

National Revenue Administration

National treasury administration – proposition for consolidation of the treasury bodies and sealing the tax system

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The article is devoted to evaluation of the proposed reform of treasury administration expressed in a parliamentary draft bill concerning National Treasury Administration (form No. 826). Analysis focuses on one of the most significant assumptions – countering avoidance and evasion of taxation. Another important objective of the reform is intensification of administrative cooperation in terms of taxation with administrations of other countries, including first and foremost Member States of the European Union. The article intends to evaluate whether the objectives proposed in the draft bill on National Treasury Administration are reflected in the solutions and constructions that it proposes and which could effectively counter the phenomenon of tax avoidance and evasion.

Keywords: national revenue administration, tax avoidance, tax evasion

JEL Classification: K34

1. Introduction

One of the fundamental goals of the authors of the reform of revenue administration as presented in the parliamentary draft Act on National Revenue Administration (Publication No. 826)¹ is

¹ Furthermore, these issues are also comprised in the Publication of the Sejm No. 827 (draft act – introductory provisions for the NRA Act).

to adjust its structures to phenomena occurring as part of broadly understood national and international tax optimisation. An important objective of the reform is intensification of administrative cooperation in terms of taxation with administrations of other countries, including, first and foremost, member states of the European Union.

In times of the global economy, Poland has been faced with significant problems, including

tax evasion and tax avoidance both on a national and international level. Dramatic growth of these pathological phenomena is a consequence of aggressive tax optimisation. The costs that Poland bears due to the inability to skilfully and effectively counteract and eradicate these phenomena are huge. Losses arising from tax avoidance and evasion in Poland are estimated to be PLN 80–100 billion a year². Considering the scale of the problem, limitation of tax fraud through a reform of the National Revenue Administration should be deemed to be a perfectly legitimate aim. It is also noteworthy that another important objective of the reform is improvement of the effectiveness of collection of tax and customs duties.

However, one should consider whether the objectives proposed in the draft National Revenue Administration Act are reflected in the solutions and constructions the draft Act offers, that is, whether those could effectively counter the phenomenon of tax avoidance and evasion. It should also be deliberated, if the reform that is to be carried out for sake of consolidation of the fiscal apparatus (understood as centralization in the draft Act) will be an appropriate antidote allowing to tighten the tax system. It is particularly important in the context of objections, which are currently being raised, that the organizational structure of the fiscal apparatus subordinated to the Minister of Finance is overly fragmented, namely, that its particular parts (concerned with taxation, control, and customs) function in a disconnected way, although the law provides for their coordination and mutual cooperation with one another.

2. Evaluation Criteria

The draft NRA Act is intended to ensure a uniform and even universal – from the point of view of the institutional solutions in place earlier – ad-

² *Analysis of the legal and tax situation of international and national holding companies operating in the member countries of the European Union between 2013–2015*. Report commissioned by the European Commission (Brussels, III.2016).

ministrative apparatus of collection of public levies in Poland. In accordance with the provisions of Article 1, section 1 of the draft; it is intended to be “a specialized governmental administration carrying out tasks comprising collection of tax revenues, customs duties, fees, and non-tax budgetary payments as well as protection of the interests of State Treasury and the customs territory of the European Union, which ensures that the taxpayer, taxable person, and enterpriser³ are serviced and supported in correct fulfilment of their tax and customs obligations.”

As far as the legislative intentions are concerned, uniformity is understood as ensuring uniform management. For such management ensures better monitoring of taxpayers’ ability to pay as well as the mutual transactional relations between them that influence the amount of their tax liabilities; such management also ensures better coordination of activity of the individual elements of the fiscal apparatus – which have not been coordinated well so far and so have inadequately responded to erosion of individual bases of public levies, which resulted from illegal taxpayers’ behaviours.

Within the framework of a disciplined and strictly scientific interpretation, the project promoters of the NRA Act intend to improve coordination of the fiscal apparatus. From a classic scientific perspective, coordination of a multi-element social system (e.g., a fiscal apparatus of a country) is achieved through:

- (a) *establishment of performance standards*, consisting in organizing the activities of individual organizational units in accordance with a certain routine dependant on the requirements of the context as well as introducing some fixed rules governing behaviours in repetitive situations occurring in an organisation;
- (b) *adoption of a plan*, consisting in providing all important activities in an organisation with a spatial and time framework and defining mutual relationships among them;

³ The correct linguistic form should, of course, be plural.

(c) *ensuring there is a possibility of mutual adjustment of activities* (in other words: receiving feedback), which additionally requires that a mechanism for the fast exchange of information is in place within the framework of operation of a given system.⁴

3. Tax Avoidance and Tax Evasion

One of the main objectives of the draft NRA Act is counteraction and even eradication of tax avoidance and tax evasion, which in this context may be equated with tightening of the tax system. Therefore, in this context, the term used in the draft Act, that is, “tax fraud” should be deemed an unnecessary simplification. The phenomena of tax avoidance and tax evasion as well as what can be clumsily referred to “tax fraud” are substantially different both in terms of configuration of operation and consequences. Thus, countering these phenomena should be adjusted to their specific nature – including planning and selection of structural solutions within revenue administration, which should be different.

Tax avoidance is used with a double meaning. In broad terms, it is any attempt made with the use of legal measures to avoid or lower taxation that would otherwise arise. Hence, there are several possible behaviours in this case and the motive behind choosing one is the tax benefit as without such benefit, the given option would not be selected in the course of normal everyday and business activity undertaken by a taxpayer. In narrow terms, tax avoidance is understood as an unacceptable reduction in a tax burden. One may assume that while tax savings and planning remain outside the scope that the legislator reasonably wanted and could have covered by tax regulation, tax avoidance within this meaning is a problem that the legislator intended to cover by the regulation but has not. The outcome is that the taxpayer takes actions that do not give rise to a certain tax burden, but analogous economic ef-

⁴ J. D. Thompson, *Organizations in Action*, Mc Graw-Hill, New York 1967, pp. 55–56.

fects would be achieved with the steps covered by a specific legal and tax regulation⁵.

The narrow understanding of tax avoidance also combines it with “circumvention of tax” (law). In numerous systems of law, such activity is also referred to as “indirect breach of tax law”. Within its framework, neither legal prohibitions nor instructions are breached directly because formal actions are taken, which are permitted by the law but whose principal aim is not acceptable by the legal order. In response to such actions, revenue administration may apply the legal norms existing in the system of laws, whose function is to eliminate the effects that the taxpayer intended to achieve, that is, the anti-avoidance rules⁶.

Whereas tax evasion mentioned earlier is always an illegal breach of tax law. This term covers any actions intentionally and knowingly undertaken by a taxpayer, which are against tax law and are intended to lower their tax burden. Tax evasion is such taxpayers’ activity that allows them to evade a tax obligations imposed on them by the law through operations that are forbidden by the law. Such prohibited activity may consist in well-thought-out behaviour that is contrary to the provisions of tax law. However, tax evasion usually takes place when the taxpayer does not declare income originating from illegal sources for tax purposes. In the broadest terms, tax evasion may result in lack of tax payment due to carelessness or negligence or a common error – even if there was no intention to hide income⁷.

⁵ P. Faes, *Scope and Meaning of Unacceptable Tax Avoidance Under Belgian Income Tax Law*, Tax Notes International, October, No. 17, 1994, p. 17; U. Fleischer-Michaelsen, *Denmark Makes Tax Avoidance More Difficult for Multinationals*, Journal of International Taxation 1995, No. 4; G. Kraft, *Germany: Classification of the Relationship between CFC Legislation and the General Abuse Doctrine*, European Taxation 1993, No. 2, pp. 65–66; J. Ward, *United Kingdom: Juridical Responses to Tax Avoidance*, European Taxation 1995, No. 1, p. 58.

⁶ P. Karwat, *Obejście prawa podatkowego* [Circumvention of Tax Law], Warsaw 2003, Dom Wydawniczy ABC, p. 14.

⁷ M. H. Collins, *Evasion and Avoidance of Tax at the International Level*, “European Taxation” 1988, No. 8, p. 239; D. Snowden, *Avoidance Versus Form*, IBFP, Amsterdam 1994;

The specific natures of tax avoidance and tax evasion are radically different. As mentioned above, the difference translates into the way these phenomena should be counteracted, especially from the point of view of actions taken by revenue administration. In systems where these differences are not reflected in their structure, it is necessary to initiate changes aimed at such structural differentiation and so improve the functioning of the fiscal apparatus.

In this context, questions arise whether the structure of the control apparatus (i.e., tax audit offices) in place so far in Poland has been inadequate for the identified challenges arising from the evident loosening of the tax system. Whether the propositions for amendments in the draft NRA Act can actually serve to increase the institutional effectiveness of countering tax avoidance or tax evasion. And whether consolidation of the fiscal apparatus proposed in this draft Act can be an effective antidote to this kind of activity.

4. Essential Coordinative Solutions

The essential coordinative solutions proposed in the draft NRA Act are based on the introduction of new institutional solutions and creation of a legal basis for the establishment of information exchange systems within the framework of the new solutions.

The above-mentioned solution is based on creation of a hierarchically organised National Revenue Administration that is subordinate to uniform management coordinated by the competent minister of public finance. The role of this minister is defined in Article 12 of the draft Act, which also entrusts them with the following task: “cooperation with other countries in tax matters, especially the Member States of the European Union” in shaping the policy of the country in terms of the tasks of the newly established structure.

V. Krishna, *The Rule Itself*, (in:) *Tax Avoidance: The General Anti-Avoidance Rule*, Toronto 1990, p. 281.

In line with the draft Act (Article 13, sections 1–2), the National Revenue Administration is subordinate to the management of the Head of the NRA (HNRA). And the HNRA reports to the competent minister of public finance who applies to the Prime Minister for the appointment of the HNRA. Administrative servicing of the HNRA is provided by the office servicing the competent minister of finance. The HNRA holds the position of the Secretary of State in this office (see Article 13).

The tasks of the HNRA would be, among others, supervision of the activity of the Director of the National Treasury Information, directors of the chambers of revenue administration, heads of tax offices, heads of tax and customs offices, the head of the Information Centre of the NRA; supervision, coordination, and the conducting of investigations carried out within the framework of proceedings in fiscal and penal cases; consideration of tax offences and crimes – uncovering, preventing, and countering them as well as prosecuting the perpetrators; and being a certifying unit in the context of allocation of funds from the general budget of the European Union. In accordance with Article 16 of the draft Act, the HNRA would be enjoying an array of powers when performing their duties. Those would include, among others, the possibility of requesting that public administration bodies, state organizational units, and legal persons disclose “any information necessary” to exercise an effective policy of tightening the tax system as well as the possibility of delegating control activity to other public administration bodies in some cases concerning spending EU funds. Control bodies performing tasks ensuring correct spending of such funds would also have to submit projects of propositions of the use of risk analysis and projects of control programmes to the HNRA no later than 21 days before the deadlines specified in this regulation – the aim would be to verify them and hand them over to the European Commission (see Article 16, section 4 of the draft Act).

In accordance with Article 18, the HNRA would be performing their tasks assisted by their dep-

uties, the Director of the National Treasury Information (appointed by the Prime Minister on application of the competent minister of public finance and so not the HNRA themselves), directors of the chambers of revenue administration (appointed on application of the HNRA by the competent minister of public finance), the heads of tax offices, heads of tax and customs offices, the director of the Tax and Customs Academy, director of the Information Centre of the NRA, and directors of organizational units of the office servicing the competent minister of public finance.

A one-person management and hierarchical subordination of all the institutional elements of the NRA is intended to ensure better coordination of their activities and so greater controllability of the operations of the fiscal apparatus and their consistency. In other words, the aim is to limit systemic risk involved in the functioning of this apparatus.

5. The NRA and Tightening of the Tax System

The objective of the draft NRA Act is to limit the extent of tax and customs fraud as well as improve the effectiveness of collection of tax and custom duties. It is somewhat astonishing that, in the explanatory statement to the draft Act, there was no thorough analysis of the causes of tax fraud and the drastically decreasing effectiveness of tax collection. This shortcoming is considerably significant because if the Act is adopted as currently proposed, essential reference points will be missing; while they would serve to credibly conclude whether the solutions accepted within the framework of the Act are effective and efficient. After all, the sole fact of registering possible higher tax revenues may have a root cause other than passing the NRA Act.

The natures of the phenomena of tax avoidance and tax evasion are complex and multifaceted. It is important that in times of the global economy, they acquire international dimensions. These phenomena have a dissimilar specific

character in various countries of the world. This is the principal reason why a country striving for effective prevention of tax avoidance and tax evasion should carry out an in-depth analysis of both their conditioning and the mechanisms (or constructions) adopted for this purpose in this country. Without such an analysis, any action will be burdened with serious risk of being fortuitous and may be evaluated as one arising from a more intuitive sense of urgency of solving the problem rather than rational reflection on how to solve it.

In the proposed draft NRA Act, it is difficult to find solutions that would be specifically designed to limit the above-mentioned phenomena of tax avoidance and tax evasion on an international level. We believe that under the circumstances of insufficient knowledge and experience, such a solution would require the establishment of a specialised unit dealing with taxpayers that usually exercise aggressive tax optimisation for the purpose of international tax avoidance, especially international holding companies that adopt highly specialised instruments and constructions of tax optimisation within their tax strategies – which are sometimes of questionable quality from the point of view of their full compliance with tax law. Currently, as regards this type of entities, control proceedings are carried out by tax audit offices competent for the location of their subsidiaries in Poland. Despite deficiencies of such a solution, it may be concluded that because of that the key competences (i.e., knowledge and experience) – valuable from the point of view of the effectiveness of the fiscal apparatus in limiting tax avoidance and tax evasion exercised by holding companies – have concentrated in these very offices. Therefore, the substantial basis for any well-thought-out reform in this respect exists in these very offices – and not in specialization of entities as decreed in the draft NRA Act.

Analysis of the NRA concept indicates that the proposed scope *ratione materiae* of the revenue administration does not differ in any respect from the scope of the currently existing fis-

cal structures subordinate to the Minister of Finance. The authors of the draft Act did as much as simply shift the tasks that had so far been carried out by tax offices and chambers, tax audit offices, the Customs Service, and the General Inspector of Financial Information to the scope *ratione materiae* of the NRA. This “measure” was adopted without performing thorough analysis and reflection as regards the possible need for making changes and establishment of new fiscal structures that would contribute to eradication of the new threats, e.g., international tax avoidance. The lack of such analysis and reflection testifies to a considerable degree of intuitiveness of the diagnosis that is supposed to justify the draft Act.

The draft NRA Act mainly focuses on consolidation of the fiscal apparatus. In principle, the concept of subordination of all the existing fiscal structures (i.e., tax offices and chambers, tax audit offices, the Customs Service) is only legitimate, if it also guarantees new quality in terms of coordination of the activities of all the elements. To a large extent, this quality is determined by the organizational culture that has formed and the level of competencies (understood in terms of management and not a legal category) within these structures that would be supposed to become part of the NRA. The proposed Act does not promise much in this respect since the planned consolidation is to be carried out essentially within the framework of the existing structures, for example, through the appointment of a single deputy minister as the Head of the Customs Service, the General Inspector of Financial Information, and the person responsible for the tax offices and chambers. It is unknown, however, how such an institutional solution would – in itself – guarantee greater effectiveness of these structures or any synergy at all.

An important issue that may affect the effectiveness of countering tax avoidance and tax evasion is the absence of a proposition for the establishment of an analytic unit within the NRA, which would be dealing with highly sophisticated tax optimisation constructions and instruments applied by entities conducting cross-border ac-

tivity. It is difficult to find this role within the National Treasury Information or any other unit within the framework of the NRA. In contrast, such analytic centres operate in numerous member states of the European Union⁸ and serve as effective support in creating and exercising state policy countering international tax avoidance.

One of the main objectives of the draft NRA Act is intensification of administrative cooperation in terms of taxation with administrations of other countries, including first and foremost Member States of the European Union. However, in the draft NRA Act, it is difficult to find novel solutions that would be supporting administrative cooperation in terms of taxation with the administrations of other Member States of the European Union. Essentially, there are no barriers to implementing constructions that would be intensifying administrative cooperation in terms of taxation with other countries within the current structure. Though one should agree with the authors of the NRA concept that there is a need to intensify such cooperation as it might contribute to minimization of international tax avoidance. It would be important considering the insufficient number of agreements signed and executed in this respect. It is doubtful though whether the establishment of the NRA is indeed needed in order to achieve that.

6. Evaluation

The parameters of operation (or actually mutual cooperation) of all the entities involved in a tax liability, including revenue administration, have been subject to intense legal regulation in Poland. Thus, to a large extent, they are defined by standards that should currently be reviewed in terms of their substance and practice of application but not necessarily thoroughly changed. Likely, it is the very reason why this issue is not covered by the draft NRA Act.

⁸ D. Gajewski, *Tarcza podatkowa dla Polski* [Tax Shield for Poland], Infos – Biuletyn Biura Analiz Sejmowych, 2014, No. 22(182), pp. 1–4.

The draft NRA Act is concerned with the parameters of cooperation among the institutional components of the fiscal apparatus. Such determination of the principal area of regulation arises from the concept authors' conviction that sufficient level of coordination had not been achieved in the previous system where individual administrations of levies worked within separate organisational and institutional frameworks but under the supervision of the Minister of Finance. However, such conviction should be deemed – to a large extent – intuitive. The draft NRA Act is a parliamentary and not a governmental one so it is not required to present analyses necessary to perform impact assessment of a legal act. It is not appropriate for such a serious project since it does not compel to provide a more precise indication of the costs and benefits of the proposed solutions – which would both demonstrate the degree of aspiration of the project initiators (that is most likely governmental administration after all) and allow to better define its success criteria.

In particular, it should be stressed that the explanatory statement to the draft NRA Act pays by far too little attention to the root causes and symptoms – which the draft Act is supposed to be an antidote to – of the dysfunction in the functioning of the fiscal apparatus in Poland. Therefore, as regards the functioning of individual administrations of levies and their mutual cooperation in terms of joint/agreed upon planning of activity and information exchange, we are not in possession of sufficient information about the situation. The root causes of dysfunctions in the operation of the fiscal apparatus – which result in asymmetry of quality (and hence also efficiency) of its activity undertaken with respect to taxpayers' actions limiting the tax base and so decreasing tax – are more complex; they lie in, among other things, lower than expected quality of operation as well as cooperation – and this, unfortunately, is a consequence of fragmentation of the structures though not really at the level of the structures themselves but at the level of administrative practice. Under such circum-

stances, the said fragmentation enhances negative phenomena occurring in the practice. Sadly, it does not imply that subordination of these individual components of this administration to uniform management will eliminate both the fragmentation of the structure and in terms of the practice.

The solutions that have been adopted may only contribute to overcoming barriers that are generated by scattered management of the individual components of an administration of a levy. They are not capable of producing changes within the existing practice though. This is because these solutions themselves do not directly address to the root causes of inefficiency, that is, the lack of general planning of activity of all the institutional components of the fiscal apparatus, differentiation of the standards of operation, and the lack of willingness to share information as well as effective and reliability constructed channels for the flow of information.

What is more, at least in the initial stage of creation of the NRA, a natural decrease in the quality of operation of these structures should be expected – which is an obvious element of the costs of the new legislative proposition though not identified in the materials presented by the promoters of the Act.

It would also be worth to polish the legislative aspect of the Act. Apart from the already-mentioned not quite fortunate aspects of the legal constructions significant for this regulation, one might reflect upon, in particular, the system of the text of the Act and the legislative overload. The Act should regulate the significant aspects of the operation of the NRA understood as an element of the functioning of the state (and society at the same time). Whereas it also regulates secondary issues, e.g., the imagery and visualization of the NRA, while laying down some guidelines for the execution of such provisions in a way that could be referred to as “perfectly illusory” (for example, one such provision is a requirement that emblem of the NRA allude to the tradition of the administrations of levies that are part of it).

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