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The concept of National treasury administration in the light of the problems faced by the tax administration in Poland

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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). It is carried out with respect to crucial issues that – in my opinion – affect the Polish treasury bodies, that is: delegating both functions of shaping the tax system and conducting public operations of the state in respect of tax law to a single tax body, organizing the executive body according to the criterion of the type of tax rather than the functions to be performed, delegating an array of tasks that are not connected with taxation to the fiscal administration, no statutory rules for funding treasury administration and no correlation between expenses and the tasks the administration performs, and no employment policy.

Keywords:: national treasury administration, reform, tax administration
JEL Classification: K34

1. Introduction

The subject-matter of the article is evaluation of a concept, which was put forward by a group of members of the Parliament[1], of the establishment of a National Revenue Administration (hereinafter also referred to as NRA) in place of: tax offices and chambers (i.e., the so called tax administration), fiscal audit, and the Customs Services. This evaluation will be performed with reference to problems that – in my opinion – the Polish fiscal apparatus (i.e. administration of public levies) is faced with.

Thus, with such a scope of deliberation, it is necessary to:

[1] Publications of the Sejm No. 826 (the draft act on the NRA) and 827 (the draft act – introductory provisions for the NRA Act). Although from a formal point of view, it is a parliamentary initiative, both the NRA concept and the drafts of both acts along with the explanatory statements for them were developed by the Ministry of Finance, which was often enough mentioned by its representatives. See, e.g., response No. BMI5.054.1.2016 of 14/01/2016 of the Minister of Finance, Paweł Szałamacha, to the interpellation No. 253 of the member of Parliament, Anna Sobecka of 22/12/2015, hence the project of the NRA concept should be treated as a governmental one but for no apparent reason submitted by a group of members of the Parliament.

Firstly – define the notion: *revenue administration (or administration of public levies)* and specify the scope ratione personae of the analysis, which will be accomplished in Part 1 of the article (see points 4–7);

Secondly – present the current organisational structure of the administration of public levies and outline (in short, obviously) the stages of its development, which is essential for the identification of the problems that the Polish fiscal apparatus is facing. These issues will be presented in part 2 of the article (see points 8–19);

Thirdly – describe the problems that the administration of public levies in Poland is fraught with; which is preceded by presentation of the problems voiced in this respect by international institutions, project promoters of acts (changing the organisational structure of the administration of public levies over the last three decades), and the representatives of the doctrine. These problems will serve as criteria for evaluation of the NRA concept derived from the parliamentary project. Part three of the article will be devoted to that (see points 20–26);

Fourthly – analyse the objectives of the NRA concept – in accordance with the explanatory statement to the draft act – in the context of the identified problems with the functioning of the revenue administration in Poland, which will be accomplished in part four of the article (see points 27–34);

Fifthly – analyse the way the NRA concept is effectuated based on the parliamentary project in accordance with the criteria identified earlier, which will be done in part five of the article (see points 35–47).

It is not the aim of the article to carry out evaluation of the parliamentary project in terms of its substance and legal framework, which is the task of authorised entities performed in the course of the legislative process, such as for example, the Bureau of Research at the Chancellery of the Sejm[2]. The present analysis and evaluation are only concerned with the concept of the NRA based on the parliamentary project and not the individual editorial sections of the project separately. If invoked in the article, they only serve to illustrate the advantages or disadvantages of the concept under examination.

2. Definition of Revenue Administration (Administration of Public Levies)

The term *revenue administration (or administration of public levies)* is understood as an organizing activity of the state in terms of collection of public funds, which encompasses (in terms *ratione materiae*) government and local government taxes as well as the levies that have not been named taxes within the meaning of the legal provisions but constitute budgetary revenue of the state or the units of the local government and the obligation to pay these levies to these entities is provided for in an act of law.[3] This activity involves: firstly – management of public levies, including designing and planning public levies (taxes), designing and creating the (tax) law on levies, organising and managing performance of the planned state duties in terms of implementing revenues from public levies (i.e., organisation and management of exercise of tax law by tax authorities), and education; secondly – engaging in public activity of the state as regards tax on levies (exercising tax law/tax on levies), which includes performance of the following functions: registration, assessment, verification, control, collection, debt collection, prevention, investigation, and provision of information.[4]

Parliamentary draft NRA Act covers organisation of the execution and performance of only

[2] See Article 17, section 1, of the Organizational Rulebook of the Chancellery of the Sejm, which is provided in the annex to the Order No. 10 of 25 March 2002 of the Chief of the Chancellery of the Sejm.

[3] See more: *Prawne aspekty budowy modelu administracji danin publicznych w Polsce* [The Legal Aspects of Creation of the Model of Administration of Public Levies in Poland].

[4] See more: *Administracja danin publicznych w Polsce* [Administration of Public Levies in Poland].

the second group of functions by the tax authorities and – importantly – administration of public levies by the units of the local government remains outside its scope. Thus, the project is only limited to regulation of organisation of the way tax law is exercised by tax authorities reporting to the competent minister of public finance[5].

I view the fact that the authors of the draft act have overlooked both organisation of the function of public levies management and the issue of tax administration by the loval government as a serious drawback of the NRA concept presented in it. Taking into consideration the condition of the Polish tax law (on levies) as well as the way it is established and exercised, it should be deemed insufficient to focus the reformative actions exclusively on organisation of the way tax law (on levies) is exercised by government administrative authorities, even if their competence *ratione materiae* covers taxes that are the most important from the point of view of public revenues. Such "reforms" concentrating on a fraction of the problem of administration of public levies – which is certainly very important but still only a fraction – with no references to the other parts are usually cursed not quite with failure but due to their fragmentary nature all they do is polish the existing regulations, give new names to institutions, and consolidate or separate competence and transfer it to other authorities without any fuller consideration of its place within the whole process of tax administration (or management).

An actual reform of organisation of the revenue administration requires consideration of the entire authority of the state related to taxes (or levies), including: a) the authority to impose taxes; b) the authority to shape tax burdens by the local government; c) the authority to collect public levies; d) the fiscal-penal authority; and e) the authority to use revenues from taxes[6]. The authority to shape the system and organisation of administration responsible for the collection of taxes (or public levies) as well as the rules governing the way tax law (on levies) is exercised by the fiscal authorities are the elements of the authority to collect taxes (or public levies). They are not, however, separate from all the other elements of state authority as regards taxes (or levies), especially the authority to establish taxes, shape tax obligations by the local government, and the fiscal-penal authority. Actual changes in the fiscal apparatus may only occur, if organisation of this apparatus will be taking into account all the other elements of the state authority as regards taxes (or levies)[7].

Obviously, such an approach requires that the reformers of the fiscal apparatus make references to the whole system of public finance described not only in ordinary acts of law but also in the Constitution[8]. Unfortunately, this is missing from the parliamentary project that takes a very narrow look on fixing the functioning of tax authorities, deprived of the necessary reflection on the performance of the tax (levies) authority by the state, which is granted to it by the Constitution.

These remarks were needed to flag up the basic problem with the NRA concept – the fragmentariness of the proposed solutions.

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[5] Currently, the Minister of Finance. See the Regulation of 17 November 2015 of the Prime Minister on the detailed scope of activity of the Minister of Finance (Journal of Laws, item 1990).

[6] See *Zakres władztwa podatkowego w obecnym systemie prawnym w Polsce* [The Scope of Tax Authority in the Current Polish System of Law] and *Zasada władztwa podatkowego w Konstytucji RP z 1997 r.* [The Principle of Tax Authority in the Constitution of the Republic of Poland of 1997], and *Ustawa podatkowa* [Tax Act].

[7] See more: *Obecny i pożądany zakres i treść konstytucyjnej regulacji zasady władztwa podatkowego państwa w Konstytucji RP z 1997 r.* [The Current and the Desirable Scope and Substance of the Constitutional Regulation of the Principle of State Tax Authority in the Constitution of the Republic of Poland of 1997] [in:] (scientific ed.), *Dylematy reformy systemu podatkowego w Polsce* [Dilemmas of the Reform of the Tax System in Poland] and *Administracja danin publicznych w Polsce* [Administration of Public Levies in Poland].

[8] Compare, among others, *Naprawa finansów publicznych w Polsce* [Fixing Public Finance in Poland], *Obecny i pożądany zakres i treść konstytucyjnej regulacji zasady władztwa podatkowego państwa w Konstytucji RP z 1997 r.* [The Current and the Desirable Scope and Substance of the Constitutional Regulation of the Principle of State Tax Authority in the Constitution of the Republic of Poland of 1997] [in:] H (scientific ed.), op. cit., pp. 49–67.

Bearing in mind the above reservations, we may now move on to the subsequent elements of the concept of the National Revenue Administration presented by the authors of the draft act.

3. The Existing Organisational Structure of the Governmental Revenue Administration and the Stages of its Development

Over the last seventy years (of the post-war Poland – the Polish People's Republic and the Third Polish Republic), the revenue administration has undergone reforms, transformations, modernisations or changes multiple times.

Initially, by the end of the 40s of the 20th century, it functioned with some modifications the way it had before World War II. The first significant reform of the fiscal structures took place at the beginning of the 50s of the 20th century and consisted in both abrogation of the fiscal authorities (i.e., tax offices and chambers as well as inspection and excise duty authorities) and dismantling fiscal audit and protection structures. Their competence was transferred either to the finance departments of national councils or control-inspection inspectorates at the voivodeship and regional bureaus of national councils or the control-inspection department at the Ministry of Finance, later transformed into the Chief Control and Inspection Inspectorate.[9]

Another reform of the revenue administration took place between 1973 and 1975[10]. It resulted in the following: the Chief Control and Inspection Inspectorate and the control and inspection inspectorates at the bureaus of national councils were dismantled; the competence *ratione materiae* of finance departments of national councils was limited to control and collection of public levies from the people and non-social economic units; and regional state revenue and financial control management boards were established as entities competent in determination of tax and non-tax budgetary duties from social economic units covered by the central budget as well as financial control of social and non-social economic units, and control of fulfilment of tax duties.

The next – which was the third one already in the post-war period – reform of tax administration was carried out at the beginning of 1983 when the tax offices and chambers, which had been liquidated at the beginning of the 50s, were brought back with the act of 29 December 1982 on the office of the Minister of Finance and tax offices and chambers (original text, Journal of Laws of 1982, No. 45, item 289). From then on, their competence included, among others, assessment, collection, and control of taxes, including special tax supervision, administrative execution of amounts due, and conducting investigations in fiscal-penal cases. Whereas the Minister of Finance – apart from tax and exchange control of social, non-social economic units, and natural persons – was made responsible for verification of annual financial statements (balance sheets) of state companies and other state organisational units as well as financial control of social economic units.

This structure of governmental tax administration lasted until 7 February 1992 when fiscal audit[11] was established and provided with part of control and verification competence of tax offices and chambers and the control competence earlier exercised by the Minister of Finance as stipulated in Articles 7 and 8 of the act of 1982.

While the act of 1982 singled out from the structure of public administration and subordinated practically the whole – apart from the local government's one – administration of public levies to the minister of finance, the act on fiscal

[9] See more: *Administracja danin publicznych w Polsce* [Administration of Public Levies in Poland] and *Kontrola skarbowa w systemie kontroli państwowej* [Fiscal Control in the System of State Control], *Organizacja ochrony skarbowej w Polsce w latach 1944–1951* [Organization of Treasury Protection in Poland between 1944 and 1951], Finanse No. 3 of 1987.

[10] See act of 28 May 1975 on two-degree administrative division of the State and amending the act on national councils (Journal of Laws No. 16, item 91, as amended) and *op. cit.*, pp. 100–101.

[11] See act of 28 September 1991 on fiscal audit (original text, Journal of Laws No. 100, item 442).

audit internally divided this administration into tax administration – principally performing all the functions within the framework of state activity in terms of public levies – and fiscal audit with singled out fiscal audit authorities, which was intended to protect the interests and property rights of State Treasury, ensure effective execution of tax liabilities and other amounts due constituting revenues of the state budget or state special purpose funds, and examine whether assets of all state legal persons are managed in compliance with the law. And so fiscal audit within the meaning of the act of 1991 combined the tasks of fiscal audit and protection structures abolished at the beginning of the 50s of the 20th century and the tasks of the Minister of Finance as regards verification of annual financial statements as well as exchange and financial control.

Until September 2003, these authorities – i.e., tax and fiscal audit ones – performed all the functions in terms of exercising tax law – registration, assessment, verification, control, collection, debt collection, prevention, investigation, and provision of information – with respect to all the taxes that are budgetary revenue of the state and partially of local government units as well.

The act of 27 June 2003 on the establishment of Regional Fiscal Boards and amending some other acts regulating the tasks and competence of authorities and organisational units reporting to the competent minister of public finance (Journal of Laws No. 137, item 1302) delegated the competence in terms of assessment and collection of value added tax on import of goods as well as control, special fiscal supervision, assessment, and collection of excise duty to the Customs Services authorities that were made tax authorities in this respect[12].

On 31 October 2009, assessment, collection, and control of gambling and lottery tax[13] was included within the competence of the Customs Servicess, whereas on 1 April 2012, tax on mining certain minerals was added within their competence as well.

According to the currently applicable law, tax offices and chambers are competent with respect to the following taxes: personal income tax (regardless of the form of taxation), corporate income tax, tonnage tax, value added tax, excluding tax on import of goods (with the exception of tax relief for payment of this tax), tax on civil law transactions, and inheritance and donation tax (constituting budgetary revenue of local government units) as well as tax on certain financial institutions, tax on retail sales (both introduced in 2016), and coal tax (introduced in 2014).

As the description of changes in the revenue administration over the last seventy years (of post-war Poland) has demonstrated so far, while in the initial period they were systemic reforms concerned with alterations in the concept of management of the state (i.e., the reforms carried out in 1950/1951, 1973–1975, and 1983), the character of subsequent "reforms" of the fiscal structures reporting to the Minister of Finance was rather that of adjustment and to a large extent the reforms were a product of individual ambitions of each "ruler" of the revenue administration or part of it. This is also the case – but to a smaller extent – with the reform carried out in 1992, which brought about the establishment of the fiscal audit, while the changes in the fiscal apparatus that were introduced in 2003 and 2009 definitely deserve to be evaluated as such for they resulted in transfer of part of the tasks of the tax offices and chambers and fiscal audit to the Customs Services so that this structure could survive with no major reforms following accession of Poland to the European Union. Unfortunately, there have been negative consequences of that for the fiscal authorities as regards defining and performance of the following functions: registration, assessment, verification, control, col-

[12] Earlier customs authorities were only performing the function of payers of tax on import of goods (compare Article 11 of the act of 8 January 1993 on value added tax and excise duty within the meaning applicable before 01/09/2003).

[13] See Article 42a, section 1, of the act of 29 July 1992 on gambling and betting (consolidated text, Journal of Laws of 2004, No. 4, item 27, as amended) and Article 197 of the act of 27 August 2009 on Customs Services (original text, Journal of Laws No. 168, item 1323, as amended).

lection, debt collection, investigation, prevention, and provision of information.

The same character is also revealed by the changes introduced in tax offices and chambers with the act of 15 January 2015 amending the act on Customs Services, act on tax offices and chambers, and some other acts (Journal of Laws, item 211), which eliminated the organisational and employment-related separateness of tax offices from tax chambers. It is also no different with the constantly postponed reform of tax offices and chambers arising from the act of 10 July 2015 on tax administration (Journal of Laws, item 1269, as amended)[14].

Though the revenue administration is an integral part of the apparatus of the Minister of Finance, all these alterations that have been made over the last nearly thirty years, that is, during the time of system-wide transformation and creation of the market economy – all the changes, adjustments, reforms, transformations, etc. of the organisational structure of the revenue administration have caused it not to be a uniform whole but divided it into three main and frequently competing parts (or functions): the tax, customs and excise, and control function.

Both the tax function – with the directors of tax chambers and tax chambers as well as the heads of tax offices and tax offices – and the customs and excise function – with the Customs Services authorities – are currently subordinated to the Head of the Customs Services although formally they are separate organisations within the structures of the Ministry of Finance[15]. Whereas, the control function is subordinated directly to the General Inspector of Fiscal Audit (GIFA) that both the directors of fiscal audit offices and the departments of fiscal audit and fiscal investigation report to.

Analysis of the current organisational structure of the revenue administration subordinated to the Minister of Finance demonstrates that:

1) at the central level (i.e., the Ministry of Finance, the Head of the Customs Services, and the GIFA), there are mainly the functions of management of public levies concentrated, which are subordinated as regards:
   a) designing and planning public levies, designing and creating the law on levies – to the Minister of Finance;
   b) supervision and management of performance of the public activity of the state in terms of taxes and supervision – to the Minister of Finance, the Head of the Customs Services, and the General Inspector of Fiscal Audit;
2) at the regional level of the tax function (tax chambers) and the customs and excise function (customs chambers), in relation to the local level (of tax offices and customs offices), the following functions are chiefly concentrated: control and supervision, including instance supervision;
3) at the local level (of the tax and customs and excise functions) and the regional level (of the control function), the tasks concerned with public activity of the state in terms of taxes are concentrated[16].

Changes introduced into the system of revenue administration over the recent years have led to:

[14] The entrance of these provision of the law into force was initially planned to take place on 1 January 2016 (cf. Article 77 of the act on tax administration) but was first postponed to 1 July 2016 (cf. Article 1, point 2, letter a) of the act of 16 December 2015 amending the act on tax administration and the act amending the Tax Ordinance act and some other acts – Journal of Laws, item 2184), and then it was moved to 1 January 2017 (cf. Article 1 of the act of 10 June 2016 amending the act on tax administration – Journal of Laws, item 905).

[15] See Order No. 17 of 1 March 2016 of the Minister of Finance laying down the organizational regulations of the Ministry of Finance (The Official Journal of the Ministry of Finance, item 21, as amended) and Order No. 42 of 30 June 2016 of the Minister of Finance on division of competence at the Ministry of Finance and earlier orders on division of competence, and publications.

[16] Some of these tasks were moved to the regional level, e.g., execution within the customs and excise function, or the central level, e.g., issuing individual interpretations of the provisions of the tax law and concluding transaction pricing agreements.

1) internal breakup of the apparatus subordinate to the Minister of Finance;
2) mutual competition as regards performance of individual functions among the tax function (tax offices and chambers) – which is the most numerous and responsible for the largest part of budgetary revenues of the state and local government units and at the same time most fiercely contested in all the reformative concepts in the last decade – the control function (fiscal audit offices), and the customs and excise function (customs offices and chambers) – which is modernized to the largest extent;
3) an abundance of procedural regulations regarding, first and foremost, control but also verification of tax liabilities, and fiscal authorities performing the registration and assessment function;
4) organisational differences in terms of human resources management and legal basis of operation of individual organisational units of the administration of public levies. These regulations are to be found in over twenty different acts of law and each regulates not only a fraction of systemic or organisational issues, which is understandable considering the large number of legal acts regulating the matter, but also covers not the whole but part of the administration of public levies. This is best exemplified by the acts: on tax offices and chambers, on fiscal audit, and on Customs Services. Each covers the system and organisation of one of the three parts of the revenue administration regulating nearly all elements separately for the tax offices and chambers, the Customs Services, and the fiscal audit. On the one hand, this leads to expansion of the legal basis of the activity of the administration of public levies and performance of the tasks and functions assigned to it and, on the other hand, to differentiation of the legal position of the fiscal authorities and employees of the organisational units of the revenue administration, the rules for appointment and dismissal of people performing the functions of fiscal authorities, and the criteria that candidates for management positions should meet.

One can also notice the lack of regulations regarding the parameters that performance of the administration of public levies can be assessed against. Moreover, the following matters have not been uniformly defined for the whole revenue administration: a) rules governing the flow of information among its organisational units and the individual internal units within them; b) information systems; c) technical aspects of data base creation; d) internal procedures for the fiscal authorities' performance of their functions; e) procedures for monitoring the activity of the authorities having tax liabilities in terms of fulfilling their instrumental obligations as well as detecting threats that might cause tax depletions; and f) internal control procedures. These are severe deficiencies that influence the operation of the administration of public levies.

In effect, the indicators for the evaluation of the fiscal authorities' performance of their functions are getting worse and worse every year. Over the last more than a dozen years, tax arrears have increased by more than double – from 4.7% in 1998 to 11–12% now[17].

The indicators of administrative execution have also worsened. By the end of the 80s and at the beginning of the 90s of the 20th century, the indicator of execution of enforceable titles exceeded 70%; currently it is just a little more than 40%. Over the same period, the indicator of the effectiveness of execution has also decreased considerably. In 1990, it was 79.9% and currently it fluctuates between 20% and 25%.

The effectiveness of tax inspections is also doubtful, especially as regards the very high level of revocations of post-inspection decisions by

[17] It is worth highlighting that in the programme statement: *Directions for the Development of Tax Offices and Chambers for 1999–2002*. It was assumed that it would drop to 3% in 2002 (from 6.04% in 1995).

appeal authorities and a low level of enforcement of tax arrears arising from these decisions.

As far as instance supervision is concerned, on the one hand, a high level of revocation of first instance decisions is noticeable and, on the other hand, there is a considerable number of second instance decisions that are appealed at the administrative court as well as the 20–30% indicator of revocation of these decisions by the court, which has been unvaried for many years.

As regards the investigation function, the static manner of its performance by tax offices, customs offices, and inspectorates of fiscal audit is striking.

It is also hardly possible not to notice that the data gathered by the revenue administration do not enable determination of numerous indicators important for the evaluation of the performance of the tax system, which evaluate the structure of the tax strategy and correctness of the way it is carried out; among others, susceptibility to tax avoidance, liquidation of a business due to fiscal reasons, undertaking activity because of tax solutions, and influence of fiscal solutions on economic growth, stagnation or regression.[18]

4. The Problems of the Modern Administration of Public Levies in Poland

The problems of the Polish revenue administration have been voiced on numerous occasions: in governmental documentation, including explanatory statements to draft acts submitted to the Sejm, in documents of international institutions, e.g., documents of the International Monetary Fund, in the judicial decisions of the Constitutional Tribunal[19], and in the relevant literature[20].

The first serious attempts to evaluate the functioning of the revenue administration were made at the end of the 90s of the 20th century. In 1998, there was a programme statement: *"Directions for the Operation of Tax Offices and Chambers for 1999–2002"* developed in the Ministry of Finance (not published), which presented the goals of governmental tax administration, the resources needed to attain them, and the actions necessary due to integration with the European Union.[21]

The document directs attention to the connections between tax administration (within the tax function – the tax offices and chambers) and the fiscal audit that also carries out tasks related to tax audit as well as the customs authorities that apart from their basic scope of activity (i.e., assessment of customs and protection of the borders in terms of trade in goods) served a supplementary role in relation to the tax offices and chambers by performing the tasks of the taxpayer within the framework of collection of taxes on import of goods. Efficient collection of tax was acknowledged to be the principal objective of the revenue administration; that is, such contribution of tax revenues to the state and local budgets which allows to carry out economic, social, and administrative reforms enabling effective operation of the State. Its accomplishment required, on the one hand, reform of the revenue structures, including introduction of a uniform infor-

[18] See more, *Administracja...* [Administration...], p.

[19] See, e.g., judgement of the Constitutional Tribunal of 20 November 2002, case identifier K 41/02, OTK ZU of 2002 No. 6A, item 83.

[20] See, among others, *System organów podatkowych w Polsce, Podatki. Problem władzy publicznej i podatników, Administracja danin publicznych w Polsce* [The System of Tax Bodies in Poland, Taxes. The Problem of the Public Authorities and the Taxpayers, Administration of Public Levies in Poland], (ed.), *Kontrola tworzenia i stosowania prawa podatkowego pod rządami Konstytucji RP, Administracja podatkowa i kontrola skarbowa w Polsce*, [Control of Creation and Application of Tax Law under the Rule of the Constitution of the Republic of Poland, Tax Administration and Fiscal Audit in Poland], *Efektywna administracja skarbowa* [Effective Revenue Administration] (vol. 1), scientific ed.; *Przyjazna administracja skarbowa* [Friendly Tax Administration] (vol. 2), scientific ed.; *Nowoczesna administracja skarbowa* [Modern Tax Administration] (vol. 3), scientific ed., the Ministry of Finance, Warsaw, 2007.

[21] *Kierunki działania izb i urzędów skarbowych na lata 1999–2002*, [Directions for the Operation of Tax Offices and Chambers for 1999–2002], the Ministry of Finance, Warsaw, 1998 (not published), pp. 8–13.

mation system supporting the operation of the fiscal services, and, on the other hand, simplification of the tax system in a way proposed by the Ministry of Finance in *"Biała księga podatków"*[22] [Tax White Paper]. It was also noted that it was necessary to raise the level of education among the employees as well as their remuneration, limit staff turnover, increase capital expenditure, and limit the number of employees dealing with non-fiscal operations. The document also directs attention to the necessity of increasing the level of voluntariness of fulfilment of tax obligations by taxpayers, taxable persons, and collectors.

In the second half of 1998, there were the representatives of the Fiscal Affairs Department of the International Monetary Fund on a mission in Poland. In the report summarising the Mission, the IMF[23] indicated:

1) the lack of effective management of the tax system in Poland;
2) the necessity to single out from the Ministry of Finance: the function of tax system management and the function responsible for the management of the tax apparatus;
3) the need to one more time thoroughly analyse the division of the tax control function to be performed by both the fiscal audit authorities and tax offices – introduced in 1992 – which was inconsistent with the practices of modern tax administration followed worldwide;
4) the need to introduce modern information systems;
5) the need to ensure effective taxpayer servicing;
6) the necessity to ensure consistent application of the provisions of the tax law by the employees of the tax administration;
7) the necessity to settle administratively as many taxpayers' appeals as possible and limit the number of complaints submitted to the court;
8) the need to establish an appeal authority that would be separate from the tax administration, which would comprise the representatives of the tax office and economic organisations as well as independent experts;
9) the need to establish the taxpayers' ombudsman.

These issues were also mentioned in the IMF's report of 2015[24]. The document brings the appeal for the formation of a single standardized national tax administration to the foreground. This appeal was already voiced in 2000 in *Biała księga administracji podatkowej*[25] [White Tax Administration Paper] which stressed, among other things, the lack of a general vision for management of revenue administration and the maladjustment of its structures to the reality of the market economy and cooperation with the administrations of the member states of the European Union.

The programme statement: *Strategia modernizacji polskiej administracji podatkowej do roku 2004*[26] [Polish Tax Administration Modernization Strategy until 2004] quotes improvement of the following as the strategic goals of modernization of the fiscal structures: a) relation with the taxpayer; b) organisation, human resources, and technical equipment; c) collection and control of tax liabilities; and d) cooperation with the European Union.

[22] See *Biała księga podatków. Analiza obecnego systemu podatkowego. Propozycje zmian* [Tax White Paper. Analysis of the Existing Tax System. Proposals for Changes], the Ministry of Finance, Warsaw, 1998.

[23] See Międzynarodowy Fundusz Walutowy, Departament Spraw Fiskalnych, *Polska: Priorytety strategiczne administracji podatkowej* [The International Monetary Fund, the Fiscal Affairs Department, Poland: Strategic Priorities of Tax Administration], October 1988.

[24] See: Międzynarodowy Fundusz Walutowy. Departament ds. podatkowych, *Polska. Administracja podatkowa – wyzwania modernizacyjne i priorytety strategiczne* [The International Monetary Fund. Fiscal Affairs Department. Poland. Tax Administration – Modernization Challenges and Strategic Priorities], January 2015.

[25] *Administracja skarbowa. Analiza stanu obecnego, Projekt i uzasadnienie zmian* [Revenue Administration. Analysis of the Current Condition. Project and Justification of Changes], working paper, the Ministry of Finance, Warsaw, 2000 (not published).

[26] Ministry of Finance, Warsaw, 2002.

The concept of a uniform revenue administration was taken into consideration again during works on the National Revenue Administration in 2005–2007; in the explanatory statement to the draft act of 10 August 2007 on the National Revenue Administration[27], it was indicated that in *"today's administration, there are problems with the structure, infrastructure, and human resources, which in practice translate into: a) heterogeneity of the organisational structures; b) paper documentation workflow; c) traditional manner of management; d) disproportions in terms of equipment in offices; e) inadequate consideration of financial needs; f) no clearly defined career path; and d) no internal communication."* The objective of the reform proposed back then was *"establishment of administration collecting public levies and Fiscal Inspection ensuring financial security, which would be: a) modern, b) efficient, c) managed by objectives, d) European, e) taxpayer-friendly, f) client-oriented, g) resistant to corruption, and h) transparent."* The works on the reform did not come to a conclusion due to the change in the ruling coalition in the parliamentary elections in 2007.

The period 2008–2015 is characterized by the tendency to abandon attempts to establish uniform administration of public levies. Actions taken during this period focused on changes in each part of the revenue administration separately. Compare, among others, government draft act amending the act on fiscal audit and some other acts (publication No. 1852/6th term), government draft act amending the act on Customs Services, act on tax offices and chambers, and some other acts (publication No. 2739/7th term), and the government draft act on tax administration (publication No. 3320/7th term). The latter was intended to "introduce legal regulations regarding: 1) determination of the tasks and organisation of tax administration; 2) introduction of the system of taxpayer servicing and support; 3) regulations concerning employees of the tax administration; and 4) the principles of recruitment on some positions in the offices of the tax administration."

To recapitulate on what has been established so far, it is noteworthy that, taking into account the government draft acts, following reinstatement of the tax offices and chambers in 1983 and separation of the fiscal audit function in 1992, the need to introduce comprehensive changes in the entire fiscal apparatus reporting to the Minister of Finance has only been noticed twice. It happened by the end of the 90s of the 20th century and between 2005 and 2007. It must be mentioned though that while the proposal from the end of the 90s was concerned with the reform of both management of public levies and public activity of the state as regards the law on levies, the NRA draft act of 2007 was essentially limited to a reform of the second group of functions. The demands of the IMF also focus on that matter, however, the first report (compiled in 1998) also mentioned the necessity to single out the function responsible for the development of the tax policy and the function responsible for the management of the performance of the tasks of fiscal authorities.

Taking into consideration the objectives of the changes that are advocated or introduced into the revenue administration, which were expressed in documentation of the government and international institutions as well as the judicial decisions of the Constitutional Tribunal, and in the relevant literature, it is noticeable that the Polish revenue administration subordinate to the Minister of Finance is faced with the following problems, which give rise to serious consequences as regards the exercise of tax law by the fiscal authorities and the taxpayers; the problems are:

Firstly – the task of management of the development of the tax system (i.e., designing the state tax policy, the objectives of draft acts and the draft acts themselves, which impose tax burdens and regulate tax procedures, as well as issuance of binding interpretations of the provisions of tax law) and the task of undertaking public activity of the state as regards tax law (on levies) are both delegated to the same authority (which is the competent minister of public finance under the current legal circumstances).

[27] Unpublished document.

The tasks of the development of the state tax policy and shaping the tax system have a typical political character – and should, of course, be based on substantive grounds – and the decisions made in this respect are strictly political, however, the task of exercising tax law by the fiscal authorities should be strictly substantive in character and based on the provisions of the law. Subordinating these two groups of functions (i.e., exercise of the tax policy and tax law) under a single management may lead to politicization of performance of the second group of functions by the fiscal authorities. This may manifest itself through, among others:

a) unclear criteria for the appointment and dismissal of people serving the roles of fiscal authorities (who currently are the directors of tax chambers, customs chambers, and fiscal audit offices as well as the heads of tax and customs offices);
b) the influence of the authority shaping the state tax policy over the way tax law is exercised through issuance of binding interpretations of tax law, which may affect the law and taxpayers' responsibilities;
c) orientation of control and verification operations of the fiscal authorities at areas selected based on current political goals;
d) the influence on tax proceedings carried out by fiscal authorities in individual cases;

Secondly – the executive apparatus is developed according to the type of tax and not the function that is performed, which leads to a multitude of fiscal authorities and, in consequence, a multitude of systemic, labour, procedural, and internal regulations as well as overlapping competence, and mutual competition. The existing organisational structure of the apparatus subordinate to the competent minister of public finance is a typical example of a caste system where individual parts (i.e., the tax, control, and customs and excise one) work in isolation from one another even though the legal regulations in this respect oblige them to cooperate. Development of the executive apparatus according to the type of tax also leads to expansion of the local apparatus as well as the structures of supervision and internal control, which consequently, on the one hand, increases the costs of the functioning of tax administration and, on the other hand, does not allow to devote the funds it receives to effective performance of the registration, assessment, verification, control, collection, debt collection, prevention, and inspection function or the function of provision of information;

Thirdly – an array of tasks that are not related to taxation (such as tasks concerned with exchange, public finance, control of the application of funds coming from the EU or international institutions, management of state property, administrative execution of all monetary benefits, determination and granting of specific subsidies, collection of a range of payments that are not tax revenue, and conducting investigations as regards fiscal offences or crimes) is delegated to the revenue administration (or administration of public levies), and competence in terms of assessment, collection, and control of some tax liabilities contributed to the state budget is allocated to other (e.g., customs) authorities.

Under the current legal circumstances, the scope *ratione materiae* of the revenue administration covers numerous tasks not related to taxation (other than levies), which could be delegated to the general administration or to separate organisational structures singled out for this task (e.g., the tasks concerned with control of public expenditure).

Frequently, the revenue administration is treated by the legislator as a bottomless pit, which is constantly filled up with new tasks without indispensible prior consideration and in most cases without provision of additional funds for their performance. This should not be the case. The scope *ratione materiae* of the administration of public levies should be clearly defined, and the non-tax matters (not related to levies) should be delegated to the fiscal authorities, if they are linked to their fundamental tasks;

Fourthly – the way revenue administration is financed. Under the current legal circumstanc-

es, the revenue administration at the central as well as regional and local levels is financed with the funds originating from the state budget – part 10: budget, public finances, and financial institutions, division 750; where there are currently the offices of supreme and central government administrative authorities, tax offices and chambers, fiscal audit offices, and customs offices and chambers[28].

Analysis of the costs of the administration of public levies expressly shows that there are no clearly defined principles of financing its activity by the State. The amount of expenses is dependent exclusively on the budgetary situation. Expenditure on the functioning of the government administration fluctuates around 2% of the expected tax revenue implemented by the fiscal authorities. The highest amount is devoted to financing tax offices, which is justified by the type of tasks performed by these authorities, the extended territorial network, and the number of employees. A substantial part of the expenses on the functioning of the organisational units of the administration of public levies is spent on remunerations. It is about 80–85% of all the expenditure on the functioning of the revenue administration secured in the budget act, which has not changed since the beginning of the 90s of the 20th century. The rest is expenditure on purchase of material assets and investment. Currently, the latter does not exceed 5% of expenditure on the administration of public levies, e.g. it was 3.83% in 2010, which was nearly four times lower than the same expenditure in the 90s of the 20th century. Reliable analysis of the costs of the functioning of the revenue administration is only possible with respect to the tasks performed by the executive and fiscal authorities. Thus, it should be done separately for the revenue administration management function and the executive function performed by the fiscal authorities. Unfortunately, the Polish legislator does not adopt such a distinction. There is also no isolation of the expenditure solely on performance of the tasks concerned with public levies and the remaining (additional, non-tax) ones performed by the fiscal and executive authorities. Therefore, it is not only necessary to define the rules governing financing of the administration of public levies in an act of law, such as, e.g., for the Social Insurance Institution[29], but also precisely describe the tasks that it carries out and assign expenditure to these tasks. This would enable analysis of the legitimacy of the level of expenditure on the organisational units of the revenue administration;

Fifthly – the human resources policy, including determination of:

1) detailed descriptions of qualifications necessary in order to be employed within the administration of public levies (i.e., general qualifications) and on each position, including ones necessary to perform the function of a fiscal authority;
2) the manner of verification of the candidate's qualifications;
3) the procedure of evaluation of the usefulness of a candidate for a particular position;
4) the system of positions within the administration of levies, including division into substantive and non-substantive ones;
5) a motivational system;
6) the system of guarantee measures ensuring due performance of tasks by the employees;
7) the rules and causes of termination of employment relationship between an employee and employer as well as limitations on employment and doing other jobs or business, and maintenance of professional secrecy following termination of employment;
8) the rules for raising qualifications of employees of the revenue administration as well as job-related consequences of fail-

[28] See Regulation of 2 March 2010 of the Minister of Finance on detailed classification of revenues, expenses, resources, and uses as well as funds from foreign sources (consolidated text, Journal of Laws of 2014, item 1053, as amended).

[29] See Articles 76 and 77 of the act of 13 October 1998 on the social insurance system (consolidated text, Journal of Laws of 2016, item 963, as amended).

ure to perform employee's duties in this respect, incentives to raise professional qualifications, financing training, and employer's duties as regards employee trainings.

Analysis of the legal regulations applicable in this respect shows that there are members of the public service, including officers, customs officers, and employees within the administration of public levies, who are bound by the provisions of the Labour Code only. As a result, employee rights and obligations as well as rules of recruitment, determination of competencies, raising qualifications, determination of the system of positions, and the motivational system or the guarantee measures ensuring due performance of employees' tasks are substantially varied.

5. The Problems of the Revenue Administration versus the Objectives of the NRA Concept

As reasons behind the concept provided for the NRA draft act submitted to the Marshal, the authors indicate:

1) *"dispersion and replication of some tasks related to the process of collection of tax and customs duties within each service"*, pointing to controls of fulfilment of some tax and customs obligations and execution proceedings. In effect, *"it is not possible to carry them out in a consistent and uniform manner while simultaneously optimally employing the available human, organisational, and financial resources"*;
2) the existence of a multitude of provisions of the law that regulate control carried out by the tax, fiscal audit, and customs authorities differently, which "*contributes to considerable procedural differences that affect taxpayers' rights and duties*";
3) no uniform procedures, which – according to the authors of the draft act – "*exerts an undoubtedly negative influence on the level of collectability of due tax liabilities and the shape of the state budget and so on the possibility of performing state functions by government administrative units as well as on the level of voluntariness of meeting common obligations*"; too high costs of the functioning of the fiscal authorities, balancing at the level of 1.6% (in 2013) compared to other countries with a developed market economy (e.g., in Spain – 0.67% and in Ireland – 0.85%);
4) necessity to adjust to the changing market reality as regards, among others, pursuance of the so-called tax optimisation by taxpayers and establish administrative cooperation in tax matters with the administrations of other countries, especially the member states of the European Union;
5) the problems of the existing revenue administration concerned *"with the structure, infrastructure, and human resources"*, which leads to: a) heterogeneity of the organisational structures, b) paper documentation workflow, c) disproportions in terms of equipment in offices, d) lack of a possibility of optimal management of funds devoted to financing activity, e) lack of a clearly defined career path, f) insufficient development of communication channels between authorities, g) dispersion of data bases, h) varied operational standards, i) lack of homogeneous procedures, and j) dispersion and replication of competence and competitiveness of tasks.

In accordance with the explanatory statement, the main objectives of the reform of the revenue administration as proposed in the NRA draft act are: a) limitation of the scale of tax fraud; b) enhancement of the effectiveness of collection of tax and customs duties; c) increase of the level of voluntariness of fulfilment of tax obligations; d) assurance of high quality client servicing; e) reduction of the cost of the functioning of the revenue administration in relation to the level of budgetary revenue, and f) development of a professional staff.

Analysis of the problems of the Polish revenue administration and objectives of the reforms, which are enumerated in the explanatory statement to the NRA draft act, demonstrates that its authors reproduce an array of – frequently correct – mainstream opinions on the fiscal apparatus without the necessary consideration or attempt to define the functions and tasks of the revenue administration or its scope *ratione materiae*, historical conditioning, or the consequences of previous reforms, modernization, transformation, and all kinds of other changes.

Claiming that the revenue administration is faced with *"problems concerned with the structure, infrastructure, and human resources, which in practice translate into heterogeneity of the organisational structures, chiefly paper documentation workflow, disproportions in terms of equipment in offices, lack of a possibility of optimal management of funds devoted to financing activity, lack of a clearly defined career path, insufficient development of communication channels between authorities, dispersion of data bases, varied operational standards, lack of homogeneous procedures, dispersion and replication of competence, and competitiveness of tasks"* while offering no determination of the root causes of these problems does not bring us any closer to solving them.

The draft act authors' remarks as regards the costs of the functioning of the revenue administration should be treated with a similar reserve. In this respect, there was no analysis, no indication of the rules for financing the revenue administration, no mention of the types of costs (whether those are costs of remunerations or other ongoing costs and investment expenses) nor how they are interconnected or what are the tax and non-tax tasks of the fiscal authorities subordinate to the Minister of Finance. The costs of the revenue administration were considered in relation to the level of tax revenues and juxtaposed with the indicators of two countries – Spain and Ireland – nonetheless, neither the source of information was provided nor comparison of, among others, the scope *ratione materiae* of the fiscal apparatuses of these countries, which is necessary in such a case.

As far as the cost of the functioning of the revenue administration and its effectiveness are concerned, the authors of the draft act paid no heed to the quality of tax law in Poland and its influence on these aspects nor the rules for planning tax revenues for the purpose of setting the state budget for each budgetary year. Thus, the influence of performance of the function of management of public levies by the state authorities – including designing and planning taxes and designing and creating tax law – over the activity of the fiscal authorities, their effectiveness, and the cost of tax collection was completely ignored.

There was also no mention of the fact that the functions of management of public levies and exercise of tax law by the fiscal authorities are combined under a single management and neither were the consequences of that discussed.

The remarks of the authors as regards dispersion and replication of tasks and the multitude of procedural regulations as well as their influence on the level of tax collectability and the shape of the state budget are not convincing either owing to the lack of analysis of this matter, especially in the context of the solutions proposed in the draft act.

To sum up, it can hardly go unnoticed that the problems of the Polish revenue administration voiced by the authors of the draft act are a set of remarks which are internally disordered, often journalistic in character, and were included in the explanatory statement with no reflection about their significance or discernement of whether they are the root cause or the consequence of the problem.

Unfortunately, the outlook on the problems of the Polish revenue administration offered by the draft's authors has impacted the way the reform objectives are defined.

The first place in the rank went to limitation of the scale of tax and customs fraud and increase in the effectiveness of collection of tax and customs duties, which is obviously a legitimate objective in itself, however, without analysis of the

causes of fiscal fraud and low effectiveness of collection of levies, its accomplishment is bound to fail.

The scale of tax fraud and success rate of collection of public levies are the elements of evaluation of the effectiveness of the revenue administration. However, the issue is more complex. Partially, it results from the scope *ratione materiae* of the revenue administration, that is, the functions it performs, and partly from the specific role of this administration that cannot only be seen as a servant to the taxpayer. The general established measure serving to evaluate the administration of public levies is its effectiveness understood as the obliged parties' (i.e., the taxpayers') inclination to voluntarily, and so under no administrative coercion, fulfil their obligations. Effectiveness defined that way is influenced by both the factors that produce impact on the sphere of management of public levies and the sphere of the public activity of the State in terms of taxes and other levies. Although these spheres remain unquestionably linked, reliable analysis of the effectiveness and evaluation of performance of the administration of public levies should be carried out with reference to the functions performed in each of the sphere separately. For, essentially, evaluation of the revenue administration should consist in assessment of the way management and fiscal authorities perform the functions delegated to them.

Similar is the case with lowering the costs of the functioning of the revenue administration. First of all, it is necessary to analyse the model of financing of the revenue administration and the level and types of costs, determine investment needs – and other related to ongoing activity and the level of employee remunerations – as well as a tax revenue planning model. Without that, the objective set by the authors of the draft act is purely journalistic and not substantive. There is an undercurrent of an appeal to minimize these costs in the objective of the reform defined that way. It is noteworthy that the cost of the functioning of the revenue administration is one of the elements of the costs of collection of taxes and other levies. The others are the costs incurred by the taxpayers and taxable persons. Minimization of the costs of tax collection may not, however, lead to collapse of the administration of levies as then the State would be bearing the costs of its negligence rather than actions and the former is always higher than the latter. Hence, essentially, the issue is optimisation of the costs of operation of the state as regards fiscal matters, which comprise, first and foremost, the costs of the functioning of the administration of public levies incurred both within the sphere of fiscal management and the sphere of the public activity of the state, and it is frequently impossible to separate one from the other. The functions of management and the public activity of the state are not quite intertwined but correct performance of one is dependent on the performance of the other and vice versa. Negligence with respect to both financial and non-financial expenditure on the administration of levies as regards the function of the public activity of the State gives rise to negative consequences in the area of management, which in turn negatively affects the former sphere. The costs of operation of the administration of levies go down but the costs of negligence go up and during the first period the entities obliged to bear tax burdens are also – directly or indirectly – burdened with these costs by way of increasing their instrumental obligations in terms of tax reporting and shifting responsibility for wrongly assessed and collected taxes, which may result in building up of "tax dishonesty" as it is the taxpayers' answer to the negligence and not the activity of the administration of levies. In time, this leads to expansion of the black economy and socially acceptable tax avoidance whether through not declaring revenue, overstating tax deductibles, adoption of procedural provisions of the law to achieve prescription of a tax duty or fictitious disposal of one's assets.

It should also be noted – which confirms the above claims – that there are no measures whatsoever of achievement of limitation of the scale of tax fraud or increase in the effectiveness of collection of tax and customs duties or decrease

in the costs of the functioning of the revenue administration provieded in the explanatory statement to the draft acts.

The next two objectives of the reform – *"increase in the level of voluntariness of fulfilment of tax obligations"* and *"assurance of high-quality client servicing"* – are absolutely legitimate from a social perspective. The problem is, however, the definitions of both *"voluntariness"* and *"high quality client servicing"*, which are eluded by the authors of the draft act. It is not only about smiling and properly dressed officers meeting taxpayers in spacious rooms of appropriately fitted offices or the possibility of settling matters via modern means of communication. Voluntariness of fulfilment of tax obligations arises, first and foremost, from understanding and acceptance of the law on levies and thus it is a product of transparency and coherence of this law, which are rooted in the way it is passed. This problem has not been voiced in the explanatory statement to the NRA draft act at all. Likewise, high "client" servicing level is, first and foremost, a product of comprehensible provisions of the tax law, which are identically interpreted by the fiscal authorities, the courts, and the taxpayers. Organisation of the revenue administration is merely a complementary element in this respect and not the cause.

The last objective of the reform – development of a professional staff – should certainly be deemed legitimate. Uncertainty in this respect, just as the case with the other objectives, arises from the fact that there is no definition, analysis, and no means of accomplishment of this goal provided in the explanatory statement to the draft act.

6. Analysis of Effectuation of the NRA Concept in Relation to the Problems of the Administration of Public Levies

At the beginning of this part of the article, one should take note of the fact that the concept of the revenue administration reform, which is subject to evaluation here and which is described in the NRA draft act (publication No. 826) and the introductory provisions for the NRA act (publication No. 827) submitted to the Marshal by a group of members of the Parliament and the Parliamentary Club "Law and Justice" (PiS), was – as evident from numerous utterances of the representatives of the Ministry of Finance (see footnote 1) – have practically been developed in this very Ministry. From a formal point of view, this is permissible. Since the legislative initiative appertains to both the Council of Ministers and the members of the Parliament (cf. Article 118, section 1, of the Constitution) and as for the latter, Article 32, section 2, of the Regulations of the Sejm[30] stipulates that it can be undertaken by Sejm Committees or at least 15 members of the Parliament, who sign a draft act. Nevertheless, owing to the significance of this regulation, it would be appropriate for the draft acts to be submitted by the Government so that they would go through the whole procedure provided for in the act on the Council of Ministers.

Submission of draft acts developed by a particular ministry to the Marshal by a group of members of the Parliament is a common practice over the last terms of the Sejm, which allows to circumvent an array of requirements that government draft acts must meet. It is highlighted in the relevant literature that not only does substitution of the Council of Ministers with an initiative of a group of members of the Parliament testify to the low level of rationality of the legislative procedure, but it also compromises the principle of transparency of the legislative process, which frequently leads to varied games between fractions, parties or coalitions instead of legislator's mature reflection about the existing legal circumstances[31].

[30] See Resolution of the Sejm of the Republic of Poland of 30 July 1992 – Regulations of the Sejm (consolidated text, Monitor Polski of 2012, item 32, as amended).

[31] Cf. Sł. Patyra, *Mechanizmy racjonalizacji procesu ustawodawczego w zakresie rządowych projektów ustaw* [Mechanisms of Rationalization of the Legislative Process for Governmental Draft Acts], Wyd. Adam Marszałek, p. 134.

If we set the benchmark (or analysis criterion) to be the first of the problems of the Polish revenue administration voiced in the draft act – that is, subordination of the management of development of the tax system and the public activity of the State in terms of taxes to a single authority – it must be concluded that analysis of the NRA concept arising from the parliamentary draft acts clearly shows that the existing model has been preserved.

Admittedly, it is not the Minister of Finance – as the competent minister of public finance – that is supposed to be the Head of the NRA, however, Article 11, section 1, point 1, of the draft act stipulates that this Minister will be an NRA authority that coordinates and cooperates in shaping the state policy as regards the tasks of the NRA (see Article 12 of the draft act), among others, through determining – by way of issuing an order – the 4-year objectives of the activity and development of the NRA and indicating the objectives to be accomplished as well as measurement of these objectives (cf. Article 7, section 1, of the draft act), and determining the basis for the preparation of the annual objectives of activity and development of the NRA by the Head of the NRA (cf. Article 7, section 2, of the draft act). The competent minister of the public finance will also be competent in determining the rules governing organisation, the territorial range, and competence of the authorities of the NRA as well as for the matters concerned with the human resources (cf., e.g., Articles 3, 4, 2, 6, 7, and 11, sections 2, 4, 6, and 8 of the draft act). Although the Minister will no longer exercise general supervision over tax matters – which is nota bene not defined clearly in the act of law – since this competence was attributed to the Head of the NRA (cf. Article 37, point 3, of the introductory provisions) – owing to the competence attributed to the Minister earlier and position of the Head of the NRA and his or her deputies, the change in this respect remains insignificant for the evaluation of the accepted model in the extent that is under examination. For the position of the Head of the NRA is supposed to be held by the deputy minister of finance as the secretary of state appointed by the Prime Minister on request of the competent minister of the public finance and he or she is supposed to report to this minister (cf. Article 13 of the draft act). His or her deputies are to be the deputy ministers of finance as under-secretaries of the state appointed by the Prime Minister on request of the competent minister of public finance (cf. Article 19 of the draft act). Simultaneously, the whole management of the NRA at the central level are political appointees – similar as the case with the current heads of fiscal services (i.e., deputy ministers responsible for the fiscal offices and chambers, the fiscal audit, the Customs Services, and financial information). The only thing that changes is the hierarchical subordination of the deputy ministers. Currently, each of these reports to the Minister of Finance, thus, they supervise the departments assigned to them as equals within the hierarchy. Following introduction of the reform that is being designed, the under-secretaries of state will be reporting to the Head of the NRA (the secretary of state) that will be reporting to the competent minister of public finance. Thus, in the Ministry of Finance itself, there will be three-level subordination as regards the revenue administration (and exercise of tax law by the fiscal authorities), which can overlap with the additional subordination arising from the fact that the under-secretaries will be carrying out tasks not related to their obligations of the deputies of the Head of the NRA.

The solution adopted in the draft act, which is concerned with the Head of the NRA and his or her deputies is thus contradictory to Article 37, section 2, of the act of 8 August 1996 on the Council of Ministers (consolidated text, Journal of Laws of 2012, item 392, as amended; hereinafter: ACM), which stipulates that the scope of activity of the secretary and under-secretaries of state is defined by the competent minister who informs the Prime Minister about that. Whereas, in accordance with Article 20, section 2, of the draft act, the scope of activity of the deputy Head of the NRA (who is an under-secretary of state)

is to be determined by the head of the NRA (the secretary of state) by way of an order. Of course, this may be a solution lex specialis in relation to the regulation arising from the ACM, but this act should also be amended in this respect. It would also be worth to determine a possibility or the lack of a possibility for the deputies of the Head of the NRA to perform other tasks delegated to them by the Minister of Finance as the competent minister of public finance, budgetary matters, and financial institutions.

One should also bear in mind that in accordance with Article 38 of the act on the Council of Ministers, acceptance of the resignation of the government by the President of the Republic of Poland necessitates resignation of the secretaries and under-secretaries of state. Although the new Prime Minister makes a decision about acceptance of their resignation within three months from the moment the Council of Ministers is appointed, it can hardly go unnoticed that within this period, the legitimacy of the management of the NRA (i.e., the Head of the NRA and his or her deputies) in performance of their tasks will be – similar as the case with the under-secretaries of state currently managing the operation of each part of the revenue administration – considerably diminished. The reason is the adoption of the political criteria of appointment of the management of the NRA. What is more, in such a case the objectives of operation and development of the NRA defined by the retiring management will be left hanging in the air. The new management of the NRA may have other priorities in this respect.

A positive solution offered as part of the adopted concept is certainly subordination of all the existing fiscal strucutures (i.e., the tax offices and chambers, the fiscal audit, and the Customs Services) to a single management. Though the same effect can be achieved under the current legal circumstances by making a single deputy minister, acting as the secretary or under-secretary of state, the Head of the Customs Services, the General Inspector of Fiscal Audit, and the authority responsible for the tax offices and chambers. For it is the minister that makes decisions as regards division of competence in the Ministry of Finance (cf. Article 37, section 2, of the ACM). If the Minister of Finance decides to take this measure, they may also introduce changes in terms of organisation of the ministry itself by adjusting its structure to the tasks that each fiscal service performs in line with statutory law as well as in terms of effective cooperation among tax administration, the fiscal audit, the Customs Services, and financial information. Although the Prime Minister confers the statute on the Ministry of Finance (cf. Article 39, section 5, of the ACM)[32], which takes place in agreement with the Minister of course, the organisational regulation that defines the tasks of the organisational units is devised by the Minister (cf. Article 39, section 6, of the ACM).

The adopted model of selection of the management of the NRA and its hierarchical subordination in the Ministry of Finance itself was unfortunately shifted to the national (the Head of the National Treasury Information), regional (the directors of the revenue administration chambers), and local (the heads of the tax offices and the revenue and customs offices) authorities. In each case, there were no particular criteria of appointment and dismissal of the people serving the roles of tax authorities defined. In accordance with the explanatory statement to the draft act (pp. 4 and 5), these positions will be filled *"analogously as regulated in the act of 21 November 2008 on the Civil Service (Journal of Laws of 2014, item 1111, as amended) as regards senior positions, that is, by way of appointment by authorised authorities."* This is supposed to enable *"efficient employment of educated, skilled, and predisposed people for the above-mentioned positions, who will be fit to meet the current needs of the NRA"* and results – according to the project promoters – from *"the significance and scope of tasks performed by the Head of the NRA and his or her deputies, the Head of the National Treasury Information and*

[32] The current one – see the regulation No. 20 of 22 February 2016 of the Prime Minister on conferment of the statute on the Ministry of Finance (Monitor Polski, item 185).

his or her deputy, the head of the revenue administration chamber and his or her deputy, the head of the tax office and his or her deputy, and the head of the revenue and customs office and his or her deputy" as well as from the need to *"ensure efficient functioning of the NRA."* This means that it will be possible to appoint people meeting only the general requirements specified in Article 53 of the act on the civil service for the position of the national, regional, and local authorities of the NRA; which are as follows: a) holder of a Master's Degree or equivalent; b) not convicted with a final and binding sentence prohibiting occupation of managerial positions in the offices of public authorities or performance of functions concerned with implementation of public funds; and c) having managerial competencies – which will ultimately be determined by the Head of the NRA and not based on objective criteria. And so, the type of education and professional experience will be of no significance just as other requirements that are currently necessary to hold these positions.

Not only were the specific requirements that the candidates for the directors of the National Treasury Information and the chambers of tax administration, the heads of tax and revenue and customs offices, and their deputies not provided in the draft act but neither were the prerequisites for their dismissal. This means that it will be possible to dismiss the person appoitned to serve as the authority (or the deputy) at any time without stating the reasons for such a decision. If the solutions adopted by the authors of the draft act are juxtaposed with the principles for assessment of the heads of the revenue administration chambers, it turns out that politicization of appointment of the revenue authorities, which has been practised for a longer while, will find legitimisation in the provisions of the law. For it should be noticed that the heads of the revenue administration chambers will be assessed against the degree of accomplishment of the objectives of activity and development of the NRA set by the Minister of Finance (in a four-year perspective) and the Head of the NRA (in a one-year perspective) (cf. Article 7, section 4, of the draft act). And so, the benchmark will not be accomplishment of the statutory tasks of the NRA but the objectives for the activity and development of the NRA arising from the documents authored by people who serve political functions. Thus, the content of these documents will also be materially affected by political aspects. In this respect, introduction of rotation in term limits for the regional and local NRA authorities changes nothing (cf. Article 21, sections 3 and 4, Article 24, sections 3 and 4, Article 27, and Article 32 of the draft act). For the essence of the function of a tax authority is not rotation in term limits or the lack of it but making decisions of the head of an organisational unit of the revenue administration (or his or her deputy) and the holder of a position of a revenue authority independent from any political pressure. It will not be guaranteed – and certainly not in the form proposed in the act – by rotation in term limits for a given function. Obviously, it will not be guaranteed by candidate selection by way of competition either. It can only be guaranteed by clearly and statutorily defined recruitment, evaluation, and dismissal criteria. In this case, rotation in term limits should rather be adopted for the function of the Head of the NRA, which with clearly defined dismissal criteria would allow him or her to keep the same independence that the provisions of the law guarantee for the Head of the Supreme Audit Office. This could also guarantee independence of the other NRA authorities. Unfortunately, it is non-existent in the draft act.

To sum up the conclusions so far, it should be clearly stated that not only does the adopted model of the reform of performance of tasks related to the registration, assessment, verification, control, collection, debt collection, and investigation function maintain the existing degree of politicisation of the fiscal authorities but it also gives it legal sanction.

Analysis of the concept of the revenue administration reform arising from the NRA draft act indicates that its authors decided to consolidate fiscal services (i.e., the tax, the fiscal audit,

and the Customs Services) through dissolution of the existing authorities, liquidation or transformation of the existing organisational units of the revenue administration and appointment of new authorities as well as creation of new organisational units (cf. Articles 160–163 of the draft act).

As a result of such consolidation ratione personae, the following organisational structure will be instituted in place of the existing one:

1) at the central level (cf., Article 14, section 1, of the draft act) – the NRA function will be singled out within the Ministry of Finance, which will be serving the following functions: a) organisation and management of performance of planned state tasks in terms of implementation of revenues from public levies; b) control and supervision as regards management of public levies; c) enforcement of the law on public levies as regards investigations and partly control and verification, including within the framework of fiscal investigation; d) function of the General Inspector of Financial Information (GIFI); e) functions of special and certifying units defined in the provisions of the law of the European Union, and f) performing audit of management of funds from foreign sources;
2) at the national level:
   a) the National Treasury Information, which first and foremost serves the education function and issues interpretations of the provisions of tax law in individual cases (In this respect, this authority will take over the tasks of the Minister of Finance carried out by the heads of revenue chambers delegated to them.);
   b) the Tax and Customs Academy, which carries out tasks concerned with education of employees of the revenue administration and so takes over the tasks of the existing Centre of Professional Education of the Ministry of Finance (cf. Article 41, sections 1 and 2, of the draft act and the Centre's statute conferred by the Minister of Finance[33]);
   c) The NRA Information Centre whose task is to render information services to the organisational units of the NRA (cf. Article 43 of the draft act);
3) on the regional level – revenue administration chambers whose tasks will include (cf. Article 25 of the draft act):
   a) organisational supervision over the activity of the heads of tax offices and the heads of revenue and customs offices (excluding the matters falling within the competence of the Head of the NRA and so, among other things, fiscal inspection and coordination of tax and customs audits);
   b) instance supervision over the heads of tax offices and the heads of revenue and customs offices, excluding supervision over the decisions of the latter as regards holding security of a tax liability and customs duties on the assets of the controlled person (cf. Article 77, section 3, of the draft act) and decisions issued as a consequence of transition from a revenue and customs audit to tax proceedings (cf. Article 80, section 6, of the draft act);
   c) performance of audit, which was earlier carried out by the customs authorities;
   d) performance of audit – that is, control of management of public funds (while audit of management of the funds from the EU budget will fall within the competence of the Head of the NRA) – of management of state assets, management of assets being part of the State Treasury, and fulfilment of obligations arising from the warranties and guarantees granted by the State Treasury

[33] See Appendix to the Order No. 45 of 28 October 2010 of the Minister of Finance on the establishment of a state budgetary unit – the Centre of Professional Education of the Ministry of Finance (Journal of the Ministry of Finance No. 11, item 50, as amended).

(which are tasks that were earlier performed by the fiscal audit authorities);

e) determination and granting of specific subsidies;
f) performance of the education function;
g) performance of tasks arising from the EU provisions regulating statistics of trade in goods, which were earlier carried out by the customs chambers;

4) at the local level:
   a) tax offices (preserved as they are) that serve the following functions: registration, assessment, verification, collection, debt collection, investigation, provision of information, and educational functions in terms of all levies falling within the competence of the NRA, except for (partially) the excise duty (cf. Article 115, point 7, of the introductory provisions) and value added tax (cf. Article 82, point 2, of the introductory provisions);
   b) revenue and customs offices performing (to a full extent) the control and verification function in a form of revenue and customs audit, the tasks that were earlier carried out by the customs offices in terms of the customs law (i.e., assessment, official checking, coverage of goods with customs procedures, conducting customs proceedings), the investigation function, and the tasks related to fiscal investigation.

As it arises from the analysis of the NRA carried out so far – with the benchmark being the scope *ratione materiae* of the revenue administration – it cannot go unnoticed that it is no different from the scope *ratione materiae* of the existing revenue structures subordinated to the Minister of Finance. The project promoters have effectuated a simple transposition of the tasks that were so far carried out by the tax offices and chambers, the fiscal audit, the Customs Services, and the GIFI to the scope *ratione materiae* of the NRA without reflecting on whether the current scope of tasks of the authorities subordinate to the Minister of Finance requires establishment of any new fiscal structure based on separation of the tasks concerned with exercise of the law (on levies) from tasks that are linked to public levies to a limited extent.

This is especially the case with the tasks concerned with management of public funds, handing over own funds to the EU budget, management of funds from foreign sources, and management of state assets, which were earlier carried out by the fiscal audit and in line with the draft act, they are to be carried out, first and foremost, by the revenue administration chambers. This group of tasks is related to expending public funds and employing state assets. Thus, it requires a different set of competencies and procedures than the ones needed to collect public levies. It would, therefore, be appropriate to consider whether this group of tasks should not be delegated to a specialized unit that would not be linked to the structures of administration responsible for the exercise of tax law. However, in order to make a decision in this respect, it would first be necessary to carry out analysis of the effectiveness of the previous solution (consisting in delegating the functions of control of public levies and expending public funds to a single authority) and confront it with the needs and threats present in this area. The explanatory statement to the draft act does not contain any information suggesting that such an analysis was conducted in the course of making a decision about carrying out the reform of the revenue structures subordinate to the Minister of Finance. It was decided to make a simple transposition of the existing entitlements of the head of the fiscal audit and the General Inspector of Fiscal Audit in this respect to the head of the revenue administration chamber and the Head of the NRA.

A separate issue is the tasks carried out by the Customs Services. This Service currently performs tasks that are concerned with both protection of the customs frontier of Poland and the EU and collection of some taxes and fees. The NRA draft act transposes all these tasks from

the former Head of the Customs Services to the Head of the NRA, from the head of the customs chamber to the head of the revenue administration chamber or the head of the tax office, and from the head of the customs office to the head of the revenue and customs office and partially the head of the tax office as well. However, it was not considered – or at least it does not follow on from the explanatory statement that it was – to what extent the broadly understood tasks of the Customs Services as regards protection of the customs frontiers of Poland and the EU remain related to tax collection and, consequently, whether a single organisational structure is appropriate for performance of tasks from both these areas, and, secondly, whether these tasks should not be carried out by a separate structure or delegated to another one that already exists and can be adopted to that purpose, e.g., the Border Guard.

One of the basic objections raised against the current regulations is *"dispersion and replication of some tasks related to the process of collection of tax and customs duties."* The authors quote control and enforcement proceedings as an example, claiming that *"it is not possible to carry them out in a consistent and uniform manner while simultaneously optimally employing the available human, organisational, and financial resources"* because the existing provisions of the law *"regulate control carried out by the tax, fiscal audit, and customs authorities differently."* Nevertheless, as it follows on from analysis of the solutions being designed, the authors preserve not only the dualism in terms of authorities entitled to conduct audit but also the differences in control procedures. Following the introduction of changes, there will be both tax audit regulated by the provisions of the Tax Ordinance and conducted mainly by employees of tax offices (as it is now) and the revenue and customs audit regulated by the provisions on the NRA and carried out by the officials and employees of the revenue and customs offices.

In the light of the provisions of the NRA draft act, the dualism of neither the authorities entitled to conduct control of fulfilment of tax obligations nor of control procedures will be eliminated. Admittedly, the explanatory statement does mention that *"the main task of the revenue and customs administration authorities will be detection of and counteracting irregularities on a large scale in situations where the scale, complexity, and degree of impact of the non-observances exert a substantial influence over the system of state financial security"*, nonetheless, statutory provisions of the law clearly state that the authority to conduct control of fulfilment of tax obligations will be conferred on the heads of tax offices and the heads of revenue and customs offices, and on each to the fullest extent, and so they will be authorised to control natural and legal persons as well as non-corporate entities, and taxpayers who run and who do not run a business. Hence the distinction between "small" and "large" taxpayers as regards "small" and "large" losses has no legal basis. By the way, it is noteworthy that there were similar intentions at the time the fiscal audit was instituted in 1991. They were quickly revised though since anyone who has ever had to do with control of fulfilment of tax obligations is perfectly aware of the fact that this is nothing more but artificial distinction concerned more closely with verification of financial statements rather than performance of the control function.

It is also noteworthy that the whole revenue and customs audit procedure was based on the provisions of the act on tax control and partially the act on the Customs Services, which – considering the current effects of operation of these authorities as regards countering tax avoidance – raises considerable doubts as to the possibility of accomplishment of the objective consisting in combating tax fraud.

Analysis of the solutions that are being designed thus clearly shows that as far as the control function is concerned, essentially nothing changes compared to the current legal and factual circumstances.

What is more, as regards both tax audit and revenue and customs audit, supervision of the

head of the revenue administration chamber over these audits and his or her influence on the selection of entities to be audited as well as formulation of audit plans in practice will be – euphemistically speaking – very limited. As far as tax audits carried out by the head of the tax office are concerned – if initiated as a result of control of tax proceedings – the head of the tax office will be the second instance authority settling a case, however, as regards revenue and customs audits, appeal will be considered by the head of the revenue and customs office – so the very authority that has carried out the audit and tax proceedings (cf. Article 80, section 5, of the draft act). Furthermore, the range of tasks of the head of the revenue administration chamber includes neither coordination of control activity of the heads of the tax offices and the heads of the revenue and customs offices nor performance of analyses of risk areas and development of audit plans. This is the task of the head of revenue and customs office (cf. Article 33, section 1, point 13, of the draft act) and so it was delegated to a local unit; while coordination of revenue and customs audits was delegated to the Head of the NRA (cf. Article 14, section 1, point 9, of the draft act). It is impossible to follow the train of thoughts of the authors of the draft act in this respect considering the objections they put forward against the existing solutions.

It seems that transposition of the current control model to the new structure arises, first and foremost, from the lack of definition of the control function, which results in establishment of procedures that are not suited to its substance and assignment of control competence to individual authorities without reflecting on whether and what type of actions on a local level are more appropriate, more effective, and more efficient then on a regional level.

This remark is also relevant for the considered placement of the debt collection function that will be performed by the head of the tax office (while so far it was him or her and the head of the customs chamber) and so a local authority, which – considering the current effectiveness of execution of receivables effectuated by the head of the tax office – should encourage reflection on the legitimacy of transposing this function to the regional level. However, it would also be best to define execution or more broadly tax liability collection beforehand.

Performance of the investigation function was also delegated to several authorities. The authors of the draft act copy the existing solutions in this respect by delegating the competence regarding this matter to the Head of the NRA, the head of the tax office, and the head of the revenue and customs office (each according to their competence *ratione materiae*). There was no reflection on the character of this function either or on the competencies needed to perform it, which would result from analysis of the actions undertaken in this respect by the fiscal audit inspectors, the tax offices, and the customs offices. In my opinion, it is worth considering either separation of performance of this function within the revenue administration structures or moving it outside these structures and delegating to, e.g., fiscal prosecutors who are independent from the management of the revenue administration.

To recapitulate on the conclusions arrived at so far, it should be concluded that neither does the reform being designed introduce changes in terms of the scope *ratione materiae* of the revenue administration subordinate to the Minister of Finance nor does it eliminate the faults of the existing construction as regards performance of the function of exercise of tax law, especially the control, debt collection, and investigation ones but the others as well.

Taking the manner of financing of the revenue administration as a criterion of analysis, it is noteworthy that the reform being designed changes nothing in this respect other than separation of the budgetary part devoted to the NRA and so removal of the costs and revenues assigned to the NRA from part 19 of the state budget that the Minister of Finance is responsible for (cf. Article 9 of the draft act).

As it arises from the explanatory statement, one of the objectives of the reform is *lowering*

the costs of the functioning of the revenue administration compared to the level of budgetary revenues that are obtained. In evaluation (which took not even two pages) of the effects of the NRA regulations, the authors of the project indicate that it will be achieved through: first of all – reduction in the costs of the functioning of the units of revenue and customs administration, in particular the running costs, and secondly – increase of the effectiveness of task performance by way of alteration of the structure and optimisation of employment.

As far as the first element is concerned – reduction in the costs of the functioning of the organisational units of the revenue administration – is concerned, it is noteworthy that the majority of these costs is remunerations (i.e., 80–85% of all the costs). Other running costs amount to about 10–15% of the total expenditure from the state budget on the revenue administration subordinate to the Minister of Finance; while expenditure on assets is 1–3%. For example, in 2015 remunerations along with derivatives (i.e., contributions to the Social Insurance Institution and Employment Fund) amounted to PLN 4,836,056 thousand and constituted 80.79% of expenditure in part 19 of the state budget on administration (while the total expenditure amounted to PLN 5,985,742 thousand); the other running costs (i.e., purchase of other services, materials, equipment and energy, contributions to the social benefits fund, administrative payments, rent for buildings, rooms and garages, purchase of redecorating services, employment costs, business trips, court and prosecution proceedings, contributions to the State Fund for Rehabilitation of Disabled People, and telecommunication fees) amounted to PLN 936,315 thousand, which was 2.66% of the total expenses on administration[34].

As follows on from the explanatory statement to the NRA drat act, *in connection with the introduction of the new organisational structure, rented office space will be reduced by about 10%, which will lower the cost of rent and use by about PLN 4,200 thousand.* This amount is merely 0.070% of the total budget of the Minister of Finance in chapter 750. Thus, reduction in office space that is occupied will not have any considerable influence on the reduction of the cost of the functioning of the revenue administration.

A radical reduction in expenses would be guaranteed by a cut in remuneration funds by half, which would make it possible to lower the cost of revenue administration in relation to the revenues from taxes, customs, and dividends to just a level of about 1%[35].

Decrease in the remuneration funds by half would require reduction in employment by half (if the authors of the draft act wanted to keep the current salary level) or lowering of remunerations (if the authors of the draft act wanted to keep the current employment level). Both would, however, lead to the collapse of the revenue administration. It is enough to mention that by the end of 2015, there were 64,159 people employed

[34] Cf. *Informacje o wykonaniu budżetu ministra właściwego do spraw budżetu, finansów publicznych i instytucji finansowych w 2015 r. – część 19* [Information on the Implementation of the Budget of the Competent Minister of Budgetary Matters, Public Finance, and Financial Institutions in 2015 – Part 19], the Ministry of Finance, Warsaw, June 2016, p. 49.

[35] Tax revenues contributed to the state budget in 2015 amounted to PLN 259,673,511 thousand, revenues from customs – PLN 2,929,145 thousand, and profits collected by tax offices and contributed to the budgets of local governments: from corporate income tax – PLN 7,076,144 thousand, from personal income tax – PLN 38,100,103 thousand, from fixed amount tax – PLN 72,963 thousand, from tax on civil law transactions – PLN 1,749,136 thousand, and from the inheritance and donation tax – PLN 246.375 thousand. The total revenue implemented by tax offices subordinate to the Minister of Finance amounted to PLN 309,847,379 thousand in 2015. See Sprawozdanie z wykonania budżetu państwa za okres od 1 stycznia do 31 grudnia 2015 r. [Budget Execution Reports for the period between 1 January and 31 December 2015], the Council of Ministers, Warsaw 2016 and Sprawozdanie z wykonania budżetu państwa za okres od 1 stycznia do 31 grudnia 2015 r. Informacja o wykonaniu budżetów jednostek samorządu terytorialnego [Budget Execution Reports for the period between 1 January and 31 December 2015. Information on budget execution by local government units], the Council of Ministers, Warsaw 2016, pp. 39–40, 82, 115, 153–154, www.mf.gov.pl.

as equivalent to full time in the whole ministry of finance, including: a) 2,123 – in the Ministry of Finance; 41,640 – in tax offices and chambers; 5,194 – in fiscal audit offices; 14,894 – in customs offices and chambers; 167 – in the Data Processing Centre; and 141 employees in the Centre of Professional Education of the Ministry of Finance[36]. Average remuneration in this period was: a) PLN 7.868 – in the Ministry of Finance; PLN 4.931 – in tax offices and chambers; PLN 6.309 – in the fiscal audit offices; PLN 5,717 – in customs offices and chambers; PLN 6.023 – in the Data Processing Centre; and PLN 3.879 – in the Centre of Professional Education[37]. To have the full picture of remunerations in tax offices in mind, which is the most numerous group of employees within the revenue administration, it should be mentioned that basic salary of half of the employees was PLN 2,810.76[38], which – including quarterly rewards, additional service benefit, and additional remuneration (the so called "13th salary") was much below the average remuneration in the national economy that amounted to PLN 3.899,78 in 2015[39].

Even the data on the budget of the revenue administration (including the Ministry of Finance) and division of costs into remunerations and other running costs and costs of assets show that the expected reduction in the cost of the functioning of the organisational units of the revenue administration is not realistic. Admittedly, it was pointed out in the explanatory statement that employment level in the revenue administration will be reduced by about 10%[40], however, the funds saved that way were supposed to be used to increase the pay of the other employees. By the way, it is noteworthy that the claim that employment would be reduced by 10% had not been preceded by any analysis of the actual needs in this respect whatsoever.

On the other hand, the relation between the costs and tax revenues is also supposed to be achieved by an increase in the effectiveness of the revenue administration. In this context, it is noteworthy that the effectiveness should increase at least twofold for the ratio between the costs and the revenues to reach the level in Ireland (0.85%), not even mentioning Spain (0.67%), which the authors of the draft act used as reference points. In other words, in order for the level of costs in relation to revenues to be below 1%, tax revenues (including all the duties and dividends) that amounted to a little above PLN 300 billion in 2015 should increase by the same amount (i.e., by about PLN 300 billion). Then, with the current level of the costs of the revenue administration, which is about PLN 6.0 billion, their proportion in the revenue collected by this administration would amount to about 1%. Such an increase in tax revenues (from levies), however, is not even guaranteed by total elimination of the tax gap, which is currently estimated to be around 9% of the GDP in Poland, that is, around PLN 180 billion[41].

In order to achieve the objective formulated by the authors of the draft act, which is substantial reduction of the costs of functioning of the revenue administration in relation to the level of tax revenues, the activity undertaken for the purpose of lowering the costs (since as follows on from the above analysis it is impossible in prac-

[36] Cf. *Informację o wykonaniu budżetu ministra właściwego do spraw budżetu, finansów publicznych i instytucji finansowych w 2015 r. – część 19* [Information on the Implementation of the Budget of the Competent Minister of Budgetary Matters, Public Finance, and Financial Institutions in 2015 – Part 19], the Ministry of Finance, Warsaw, June 2016, p. 64.

[37] *Ibid*., p. 65

[38] *Cf., e.g., Komunikat dotyczący podwyżek wynagrodzeń*, podpisany przez podsekretarza stanu w Ministerstwie Finansów Mariana Banasia [Marian Banaś's Communication on Pay Increase Signed by the Under-Secretary of State at the Ministry of Finance].

[39] Monitor Polski of 2016, item. 145.

[40] In the response to the interpellation of 22/12/2015 (No. 253) of a member of Parliament, Anna Sobecka, the Minister of Finance indicated a reduction of employment by 10–15%.

[41] See an interview with Professor See also *Polska. Administracja podatkowa – wyzwania modernizacyjne i priorytety strategiczne* [Poland. Tax Administration – Modernization Challenges and Strategic Priorities], the International Monetary Fund, Fiscal Affairs Department, January 2015 r., pp. 4–11.

tice) or increase the effectiveness of the revenue authorities is not enough. First and foremost, it is necessary to increase the GDP, without refraining from activity aimed at reforming the revenue administration. Besides, as I have already mentioned above, the purpose of a reform may not be minimization of the costs of the revenue administration but optimisation of the costs of tax collection; and that requires actions to be taken within the spheres of organisation and management of tax administration, the human resources policy, tax procedures as well as creation of the law on levies. Thus, it requires a new (reformed) model of performance of the tax authority arising from the Constitution of the Republic of Poland by the State. Unfortunately, it is missing from the NRA concept.

Indication of the measures for the evaluation of the activity of the new revenue authorities is also missing (as they are supposed to be determined by the Minister of Finance and Head of the NRA) and – more importantly – there are no measures for the evaluation of the reform that is being introduced, which makes it much more difficult for the Sejm to perform its control function in practice (cf. Article 95, section 2, of the Constitution of the Republic of Poland).

The last element of analysis of the NRA concept is the human resources (or employment) policy. In this context, the explanatory statement to the draft act mentions as an objective of the reform, among other things, lack of a clearly defined career path and the need for the professional development of the staff. Unfortunately, there are no changes in relation to the current legal circumstances proposed in the draft act in this respect. As far as the human resources policy is concerned, it refers chiefly to the revenue and customs officers and copies regulations provided in the current Customs Services Act (cf. Articles 148–275 of the draft act and Articles 76–187 of the Customs Services Act); whereas as regards the other employees, it refers to the provisions of the act on the civil service, the Labour Code, and the act on civil servants (cf. Article 141, section 1, of the draft act).

And so, in the revenue administration, we will continue to have several groups of employees to whom different solutions apply as regards the human resources policy.

First and foremost, the staff's professional level is to be improved as a consequence of establishment of the Tax and Customs Academy that will replace the Centre of Professional Education of the Ministry of Finance. As it follows on from the comparison of the content of the draft act in this regard (i.e., Articles 41 and 42) and the Centre's statute (see footnote 32), the change is mainly the alteration of the legal basis for the establishment and functioning of the training centre at the ministry of finance.

7. Conclusions

The present analysis of the concept of reform of the revenue administration subordinate to the Ministry of Finance, which was presented in parliamentary projects (in Publications No. 826 and 827), first and foremost, points to fragmentariness of the proposed solutions. Both projects focus exclusively on organisation of performance and some aspects of performance of the State's public activity in terms of tax law by the revenue authorities of the government administration, while leaving not only performance of the function of management of public levies but also the local mode of tax administration outside their scopes, which – I believe – is a serious flaw of the NRA concept proposed in the draft acts.

It seems that owing to its very fragmentariness, the concept does not remove the primary problems that the government revenue administration is faced with, and so, in particular, the politicisation of the management, which arises from delegation of the responsibility for both shaping the state tax policy (regarding levies) and exercise of tax law to a single authority. What is more, legal sanction is given to the current practice of selecting people to serve as local and regional revenue authorities, which consists in abandonment of competition verifying substan-

tial suitability of a candidate to the function in favour of indication of a person by an authority entitled to do so (currently he Minister of Finance and later the Head of the NRA following the changes). Negative consequences of such a practice may be palpable within the sphere of both control and verification activity undertaken by the revenue authorities, for example, in selection of areas subject to control based on political criteria; they may also influence tax proceedings in individual cases.

Secondly, while altering the previous organisational structure and defining the scope *ratione materiae* of the NRA, the project promoters have effectuated a simple transposition of the tasks so far carried out by the previous authorities without reflecting on whether the current scope of tasks of the authorities subordinate to the Minister of Finance requires establishment of any new revenue structure based on separation of the tasks concerned with exercise of the law (on levies) from tasks that are linked to public levies to a limited extent.

Moreover, the new model solves neither the problem of the dualism of tax and revenue audits nor the problem of the multitude of procedures applicable in this respect. Performance of the investigation function was not altered either. Complete absence of reflection by the authors of the NRA concept is also noticeable as regards performance of the debt collection function which was left on the local level (and it is supposed to be performed by the head of the tax office as before).

Not only was the model of financing of the revenue administration left unchaned but no analysis of the costs of its functioning was conducted, which led the authors of the draft act to draw utterly ungrounded conclusions as to the possibility of reducing them. The possibility of substantial improvement of the cost to revenue ratio by way of increase of the effectiveness of the revenue authorities should be deemed ungrounded as well. Furthermore, the NRA concept introduces no changes in the human resources policy by making no adjustments in the existing employment regulations.

Considering the remarks presented in the present article, the improvement of the effectiveness of tax collection and administrative execution as well as taxpayer servicing, reduction of the tax gap, increase of the effectiveness and efficacy of countering tax fraud, detailed specification of the responsibility of the people managing the revenue administration, unification of tax judicial decisions nationwide, increase of the effectiveness of tax audits, creation of an effective taxpayers' data verification system, improvement of information flow, not even mentioning creation of an appropriate staff selection, education, and motivational system or a data collection and analysis system, which were indicated in the explanatory statement to the NRA draft act, should all be deemed wishful thinking.

All these objectives of the NRA may also be achieved with the existing structure of the revenue administration without modifying it. The legal bases are provided for in the acts on divisions of government administration (cf. Article 36), on the Council of Ministers (cf. Articles 34, 34a, 39, section 6), on tax offices and chambers (cf. Article 5, section 10), on fiscal audit (cf. Article 9, section 2), on the Customs Services (cf. Article 21, section 2), on public finance (cf., e.g., Article 12, section 2). In this case the key is thus reliable analysis and will to create procedures intended to accomplish the objectives enumerated in the explanatory statement to the NRA draft act.

To sum up, the NRA concept arising from the parliamentary projects may be described as modernization of the revenue administration at the most similarly as the act of 10 July 2015 on tax administration accepted by the Sejm – 7th term (Journal of Laws, item 1269, as amended), which is constantly being postponed. It is not, however, a reform, which would require development of a new model of State's performance of its tax authority arising from the Constitution of the Republic of Poland; and so both within the sphere of management of public levies, including establishment of taxes, and exercise of tax law, and not only by the government but also by the local administration.

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