

## **OPINION**

**Issued by Prof Dr Biser Jordanov Slavkov, Financial Control Department, University of National and World Economy**

concerning the materials submitted  
for the selection procedure for holding the academic position of **“Professor”  
at the Higher School of Insurance and Finance**  
for higher education field 3 “Social, economic and legal sciences”  
professional field 3.6 “Law” (Financial and Tax Law) for the needs of the Higher School of  
Insurance and Finance (VUZF), Sofia

The candidate participating in the selection procedure for a professorial position 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 of VUZF, is Assoc Prof Dr Lyubka Mladenova Tsenova from the Higher School of Insurance and Finance, Sofia.

### **1. General introduction to the procedure and the candidate**

#### **1. Monographs, studies, articles and reports, scientific communications**

The candidate has submitted 2 monographs of which she is the single author, one of which is a monograph for participation in this competition (item 5 on p. 6), one book, 3 studies, 12 scientific articles and scientific reports, and 21 scientific communications published in English.

1. The monographic work submitted for participation in the selection procedure for the professorial position is on the topic “The complaint in the tax proceedings” (2020), 209 pages.

The work comprises of: foreword, seven chapters, conclusion, statistical tables, and reviews by two independent habilitated reviewers.

The reviewed monographic work “The complaint in the tax proceedings” is a single-author scientific study on the legal characteristics of the complaint as a legal instrument for protection of taxpayers in the proceedings for administrative control over acts issued by the revenue authorities as a result of conducted tax inspections.

The study of the legal institution of the complaint in tax proceedings uses the foundational scientific achievements of the administrative, financial and tax legal science and case law.

Chapter One examines the sources of the legal regulation of the institution of the complaint at constitutional and statutory level. The influence of EU tax law on the development of recent national tax legislation has been studied. The chapter reviews the leading tax law doctrines in the EU dedicated to the study of the mechanisms of tax disputes, the problems of tax control, the evolution and the application of tax mediation for resolving tax disputes, the procedure for administrative review of tax audit acts, the right of access to tax litigation for all interested parties, the possibilities of digital tax proceedings and the role of the reference to the Court of Justice for the development of tax justice.

Chapter Two is dedicated to the legal regulation of the bodies that administer administrative justice, as regulated in the Tax and Social Security Procedure Code (TSSPC). It explores the role of the National Revenue Agency (NRA) as a state control body with special competence which carries out two types of control: extrainstitutional control over the due tax (public) obligations; and intrainstitutional control over the activity of the revenue bodies and the acts issued by them.

The powers of the Director of the “Appeals and Tax and Social Security Practice” Directorate as an administrative and deciding body in tax disputes are analysed.

Chapter Three examines public receivables as a subject of control carried out by the revenue authorities. The content of the different types of public receivables is elucidated, depending on the grounds for their occurrence. The distinction between public state receivables and tax liabilities is explored. The recent theoretical views expressed in the foreign tax law doctrine regarding the content of the term “tax liability” are stated. Tax liability as an institution of tax law has been studied theoretically and proposals for elaboration of a definition of the term tax liability have been put forward.

Chapter Four examines the acts issued by the NRA bodies in the course of tax reviews and tax inspections. An analysis of the substantive nature of the tax review and tax inspection as a set of actions performed by the NRA bodies in the control proceedings is carried out. The types of administrative acts issued by the NRA bodies in the course of the three stages of the tax audit proceedings are studied and the case law accumulated as a result of their appeals is analysed.

Chapter Five contains a theoretical study of the complaint in tax proceedings as a legal institution. The two main theoretical views on the nature of the complaint in the domestic and foreign legal literature are examined; these consider the complaint as an action and the complaint as an object in the material world. The author of the monograph expresses the thesis that the combination of the two views reveals the true nature of complaints. It also advocates that a complaint should be considered as a system of tax law guarantees aimed at protecting the rights of the audited persons. The normative gaps in the legal framework of complaints are stated and proposals for future changes in the tax legislation are made.

Chapter Six deals with the administrative control proceedings before the Director of the “Appeals and Tax and Social Security Practice” Directorate arising in connection with complaints filed by audited persons. An analysis is made of the mandatory information to be included in the complaint and of its significance for the complaint’s admissibility. The legal regulation of the deadlines for filing a complaint from a comparative law perspective in the legislation of the EU Member States, Russia, the USA, China, and Turkey has been studied. It is concluded that the domestic legislation provides for the shortest deadlines for filing complaints.

The monograph contains an analysis of the three stages through which the procedure for administrative review of a tax audit act successively progresses. It is stated that the first stage comprises an examination of the admissibility of the complaint whereby the satisfaction of the procedural requirements for form, regularity and information to be in-

cluded is established, and the irregularity thereof results in a refusal to consider the complaint. The case law is explored.

The second stage concerns the conduct of the administrative proceedings which takes place in closed session *in absentia* for the applicant, and analyses the powers of the deciding authority.

The third stage of the control proceedings concerns the requirements that must be satisfied when issuing a reasoned decision on a complaint; these requirements are analysed in detail and are accompanied by case law.

Chapter Seven provides a comparative legal review of the complaint proceedings concerning acts issued by the tax authorities in the EU Member States, as well as in China, Russia, the United States, and Turkey – countries with which taxpayers in Bulgaria have significant commercial relations. The comparative legal research introduces an element of originality and scientific completeness of the research, as there is currently no analogue in the tax law literature.

The monographic work contains a rich bibliography, including domestic and foreign authors, as well as current case law.

The monograph also contains a report provided by the NRA which contains official statistical information on the complaints filed with the NRA and their development in the period 2015 – 2018.

2. In the monograph "Taxation – Recent Trends," Sofia, 2017, *Avangard Prima*, the candidate explores the following problems:

2.1. The nature of taxation in the light of the recent trends in the development of taxation considered from a legal viewpoint, in line with trends in the development of EU tax policy. The influence of the EU tax policy on the formulation of the tax policy of the Republic of Bulgaria, both now and in the immediate future, is considered. The need for a legal perspective on this topic is emphasised due to the fact that usually the abovementioned problems are research topics for economists. (The impact of EU tax law was of interest to the candidate also in her study "Retrospective view on the development of tax law in the EU and its influence on the legislation of the Member States", 2013 yearbook of the International Business School – Botevgrad, which is also in the list of publications for participation in the selection procedure for Professor).

2.2 An opinion is expressed on the new theoretical views on the content of the definition of the tax concept in countries in transition to market economy after the political and economic changes that have taken place since the late 1980s.

2.3. An analysis of the current EU proposals to combat "aggressive taxation" has been made in order to minimise its damage on Member States' budget revenues and on the EU budget as a whole.

2.4. The institution of securing the payment of tax receivables is explored, which has been considered in two aspects. From the viewpoint of the state as an active subject in the legal relationship, it is considered as an institution for securing the fulfilment of tax receivables, and from the viewpoint of the taxpayers it is considered as an institution for securing the fulfilment of tax obligations. The role and place of the defining legal norms for revealing

the meaning and content of the specialist terminology employed in the tax legislation are explained.

2.5 Interest is considered as a method to ensure the fulfilment of tax obligations, which is different from its role as a penalty for belated fulfilment of tax obligations. For completeness' sake, the methods used to secure the payment of tax receivables are also stated. Proposals *de lege ferenda* are put forward. (The problem of the place and role of interest in proceedings for interim measures interested the candidate in the article "The importance and role of interest as a financial instrument", 12th International Scientific Conference of Young Scientists on the topic of "The Economy of Bulgaria and the European Union: Science and Business", held on 11 November 2016 in Sofia at the University of National and World Economy (UNWE), Faculty of Finance and Accountancy, ISSN 978-954-8590-41-9, pp. 151-164, which article is also submitted in the selection procedure for "Professor".)

2.6 It explores the new notion of the role of the court as an interpreter of the law and a legislator, in addition to applying the tax laws. The tendencies for recognising the force of precedents set by the decisions of the Supreme Courts in tax cases in a number of Member States in transition to market economy, similarly to the precedent nature of the decisions of the Court of Justice of the EU, have been studied. The candidate raises those problems and opens the topic for debate. (This thesis is developed in more depth in the study "Judicial Tax Law", accepted for publication in the Yearbook of the Higher School of Insurance and Finance for 2020, which examines in greater depth the place and the role of the court, as well as the need for recognition of decisions of the Supreme Courts as precedents when deciding on tax disputes. The study is also on the list of publications for participation in the selection procedure for Professor.)

3. The book "European Tax Law", *Fenea*, 2012, is the basis for the "International Tax Law" course taught at VUZF. It clarifies the place, role and importance of Community tax law and its influence on the integrated EU tax law and on the domestic tax law of the Member States. The sources of tax law at the EU level are considered and their influence is clarified.

4. The candidate has prepared 3 scientific reports, in which she discusses various aspects and tendencies in the development of European tax legislation and its impact on and reflection in the Bulgarian tax legislation. The approaches and methods that the tax policy of Bulgaria should follow in order to meet the new requirements for taxation and fight against tax fraud, tax evasion and avoidance, have been explored.

5. Separately are submitted 5 scientific reports where the candidate examines the recent development of VAT, corporate, and local taxation. Consideration is given to the automatic information exchange between Member States aimed at enhancing the interaction and the fight against tax fraud and increasing tax collection. The rights and obligations of taxpayers and the state are examined, as well as the expected outcomes from the introduction of new methods and approaches to taxation.

6. The scientific communications concern the provision of information to companies and citizens from other countries on the development of Bulgarian tax law, its specificities and its alignment with the new European and global trends in the field of taxation.

### **3. Teaching aids and materials**

The candidate has submitted 7 single-author teaching aids and electronic resources for the subjects she teaches at VUZF – Sofia, namely:

2.1. “International Tax Law” (textbook), 193 pages, electronic edition, structured in 8 chapters. More than 180 titles were used in the work. The textbook is designed to facilitate learning at VUZF, Sofia.

2.2. “International Tax Law” (teaching aid), 9 pages, containing cases for self-study for students at VUZF.

2.3. “Introduction to Labour Law” (textbook), 192 pages, electronic edition, structured in two sections and 15 chapters. Each chapter ends with “keywords”, “further readings”, and “control questions on the topic”. The textbook is intended for students at VUZF, Sofia.

2.4. “Introduction to Labour Law” (teaching aid), 11 pages, electronic edition containing 21 case studies for self-study for students from VUZF.

2.5. “Introduction to Social Security Law” (textbook), 85 pages, electronic edition, structured in eight topics. Each topic ends with “keywords”, “further readings” and “control questions on the topic”. The textbook is intended for students at VUZF, Sofia.

2.6. “Introduction to Social Security Law” (teaching aid), 7 pages, electronic edition containing 7 cases for self-study for students at VUZF.

2.7. “Introduction to Commercial Law” (teaching aid), 31 pages, electronic edition, structured in fourteen topics. The textbook is intended for students at VUZF, Sofia.

### **4. Project participation**

The candidate has not indicated participation as a manager in research projects.

### **5. Compliance with the national scientometric indicators for holding the academic position of Professor**

5.1 The candidate is confirmed as an associate professor in the National Centre for Information and Documentation (NACID) with the necessary number of 5 citations required for jurists.

5.6. The candidate scores 1090 points while the required minimum for holding the academic position of Professor in professional field “3.6. Law”, required by the Implementing Rules of the Development of Academic Staff in the Republic of Bulgaria Act is 450 points.

5.3. The candidate has submitted a document issued by NACID for confirmed 18 new citations, compared to a requirement of 15 ones for jurists.

### **6. Academic workload**

The candidate meets the requirements for classroom workload, as planned for VUZF.

## **7. Brief biographic information**

Associate Professor Dr Lyubka Mladenova Tsenova is the only candidate who has applied in the selection procedure to fill the academic position of “Professor”, **professional field 3.6 Law (Financial and Tax Law) for the needs of** the Higher School of Insurance and Finance. The submitted documentation is prepared precisely in terms of type and detail, as required by the Development of Academic Staff in the Republic of Bulgaria Act.

Associate professor Dr Lyubka Tsenova was born in Sofia. She completed her higher education in 1973, graduating from the Faculty of Law at Sofia University “Kliment Ohridski”. She is a long-time lecturer with 31 years of experience.

After passing a competition in 1986, for 5 years she worked as Chief Assistant in the Department of Legal Studies at the D.A. Tsenov Academy of Economics – Svishtov.

In the period 1992–2005 she was an adjunct assistant in “Tax Law” at the faculties of law of Burgas Free University, the New Bulgarian University, the University of Plovdiv “Paisii Hilendarski”, the Southwestern University “Neofit Rilski” in Blagoevgrad.

From 2000 to 2010, she worked at the National Assembly’s Legislative Activity and European Law Directorate, successively as Head of the European Law Department and then as director of the same directorate.

From February 1, 2011, to August 25, 2018, Ms Lyubka Tsenova worked as a lecturer at the International Business School – Botevgrad, initially as chief assistant, and after passing a competition in 2012 she was appointed to the academic position of “Associate Professor”.

From October 1, 2007 to March 5, 2019 she worked as adjunct lecturer in “Labour and Social Security Law” at the Higher School of Insurance and Finance (VUZF), Sofia.

Since March 5, 2019, Lyubka Tsenova has been a full-time lecturer holding the academic position of “Associate Professor” at VUZF – Sofia.

## **8. General characterisation of candidate’s activity**

It is evident from the documents submitted for the present selection procedure that since her last habilitation Assoc Prof Dr Lyubka Tsenova has been engaged in active scientific work manifested in a significant number of scientific publications in Bulgarian and foreign publications in the field of indirect taxes and the impact of EU law on domestic tax law.

Assoc Prof Dr Lyubka Tsenova submitted a list of scientific papers published after the habilitation as “Associate Professor” in January 2012 which should be taken into account and evaluated in the course of the procedure for awarding the academic position of “Professor”. The submitted scientific works were not included in the procedure for awarding the academic position of “Associate Professor”. This is evident from the submitted general list of publications of Assoc Prof Dr Lyubka Tsenova (Appendix No. 3 in the list of documents on the selection procedure). A total of 38 scientific works submitted for review for participation in the competition for “Professor” can be assigned to the following groups.

Her professional carrier in the field of taxation began in 1991 and for 7 years she worked as a Chief Legal Advisor in the General Tax Office of the Ministry of Finance, followed by two years as a state expert in the Legislation Council of the Ministry of Justice.

Associate Professor Dr Lyubka Tsenova trained at the Organisation for Economic Co-operation and Development (OECD), the Tax Training Centre – Vienna (1997), the US Department of the Treasury on a technical assistance project at the Washington Department of Revenue; she also did an internship with the International Bureau of Fiscal Documentation (IBFD) – The Netherlands in 2001, 2005 and 2008. She completed a short course on European law at the College of Europe, Bruges, Belgium, in 2002.

### **9. Significance of contributions**

The significance of the scientific contributions of the candidate's scholarly works can be described as considerable as regards the following:

1/ Problems of modern methodology and research in the EU in the field of taxes are analysed, along with their impact on domestic tax legislation in the country.

2/ The legal regime for organising the administrative review is analysed in order to determine the internal administrative control over tax authorities' acts regulated in the TSSPC.

3/ The function of the Director of the "Appeals and Tax and Social Security Practice" Directorate at the Head Office of the National Revenue Agency is explored in connection with his/her powers concerning administrative review of tax audit acts.

4/ A comparative legal analysis of appeals against tax audit acts has been performed (encompassing all 27 EU Member States, as well as in the United Kingdom of Great Britain, Russia, China, and Turkey).

5/ Proposals have been put forward concerning the following: amendments to the legislation regarding the definition of the term "complaint" for taxation purposes; extension of time limits for filing complaints on the basis of the procedure provided for in the Member States; changes in the legal framework for the powers of the Director of the "Appeals and Tax and Social Security Practice" Directorate and in the administrative structure of the "Appeals and Tax and Social Security Practice" Directorate.

6/ Recent developments in the field of value added tax and the new views of the European Commission on the fight against tax fraud and VAT evasion are analysed.

### **3. Critical comments and recommendations**

The following critical comments and recommendations can be made concerning the presented scientific works, without underestimating their contributions:

1. The proposition of the subjective organisation of the participants in the control proceedings in the monograph "The complaint in the tax proceedings" is not exhaustively studied (p. 107 *et seq.*). This problem needs to be further developed in future works.

2. In the monograph "Taxation – Recent Trends" (p. 92), the statement concerning the legal institution of securing the fulfilment as an intermediate situation between the institutions of voluntary performance of an obligation and the enforcement of a claim, could be subject to further clarification that this also applies to tax audit proceedings where it is necessary to impose interim measures to ensure the collection of public receivables. This specificity is confirmed in the next part of the monograph (p.132-133), where the procedure for imposing interim measures is precisely clarified.

3. I recommend to the candidate Assoc Prof Dr Lyubka Tsenova to continue her research and publications in the field of tax fraud in order to propose changes in tax legislation to create effective legal tools to combat such fraud (see again p.36, pp.56-57, p.79).

### **CONCLUSION**

The documents and materials submitted by Assoc Prof Dr Lyubka Mladenova Tsenova **satisfy all the requirements** of the Development of Academic Staff in the Republic of Bulgaria Act (ZRASRB), its implementing rules (PPZRASRB), and the relevant Rules of VUZF.

The candidate in the selection procedure submitted a significant number of scientific works published after the materials used in the defence of the educational and scientific degrees “Doctor” and “Associate Professor”. The works of the candidate contain original scientific and applied contributions which have been recognised internationally, and a representative part of them were published in journals and scientific collections published by international academic publishers. Her theoretical works have practical applicability, and some of them are directly oriented towards teaching. The scientific and teaching qualification of Assoc Prof Dr Lyubka Mladenova Tsenova is indisputable. The required scientific indicators for holding the academic position of “Professor” are satisfied. The requirements for classroom workload set by VUZF are met.

The accomplishments of Assoc. Prof. Dr. Lyubka Mladenova Tsenova in teaching and research activities fully comply with the Rules of VUZF implementing ZRASRB.

After reviewing the materials and scientific works submitted in the selection procedure, and analysing their significance and their scientific, translational and applied contributions, I find it justified to offer my **positive** assessment and to **recommend** to the Scientific Jury to prepare a report-proposal to the Academic Council for appointment of Assoc Prof Dr Lyubka Mladenova Tsenova to the academic position of “Professor” at VUZF in the professional field of law (financial and tax law).

20 July 2020

**Issued by:** .....

/Prof Dr Biser Slavkov/