

The Financial Administration Act

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Abstract

The paper analyses the Financial Administration Act as for the objectives its legislator had originally intended to accomplish upon execution of the new enactment. It includes a short and brief historical excursion clarifying all the circumstances having led to the above mentioned statute being approved and those which directly resulted from the merger of the tax and customs administration in 2012 and establishment of the Financial administration of the Slovak Republic. The members of the Financial Administration consisting of customs officers as well as armed corps and civil servants had not been properly integrated until the adoption of the Financial Administration Act. The author deals with particular benefits the new Financial Administration Act is set to bring. Simultaneously author points to certain legal loopholes or drawbacks of the new enactment including transfer of civil servants into civil service in compliance with the above mentioned legislation. The author concludes the paper by assuming that there has been no adequate application of the new enactment and its full potential. In other words, the existing application problems have not been properly solved by the new legal enactment. In addition hereto, the author expresses her own opinions of „de lege ferenda“.

Keywords: Tax administration; Customs administration; Financial Administration; Financial Administration Act

1. Introduction and theoretical basis

The system of administration and collection of public revenues under the conditions of the Slovak Republic (hereinafter referred to as „Slovakia“) has been duly modified as of January 1, 2012 by establishment of the Slovak Financial Administration (hereinafter referred to as „Financial Administration“). The Financial Administration was set up upon merging of tax and customs administration in the framework of the former Tax Administration of the Slovak Republic (hereinafter referred to as „tax administration“) and the Customs Administration of the Slovak Republic (hereinafter referred to as „customs administration“) into the state organisation named the Financial Administration of the Slovak Republic (hereinafter referred to as „Financial Administration“). Its main objective was to reduce the number of tax and customs offices to eight seated in each of the counties besides Michalovce and its region having their corresponding customs office seated in Michalovce. In addition hereto, the former Customs criminal office was transformed into the corresponding organisation named – the Criminal Bureau of Financial Administration (Straka & Šimonová, 2014) with the Tax Office

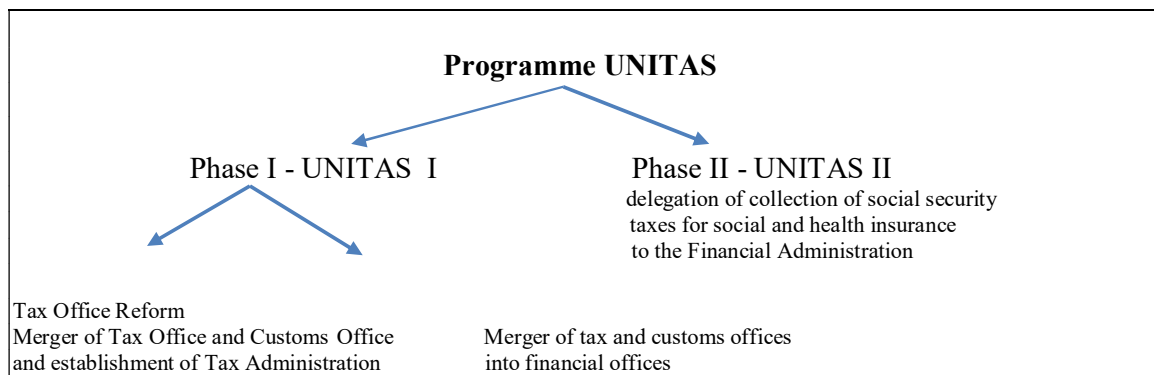
having been established for particular taxable entities. The new organisational structure of the Financial Administration along with its local and factual competence was constituted in compliance with the following legislation:

- the Act Nr. 652/2004 Coll. on customs state authorities as amended, supplemented or otherwise modified from time (hereinafter referred to as „the Act Nr. 652/2004 Coll.“);
- the Act Nr. 479/2009 Coll. on state authorities in the field of tax and fees administration (hereinafter referred to as „the Act Nr. 479/2009 Coll.“);
- the Act Nr. 333/2011 Coll. on state authorities in the field of taxes, fees and customs (hereinafter referred to as „the Act Nr. 333/2011 Coll.“).

1.1 Programme UNITAS

The above mentioned modifications have been implemented within the programme of the Ministry of Finance of the Slovak Republic named „UNITAS“. The programme „UNITAS“ regulates the reforming procedure of tax administration by engaging customs administration herein in order to unify the overall administration of tax collections, customs and levies into a single institution. The Ministry of Finance of the Slovak Republic launched the project in two phases as the businesses in question had not been duly prepared for single implementation of the procedure. The first phase „UNITAS I“ focused on establishment of the new Financial Administration. Other reforming steps under „UNITAS I“, e.g. merging tax and customs offices and establishment of financial offices, has been postponed (the Situation Report on the programme UNITAS 2012). The second phase named „UNITAS II“ originally dealt with unified collection of social security taxes for social and health insurance through the Financial Administration.

Figure 1: Programme UNITAS



Source: Situation report on the programme UNITAS 2012.

Further to the strategic document named „The concept of reform of tax and customs administration with regard to unified collection of taxes, customs and levies“, the main objective of the programme „UNITAS“ is to ensure unified collection of taxes, customs and levies by a single organisation consisting of former tax offices and customs authorities which is set to take over certain operations of the social and health insurance authorities dealing with collection of security taxes and levies. By implementing the abovementioned programme we

aim at modifying tax and customs administration and thus increase effectivity, reduce operational costs, improve collection of state revenues by optimising existing processes, eliminate administrative burden of taxpayers and establish proper customer service. The reform of tax administration is likely to provide methods to entities with good business record as well as pave the way for more effective detection and penalising of those businesses avoiding their tax obligations or perpetrating tax evasions or frauds.

2. Adoption of the Financial Administration Act

Unifying the financial administration workforce after the merger of the tax and customs administration back in 2012 as a result of the implementation of the programme „UNITAS“ shall be governed by the new Financial Administration Act as amended, supplemented or otherwise modified (hereinafter referred to as „the Financial Administration Act“). The Financial Administration Act was adopted by the National Assembly on December 5, 2018 on its 38th session with the president's approval to be expected upon publication of this paper. Enacting the abovementioned proposal of the Act is regarded as fulfillment of the Government's mission statement for 2016 - 2020. In accordance with the aforementioned, the Slovak government was bound to create the legislation which determines the unified rules of state service in the financial administration for all its specialists as well as unified codification of competences of financial authorities (the Government's Declaration and Programme of Action 2016-2020). Employment relations in state service may be divided into three main groups. These are state employment relations for the execution of public service by civil servants in the framework of state employment agreements, employment relations and work duties in the public interest based upon a contractual relation (public service) and employment relations with specific groups of state employees, e.g. police officers, members of the Corps of Prison and Judicial Guard, members of the Fire Brigade, customs officers or professional soldiers of the armed forces. From July 1, 2019 the law is set to cover the Financial Administration service as well. The Financial Administration Act shall adapt the legal status of civil servants under the Financial Administration to that of customs officers within the armed corps and create a new category of employees to be derived from the former structure of civil servants, i.e. the category of armed and non-armed members of the Financial Administration (the Explanatory Report to the Financial Administration Act 2018). Besides the integration of the two formerly independent groups of employees of the Financial Administration, the Act meets the Government's mission statement for 2016 - 2020 by transforming the former Tax Office for specific taxable entities into the Office for specific business entities. Simultaneously, the Financial Administration Act is set to abolish any former competence statutes and introduce new competences and the scope of powers of Slovak state authorities in the field of taxes, levies and customs.

As for its taxonomy, the Financial Administration Act is divided into twenty articles marked with Roman numerals with all the statutes governing corresponding social relations, i.e. fundamental principles and duties of the Financial Administration and its civil servants being stipulated in the Article I. The Article I is further divided into five subparagraphs. The first part sets forth the subject matter, the second part specifies the status, organisations, competences and powers of state authorities in the field of taxes, fees and customs, the third part refers to the status, duties and powers of civil servants in course of exercise of their duties, the fourth part governs state service of members of the Financial Administration and legal relations related to establishment, modification and termination of their civil service while the fifth part focuses on joint, transitional and final provisions.

3. Benefits and drawbacks of the Financial Administration Act

In relation to the competence part of the Financial Administration Act dealing with the status, organisations, competences and powers of state authorities in the field of taxes, fees and customs we may assume that this one was largely transferred from formerly valid statutes, i.e. the Act Nr. 652/2004 Coll., the Act Nr. 479/2009 Coll. and the Act Nr. 333/2011 Coll. As for further modifications, we may refer to transformation of the Tax Office for special taxable entities (§ 6 of the Act Nr. 479/2009 Coll.) entering into force as of July 1, 2019 and changing not only the name of the given tax office, but also extending its competences besides banks, branches of foreign banks, insurance companies, reinsurance companies and other taxable entities with an annual turnover of over 40,000 EUR as well as stock exchange dealers, pension funds, private pension funds, payment processing companies or branches of foreign payment processing companies and companies with the status of an approved business entity. The Financial Administration Act provides the Office for special taxable entities with a kind of hybrid character. Despite the § 6 subpar. 1 of the given Financial Administration Act expressly making reference to the tax office in the Article X governing any changes to the Act Nr. 199/2004 Coll., the above mentioned reasoning is not applied as for the Customs Administration Act. as amended, supplemented or otherwise modified. The Office for special taxable entities shall not only have a status of the tax office but also that of the customs office when ruling procedures on the status of an approved business entities and ensuring exchange of information with corresponding customs authorities of other EU member states and the European Commission in the given proceedings. As for its constitution, the character has not been changed as it operates as an allowance organisation depending upon the budget of the Financial Administration of the Slovak Republic. The Chairman of the Office for special taxable entities shall be appointed and revoked by the President of the Financial Administration.

In comparison to the provisions of § 5 of the Act Nr. 333/2011 Coll. and the provisions of § 9 of the Financial Administration Act we may assume that some changes, even though the minor ones, shall also be applicable to the Criminal Office of the Financial Administration as of July 1, 2019 (hereinafter referred to as „the Criminal Office“). As for its organisation, the Criminal Office shall cover only its individual branches and exclude any of its stations. Criminal Office branches shall be established and closed by the President of the Financial Administration without the consent being granted by the Minister of Finance of the Slovak Republic as these days. Due to the extent of its competences, the Criminal Office shall not exercise those operations falling into tax or customs authorities in case it will be necessary to verify customs supervision by a particular customs office. Simultaneously, the Criminal Office shall not provide assistance to the Criminal Office in Žilina (§ 10a of the Act Nr. 652/2004 Coll.) when verifying compliance with the conditions for granting the status of an approved business entity as amended hereby because on July 1, 2019 this competence shall be transferred from the Customs Office in Žilina to the above mentioned Office for special taxable entities. Moreover, the new enactment will not specify who will be in charge and administrate the activity of the branch of the Criminal Office. However, we may logically assume that the Head of the branch of the Criminal Office shall be in charge hereof as stipulated in the Annex Nr. 4 to the Financial Administration Act providing an extra pay to the Head of the branch of the Criminal Office for any managing and administration activities related hereto.

Besides introducing new terms such as „an armed officer of the Financial Administration“ referring automatically to each new customs officer exercising their duties as amended by the Act Nr. 200/1998 Coll. on the state service of customs officers as amended,

supplemented or otherwise modified (hereinafter referred to as „the Act Nr. 200/1998 Coll.“) and „a non-armed officer of the Financial Administration“ referring to employees of the Financial Administration, the new enactment shall bring other changes as well. Ultimate allocation of armed work positions within the Financial Administration shall be decided by the President of the Financial Administration. The age of 33, which had previously qualified for a five-week long holiday entitlement, shall not be effective any more. All financial administration officers shall be entitled to a six-weeks' holiday. As for remuneration, an extra pay for the number of year of active service shall be determined by a fixed percentage from the wage taking into consideration experience and practice prior to the starting date of employment in another work position which may be considered relevant for the state service, max. two thirds. Financial administration officers shall generally have a pay rise. One of the greatest benefits for tax officers are as follows: a pay rise, an increase in the minimum rate of an extra pay from €33.50 to €50 as well as the maximum rate of an extra pay rising from €166 to €300 per month. In relation to customs officers, the rate of an extra pay for state service overtime shall increase by 10% in a week; for each hour of service overtime they shall be granted an extra pay to their basic wages of 30% instead of 20% per working day and 60% instead of 50% per public holiday. The Financial Administration Act also governs replacing of an employee on maternity leave or the option of transfer to the non-armed category of financial administration officers.

As for civil servants it is important to note that the Act Nr. 200/1998 Coll. has become a basis for governing employment relations as the former enactment by the Act Nr. 55/2017 Coll. on civil service as amended, supplemented or otherwise modified (hereinafter referred to as „the Act Nr. 55/2017 Coll.“) has been taken into consideration by incorporating some of institutes applied on state employment. The Act forecasts the change of a monthly pay for each particular category of which there will be seven in contrast to the current wording of the Act Nr. 55/2017 Coll. which determines nine payment categories. The lowest payment category starts at a monthly salary of €690.00 in contrast to €419.50 these days (the Annex Nr. 3 to the Act Nr. 55/2017 Coll.). The Financial Administration Act also governs the payment of an extra allowance to a non-armed employee of the Financial Administration for purchasing civilian clothing, which is calculated as a percentage from the price of a working uniform.

Nevertheless, it is necessary to state that despite the main objective of the Financial Administration Act, which should have been establishing equality among customs officers and civil servants, their social security shall not be the same even after the implementation of the new enactment. In relation to customs officers as armed members of the Financial Administration, the Act Nr. 328/2002 Coll. on social security of soldiers and police officers as amended, supplemented or otherwise modified shall be applied (hereinafter referred to as the Act Nr. 328/2002 Coll.). The Act Nr. 328/2002 Coll. shall not be applied to non-armed officers of the Financial Administration. Based upon the aforementioned, we may assume that civil servants or non-armed officers of the Financial Administration shall not be entitled to e.g. a pension allowance or armed forces pension as shall be an armed officer of the Financial Administration after 25 years of service. The overall objective of the Financial Administration Act seems to be rather inconsistent as on the one hand it aims at unifying the workforce but on the other one the differences among its officers in the field of social security persist. As amended by the Act Nr. 328/2002 Coll., civil servants would have not been able to receive an armed forces pension as they would have needed to „serve“ 25 years in active service, which is effective of July 1, 2019.

However, this may not be considered as a relevant reasoning or an obstacle as for the purpose of entitlement to an armed forces pension, the legislators could have taken into account

not only the duration of employment of a non-armed forces member pursuant to the Financial Administration Act, but also the previous duration of state employment as amended by the Act Nr. 55/2017 Coll. or any former Acts on state service or any employment within a state office in case this one was directly linked to formation of employment under the Act Nr. 312/2001 Coll. There is a question, however, whether we may speak about accomplishment of the declared objective of the Financial Administration Act – despite the implementation of a new terminology „a financial administration officer“ replacing the term of a customs officer and a civil servant, there are still obvious differences between an armed and a non-armed member of the Financial Administration when it comes to social security taxes or social security in general. The special enactment of the Act Nr. 327/2002 Coll. is applied on armed officers of the Financial Administration while social security of non-armed officers will still be governed by those statutes related to other civil servants, i.e. the provisions of the Act Nr. 55/2017 Coll. It may seem rather paradoxical as a new type of state service has been created upon adoption of the Financial Administration Act to be in line with the former legislation, i.e. the Act Nr. 55/2017 Coll., the Act Nr. 171/1993 Coll. on the Police Corps, the Act Nr. 315/2001 Coll. on Fire Brigade and Emergency or the Act Nr. 281/2015 Coll. on state service of professional soldiers as amended, supplemented or otherwise modified. As the main role of the newly adopted Act was to grant equal rights to both customs officers and civil servants within the Financial Administration, we allege that this objective has only been partially accomplished.

4. Transfer of customs officers and civil servants into state service as amended by the Financial Administration Act

Transition provisions of the Part 5, the Article I of the Financial Administration Act govern transfer of former categories of financial administration employees, i.e. customs officers and civil servants, into state service as amended by the Financial Administration Act. Customs officers will see no considerable changes after July 1, 2019. As of July 1 and pursuant to the Act Nr. 200/1998 Coll. the employment of customs officers shall be any employment of an armed officer within the financial administration. The fundamental systematic change shall apply to civil servants. The new legislation will regard them as former customs officers, i.e. armed officers of the financial administration while demonstrating a subordination relation to these non-armed employees of the Financial Administration. Such subordination of non-armed employees of the Financial Administration or former civil servants demonstrates through starting of their employment when their former employment relation based upon a mutual legal act, which is a civil service agreement, shall be replaced by a completely new legal relation – civil service derived from an employer's unilateral decision on appointment to a particular work position (§ 325 subpar. 2 of the Financial Administration Act).

The transfer of former „contractual“ civil servants into service as amended by the Financial Administration Act as of July 1, 2019 is based upon three basic assumptions and these are as follows:

- a) as of June 30, 2019 the Financial Administration is a state office of a civil servant as amended by the Act Nr. 55/2017 Coll.,
- b) by 31 May, 2019 a civil servant will have not notified the state office – the Financial Administration - of not entering the civil service as amended hereby,
- c) an employee will have taken an official oath further to the employer's decision on appointment to a function by July 31, 2019.

The key point is to take into consideration how such an employment relation may be modified or amended upon the decision of superior officers as it is based upon employment agreement as a bilateral legal act requiring two mutual and concurring expressions of a free will of the parties (Švestka et al. 2008) and the modification of which, apart from the exceptions as stated herein (§ 55 subpar. 5 of the Act Nr. 55/2017 Coll. – a work position off the active civil service including suspension hereof or repetitive employment after termination of the active civil service, termination of a specific mandate or substitution of an executive, removal from an executive work position, termination of temporary employment, removal from employment, leaving a work position or termination of the employment duration as amended by § 48 subpar. 1 b) or c) of the Act Nr. 55/2017 Coll.), shall only be subject to a mutual agreement between a state authority and a civil servant whereas all such amendments to the civil service agreement shall only be made in writing.

The decision of a superior is regarded as an unilateral and specific expression of a will on employment of „a civil servant“ as amended by the Financial Administration Act. Besides non-compliance with the Act Nr. 55/2017 Coll. regarding a presumed manner of change of employment, the Article XIX of the Financial Administration Act does not stipulate any major modifications of the provision § 55 subpar. 5 of the Act Nr. 55/2017 Coll. enabling any change of employment in an unilateral form – upon a decision of a superior on appointment to a particular work position.

Instead of maintaining continuity of a former employment relation in civil service under the Act Nr. 55/2017 Coll. e.g. by changing the former state employment into civil service as amended by the Financial Administration Act, this enactment has resulted in cessation of civil service pursuant to the Act Nr. 55/2017 Coll. and chronological formation of civil service employment pursuant to the Financial Administration Act (§ 325 subpar. 16 of the Financial Administration Act). The history knows that the Slovak Republic has already encountered a similar systematic change when employees exercising their duties for the benefit of the state and based upon employment agreements were being transferred into civil service as a result of adoption of the first specific law on civil service under the conditions of the Slovak Republic, which was the Act Nr. 312/2001 Coll. on civil service as amended, supplemented or otherwise modified (hereinafter referred to as „the Act Nr. 312/2001 Coll.“). Such transfer of contractual employees into civil service was not automatic, though. It was linked to an act of commission from the part of an employee who could have applied for a civil service position within a two-month deadline in compliance with the Act Nr. 312/2001 Coll. These days, as amended by the Act Nr. 55/2017 Coll., a civil servant is not required to apply actively for a work position as amended by the Financial Administration Act; an employee is only expected not to reject the offer, i.e. not to obstruct the employment and to take an oath. The oath may be taken even after the effectivity of the given Act, on July 31, 2019 at the latest.

The Financial Administration Act will not be directly linked to that type of civil service which has only recently been adopted by the Act Nr. 55/2017 Coll. having entered into force on June 1, 2017. This new type of civil service governed by a specific legal regime shall not imply any subsidiary application of the Act Nr. 55/2017 Coll. as a general enactment on civil service. As of July 1, 2019 the aforementioned will prevent financial administration officers from being either temporarily or permanently transferred into another civil service (§56 subpar. 1 of the Act Nr. 55/2017 Coll.). It is of no exception that civil service officers would conclude a written agreement on transfer of a civil servant when these used to be transferred into the Ministry of Finance of the Slovak Republic as the Financial Administration funds are directly allocated from the state budget. This procedure shall not be permitted after July 1, 2019. Despite the fact that the Ministry of Finance of the Slovak Republic along with the Financial

Administration, tax, customs and criminal offices are all state authorities in the field of taxes, fees and customs, their employees shall exercise their work duties as civil servants under the Act Nr. 55/2017 Coll. and will not be affected by any transfer into civil service, which is a paradox of the new enactment.

5. A failure to use potential of the Financial Administration Act to eliminate application problems in the practice

After having studied the provisions of § 74 of the Financial Administration Act, we may understand that this refers to systemizing of civil service positions rather than work positions in the Financial Administration. However, the Financial Administration is also an employer of workers performing tasks in the public interest, i.e. in an employment relation pursuant to the Act Nr. 552/2003 Coll. With regard to the aforementioned and besides systemizing of work positions of armed and non-armed officers of the Financial Administration, there shall be another systemizing of work positions of employees performing work in the public interest. The wording „systemizing of work positions“ has been taken over from the provision of § 5 of the Act Nr. 200/1998 Coll., without any drawbacks having been resolved and therefore these have been seen as problematic in the application practice. One area which has failed to be changed is that the proposal of systemizing representing the number of work positions of financial administration officers in line with competences of the Financial Administration authorities, including the amount of funds for their civil service income, is prepared by the Ministry of Finance of the Slovak Republic and approved by the Slovak Government when negotiating the law on state budget for the ensuing year. The Ministry of Finance of the Slovak Republic is responsible for any amendments to systemizing further to the act on state budget for the ensuing year. In course of the year, systemizing may be amended by the government or the Minister on the basis of the power of attorney. The number of financial administration officers and their classification into payment categories within financial authorities in line with their competences and organisational structure is determined by a special statute issue by the President of the Financial Administration. The appointment of financial administration officers to all types of civil service may only be executed providing this function has been created on the basis of systemizing defined by the Minister of Finance of the Slovak Republic and is vacant.

As for the practical application, it occurs that the President of the Financial Administration issues a personal order in course of the calendar year for the purpose of more effective work performance of customs officers in order to execute organisational and systematic changes by the categories and numbers of customs officers under the Financial Administration. Upon the decision on transfer issued by a corresponding head of office, employment of customs officers involved could have been duly terminated. Customs officers used to be transferred even to such work positions which were linked to another place of work or within another state authority in the field of customs administration. However, current rulings of Slovak courts state that employment shall not be terminated exclusively on the basis of a personal order of the President of the Financial Administration without applying necessary changes to systemizing which shall only be performed in line with the Act on state budget. The given legal opinion was based on the grounds that work positions of customs officers in all types of civil service shall only be occupied on the condition that such a work position has been created according to the approved systemizing and it is vacant. Slovak courts reason that the approved systemizing shall be binding if such a change has been applied in a lawful and regular manner and has been subject to consent of the Slovak Government or its Deputy Prime Minister

– the Minister of Finance of the Slovak Republic. This procedure shall be binding for all parties in the above mentioned case. It is obvious that courts did not understand the statutory provision of § 5 of the Act Nr. 200/1998 Coll. in a way that the President of the Financial Administration shall be entitled to modify the number of customs officers within payment categories through a personal order in contrast to execution of operative duties (the need for reinforcement of the personnel on the Eastern Schengen border) within the currently determined number of work positions of customs officers. Slovak courts state that each such a work position shall be considered through systemizing and therefore and as amended by the § 5 subpar. 3 of the Act Nr. 200/1998 Coll. any modification and organisation changes hereof shall be subject to consent of the Slovak government pursuant to the Act on state budget (the ruling of the District Court in Košice 2015). Despite the above mentioned explication precluding the Financial Administration and its President from reacting operatively and promptly to specific situations which may possibly require customs officers as members of the armed corps to be involved in other tasks than usual, the particular wording of this enactment on systemizing of civil service positions has been mostly taken over from the former Act Nr. 200/1998 Coll. and transferred into the Financial Administration Act. Generally speaking, it is obvious that the legislator has not specified the possibility of occupancy of work positions by customs officers of the Financial Administration. We may allege, however, that due to the intagibility of the whole systemizing of the number of civil service work positions and wages and labour costs as amended by the latest Act on state budget, the interpretation and application drawbacks as stated herein would persist. Systemizing shall depend on the approved budget for wages and labour costs which are allocated by the number, type („regular“ employees and „superiors/managers“) and payment categories of civil service work positions (Pichrt 2015). We may assume that the legislator would have not intended for all the systemizing changes to the content and number of civil service work positions within the Financial Administration to be subject to a legislative amendment process of the Act on state budget or the approval procedure by the Slovak Government or the Minister of Finance of the Slovak Republic based upon the mandate of the said Government.

The Financial Administration Act could have considerably modified a non-compete clause of financial administration officers after termination of employment. The Financial Administration Act does not include the term of „a non-compete clause“ or any further definition whatsoever in contrast to the Czech enactment on the civil service (§ 17, subpar. 1e) of the Act Nr. 234/2014 Coll. on civil service). When it comes to systemizing of civil service employment, the Czech law on civil service contains the definition of those civil service positions applying a non-compete clause. Implementing a non-compete clause after termination of employment, which prevents running a business or performing any other business activity or being a shareholder or a member in the trade unions similar to any civil service within the Financial Administration or entering any employment or similar agreement with an entrepreneur in the particular scope of business, would have certainly led to a more effective principle of impartiality in the performance of civil service as such. If the main goal of the Financial Administration Act is to provide both a legislative and an institutional framework of non-political, independent, impartial and professional services, then the absence of any provisions including a non-compete clause after the termination of employment is regarded as a considerable drawback of the whole enactment. A non-compete clause institute, which provides a legal framework for both an employer and an employee about not entering the competition from the part of an employee after termination of his/her employment with a certain financial compensation, has been an unseparable part of employment relations under the Labour Code since September 1, 2011. The specific enactment of the § 83 and 83a of the Labour Code

provides protection to an employer against unlawful abuse of information (unfair competition, disclosure of a trade secret) an employee was informed about in course of performance of his/her duties while an employer regards such information as confidential or essential to their operations (Kochan 2012). In our opinion, the Financial Administration Act has not sufficiently used its potential when the legislator could have been more particular about a precise legal wording hereof to effectively eliminate occurrence of ambiguities or contradictions between the public interest and that of financial administration officers through application of a non-compete clause.

6. Conclusion

After the merging of tax and customs administration back in 2012, the workforce of the financial administration has been unified upon the adoption of the said Act. The integration of employment relations within the Financial Administration should take place on July 1, 2019, upon the date of effectivity of substantial provisions of the Financial Administration Act. The Financial Administration Act represents the detailed legal enactment integrating into one codex all former legal statutes governing competences of state authorities in the field of taxes, fees and customs.

Apart from various competence statutes having been merged, the Financial Administration Act unifies both groups of employees of the Financial Administration – customs officers and civil servants under the name of „a financial administration officer“. As of July 1, 2019 customs officers and civil servants will be jointly referred to as financial administration officers with customs officers as armed members and civil servants as non-armed ones. What is more, a non-armed work position may be changed into an armed work position and vice versa. The Financial Administration Act intends to unify the principles serving as a basis for civil service of customs officers as the armed corps and civil service of civil servants as the non-armed corps with equal responsibilities. The institutes referring to employment of customs officers will be applied on civil servants, but only to a certain extent as these are not regarded as armed members of the Financial Administration. The uniqueness of civil service will be remunerated by salaries divided into seven payment categories with a considerable pay rise in contrast to former legal enactment under the Act Nr. 200/1998 Coll. and the Act Nr. 55/2017 Coll. Nevertheless, there shall be no unification of employees in the sphere of social security which should still be differentiated after July 1, 2019. The specific Act Nr. 327/2002 Coll. will be applied on armed officers of the Financial Administration as this enactment serves as a basis for other armed forces, e.g. policemen, soldiers and firemen. Non-armed officers will not be subject to a specific system of social security, i.e. not all the attributes of employment of customs officers shall be applied accordingly. With regard to the aforementioned, the key objective of the Financial Administration Act unifying the rules of execution of civil service by the Financial Administration officers may be regarded as partially accomplished. Transfer of customs officers into civil service should be more comprehensive and without any particular changes as these have already been incorporated into the Act Nr. 200/1998 Coll. Civil servants performing their duties under the Act Nr. 55/2017 Coll. shall be more influenced by these systematic changes. We may assume that the given enactment intends to compensate a lack of equality between civil servants and customs officers through certain benefits in the field of social security. Practice and the number of years of work experience of civil servants in another scope of business and prior to such employment may be calculated into their premium pay with regard to successful accomplishment of work duties. Upon transfer of civil servants into service, civil service employment terminates as amended by the Act Nr. 55/2017 Coll. in relation to

a particular state authority – the Ministry of Finance of the Slovak Republic. Continuity of civil service remains unchanged, though. We may assume that the Financial Administration Act introduces a new and specific type of civil service limited exclusively for state authorities in the field of taxes, fees and customs except for the Ministry of Finance of the Slovak Republic. As the Financial Administration Act contains both material and procedural legal provisions, it can be said that a particular type of civil service has been defined to apply specifically on employees of the Financial Administration besides civil service as amended by the Act Nr. 55/2017 Coll., the Act Nr. 171/1993 Coll. on police forces, the Act Nr. 315/2001 Coll. on fire brigade and emergency or the Act Nr. 281/2015 Coll. on civil service of professional soldiers as amended, supplemented or otherwise modified. The given conclusion may preclude permanent transfer of members of the Financial Administration to other state authorities including the Ministry of Finance of the Slovak Republic as the legal enactment of civil service will not concur herewith.

The particular enactment had great potential as it could have and, in our opinion, should have removed application as well as interpretation problems which have become natural practice for state authorities in the field of taxes, fees and customs or in Slovak arbitration courts. One of such drawbacks may be the interpretation of the entitlement to perform changes in the content and number of work positions in course of a calendar year through a personal order by the President of the Financial Administration. Despite the fact that we may think the legislator may not have intended to make this subject to approval by the Slovak Government or amendment to the Act on state budget, there have been certain court rulings with a different practice. In order to eliminate ambiguities as for competences of the President of the Financial Administration in the field of systemizing of work positions, the given enactment should have been rendered more precise instead of a non-critical transition of the former Act Nr. 200/1998 Coll. into the Financial Administration Act.

We may allege that each effective reform of civil service should include a non-compete clause for those civil servants who directly participate in formation and implementation of state administration and which shall be applied after termination of their employment. An employee of the Financial Administration may run a business in the field similar to his/her former specialisation with a potential conflict of interest. In course of exercise of his/her duties, such an employee of the Financial Administration may become familiar with secret or sensitive information, e.g. what methods, procedures or manners a tax authority implements to fight tax evasion or what „modus operandi“ taxable entities apply to claim tax incentives or tax deductions and what obstacles tax authorities may face when dealing with such fraudulent behaviour. Eventually, a tax advisor may abuse such information for illegal tax optimization for benefit of his/her own clients. The Financial Administration Act had not been inspired by the wording of the Czech law on civil service which determines a non-compete clause for specific civil service positions in the framework of systemizing of such employment.

Further evolution of the Financial Administration is only a question of time. Possible application problems or proposals for any changes or modifications will show only after implementation of the act into real practice. All depends upon the decisions to be made when implementing the second stage of the programme UNITAS which intends to unify collection of social security taxes and health insurance within the Financial Administration. For conclusion we may say that upon adoption of the new act, a specific type of civil service has been defined, i.e. civil service of officers of the Financial Administration when subsidiary usage of the Act Nr. 55/2017 Coll. as a general enactment of civil service for non-armed forces is no longer acceptable. However, the overall unification of personnel within the Financial Administration and elimination of discrepancies between the customs and tax authorities have

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