 65н
acquire) new objects. In this and in another case the budget investments are specially considered in the sphere of state defense order\textsuperscript{28}.

The newly acquired (created) objects at the expense of budget investments can be transferred based on operational management or economic control of the public (municipal) institutions and unitary enterprises or included in general undistributed treasury.

The budget investments from the federal budget are allotted for more than RUB 1.5 billion rubles to the federal foreign institutions and unitary enterprises regardless of the cost, which are decided upon in the form of normative legal acts of the Government of the Russian Federation. A decision concerning other budget investments is made in the form of legal acts of the principal administrators of budget funds (BCRF Article 79).

In budget accounting, budget investments are distinguished as follows: budget investments planned to be submitted to the legal entities are approved as a separate \textit{appendix to a law (decision) on budget}, which specifies the recipients, volumes and targets of allotted budget (BCRF Article 80). Capital budget investment (other budget investments are not provided by the legislation) allotted from the federal budget are included into \textit{the federal target investment program} (BCRF Article 179.1), which is also an appendix to the federal law on federal budget.

There is a clear specific feature for all budget investments including for those, which are targeted to legal entities not being public (municipal) institutions or unitary enterprises. This lies in the fact that provision of investment entails \textit{public cost increase} or \textit{creation of public or municipal property right} by equivalent part of authorized (share) capitals of legal entities, which are recipients of budget investments.

This feature of budget investments calls into doubt the legitimacy of their referring to the budget expenses. It is obvious that payments from the budget in the form of investments shall be accompanied by the receipt (increase) of non-

\textsuperscript{28} See also article 12 of the Federal Law dated December 29, 2012 No 275-FZ “On State Defense Order”.
financial assets\textsuperscript{29}. Thus, in terms of the government finance statistics (GFS), the budget investments are not net expenses\textsuperscript{30}. The result of budget execution, in terms of the GFS, will be expressed in net assets (NA), which are the sum of changes of non-financial assets (NFA) and financial assets (FA) minus changes of liabilities (L)\textsuperscript{31}. These data should be included in the balance of budget execution, which is a part of budget reports for the budgets in the budget system of the Russian Federation (BCRF Article 264.1).

However, the balance of budget execution is not a principal document of budget reports. A final report of budget execution, which is approved by a competent authority, includes data on expenses, incomes and sources of budget deficit financing (BCRF Article 264.1). According to the current rules of budget accounting and reporting, the non-financial assets including those obtained owing to budget investments remain beyond a budget balance and do not affect a final report of its execution, which is a result of cash flow of funds. This situation leaves unanswered the inevitable question: \textit{how adequate is public property increase made by budget investments (expenses)?}

The goal of investment result measurement is not easy. If we remember that the main economic criterion of investment is a future income or saving, then we need to introduce this result in reports. That is, the result of budget investments should be no increase of public property (non-monetary part of the treasury) but \textit{a future benefit}\textsuperscript{32}. The current legislation does not establish a mechanism that would allow seeing the future benefits from budget investments.

\textsuperscript{29} Code 300, according to the classification of operations of public management sector (BCRF Article 23.1).


\textsuperscript{31} That is NA = NFA changes + NA changes – O changes

\textsuperscript{32} In this context, the teleological criterion for investment differentiation proposed by O.A. Akopyan is justified: see Konyukhova T.V. Legal Regulation of Budget Investments // Russian Law Journal. 2010. No 10.
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Annotation

The article covers the budget investments, which can be understood both as a type of budget expenses and as a procedure of transformation of budget funds to public property. At the same time, budget and public property are parts of the state (municipal) treasury. The article raises an issue of no account taken of future benefits when exercising budget investments.

Key words:

budget, investments, budget expenses, public and municipal property, state and municipal treasury.