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## THE CUSTOMS AND TAX SERVICE AND THE BORDER GUARD IN REPUBLIC OF POLAND AFTER THE TAX ADMINISTRATION REFORM OF 1 MARCH 2017

### SŁUŻBA CELNO-SKARBOWA A STRAŻ GRANICZNA W RZECZYPOSPOLITEJ POLSKIEJ PO REFORMIE ADMINISTRACJI SKARBOWEJ Z 1 MARCA 2017 ROKU

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**Abstract.** The scientific problem discussed in the article is to determine the essence of the creation of the Customs and Tax Service as a result of the reform of the tax administration in Poland in 2017 and to assess the correctness and legitimacy of its functioning in comparison with the functioning of the Border Guard. The paper uses the formal-dogmatic method based on the analysis of legal acts, which is the main method used in legal sciences. The method of critical analysis of the literature was also used. The Customs and Tax Service was established by the Act of 1 March 2017 on the National Revenue Administration together with the reform of the tax administration, combining the Customs Service and the tax administration authorities, while the Border Guard operates on the basis of the provisions of the Act of 12 October 1990 on the Border Guard. Both of these services are uniform, uniformed and armed formations designed to protect the state border, control traffic at the state border and ensure the protection of the customs territory of the European Community (Customs and Revenue Service) or counteract illegal migration (Border Guard). The same scope of many powers raises doubts as to the legitimacy of the creation of the Customs and Revenue Service and, consequently, as to the functioning of two uniformed formations performing, as the analysis shows, many of the same or similar tasks. In addition, the same issue of duplication of powers has been identified with regard to officers and officials of the National Revenue Administration. The question is whether such a solution and division of tasks should continue to function. The results of the findings clearly indicate that most of the tasks of the Customs and Revenue Service are duplicated with those of the Border Guard, and the tasks that currently lie solely within the competence of the Customs and Revenue Service could be distributed among the already functioning formations.

**Słowa kluczowe:** tax administration, uniformed formation, Customs and Tax Service, Border Guard, National Revenue Administration

**Abstrakt.** Podjętym w artykule problemem naukowym jest określenie istoty utworzenia Służby Celno-Skarbowej na skutek reformy administracji skarbowej w Polsce w 2017 roku oraz ocena prawidłowości i zasadności jej funkcjonowania w zestawieniu z funkcjonowaniem Straży Granicznej. W pracy wykorzystano metodę formalno-dogmatyczną polegającą na analizie aktów prawnych, jest to główna metoda stosowana w naukach prawnych. Posłużono się także metodą krytycznej analizy piśmiennictwa. Służbę Celno-Skarbową powołano ustawą z dnia 1 marca 2017 r. o Krajowej Administracji Skarbowej wraz z reformą administracji skarbowej łącząc Służbę Celną oraz organy administracji skarbowej, natomiast Straż Graniczna funkcjonuje na podstawie przepisów ustawy z dnia 12 października 1990 r. o Straży Granicznej. Obie te służby stanowią jednolite, umundurowane i uzbrojone formacje przeznaczone do ochrony granicy państwowej, kontroli ruchu na granicy państwa oraz zapewnieniu ochrony obszaru celnego Wspólnoty Europejskiej (Służba Celno-Skarbowa) czy przeciwdziałania nielegalnej migracji (Straż Graniczna). Tożsamy zakres wielu uprawnień budzi wątpliwości co do zasadności utworzenia Służby Celno-Skarbowej, a w następstwie co do funkcjonowania dwóch formacji mundurowych wykonujących, jak wynika z analizy, wielu tych samych lub podobnych zadań. Ponadto tożsama kwestia powielenia uprawnień zidentyfikowana została w odniesieniu do funkcjonariuszy i urzędników NRA. Postawić zatem należy pytanie, czy takie rozwiązanie i podział zadań powinien nadal funkcjonować. Wyniki z przeprowadzonych ustaleń jasno wskazują, że w większości zadania Służby Celno-Skarbowej powielają się z zadaniami Straży Granicznej, a zadania, które obecnie leżą wyłącznie w kompetencji Służby Celno-Skarbowej mogłyby być rozdysponowane pomiędzy już funkcjonujące formacje.

**Keywords:** administracja skarbowa, formacja mundurowa, Krajowa Administracja Skarbowa, Służba Celno-Skarbowa, Straż Graniczna

## Introduction

In contrast to other bodies of the National Revenue Administration (NRA), the tasks of the head of the customs and tax office, through which the tasks of the Customs and Tax Service are derived, are similar to the tasks of uniformed formations, as a result of which they need to be compared with the tasks of the Border Guard. The aim of the publication is to assess the problem of duplication of powers of two services, i.e. the Customs and Tax Service and the Border Guard. The establishment of the Customs and Tax Service took place after the entry into force of the Act of 16 November 2016 on the National Revenue Administration (hereinafter: the Act on the National Revenue Administration) (Journal of Laws of 2023, item 615). Its primary task is, m.in, to carry out operational and reconnaissance activities as well as to conduct customs and fiscal inspections aimed at combating tax crime (Kłosowiak 2021, p. 95). The scope of the basic tasks of the Customs and Tax Service is partly modelled on the Border Guard, whose tasks are regulated in the Border Guard Act of 12 October 1990 (hereinafter: the Border Guard Act) (Journal of Laws of 2023, item 1080). Therefore, the essence and purpose of the functioning of both formations seems to have both similar tasks and competences. Customs and fiscal audit is a procedural tool that the head of the customs and tax office is entitled to use in order to perform the tasks specified in the Act on the National Revenue Administration. In terms of its content, it is used to carry out control activities in the field of verification of compliance with the provisions of tax, customs and foreign exchange law,

regulating the organisation and conduct of gambling games, possession of gambling machines and counteracting money laundering and terrorist financing (Melezini 2017, p. 16). It should be emphasized that customs and fiscal control is a procedure that uses not only typical legal instruments known to administrative law, but also those characteristic of the operation of the Police and intelligence formations. Only officers serving in customs and tax offices are authorized to carry out customs and fiscal inspections. As a result of the above, there was a need to juxtapose these two formations, which are the Customs and Tax Service and the Border Guard.

### **Origins of the Border Guard**

The Border Guard (hereinafter: Border Guard) was established in place of the liquidated Border Protection Forces (Regulation of Ministers 1975, Journal of Laws of 1975 No. 29, item 157) Border Guard officers have the right to detain persons illegally crossing the state border or using false documents. The Border Guard is also involved in combating the illegal movement of goods, excise-free items and hazardous materials. They also combat threats resulting from the activities of criminal structures that threaten the security of communication (Maciejewska, Piffer 2016, p. 16). It is also within the powers of the Border Guard officers to eliminate the dangers associated with bribery and corruption. In the Border Guard, the Staff of the Commander-in-Chief of the Border Guard is responsible for command (Maciejewska, Piffer 2016, p. 16). Its main tasks include monitoring, coordinating and immediate response in the event of an emergency, as the authorities have to respond to the dynamically changing environment. The Border Guard cooperates with the authorities responsible for security in Poland (the minister responsible for internal affairs, the Government Centre for Security, the National Security Bureau) (Maciejewska, Piffer 2016, p. 16).

### **Reasons for the establishment of the Customs and Revenue Service**

Originally, there was an idea to transform the tax audit into a tax police. As a result, the tax audit would be focused solely on activities that exhaust the list of misdemeanours or crimes (Łoboda, Strzelec 2017, p. 29). The moment of Polish's accession to the European Union exposed the problem with the management of the Customs Service due to the decreasing number of duties in the area of customs. As a result of the decreasing number of tasks, the powers of the Customs Service have been extended to include control of the application of excise duty regulations (Zdunek 2018, p. 296). The next stage aiming at the proper use of this service took

place on 1 March 2017, when the Customs Service was merged with the tax control, thus creating the Customs and Tax Service, which took over the powers previously belonging to the Customs Service and the tax control authorities. The reform was aimed at reducing the operating costs of the then tax administration, which was an inevitable result of the duplication and dispersion of some tasks. An example of this mismanagement were tasks such as the control of compliance with the correctness of tax settlements, which could be carried out by the director of the tax audit office, the head of the tax office and the head of the customs office (Zdunek 2018, p. 296). In addition, the Tax Ordinance (Journal of Laws of 2023, item 2383) and the Tax Audit Act of 28 September 1991 (Journal of Laws of 2016, item 720) did not distinguish between situations where the proceeding of specific types of tax settlements would be assigned to a specific procedure (Podsiadły, Zawiejska-Rataj 2018, p. 318). Therefore, the 2017 reform is the next stage in the adequate management of state services.

## **Scope of activities of the Customs and Tax Service and the Border Guard**

The tasks of the Customs and Revenue Service are regulated in Article 33 and Chapter V of the NRA Act. On the other hand, the tasks of the Border Guard are defined in Article 1(2)-(4) of the Border Guard Act. It is worth starting the analysis by recalling the Regulation of the Council of Ministers of 22 February 2017 on the performance of certain activities by officers of the Customs and Tax Service and the cooperation of the Customs and Tax Service with the Police and the Border Guard (Journal of Laws of 2017, item 386). From the point of view of the analysis carried out, the fifth chapter is important, which lists the common areas for these bodies. §24 of the said regulation defines the areas of cooperation conducted in connection with the activities performed by officers, in the scope of:

- determine the personal data of the detained person;
- determining the data on the seized items;
- providing information necessary to perform the activities specified in section 1(1) and (2), i.e. the performance by an officer of the Customs and Revenue Service (hereinafter referred to as the officer) of detaining and searching persons, seizing belongings and searching residential premises, rooms and other places, luggage, cargo and means of transport to the extent and in the manner specified in separate regulations (in the Act of 6 June 1997 – the Code of Criminal Procedure (Journal of Laws of 2024, items 37);
- ensure mutual safety and effectiveness in the performance of tasks;
- pursuit of a detained person;
- organising joint training projects;

- mutual sharing - during cooperation, training and exercises - of equipment and devices along with the service.

As already mentioned, the scope of the basic tasks of the Customs and Revenue Service is partly modelled on the tasks of the Border Guard. From the point of view of the discussed issues, it is necessary to cite the tasks of the Border Guard regulated in the Border Guard Act, which coincide with the tasks of the Customs and Tax Service. All tasks of the Border Guard are listed in Article 1 of the above Act. In Article 1(4), the legislator provides for the tasks of the Border Guard, such as: recognizing, preventing and detecting crimes and offences and prosecuting their perpetrators, within the scope of competence of the Border Guard. With regard to the National Revenue Administration, Article 1(4)(b) and (c) of the Border Guard Act is of interest, as it refers to competences purely related to tasks related to the Customs and Revenue Service. We are talking about the detection of fiscal crimes and offences listed in Article 134(1)(1) of the Act of 10 September 1999. The Penal Fiscal Code (PFC) (Journal of Laws of 2023, item 654), which refers to Articles 63-71, 85-96(1), 106e and 106f, and 106h of the Penal Fiscal Code, which refer to preparatory proceedings conducted by m.in. the Border Guard - in cases of fiscal crimes and fiscal offences specified in Articles 63-71, Articles 85-96(1), 106e, 106f and 106h, disclosed within the scope of their activities by the Border Guard) and offences related to crossing the state border or moving goods and excise goods subject to the obligation to mark with excise duty marks, as well as items specified in the regulations on weapons and ammunition, on explosives, about the precursors of restricted explosives, about libraries, about the protection of monuments and the care of monuments, about the national archival resources, about counteracting drug addiction, and about population registration and identity cards. A similarity can be found in Article 33(1) of the NRA Act, which lists the tasks falling within the competence of the head of the customs and tax office. This includes, m.in, the covering of goods with customs procedures and the performance of other activities provided for by customs law; the levying of customs duties, taxes and other charges connected with the importation and export of goods; identifying, detecting and combating fiscal crimes and offences, preventing these crimes and misdemeanours and prosecuting their perpetrators, to the extent specified in the PFC; recognizing, detecting and combating crimes specified in the Accounting Act, preventing these crimes and prosecuting their perpetrators. In addition, the tasks of the Customs and Tax Service include identifying, detecting and combating crimes and offences related to the violation of the provisions of the regulations concerning goods whose trade is prohibited or restricted under the provisions of Polish law, the provisions of the European Union law or international agreements (Article 33(10) of the NRA Act).

Based on the article 134(1)(1) of the Penal Fiscal Code, it is necessary to present considerations on the provisions enumerated in this article, which are to give the Border Guard, as a non-financial authority, the competence to exercise the powers

directly belonging to the Customs and Tax Service. Starting from Articles 63 to 71, they consist in the control of illegal imports (Article 63) and exports (Article 64) of excise goods and the sale of excise goods without marking them with excise duty marks (Article 63a). Then, checking the excise stamp (Art. 65), the originality of the excise stamp (Art. 67) along with the possession of false excise stamps or the authorization to collect the bands (Art. 67a), checking the markings of excise goods (Art. 66), as well as verifying the fulfilment of the obligation to mark the excise goods (Art. 68), checking the correctness of commercial transactions (Art. 69) and the sale of the excise stamp to unauthorised persons (Art. 70) or improper transport of excise stamps (Art. 71). The conflicting powers of these two services also include the tasks included in Article 106f of the PFC – failure to declare imports, which refers to notification to the customs authorities or the Border Guard, and then Article 106h of the PFC – failure to comply with customs control requests, which applies to both the Customs and Tax Service and the Border Guard.

The tasks listed in Article 2 of the Border Guard Act are already carried out by officers of the Customs and Revenue Service. These include Article 2(2) of the Border Guard Act, i.e. the organisation and control of border traffic, and Article 2(4) of the Border Guard Act, which mentions, m.in, the identification, prevention, detection of crimes, offences and the prosecution of their perpetrators, such as fiscal offences, offences and offences related to crossing the state border or the movement of goods and excise goods subject to the obligation across the state border marking with excise duty stamps. In addition, identifying, detecting and combating crimes such as participation in an organised group or criminal association, against the credibility of documents, fraud and money laundering, in connection with which there has been a reduction or exposure to a reduction of a public law debt (Article 2(13)-(16) of the NRA Act).

Similar tasks are listed in Article 2(4d) of the Border Guard Act, which refers to crimes against public security and crimes and offences against safety in communication, which are related to the operation of air transport, and in Article 2(5) of the Border Guard Act, ensuring security in international communication and public order within the territorial range of the border crossing, and, within the scope of competence of the Border Guard - also in the border zone and Article 2(5a) carrying out security checks in means of transport in international transport, within the territorial range of road, rail, sea and river border crossings, at airports in accordance with the rules set out in the regulations on civil aviation security.

## Applications

As a result of the above, it is worth making a diagnosis of the legitimacy of the functioning of the Customs and Tax Service. The duplication of some competences and the scope of tasks prompts us to rethink the legitimacy of establishing a uniformed formation, which is the Customs and Revenue Service.

In this context, it is worth considering whether the tax administration should have its “own” uniformed formation with the ability to use firearms. It seems that the tasks related to compliance with the provisions of tax law are primarily of the nature of a legal assessment of the taxpayer’s actions. The functioning of both civilian employees and officers within the National Revenue Administration gives rise to ambiguities in terms of the division of tasks and the relationship between the statutes of individual persons. Examples include customs and fiscal inspections carried out by officers and tax audits carried out by officials, in which officers have a wider range of powers (in the same case) than officials (Kłosowiak 2021, p. 103). It is worth considering the issue of the rights that both officers and officials have, as it causes unnecessary chaos. If a given authority to perform certain activities is within the competence of officials, it is unjustified for stations to grant them to officers as well. As a result, it seems incomprehensible that an official and an officer perform identical activities, as this undermines the legitimacy of separating a uniformed formation within the tax administration in Poland.

It should be argued that an orderly and coherent solution would be to make the National Revenue Administration only a civilian formation, which would cooperate with services, such as the Police or the Border Guard, in situations related to crime. Selected duties of the Customs and Revenue Service can be fully taken over by the Border Guard, which already performs some of the tasks overlapping with the tasks of the Customs and Revenue Service. In addition, the scope of activities of both authorities covers the same places on the state border, i.e. airports, seaports, road and rail traffic. Within the scope of duties that would not fall within the competence of the Border Guard, these tasks would generally be performed by the National Revenue Administration authorities in cooperation with the Police.

Therefore, it is reasonable to ask whether there is a need for the tax administration to have a uniformed formation, which, *m.in.*, gives it the right to use firearms. The Border Guard was also included in the subject of the analysis, as its tasks and powers largely overlap with the Customs and Revenue Service. At the same time, this leads to the question of whether the Border Guard, as it is a formation specialized in matters that may require the use of force, cannot take over a number of tasks of the Customs and Revenue Service. All this intensifies doubts about the role of the Customs and Tax Service in Poland. There may be several proposals for resolving this “conflict of interest”. On the other hand, the most sensible proposal is a gradual integration, which would result in the merging of the Customs and Revenue

Service with the Border Guard, so that the changes would take place gradually and to avoid disruptions in the functioning of both services. A good place to start is by creating a common organisational structure, which may include, m.in joint training, command centres and administration. For the effectiveness of the changes, it is worth focusing on the optimization of organizational structures by conducting an analysis of the organizational structures of both services in order to eliminate excessive bureaucratic burden and improve the efficiency of operational activities. As a result, the NRA would be a civil service only.

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