

PEER REVIEW

by professor doctor of law Sasho Georgiev Penov,
Sofia University “St. Kliment Ohridski”, Faculty of Law

of the materials submitted in the selection procedure
for holding the academic position of “**Professor**”
at the **Higher School of Insurance and Finance**

in scientific field: 3. Social, Economic and Legal Sciences

professional field: 3.6 LAW

Lyubka Mladenova Tsenova, Doctor of Law, holding the position of “Associate Professor” at VUZF on the grounds of employment contract dated 5 March 2019, participates in the selection procedure announced in the “State Gazette”, Issue 94 dated 29 November 2019, and on the Internet site of the Higher School of Insurance and Finance (VUZF) for the needs of the Academic Council (<https://vuzf.bg/konkursi-za-akademichni-dlazhnosti>).

1. Overview of the submitted materials

Particulars of the procedure and inventory of the materials submitted for review.

By Order No. 56/20.03.2020 of the Rector of the Higher School of Insurance and Finance I am appointed a member of the Scientific Jury for filling the academic position of “**Professor**” at VUZF in scientific field 3. Social, Economic and Legal Sciences, professional field 3.6 Law, **announced** for the needs of the Academic Council.

Lyubka Mladenova Tsenova, Doctor of Law, Associate Professor employed by VUZF, is **the only candidate** who submitted documents for the selection procedure.

The set of materials submitted by Assoc Prof Tsenova in hard and soft copy **complies with the Rules on the Development of the Academic Staff of VUZF** and includes the following documents: application with incoming No. 16/29.01.2020 for participation in the selection procedure, autobiography, reference from the Higher Attestation Commission dated 6 April 1998 for the educational and scientific degree “Doctor”, certificate from the International Business School – Botevgrad for appointment to academic position of “Associate Professor” dated 6 November 2013, employment contract with the rector of VUZF dated 5

March 2019, and reference with outgoing No. 43-1/ 28.01.2020 issued by the Chief Accountant of VUZF for holding the position of “Associate Professor” under primary employment contract with VUZF, summary of the monographic work “The Complaint in the Tax Proceedings”, report on publications, declaration concerning the contribution in joint publications, Order No. 485/17.12.2018 of the Rector of VUZF for appointment of Assoc Prof Tsenova as supervisor of an enrolled independent doctoral student, list of publications of Assoc Prof Tsenova for participation in the selection procedure for “Professor”, own report on scientific contributions, reference on citations by the National Centre for Information and Documentation (NACID), report on participation in research projects and other research assignments, report on the satisfaction of the minimal national requirements for holding the academic position of professor, report on the original scientific contributions of the works, personal data processing consent form.

It is established from the submitted teaching workload reference for the academic years 2018/2019 and 2019/2020 that the candidate was assigned 245 and 260 hours, respectively.

The candidate Associate Professor Lyubka Mladenova Tsenova has submitted a total of 14 scientific works for participation in the selection procedure: 3 monographs, 7 articles, 4 scientific communications.

Brief biographic information on Assoc Prof Lyubka Mladenova Tsenova relevant to the selection procedure

Lyubka Mladenova Tsenova obtained higher education in law and qualification as a jurist with diploma No. 072001 dated 31 August 1973 issued by Sofia University “St. Kl. Ohridski”. With diploma No. 25240 dated 29 June 1998 issued by the Higher Attestation Commission the candidate obtained the educational and scientific degree of Doctor. By resolution of the Academic Council of the International Business School (IBS) from Minutes No. 01/25.01.2012 the candidate was awarded the academic position of “Associate Professor” in professional field 3.6. LAW (financial and tax law) at IBS. The candidate was employed in the “Legislative Activity and European Law” Directorate at the National Assembly of the Republic of Bulgaria (2000-2010), as an expert in the Legislation Council of the Ministry of Justice (1998-2000), as an expert and senior legal advisor with the Ministry of Finance (1991-1998), as full-time lecturer, assistant on foundations of law, employment and social

security law at the D.A. Tsenov Academy of Economics – Svishtov (1991-1998), as an expert senior legal advisor at the Bulgarian Academy of Sciences (1980-1986), as bailiff at the Sofia District Court (1975-1980). The candidate taught at the Burgas Free University (1992-1998); the Southwestern University, Blagoevgrad (1994-2005); New Bulgarian University (1996-1997); Plovdiv University “Paisii Hilendarski” (1994-1997); the International Business School (2011-2018); the Higher School of Insurance and Finance (2011-2017), where since 5 March 2019 and presently she is employed under a primary employment contract. The candidate has many years of teaching experience. The entire work experience of Ms. Tsenova is in the field of law, and the expert positions she has held developed her professional qualification both in law administration and in legislative activity. From the materials submitted for the selection procedure it is established that the candidate has numerous publications – monographs, studies, articles in Bulgarian and foreign publications, participation in conferences and seminars, i.e. together with the practical and teaching activity in the field of law, she has also pursued and is pursuing scientific work reflected in many scientific publications. The candidate is recognised as an established researcher by the specialists in the Republic of Bulgaria working in the field of tax law with her scholarly output, teaching, and expert activities.

I consider the requirements of Article 29, Para 1, Item 1, Item 2, points “a” and “c” of ZRASRB satisfied.

2. General characterisation of the work of Assoc Prof Lyubka Mladenova Tsenova

Assessment of the candidate’s teaching and pedagogical work and background

The candidate’s teaching and pedagogical work is characterised by many years of teaching experience at various universities in the Republic of Bulgaria. The legislative dynamism, in particular in tax law, as well as the challenges in the application of the EU law after the accession of the Republic of Bulgaria to the European Union, mandate the maintenance of consistent highly specialised expertise, which the candidate has. The lecture courses she taught are inevitably related to the current legal framework. Her recruitment as a lecturer at the higher schools she taught at evidences the positive assessment by the faculty peers and the students for the candidate’s teaching and pedagogical work. In her teaching work the candidate also benefits from her accumulated practical expert-level experience in the bodies

of the legislative and executive branches. According to the submitted documentation for the selection procedure, she is currently the research supervisor of an independent doctoral student. The candidate's professional biography is evidence of her extensive practical experience in the field of law, and her research is evidence of keeping abreast of legal scholarship in the field of tax law, including the comparative law aspects. The peer-reviewed textbooks and teaching aids by Associate Professor Tsenova are used by students at VUZF in their preparation in the relevant scholarly disciplines and allow the acquisition of practical knowledge by discussing cases and solving tests, in addition to the foundations of the relevant legal disciplines.

Assessment of the candidate's scholarship and translational scholarship

In addition to the publications submitted for participation in the selection procedure, the candidate has further publications – habilitation thesis, studies, articles and reports, published in peer-reviewed journals with no impact factor or in edited collective works. According to the reference presented, 18 citations are recognised by NACID. Excluding the candidate's publications from 2018-2019, the candidate scores a total of 650 points as per the criteria of the minimum national requirements for scientific and teaching work for holding the academic position of "Professor", i.e. **the requirement for participation in the selection procedure under Art. 29, Para 1, Item 5 in connection with Art 2b of ZRASRB is satisfied**. I know the scholarly work of the candidate and I participated as a reviewer in the selection procedure that awarded her the academic position of "Associate Professor" at the IBS.

Submissions to the selection procedure:

- **monograph: European Tax Law, Sofia, Fenea, 2012 (159 pages)**
- **monograph: Taxation – Recent Trends, Sofia, Avangard Prima Publishing House, 2017 (170 pages)**
- **monograph: The Complaint in the Tax Proceedings, Sofia, Avangard Prima Publishing House, 2020 (197 pages)**
- **7 articles published between 2014 and 2018 in conference proceedings of the UNWE and the IBS.**
- **4 scientific communications published in European Taxation and International VAT Monitor, IBFD, over the period 2017-2019.**

I believe that in accordance with the requirements of Article 29, Paragraph 1, Item 3 of the Development of Academic Staff in the Republic of Bulgaria Act, the submitted published monographic works and publications in specialist scientific publications do not overlap with the ones submitted for the award of educational and scientific degree “Doctor”, of scientific degree “Doctor of Science”, and for holding the academic position of “Associate Professor”.

My assessment of the candidate is based on the criteria set out in Art. 29b, Para. 2 of ZRASRB – “The academic jury shall assess the candidates for academic appointment as “Professor” in accordance with the achievements fulfilled, referred to in Art. 29, Para. 3.” Art. 29, Para. 3 of ZRASRB requires the candidates to submit a reference on the fulfilment of the minimum national requirements under Art. 2b, Para. 2 and 3, respectively the requirements under Art. 2b, Para. 5, and a reference on the original scientific contributions to which shall be attached the relevant evidence laid down in this Act, in the Regulations for its implementation and the regulations of the higher schools and of the scientific organizations. The candidate has submitted the necessary references.

The submitted works concern the evolution and practical administration of tax law in the Republic of Bulgaria as an EU member state. The monographs theoretically study the institutions of tax law. The articles explore issues that are not fundamentally related to the monographic works, but are invited by discussions in Bulgarian legal literature or changes in legislation. The scholarly works are characterized by the application of the legal methods of scientific knowledge, with logically constructed legal structure and conclusions, advancing legal research and resolving problems in judicial practice. **The submitted scientific works meet the requirements of Art. 29, para 1, item 3 of ZRASRB.**

A contributory aspect of candidate’s entire scholarship is the frequent analysis of current issues in taxation triggered by the annual changes in the legal framework. These contributions are contained in the submitted scientific reports meeting the statutory criteria for articles: **“Changes in the VAT Act 2014 and Business Issues /Legal View of Economic Issues”**, a report at a jubilee scientific conference organized on the occasion of the 100th anniversary of the birth of Prof. Vesselin Christophorov, 21 November 2014, University of National and World Economy (UNWE), Faculty of Law; **“Modernisation of VAT for the purposes of cross-border business-to-consumer e-commerce”**, 13th International Scientific Conference of Young Scientists, on “The Economy of Bulgaria and the European Union

in the Global World”, UNWE, 2017; **“Current trends in VAT taxation”**, Scientific Conference: “Bulgaria’s Membership in the EU: 10 Years Later,” UNWE, Faculty of International Economics and Politics, Sofia, 2017; **“Current Legislative Systems in Accounting”**, International Scientific Conference – “Intelligent Specialisation in Bulgaria”, IBS, 2014; **“Necessary and sufficient condition for qualifying as a taxable person under the tax on passenger transport by taxi”**, collective monograph – UNWE, Sofia, 2017; **“Legal aspects of electronic money as a new method to raise capital”**, scientific conference of young scientists: “The Economy of Bulgaria and the European Union in the Digital World”, UNWE, 2018. The communications in the IBFD publications are also dedicated to topical issues.

The candidate’s analyses in her scientific monographs on EU indirect taxation legislation are scientific contributions to Bulgarian legal theory. She analyses in depth the effects of transposition of EU law in the legal framework of indirect taxation in the Republic of Bulgaria, making proposals *de lege ferenda* to improve the legislation. At the same time, she also puts forward questions for scholarly discussion concerning local taxes and corporate tax and the importance of the case law of the Supreme Administrative Court and the decisions of the CJEU. Her research invites discussions in the scientific community, and also helps judicial and legislative practice. These contributions are contained in the monograph “European Tax Law”, Sofia, 2012. In my opinion, the terminology used by the author – “EU tax law” and “European tax law”, “pan-European tax law” – necessitates critical scientific analysis from the viewpoint of Bulgarian legal theory. Although often found in the literature, these concepts need an accurate characterisation of their content.

In the monographic work “Taxation – Recent Trends”, Sofia, 2017, the author summarises the theoretical views found in Bulgarian and foreign literature concerning the content of the definition of the term “tax”, but also raises questions about modern goals and methods of tax policy, taking into account the current understanding of the Organization for Economic Cooperation and Development and the EU bodies that are of particular importance to countries in transition to market economy. The legal norms of the primary EU tax-related legislation, the legal regulation in the secondary legislation, and the major decisions of the CJEU are discussed. The current EU initiatives in the field of cooperation in information-sharing and in tax collection, which are yet to be theoretically analysed, are discussed. The work of the OECD and the EU under the BEPS project aimed at overcoming tax fraud and tax avoidance, which has an impact on the domestic tax laws, is also analysed. In view of the

study subject and the effective collection of tax obligations, the author also considers the proceedings for interim measures for public receivables, analysing the current legislation. The author has proposed a legal definition of “securing of public receivables”, which is interesting in its content and is an occasion for scholarly discussions. The author examines the role and place of legal norms- definitions for revealing the meaning and content of the specialised terminology used in the tax laws. This matter, given the contradictory case law, raises many questions for the scientific community and the legislative activity. The work provides a retrospective review of the existing theoretical legal views, opinions of the Supreme Administrative Court and the Decisions of the Court of Justice of the European Union concerning the place, role and significance of court acts for the formation of the so-called judicial tax law, the subject of which is the clarification of the legal fiscal norms, filling of normative gaps, eliminating existing contradictions and reducing the degree of their uncertainty in tax legislation. The concept of judicial tax law outlined in this monograph can, in my opinion, be used only in a conditional sense. I do not share some of the conclusions of the author on the role and importance of interest on tax obligations as a “hidden” method to ensure the collection of public receivables. It does not take into account that the statutory interest is due both by the taxable persons for taxes not paid on time, and by the revenue authorities in case of refund of taxes unlawfully determined with an assessment. The different legal regulation of interest on customs duties and social security contributions is also not taken into account. My personal opinion is that the level of the statutory interest for tax obligations and social security contributions is too high in the current economic situation and should be reviewed more often after an analysis of the effect of the application of the legal framework. The critical remarks do not underestimate the value of work as a study of various areas of tax law, inviting scientific discussion.

In the monographic work “The Complaint in the Tax Proceedings”, Sofia, 2020, the candidate emphasised the citizens’ right to protection against unlawful acts of the revenue authorities in the administrative review phase. The research topic is interesting and previously in Bulgarian legal literature there was no monograph dedicated to it. Structurally, the work is divided into seven chapters which address individual aspects of the subject of scientific research. According to the reference on the scientific contributions of the author, this monographic work researches various problems related to the right to challenge tax assessments. The legal characterisation of the “complaint” in the appeal proceedings against assessments,

regulated in the TSSPC, has been studied. The content of the term “tax receivable” is studied. The current theoretical views and research in the EU concerning taxes and their impact on national legislation are examined. The legal regime of the organisation of administrative control, regulated in the TSSPC as internal administrative control over the acts of the tax authorities, has been studied. The powers of the Director of the “Appeals and Tax and Social Security Practice” (ODOP) Directorate at the Head Office of the National Revenue Agency in the process of organising and conducting the proceedings for administrative review of tax assessments have been studied. The parties to the assessment proceedings have been studied. The role of the three main revenue bodies involved in the assessment process has been clarified, i.e.: the body that orders the inspection, the inspection team, and the bodies that issue the assessment. In a comparative aspect, the legal framework of the procedure for appealing assessments in 31 countries is considered. Proposals to amend the legislation have been put forward, including the formulation of a definition of the term “complaint” for tax purposes, a proposal to extend the deadlines for filing complaints in order to harmonise them with the procedure provided for in the EU Member States, proposals to improve the legal framework governing the powers of the Director of the ODOP Directorate as a tax authority within the meaning of Article 7 of the NRA Act, and of the ODOP Directorate as an administrative structure due to unclear points in the TSSPC. In addition, I can point out that the acts issued in the assessment proceedings – inspection report and assessment – and the stages of the assessment proceedings are discussed in detail. An important contribution is to clarify the legal characterisation and the competence of the directors of the “Appeals and Tax and Social Security Practice” Directorate. The comparative legal review is an indisputable contribution. My overall assessment is that the objectives of the research have been achieved – to study the tax-law regime of the complaint as an institution for protection of the rights and obligations of taxpayers from incorrect or inaccurate assessment of their tax obligations by the revenue authorities. Besides being theoretical in nature, the work is also of practical value and will contribute to the improved administration of the law. The work references 110 sources in Bulgarian and 96 in foreign languages. The case law relevant to the considered problem is summarised and critically analysed, which can also be valued as a scientific contribution.

In the reviewed monograph the author has analysed in more detail in historical terms the different concepts in Bulgarian administrative and financial legal literature concerning the nature of the appeal of administrative acts, such as the assessments, as well as the regulation

at constitutional and statutory level, and the opinions expressed in foreign sources (Chapter one, Sections 1, 2 and 5). The work examines methodologically correctly the influence of the common EU tax policy, based on the principles of democracy, legal pluralism, priority of citizens' rights and freedoms, the rule of law, proportionality and subsidiarity (Chapter One, Section 2). However, I do not share the characteristics of the principles of proportionality and subsidiarity contained on page 16 of the monograph, as these principles are defined in Article 5(3) and (4) of the Treaty on European Union (TEU) and their application is regulated in Protocol (No.2) on the application of the principles of subsidiarity and proportionality to the Treaties. I believe that the EU is not yet a tax union, and the Member States do not cede their fiscal sovereignty to the EU according to the principle of conferred competence. According to Article 3 of the Treaty on the Functioning of the European Union (TFEU), taxation is not in the exclusive competence of the EU. The author correctly uses the term "approximation of laws" (Chapter One, Section 4) in relation to tax laws in the EU. I consider inaccurate footnote 18 on p. 18 that the principal revenues in the EU budget are value added tax, excise duties, capital duties, energy and environmental taxes, because the revenues in the EU budget are determined in the Decisions on own resources adopted on the basis of Art. 311 of TFEU. The novel contributory study of the key legal issues in Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union, transposed with amendments to the TSSPC that entered into force on 13 August 2019. The legal community would be interested in the issue of the application of mediation in tax disputes (p. 23). Chapter Two outlines the characteristics of administrative justice under the TSSPC, based on an in-depth analysis of the views in the legal literature and the legal regulation. The terminological explications (Section 1), the clarification of the purpose of the administrative control (Section 2), the delimitation of the powers of the bodies and the delineation of the differences with other types of control (Sections 3 and 4) clearly outline the control competence and its specifics, with the author appropriately selecting criteria for comparison. Chapter Three deals with the concept of "public receivables" (Section 1) and "the substance of tax obligations" (Section 2), with author's conclusions and the analysis of contemporary theoretical views (Section 4) creating the foundation for theoretical discussions of the legislation in force in Bulgaria. Chapter Four analyses the acts that are subject to administrative control. The author did not cover all acts issued by the revenue bodies which are subject to the right of administrative review (for example, acts under TSSPC subject to review by the Territorial

Director of the NRA), but those issued in connection with tax audit proceedings. The exposition and discussion of the stages of the tax audit proceedings is distinguished by clarity and systematism (Section 2). The case law of the Supreme Administrative Court is analysed, which makes the monograph useful for practicing lawyers. The author has also considered the proceedings for amendment of tax audit acts that have entered into force (Section 3), which proceedings have been little studied in the legal literature. Chapter Five considers the complaint as a legal institution. I can assess as a scientific contribution the summarisation of the theoretical views (Sections 1 and 2) and those contained in the case law of the Constitutional Court and the judiciary. Although I value positively the given definition of complaint for the purposes of the tax audit appeal proceedings (Section 5), my personal opinion is that it is hardly appropriate to reproduce it in the additional provisions of the TSSPC, as it has theoretical significance and in addition, there are other proceedings for administrative review of acts of the revenue authorities. Chapter Six considers the proceedings before the Director of the “Appeals and Tax and Social Security Practice” (ODOP) Directorate. The comparative legal analysis of the approaches and deadlines for filing a complaint is interesting (Section 3). I think that the author could have examined in greater detail the procedure for suspending the execution of audit acts (in principle, the complaint against them does not suspend their execution), insofar as that is important in order to protect citizens’ rights and legitimate interests, and that may be the topic of a separate scientific study. I appreciate the outline of the stages and phases of the proceedings before the Director of the ODOP Directorate (Section 6). As previously stated, I consider as a scientific contribution to Bulgarian legal literature the comparative legal analysis of the legal framework of the appeal proceedings against acts of the revenue authorities in the EU and other countries, considered on 63 pages in Chapter Seven. I share the proposal to extend the deadline for filing complaints against audit acts, not only because of the longer deadlines in comparative terms adopted in foreign legislations, but also because the audit is usually carried out within three months and a lot of evidence is gathered, and its serious and in-depth discussion in the course of complaint preparation objectively necessitates a longer period.

The references in the body of the reviewed works are accurate and substantively related to the discussed scientific problems.

My final conclusion in the candidate review is that the presented scholarly works position her as an established Bulgarian researcher in the field of tax law with extensive practical

experience who has original scientific contributions and can independently identify and solve research problems in the field of financial and tax law.

4. Assessment of the individual contribution of the candidate

The contributions described in the discussed scientific works with which the candidate participates in the selection procedure are in my opinion her own work and can be stated as formulation of new scientific problems and as creation of new taxonomies relevant for law administration. There is no information for plagiarism in the scientific works proved in accordance with the due procedure, by which the requirement of Art. 29, Para. 1, Item 6 of ZRASRB is satisfied.

5. Critical notes and recommendations

The critical remarks and recommendations mentioned above under item 3 of this review are important for the development of theoretical discussions or as an additional recommendation for the author to further develop her theses in new scholarly works.

6. Personal impressions

I know the candidate. Her hand-on work at various institutions of the legislative and executive branches has always been paralleled by her interests in research and teaching.

CONCLUSION

The documents and materials submitted by Lyubka Mladenova Tsenova **satisfy all** the requirements in the Development of Academic Staff in the Republic of Bulgaria Act (ZRASRB), the implementing rules of ZRASRB, and the respective Regulations of VUZF.

The candidate in the selection procedure **has submitted a sufficient** number of scientific works published after the materials used in the defence of the educational and scientific degree “Doctor” and not reviewed in the award of the academic position of “Associate Professor”. The candidate’s works contain original scientific and applied contributions. Theoretical works have practical applicability, and some of them are directly oriented to teaching work. The practical, scientific and teaching qualification of Lyubka Mladenova Tsenova is beyond any doubt.

The results achieved by Lyubka Mladenova Tsenova in teaching and research work fully comply with the Regulations of VUZF implementing ZRASRB.

Having regard to the materials submitted for participation in the selection, I consider the conditions of Article 29, Para. 1 of ZRASRB satisfied. The research, teaching and expert work of the candidate Lyubka Mladenova Tsenova motivate me to give my positive evaluation for her selection for the academic position of “Professor” at the Higher School of Insurance and Finance in professional field 3.6. Law and to recommend to the Scientific Jury to prepare a report-proposal to the Academic Council for the selection of Lyubka Mladenova Tsenova for the academic position of professor at VUZF in professional field 3.6 Law.

16 July 2020

Reviewer:
(Prof Sasho Penov)