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An officer employed as a revenue collector in the structure of the National Revenue Administration – critical remarks

Radca skarbowy w strukturze Krajowej Administracji Skarbowej – uwagi krytyczne

Abstract. This article is devoted to the institution of an officer employed as a revenue counsellor which is regulated in the Polish legal system since 1 March 2017 with the establishment of the National Revenue Administration. According to the Author, the introduction of the position of the officer employed as a revenue counsellor, who exercises the powers of the state tax authority (head of a revenue office, head of a customs and revenue office, and a director of a fiscal administration chamber) to resolve tax matters is unnecessary, as it only leads to a multiplication of cost-intensive and inefficient “clerical positions” in the structures of the administration of public levies.

Keywords: an officer employed as a revenue counsellor; National Revenue Administration; tax (fiscal) authority; officer; courtesy allowance; decision-making allowance.

Streszczenie. Artykuł poświęcony jest instytucji radcy skarbowego uregulowanej w polskim systemie prawnym od 1 marca 2017 r. wraz z utworzeniem Krajowej Administracji Skarbowej. Zdaniem autora wprowadzenie stanowiska radcy skarbowego, który korzysta z uprawnień państwowego organu podatkowego (naczelnika urzędu skarbowego, naczelnika urzędu celno-skarbowego oraz dyrektora izby administracji skarbowej) w zakresie rozstrzygania spraw podatkowych, jest zbyteczne, gdyż jedynie prowadzi do mnożenia kosztochłonnych, a zarazem nieefektywnych „posad urzędniczych” w strukturach administracji danin publicznych.

Słowa kluczowe: radca skarbowy; Krajowa Administracja Skarbowej; organ podatkowy (skarbowy); funkcjonariusz; dodatek orzecznicy.

1. Introductory remarks

The main purpose of this publication is to review the findings concerning an institution of an officer employed as a revenue counsellor, which was introduced into Polish tax law relatively recently, i.e. on 1 March 2017. The considerations presented in this article justify the thesis that the institution of the officer employed as a revenue counsellor is superfluous, as it only multiplies clerical positions in the system of administration of tax levies. Moreover, in neither the Act of 16 November 2016 on National Revenue Administration¹, nor in the Act of 16 November 2016 implementing the Act on National Revenue Administration² are any regulations on the employment (appointment) of the officer employed as a revenue counsellor place. This means that the belief in the legislator's rationality

¹ Act of 16 November 2016 on National Revenue Administration (consolidated text: Dz.U. [Polish Journal of Laws] of 2019, poz. [item] 768 with subsequent amendments), hereinafter: A.N.R.A.

² Act of 16 November 2016 introducing the Act on the National Revenue Administration (Dz.U. of 2016, poz. 1948 with subsequent amendments), hereinafter: A.I.A.N.R.A.

becomes *de facto* a utopia. I share A. Gomułowicz's opinion on this matter that "a lifetime is not long enough to master the art of understanding the meaning of tax law solutions created by the legislator"³.

Critical remarks concerning the above mentioned research issue are also confirmed by empirical material obtained from the Directors of a Fiscal Administration Chambers, the Minister of Finance, Investment and Development, and the Director of National Revenue Information System.

2. Tax authority vs an officer employed as a revenue counsellor status

In the Polish legal system, taking into account the criterion of the beneficiary of tax revenues, two types of tax (fiscal) authorities are distinguished⁴: state and local government authorities⁵, which are in principle monocratic (single-person) public administration bodies⁶. Such a legal solution has its advantages as, *inter alia*, it results in high operability (independence), low administrative costs, speed of tax settlements, and clear setting of a responsibility for the correctness of decisions made⁷. However,

³ A. Gomułowicz, *Ingerencyjny charakter prawa podatkowego* [in:] J. Głuchowski (ed.), *Współczesne problemy prawa podatkowego. Teoria i praktyka. Księga jubileuszowa dedykowana Profosowi Bogumiłowi Brzezińskiemu*, vol. I, Warszawa 2019, p. 178 et seq.

⁴ The so-called dualistic model of administration of public levies – J. Kulicki, *Administracja danin publicznych w Polsce*, Warszawa 2014.

⁵ I. Nowak, *Samokontrola decyzji podatkowych przez wójta, burmistrza (prezydenta miasta)*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2020, No 3, in print; M. Masternak, *Administracja podatkowa* [in:] B. Brzeziński (ed.), *Prawo podatkowe. Teoria. Instytucje. Funkcjonowanie*, Toruń 2009, p. 317.

⁶ K. Teszner, *Administracja podatkowa i kontrola skarbowa w Polsce 2012*, Lex/el; I. Nowak, *Związanie organu podatkowego wydaną i doręczoną decyzją*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2018, No 10, pp. 23–28.

⁷ E. Iserzon, *Prawo administracyjne*, Warszawa 1968, p. 76; J. Zimmermann, *Ordynacja podatkowa. Komentarz. Postępowanie podatkowe*, Toruń 1998, p. 78; P. Smoleń (ed.), *System organów podatkowych w Polsce*, Warszawa 2009, p. 45; R. Michalska-Badziak, *Podmioty administrujące* [in:] M. Stahl (ed.), *Prawo administracyjne. Pojęcia. Instytucje. Zasady w teorii i orzecznictwie*, Warszawa 2013, pp. 272–273.

er, the disadvantage of this “legal procedure” is the significant risk of making mistakes⁸.

The Tax Ordinance⁹, but also other acts of tax law, do not contain a definition of the tax (fiscal) organ, except for their taxonomic listing¹⁰. At the same time, it should be emphasized that the legislator “both in the inter-war regulations and in the post-war legislation consistently abandoned the conceptual definition of tax authorities in favour of their exhaustive enumeration”¹¹.

It follows *expressis verbis* from Article 13 of the TO that the tax authority, with regard to its jurisdiction, is:

- a) the head of a revenue office,
- b) the head of a customs and revenue office,
- c) the head of the fiscal administration chamber,
- d) the Head of the National Revenue Administration,
- e) the Director of the National Revenue Information System,
- f) the Minister responsible for public finance,
- g) commune head, mayor (city mayor), starost or marshal – as local government bodies,
- h) the local authority appeals board¹².

In the light of Article 13 § 2c of the Act on taxation, the powers of the head of a revenue office, the head of the customs and revenue office,

⁸ Ibidem; I. Nowak, *Upoważnienie pracownika do załatwiania spraw w imieniu samorządowego organu podatkowego*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2017, No 10, pp. 19–27.

⁹ Act of 29 August 1997 Tax Ordinance (consolidated text: Dz.U. of 2019, poz. 900 with subsequent amendments), hereinafter: the TO.

¹⁰ P. Smoleń, *Komentarz do art. 13 o.p.* [in:] H. Dzwonkowski (ed.), *Ordynacja podatkowa. Komentarz 2019*, Legalis/el; B. Brzeziński, M. Kalinowski, A. Olesińska (eds), *Ordynacja podatkowa. Komentarz praktyczny*, Gdańsk 2017, p. 70.

¹¹ K. Teszner, *Komentarz do art. 13 o.p.* [in:] L. Etel (ed.), *Ordynacja podatkowa. Komentarz 2019*, Lex/el.

¹² The Council of Ministers may, by way of a regulation, confer powers on the tax authorities if this is justified by the protection of classified information and the requirements of state security to: the Head of the Intelligence Agency, the Head of the Internal Security Agency, the Head of the Central Anti-Corruption Bureau, the Head of the Military Intelligence Service, the Head of the Military Counterintelligence Service – see Article 13 of TO.

and the head of the fiscal administration chamber¹³, as a tax authority, are also vested in the officer employed as a revenue collector, who performs decision-making activities in this authority. The institution of the officer employed as a revenue collector was “implemented” into the Polish tax system by virtue of Article 38 point 3(c) of the A.I.A.N.R.A. and became effective as of 1 March 2017. It is worth noting at this point that the National Revenue Administration¹⁴ was established by way of consolidation of the tax administration, customs service, and fiscal control, with 16 tax chambers, 16 fiscal chambers, 16 tax control offices, 400 tax offices, 45 customs offices, and 143 customs branches¹⁵. As a result, in the structure of the National Revenue Administration, as a rule, 16 chambers of revenue administration, 16 customs and treasury offices were “established” – or perhaps more accurately: the nomenclature was modified – together with 45 delegations of customs and treasury offices and 143 customs branches¹⁶ and 400 revenue offices which were preserved¹⁷.

¹³ That is, state bodies in the organisational structure of public levies.

¹⁴ Cf. K. Teszner, *The National Fiscal Administration – challenges and expectations* [in:] E. Lotko, U.K. Zawadzka-Pąk, M. Radwan (eds), *Optimization of Organization and Legal Solutions Concerning Public Revenues and Expenditures in Public Interest*, Białystok 2018, pp. 563–576.

¹⁵ More broadly I. Nowak, *National Revenue Administration – current organisational and financial problems*, „Prawo Budżetowe Państwa i Samorządu” 2020, No 2, pp. 37–65, DOI: <http://dx.doi.org/10.12775/PBPS.2020.010>.

¹⁶ I. Nowak, *Krajowa Administracja Skarbowa w liczbach*, „Kazus Podatkowy” 2020, No 2, in print.

¹⁷ More broadly I. Nowak, M. Dominiak, *Krajowa Administracja Skarbowa a uszczelnianie systemu podatkowego – spostrzeżenia po dwóch latach funkcjonowania* [in:] P. Łabuz, I. Malinowska, M. Michalski (eds), *Przestępczość gospodarczo-ekonomiczna – przeciwdziałanie i zwalczanie*, Warszawa 2020, pp. 111–125; letter of the Minister of Development and Finance of 7 February 2017, No RS6.054.3.2017, <http://orka2.sejm.gov.pl/INT8.nsf/klucz/658C47EE/%24FILE/i09407-o1.pdf>, (access on-line: 25.11.2019); letter of the Minister of Finance of 23 April 2018, No DOW6.054.8.2018.KZM, <http://orka2.sejm.gov.pl/INT8.nsf/klucz/658C47F2/%24FILE/i20954-o1.pdf>, (access on-line: 20.12.2019); L. Bielecki, *Ustrojowe prawo administracyjne (podatkowe) dotyczące Krajowej Administracji Skarbowej jako przykład wpływu ideologii politycznej na kształt prawa*, „Przegląd Prawa Publicznego” 2017, No 7–8, p 44 et seq.

The officer employed as a revenue collector is not a tax authority, although, as in the case of the latter, the legislator has likewise failed to standardise the definition of this position. Article 148(1)(3) of the A.N.R.A. *expressis verbis* stipulates that a person employed in an organisational unit of the National Revenue Administration and the officer are entitled, respectively, to, *inter alia*, a decision-making allowance of up to 50% of the basic salary of a person employed in an organisational unit of the National Revenue Administration or the basic salary of an officer in the position of a tax adviser for performing the activities of the body referred to in Article 13(2)(c) of the TO¹⁸. Also in the doctrine of tax law, the above view is fully endorsed, according to which “undoubtedly, a tax adviser is not a tax authority”, but only an employee (officer) whose duties include resolving tax matters under Article 13(2)(c) of TO¹⁹. In other words, the legislator delegates the decision-making powers vested in the tax (fiscal) authorities to an employee (“officer”) employed in an office serving a public authority²⁰.

Summarizing the above considerations, one should notice a mistake made by the legislator who, in Article 11 of the A.N.R.A., which regulates the closed catalogue of the National Revenue Administration bodies²¹, omits the tax administration bodies from Article 13 of the TO, which, after all, has “a wider scope, since among the tax authorities it mentions, not only the centralised bodies of the NRA, but also local government tax

¹⁸ More broadly M. Ciecierski, *Komentarz do art. 148 u.k.a.s.* [in:] A. Melezini, K. Teszner (eds), *Krajowa Administracja Skarbowa. Komentarz 2018*, Lex/el.

¹⁹ B. Brzeziński, M. Kalinowski, A. Olesińska (eds), *Ordynacja...*, p. 74.

²⁰ *Ibidem*.

²¹ The bodies of the National Revenue Administration are: the minister competent for public finance; the Head of the National Revenue Administration; the director of the National Revenue Information System; the director of the fiscal administration chamber; the head of a revenue office; the head of the customs and revenue office – Article 11(1) of the A.N.R.A. Accordingly, the organizational units of the National Revenue Administration are: organizational units of the office serving the minister; National Revenue Information System; fiscal administration chamber; revenue offices; customs and treasury offices together with their subordinate customs branches; School – Article 36(1) of the A.N.R.A.; see also W. Byrzykowski, A. Zdunek, *Ustawa o Krajowej Administracji Skarbowej – organy, zadania oraz forma ich realizacji*, „Przegląd Podatkowy” 2017, No 3, pp. 47–52.

authorities and (which is a novelty) an entity which exercises the powers of a tax authority to resolve tax cases (tax adviser)²².

3. The powers of the officer employed as a revenue collector

Firstly, the officer employed as a revenue collector, in the light of Article 13(2)(c) of the TO, was authorised by the legislator to perform “decision making activities” in the state tax authorities, which include: the head of the revenue office, the head of the customs and revenue office, and the director of the fiscal administration chamber. The powers of these active entities of the tax-legal relationship are vested in the officer employed as a revenue collector only within the scope of “resolving tax cases” in the above mentioned tax (fiscal) authority. This means that within the framework of broadly understood tax proceedings, the officer employed as a revenue collector is empowered to concretise and implement the powers and obligations imposed by detailed (substantive) tax law by way of an individual administrative act (as a rule, a decision, but also provisions), deciding on the merits of the case (*in merito*) or otherwise terminating the proceedings at a given instance, e.g. by discontinuing them²³.

Secondly, the tax adviser “enjoys” the powers of the tax (fiscal) authority only at the stage of the process activities of a conclusive (decisive) nature. *A contrario*, a tax adviser is excluded from the preparatory phase (preliminary, explanatory, technical, and clerical), which includes the activities related to establishing the facts of a tax case according to reality.

Thirdly, the officer employed as a revenue collector may conduct tax proceedings aimed at “resolving tax cases” in both an ordinary and extraordinary manner, as a tax (fiscal) authority of the first instance, but also

²² K. Teszner, *Komentarz do art. 13 o.p...*, Lex/el; *ibid.* *Uprawnienia radcy skarbowego w zakresie załatwiania spraw podatkowych*, „Procedury Administracyjne i Podatkowe” 2018, No 2, p. 17 et seq.

²³ See Article 207 of TO; I. Nowak, *Protokoły i adnotacje jako formy dokumentowania czynności postępowania podatkowego*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2019, No 12, pp. 19–24.

as a second-instance (appeal) tax authority, a practice which may undoubtedly contradict the principle of a two-instance tax procedure, creating “the risk of undesirable, informal settlements within the same organisational unit” in the structures of the National Revenue Administration²⁴.

Fourthly, despite the doubts that appear in the literature on the subject²⁵, it seems justified to take the position that Article 143 of the TO should not be applied to the rights of the officer employed as a revenue collector resulting from the actual wording of Article 13(2)(c) of the TO within the scope covered by this provision²⁶, according to which the tax authority may authorize an officer or employee of the headed organizational unit to handle matters on his/her behalf and in the agreed scope, and in particular to issue decisions, provisions and certificates²⁷. Already the *prima facie* juxtaposition of Article 13(2)(c) of the TO with Article 143 of the TO indicates that the establishment of the institution of the officer employed as a revenue collector is flawed, or perhaps more appropriately – irrational, because we are dealing here with the so-called statutory *superfluum*, resulting in an unnecessary and double expression of the same tax law standard in a single legal act. If the legislator wanted to establish a “legal instrument” for employees (officers) who will resolve the most difficult tax cases in the organizational units of the National Revenue Administration²⁸, the legislator did not have to do so – by constructing a new provision in the form of Article 13(2)(c) of the TO – because the head of each organisational unit (tax, treasury) knows perfectly well – if only they want to – which of his or her employees (officers) is a professional in the field of public-law levies, and may authorise him or her to

²⁴ K. Teszner, *Uprawnienia...*, p. 22; I. Nowak, *Efektywność zasady dwuinstancyjności postępowania podatkowego w świetle ustawy o administracji podatkowej* [in:] Ł.J. Pi-kuła, H. Kaczmarczyk (eds), *Granice efektywności prawa. Sposoby osiągnięcia efektyw-ności w prawie*, Toruń 2016, pp. 59–76.

²⁵ See K. Teszner, *Komentarz do art. 13 o.p...*, Lex/el

²⁶ See A. Kabat, *Komentarz do art. 13 o.p.* [in:] S. Babiarsz, B. Dauter, R. Hauser, M. Niezgodka-Medek, J. Rudowski, *Ordynacja podatkowa. Komentarz 2019*, Lex/el.

²⁷ An authorisation may include the signing of letters in the form of an electronic docu-ment with a qualified electronic signature – see § 1–2 Article 143 TO.

²⁸ A. Krukowski, *Komentarz do art. 148 u.k.a.s.* [in:] L. Bielecki, A. Gorgol (eds), *Usta-wa o Krajowej Administracji Skarbowej. Komentarz*, Warszawa 2018, p. 508.

handle matters under Article 143 of the TO Moreover, the “choice” of an authorised employee (officer) on the basis of Article 143 of the TO belongs to the tax (fiscal) authority, which is not bound by any legal requirements in this respect. In particular, this does not apply to, *inter alia*, the functions or positions held²⁹, and is only subject to the substantive prerequisites for the proper exercise of the authority’s powers³⁰. Thus, the legal institution under Article 143 of the TO ensures the proper organisation of the work of the tax (fiscal) authorities as monocratic bodies under the so-called internal deconcentration³¹. This means that the granting of administrative authority by a tax (fiscal) authority, which is an activity of an internal nature, means that the person granting the “administrative authority” does not in fact lose his or her powers to issue tax decisions³², and the authority does not become a public authority (does not acquire these powers as its own), but exercises them in the name and on behalf of the authority³³. In other words, there is no delegation of competences, but an authorisation to exercise them³⁴. As it also follows from Article 143(2) of the TO, the authorisation referred to in sec. 1-1a of Article 143 of the TO may also be granted to:

- a) staff serving the head of the tax office – through the head of the revenue office;
- b) officers or employees serving the director of a fiscal administration chamber – through the director of a fiscal administration chamber;

²⁹ Judgment of the Supreme Administrative Court of 8 November 2012, I OSK 1554/12, CBOSA.

³⁰ Judgment of the Supreme Administrative Court of 7 October 2011, I OSK 210/11, CBOSA.

³¹ Cf. B. Adamiak, *O podmiotowości organów administracji publicznej w postępowaniu sędowoadministracyjnym*, „Państwo i Prawo” 2006, No 11, p. 52.

³² Decision of the Voivodeship Administrative Court in Olsztyn of 4 April 2017, II SA/OI 25/17, CBOSA.

³³ I. Nowak, *Upoważnienie...*, p. 22; decision of the Supreme Court of 5 June 2003, II CKN 194/01, CBOSA.

³⁴ *Ibidem*; J. Borkowski, *Komentarz do art. 143 o.p.* [in:] B. Adamiak, J. Borkowski, P. Borszowski, R. Mastalski, J. Zubrzycki, *Ordynacja podatkowa. Komentarz*, Wrocław 2017, pp. 897–904; judgment of the Voivodeship Administrative Court in Warsaw of 31 January 2013, VI SA/Wa 1861/12, CBOSA.

- c) officers or employees serving the head of the customs and revenue office – through the head of the customs and revenue office;
- d) employees of the National Revenue Information System – through the Director of National Revenue Information System;
- e) officers or employees serving the head of the customs and revenue office or the director of a fiscal administration chamber or the Head of the National Revenue Administration – through the Head of the National Revenue Administration;
- f) officers or employees of organisational units of the office serving the minister in charge of public finance – through the Head of the National Revenue Administration.

Fifthly, mainly due to the lack of regulations that would sanction the actions of a tax adviser, a public administration body will always be fully responsible for the competences he/she exercises³⁵. Therefore, it is not possible to share the view expressed by the Director of the Tax System Department at the Ministry of Finance at the meeting of the Public Finance Committee on 15 November 2016, that officer employed as a revenue collector “on behalf of the authority, but signing in their own name, will issue decisions, also bearing personal responsibility for the shape and content of the decision. This is a response to the common demand to increase the responsibility of employees who carry out decision-making work and formulate decisions”³⁶.

Sixthly, an employee (officer) employed (serving) as an officer employed as a revenue collector tax cases, whether in ordinary or extraordinary proceedings, regardless of the instance in which they are taking place, will be subject to exclusion (loss of procedural capacity)³⁷ with

³⁵ M. Łoboda, D. Strzelec, *Kontrola przestrzegania przepisów prawa podatkowego 2017*, Lex/el; K. Teszner, *Organy podatkowe i quasi-podatkowe – problemy wynikające z wadliwej legislacji Ordynacji podatkowej* [in:] L. Etel (ed.), *Ordynacja podatkowa w praktyce. Materiały konferencyjne*, Białystok 2007, pp. 118–138; A. Matan, *Rażące naruszenie prawa jako przesłanka odpowiedzialności majątkowej funkcjonariusza publicznego 2014*, Lex/el.

³⁶ <http://orka.sejm.gov.pl/zapisy8.nsf/0/1D776C85660F89FAC125807A004DAC7F/%24File/0124208.pdf>, (access on-line: 20.12.2019).

³⁷ I. Nowak, *Wyłączenie pracownika samorządowego organu podatkowego od udziału w postępowaniu podatkowym – zagadnienia ogólne*, „Przegląd Podatków Lokalnych

respect to resolving tax cases pursuant to the provisions of Article 130 of the TO)³⁸. Incidentally, it should be reiterated after Mr Pietrasz that on the basis of the Tax Ordinance, taking into account the fact that we are dealing here with monocratic (single-person) tax authorities, the grounds for exemption for employees (officers) and tax authorities should be unified³⁹, bearing in mind that in a democratic state of law it is not permissible to differentiate the guarantees ensuring objectivity and impartiality of decisions⁴⁰.

4. The „principles” of appointing officers employed as a revenue collector in the light of empirical material

The Author, exercising his right of access to public information under the Act on Access to Public Information of 6 September 2001⁴¹, petitioned the Head of the Fiscal Administration Chambers in Poland and the Minister of Finance for answers to questions concerning:

a) the number of employees of Fiscal Administration Chambers and

i Finansów Samorządowych” 2017, No 8, pp. 25–28; *ibid.* *Przesłanki wyłączenia pracownika samorządowego organu podatkowego od udziału w postępowaniu podatkowym*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2017, No 9, pp. 18–27.

³⁸ More broadly I. Nowak, *Wyłączenie samorządowych organów podatkowych od załatwiania spraw w postępowaniu podatkowym*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2017, No 6, p. 24; cf. also I. Nowak, J. Wyporska-Frankiewicz, *Biegły skarbowy a wycena majątku zobowiązanego w egzekucji należności podatkowych*, „Prawo Budżetowe Państwa i Samorządu” 2019, No 3, pp. 71–94, DOI: <http://dx.doi.org/10.12775/PBPS.2019.020>.

³⁹ P. Pietrasz, *Komentarz do art. 130-132a o.p.* [in:] L. Etel (ed.), *Ordynacja...*, Lex/el; analogicznie L. Etel (ed.), *Nowa Ordynacja podatkowa. Z prac Komisji Kodyfikacyjnej Ogólnego Prawa Podatkowego*, Białystok 2017, pp. 182–186.

⁴⁰ I. Nowak, *Instytucja wyłączenia organu podatkowego i jego pracowników jako gwarancja bezstronności przy podejmowaniu rozstrzygnięć podatkowych – uwagi krytyczne*, „Toruński Rocznik Podatkowy” 2016/el, pp. 70–86; *ibid.* *Status biegłego i jego opinii jako dowodu w jurysdykcyjnym postępowaniu podatkowym (cz. I–III)*, „Przegląd Podatków Lokalnych i Finansów Samorządowych” 2018, No 4–6, pp. 19–26/19–27/23–29.

⁴¹ Act of 6 September 2001 on access to public information (consolidated text: Dz.U. of 2019, poz. 1429 with subsequent amendments).

- fiscal offices as well as a customs and revenue office subordinate to them;
- b) the responsibilities of the officers employed as a revenue collector, including an indicative list of them;
 - c) the criteria for selecting candidates for the position of an officer employed as a revenue collector (including, *inter alia*, minimum employment/appointment periods in tax/fiscal authorities);
 - d) the conditions of remuneration of officers employed as a revenue collector in relation to other employees (officers) of the tax (fiscal) apparatus;
 - e) the holding of competitions for the post of officers employed as a revenue collector;
 - f) representation of tax authorities before administrative courts by officers employed as a revenue collector.

According to the information obtained, 105 officers employed as a revenue collector (79 women and 26 men) are employed in the National Revenue Administration⁴². It is worth adding that only one civil servant is an officer employed as a revenue collector⁴³, whilst the remaining 104 persons are members of the civil service corps.

As at 31 December 2019, the number of officers employed as a revenue collector in individual Fiscal Administration Chambers, together with subordinate revenue offices and customs and revenue offices, is as follows:

- 1) Białystok – 8 posts for 1,399 employees and 1,007 officers of the Customs and Revenue Service⁴⁴;
- 2) Bydgoszcz – 4 posts for 2,585 employees and 222 officers of the C.R.S.;
- 3) Gdańsk – 8 posts for 2,847 employees and 659 officers of the C.R.S.;
- 4) Katowice – 0 posts for 5,506 employees and 646 officers of the C.R.S.;
- 5) Kielce – 4 posts for 1,250 employees and 134 officers of the C.R.S.;
- 6) Kraków – 21 posts for 3,954 employees and 423 officers of the C.R.S.;

⁴² Data for February-March 2020 obtained from the Directors of the Fiscal Administration Chambers by way of access to public information.

⁴³ According to the letter of the Director of the Tax Administration Chamber in Rzeszów of 24 February 2020, No 1801-IWK.0150.21.2020.4.

⁴⁴ Hereinafter: the C.R.S.

- 7) Lublin – 0 posts for 2,386 employees and 1,763 officers of the C.R.S.;
- 8) Łódź – 11 posts for 3,337 employees and 439 officers of the C.R.S.;
- 9) Olsztyn – 0 posts for 1,530 employees and 789 officers of the C.R.S.;
- 10) Opole – 0 posts for 1,430 employees and 205 officers of the C.R.S.;
- 11) Poznań – 8 posts for 4,409 employees and 494 officers of the C.R.S.;
- 12) Rzeszów – 5 posts for 2,199 employees and 1.123 officers of the C.R.S.;
- 13) Szczecin – 9 posts for 2,543 employees and 439 officers of the C.R.S.;
- 14) Warszawa – 21 posts for 6,888 employees and 1,238 officers of the C.R.S.;
- 15) Wrocław – 2 posts for 3,721 employees and 484 officers of the C.R.S.;
- 16) Zielona Góra – 4 posts for 1,458 employees and 396 officers of the C.R.S.⁴⁵.

The legislator has not standardised any “prerequisites for determining who may become an officer employed as a revenue collector”⁴⁶ in individual organisational units of the National Revenue Administration. Such a “legislative technique” raises justified doubts related to the correctness of creating and subsequently applying tax law. It is not known what was decisive for the adoption of such a “convention”. In this respect, however, it is worth dividing in part the position of the doctrine that “the inexplicable intention of the legislator can only be explained by the liquidation of the institution of the tax inspector and the need to fill the gap in the posts, primarily in tax and revenue offices, all the more so because the appointment of an officer employed as a revenue collector will entitle this person to additional remuneration”⁴⁷. However, empirical evidence shows that out of 105 officers employed as a revenue collector only 28 were previously employed as tax inspectors. It also seems that an officer employed as a revenue collector may also play – as a *sui generis* quasi-tax authority – an important “political role” in the structures of the National Revenue

⁴⁵ Number of employees and officers of Fiscal Administration Chambers together with subordinate revenue offices and customs and revenue offices as of 31 December 2019, excluding persons employed on a substitution contract and on unpaid and parental leaves – letter of the Minister of Finance of 17 February 2020, No BMI1.0123.188.2020.

⁴⁶ A. Krukowski, *Komentarz...*, p. 508.

⁴⁷ M. Łoboda, D. Strzelec, *Kontrola...*, Lex/el.

Administration which is a specialised government body. It is not difficult to imagine situations in which an officer employed as a revenue collector will be appointed – as so-called trusted persons of the manager of a particular organizational unit – to conduct “privileged” or “sensitive” tax proceedings or inspections (customs and fiscal)⁴⁸.

In view of the above, one cannot in any way approve of the position that “the rank of an officer employed as a revenue collector and the associated allowance should be evaluated positively as an incentive instrument for the best employees who on a day-to-day basis handle the most difficult tax matters in units”⁴⁹. First of all, the results of the empirical research carried out show undisputedly that the directors of fiscal administration chambers have unlimited freedom in appointing tax advisers, because apart from the lack of detailed legal regulations in this respect, the Minister of Development and Finance have also failed to create guidelines “on the employment of tax advisers”⁵⁰. The fact that the Minister of Finance, as of 1 March 2017, has not made any assessment of the effectiveness of officers employed as a revenue collector’ activities (sic!) also causes misunderstanding and disapproval⁵¹.

Secondly, the required competences and professional experience in the position of an officer employed as a revenue collector calculated over the years differ significantly from one another across organizational units of the Polish Fiscal Administration Chambers. For example, in:

- a) Zielona Góra – above 3 years⁵²;
- b) Kraków and Białystok – minimum 5 years⁵³;

⁴⁸ See A. Melezini, K. Teszner, *Kontrola celno-skarbowa – wybrane aspekty ustrojowe i proceduralne*, „Białostockie Studia Prawnicze” 2019, vol. 24, No 3, pp. 13–25.

⁴⁹ A. Krukowski, *Komentarz...*, p. 508.

⁵⁰ According to the letter of the Minister of Development and Finance of 26 April 2017, No BMI1.0124.298.2017, http://www.skarbowcy.pl/blaster/extarticle.php?show=article&article_id=25342, (access on-line: 28.11.2019).

⁵¹ According to the letter of the Minister of Finance of 23 August 2019, No BMI1.0124.926.2019.

⁵² Letter of the Director of the FAC in Zielona Góra of 9 April 2019, No 0801-IWK.0150.14.2019.

⁵³ Letter of the Director of the FAC in Krakow of 12 April 2019, No 1201-IWK.0150.1.15.2019.2; letter of the Director of FAC in Białystok of 5 April 2019, No 2001-IWK.0150.16.2019.2.

- c) Kielce – 5.5 years⁵⁴;
- d) Warsaw – minimum 7 years⁵⁵;
- e) Rzeszów – minimum 10 years⁵⁶.

With further regard to the criteria for selecting individuals for the position of an officer employed as a revenue collector (including, *inter alia*, minimum periods of employment/service in tax/fiscal authorities), it is also worth noting that some Directors of Fiscal Administration Chambers have applied their own “interpretation” of the above question. For instance:

- a) The Director of the FAC in Poznań argues that “(...) persons with extensive experience in working in customs and tax authorities and with extensive knowledge of tax law have been appointed to the position of an officer employed as a revenue collector”⁵⁷;
- b) The Director of the FAC in Gdansk enigmatically notes that this is undertaken “...as part of a vertical promotion”⁵⁸;
- c) The Director of the FAC in Łódź claims that “those employed in the position of an officer employed as a revenue collector in the Chamber are selected from among the candidates constituting the pillar of the decision-making departments”⁵⁹;
- d) The Director of the FAC in Wrocław states that “the selection of persons for the position of an officer employed as a revenue collector takes into account their education, qualifications, and professional experience. The law does not specify the minimum periods of employment in fiscal/tax authorities that are required before taking up the position of an officer employed as a revenue collector”⁶⁰;
- e) The Director of the FAC in Bydgoszcz points out that “all the officers employed as a revenue collector employed in the Fiscal Administration Chamber in Bydgoszcz perform work on the basis of a writ-

⁵⁴ Letter of the Director of FAC in Kielce of 11 April 2019, No 2601-IWK.0150.35.2019.

⁵⁵ Letter of the Director of FAC in Warsaw of 9 April 2019, No 1401-IWK.0150.23.2019.

⁵⁶ Letter of the Director of FAC in Rzeszów of 14 April 2019, No 1801-IWK.0150.23.2019.5.

⁵⁷ Letter of the Director of FAC in Poznań of 10 April 2019, No 3001-IWK.0150.24.2019.

⁵⁸ Letter of the Director of FAC in Gdańsk of 5 April 2019, No 2201-IWK.0150.30.2019.

⁵⁹ Letter of the Director of FAC in Łódź of 10 April 2019, No 1001-IWK.0150.21.2019.

⁶⁰ Letter of the Director of FAC in Wrocław of 5 April 2019, No 0201-IWK.0150.34.2019.

ten proposal for employment as an officer employed as a revenue collector submitted by the Director of the Fiscal Administration Chamber in Bydgoszcz, in accordance with the guidelines contained in Article 165(7) of the Act of 16 November 2016 introducing the Act on National Revenue Administration (Journal of Laws, item 1948, with subsequent amendments), i.e. based on their qualifications and the course of their previous work, as well as their place of residence”⁶¹;

- f) The Director of the FAC in Warsaw maintains that tax advisers are “selected from among those working in the relevant unit, and accepting the position of an officer employed as a revenue collector is a promotion in the professional development path”⁶².

Thirdly, no competitions were held for the position of an officer employed as a revenue collector (the so-called external recruitment), which ensure – at least formally – in accordance with Article 6 of the Act of 21 November 2008 on the civil service, that every citizen has a right to be informed about vacancies in the civil service, and recruitment to the civil service is open and competitive⁶³. This is also explicitly confirmed by a number of Directors of Fiscal Administration Chambers. For instance:

- a) The Director of the FAC in Warsaw argues that “no competitions were held for the post of an officer employed as a revenue collector, owing to the specific requirements of this post”⁶⁴;
- b) The Director of the FAC in Poznań notes that “(...) there were no competitions for the position of an officer employed as a revenue collector (...). In the future, if a need to increase the number of officers employed as a revenue collector is discovered, internal recruitment for this position is not excluded”⁶⁵;
- c) The Director of the FAC in Wrocław states that “no competitions are

⁶¹ Letter of the Director of FAC in Bydgoszcz of 4 April 2019, No 0401-IWK.0150.16.2019.3.

⁶² Letter of the Director of FAC in Warsaw of 9 April 2019, No 1401-IWK.0150.23.2019.

⁶³ Act of 21 November 2008 on civil service (consolidated text: Dz.U. of 2020, poz. 265 with subsequent amendments).

⁶⁴ Letter of the Director of FAC in Warsaw of 9 April 2019, No 1401-IWK.0150.23.2019.

⁶⁵ Letter of the Director of FAC in Poznań of 10 April 2019, No 3001-IWK.0150.24.2019.

held for the positions of officers employed as a revenue collector, as there is no legal obligation to hold them”⁶⁶;

- d) The Director of the FAC in Kraków indicates that the position of an officer employed as a revenue collector is “not open to external recruitment (...). Candidates are selected by internal recruitment based on their professional experience, self-reliance, high quality of work, reliability, and proper resolution of conducted cases and the opinions of their superior”⁶⁷.

Other Directors of Fiscal Administration Chambers offered a “diplomatic answer” to the above question, e.g.:

- a) the Director of the FAC in Zielona Góra writes that “in the case of a vacancy for the post of an officer employed as a revenue collector, this post may be filled by way of
- external recruitment to the civil service, which is open and competitive. Vacancy announcements are published in the Public Information Bulletin of the Chancellery of the Prime Minister (Announcement Database), the Public Information Bulletin of the office that is looking for employees and in a place commonly accessible in the premises of this office,
 - internal recruitment within the organisational units of the National Revenue Administration. Currently, the Fiscal Administration Chamber in Zielona Góra is not recruiting for the position of an officer employed as a revenue collector”⁶⁸;
- b) The Director of the FAC in Rzeszów states that “as at the date of preparation of this letter, there are no recruitments for the position of an officer employed as a revenue collector owing to the lack of vacancies for this position”⁶⁹;
- c) The Director of the FAC in Bydgoszcz claims that “after 1 June

⁶⁶ Letter of the Director of FAC in Wrocław of 5 April 2019, No 0201-IWK.0150.34.2019.

⁶⁷ Letter of the Director of FAC in Kraków of 12 April 2019, No 1201-IWK.0150.1.15.2019.2.

⁶⁸ Letter of the Director of FAC in Zielona Góra of 9 April 2019, No 0801-IWK.0150.14.2019.

⁶⁹ Letter of the Director of FAC in Rzeszów of 14 April 2019, No 1801-IWK.0150.23.2019.5.

2017, new persons did not take up the position of an officer employed as a revenue collector in the Fiscal Administration Chamber in Bydgoszcz, and accordingly no competitions were held for the above position”⁷⁰.

Fourthly, officers employed as a revenue collector in various organizational units of the Fiscal Administration Chambers have, within the scope of their duties as an employee (officer), been unequally empowered to participate or represent the fiscal (tax) authorities before administrative courts. For instance in:

- a) Gdańsk and Bydgoszcz – officers employed as a revenue collector do not represent the tax (fiscal) authority before administrative courts⁷¹;
- b) Łódź – “officers employed as a revenue collector represent the Director of the Fiscal Administration Chamber in Łódź before the Voivodeship Administrative Court (...)”⁷²;
- c) Poznań – “as of the date the information is made available, one officer employed as a revenue collector is authorised to represent the Director of the Fiscal Administration Chamber in Poznań before the courts”⁷³;
- d) Warsaw – “to the extent of his duties, an officer employed as a revenue collector is involved in court proceedings (...), but does not represent the tax authorities before administrative courts”⁷⁴;
- e) Krakow – “officers employed as a revenue collector, within the scope of their duties, participate in the hearings. To date, an officer employed as a revenue collector have not represented the Director of the Fiscal Administration Chamber in Krakow independently in the hearings before the Voivodeship Administrative Court”⁷⁵.

It is also worth noting that the employees of the Legislative Office of

⁷⁰ Letter of the Director of FAC in Bydgoszcz of 4 April 2019, No 0401-IWK.0150.16.2019.3.

⁷¹ Letter of the Director of FAC in Gdańsk of 5 April 2019, No 2201-IWK.0150.30.2019; letter of the Director of FAC in Bydgoszcz of 4 April 2019, No 0401-IWK.0150.16.2019.3.

⁷² Letter of the Director of FAC in Łódź of 10 April 2019, No 1001-IWK.0150.21.2019.

⁷³ Letter of the Director of FAC in Poznań of 10 April 2019, No 3001-IWK.0150.24.2019.

⁷⁴ Letter of the Director of FAC in Warsaw of 9 April 2019, No 1401-IWK.0150.23.2019.

⁷⁵ Letter of the Director of FAC in Krakow of 12 April 2019, No 1201-IWK.0150.1.15.2019.2.

the Senate Chancellery had already on 2 November 2016 raised various doubts concerning the provision of Article 13 Section 2c of the TO, which states the rights of an officer employed as a revenue collector, posing among others the following questions: why there are no rules for appointing and locating such a post within the structures of a fiscal (tax) authority? Does this provision assume the obligation to appoint an officer employed as a revenue collector in each office serving a given tax administration authority? How will the division of cases resolved by the fiscal (tax) authority and the adviser be carried out? Why is a decision-making allowance, in accordance with the Act on National Revenue Administration, granted to an officer employed as a revenue collector, but not to an employee (officer) authorised under Article 143 of the TO⁷⁶?

In summary of the above considerations, it should be noted that in April 2018, 74 officers employed as a revenue collector were employed in the organizational units of the National Revenue Administration⁷⁷. As of 31 March 2019, this figure increased to 89⁷⁸. However, the data for February-March 2020 show that we already have 105 officers employed as a revenue collector⁷⁹. This is perhaps because this *sui generis* sinecure, which one of the participants in the “skarbowcy.pl” forum has bluntly described as “a position for friends of rabbit, (...), daddy’s daughters, mummy’s sons, etc.”⁸⁰ is *volens nolens* financially attractive, since in the period from March 1, 2017 to December 31, 2019, officers employed as

⁷⁶ Opinion on the Act – Provisions introducing the Act on National Revenue Administration (print No 313), Warsaw, 2 November 2016, https://webcache.googleusercontent.com/search?q=cache:rSDH8_X5mvoJ:https://www.senat.gov.pl/download/gfx/senat/pl/senatekspertyzy/3638/plik/313.pdf+&cd=1&hl=pl&ct=clnk&gl=pl, (access on-line: 28.11.2019).

⁷⁷ According to the letter of the Minister of Finance of 12 October 2018, No RM-10-159-18, bip.kprm.gov.pl › download › RM-10-159-18, (access on-line: 20.12.2019).

⁷⁸ According to the letter of the Minister of Finance of 23 August 2019, No BMI1.0124.926.2019; according to the draft Ordinance of the Minister of Finance on the decision making allowance for the position of tax adviser, <https://celnicy.pl/threads/projekt-rozporzadzenia-w-sprawie-dodatku-orzeczniczego.16320/>, (access on-line: 19.12.2019).

⁷⁹ Data for February-March 2020 obtained from the Directors of the Fiscal Administration Chambers by way of access to public information.

⁸⁰ http://www.skarbowcy.pl/blaster/extarticle.php?show=article&article_id=25342, (access on-line: 15.12.2019).

a revenue collector were entitled to a decision-making allowance whose rate ranged from 10% to 50% of the basic salary of a person employed in an organisational unit of the National Revenue Administration or the basic salary of an officer of the Customs and Fiscal Service in the position of an officer employed as a revenue collector, and could be further increased⁸¹. However, under the new regulation of the Minister of Finance of 23 December 2019 on the decision-making allowance for the position of an officer employed as a revenue collector⁸² – effective from 1 January 2020 – the amount of the allowance was established as a quota and not as a percentage, as was the case in the previous implementing act. Currently, the amount of the allowance is from PLN 400 to PLN 1200 or from PLN 1201 to PLN 1500 if it is justified by particular results and achievements in resolving tax cases or organizational aspects related to the need to ensure proper performance of the body's activities referred to in Article 13 Section 2c of the TO.

5. Conclusion

Pursuant to the provisions of the Act of 16 November 2016 on National Revenue Administration and the Act of 16 November 2016 introducing the Act on National Revenue Administration⁸³, the official position of an officer employed as a revenue collector has been regulated⁸⁴ in the structures of the National Revenue Administration operating in the Polish legal system since 1 March 2017. However, it is not possible to “decode” the purpose of that institution, since the legislature is silent in the explanatory memoranda of the abovementioned acts as to the motives or needs for the

⁸¹ Regulation of the Minister of Development and Finance of 26 April 2017 on the decision making allowance for the position of tax adviser (Dz.U. of 2017, poz. 863), hereinafter: R.D.A.T.A.

⁸² Regulation of the Minister of Finance on the decision making allowance for the position of tax adviser of 23 December 2019. (Dz.U. of 2019, poz. 2539); hereinafter: R.D.M.A.T.A.

⁸³ More broadly K. Teszner, M. Wincenciak, P. Pietrasz, *Nowe tendencje w procedurach kontrolnych na przykładzie kontroli celno-skarbowej* [in:] J. Jagielski, M. Wierzbowski (eds), *Prawo administracyjne dziś i jutro 2018*, Lex/el.

⁸⁴ See also I. Nowak, *Upoważnienie...*, pp. 19–27.

establishment of the post of an officer employed as a revenue collector. Only from the full record of the meeting of the Committee on Public Finance of 15 November 2016, No 135, can we learn about the position of, among others, the Director of the Tax System Department at the Ministry of Finance, who asserted that “as far as the institution of an officer employed as a revenue collector is concerned, it is a job position. The intention of this provision is to concentrate, for the purposes of the judicial function, staff with special qualifications, the highest qualifications in the tax administration (...)”⁸⁵. The quoted Director also noted that “the number of officers employed as a revenue collector depends on the scope of jurisdiction in the tax office. The size of tax offices varies greatly, and the number of decisions issued in each office also varies, thus this will be tailored to the tasks in each office. It is to be related to the tasks, of course, to a minimum extent so as to minimize the expenditure of the State Treasury for this purpose, but also so as to appreciate employees who possess special knowledge and are characterized by commitment”⁸⁶. Unfortunately, the findings made by the Author, mainly supported by empirical material, are in clear contradiction with the “declarations” of the representative of the Minister of Finance.

The directors of fiscal administration chambers enjoyed and continue to enjoy full freedom in appointing officers employed as a revenue collector, as no guidelines for their employment (appointment) have been ensured by the legislator or the Minister of Development and Finance⁸⁷. As a result, no competitions for the positions of officers employed as a revenue collector (sic!) were (or are) held because – as the Director of the Wrocław Fiscal Administration Chamber put it aptly – “legal regulations do not impose any obligation to conduct them”⁸⁸.

⁸⁵ <http://orka.sejm.gov.pl/zapisy8.nsf/0/1D776C85660F89FAC125807A004DAC7F/%24File/0124208.pdf>, (access on-line: 20.12.2019).

⁸⁶ *Ibidem*.

⁸⁷ Letter of the Minister of Development and Finance of 26 April 2017, No BMI1.0124.298.2017, http://www.skarbowcy.pl/blaster/extarticle.php?show=article&article_id=25342, (access on-line: 28.10.2019).

⁸⁸ Letter of the Director of FAC in Wrocław of 5 April 2019, No 0201-IWK.0150.34.2019.

In conclusion, it is worth emphasizing that the institution of an officer employed as a revenue collector, exercising the powers of the tax (fiscal) authority to resolve tax matters, is redundant, as it only multiplies clerical positions in the administration of public levies⁸⁹, and additionally generates a lot of ambiguity and – as it seems – demotivates the remaining employees (officers) of the National Revenue Administration. It should also be noted that “in the course of work on the draft tax ordinance, it was proposed to liquidate this institution, however, the proposal was not supported by a majority of the members of the Codification Committee (...)”⁹⁰. It is a pity, because such a position is difficult to accept when the legislator, without any logic and consistency, introduces flawed legal solutions.

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⁸⁹ K. Teszner, *Komentarz do art. 13 o.p...*, Lex/el; *ibid.* *Uprawnienia...*, p. 17 et seq.

⁹⁰ L. Etel (ed.), *Nowa...*, p. 161.

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