

01 April — 30 June

QUARTERLY REPORT 2020

**REPORT FOCUS:
LISTS OF HIGH-RISK
TAXPAYERS**



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FOREWORD OF THE BUSINESS OMBUDSMAN



DEAR FRIENDS, COLLEAGUES AND PARTNERS,

The quarantine, introduced in midst March this year, affected the Business Ombudsman Council operations in Q2 2020. While in Q1 2020 we received 462 appeals (which is 12% more as compared to Q4 2019), in Q2 2020 the number of complaints went down to 385, that is 77 appeals less than in Q1 2020 and 13 appeals less than in Q2 2019. At the same time, the number of complaints concerning five key blocks of appeals remained almost flat and, in some cases, even went up. What caused the reduction in the number of appeals?

Firstly, the number of complaints on tax inspections decreased significantly. This was mainly a consequence of a moratorium on inspections of businesses (except for inspections related to budget VAT refund) introduced by the government at the end

of March. In total, we received 55 complaints (35 less as compared to Q1 2020) on tax inspections, bearing in mind that the contested conclusions of the State Tax Service (STS) in some cases occurred before the lockdown.

Secondly, a considerable decrease in the number of appeals was recorded with respect to actions of local government authorities (from 33 to 8). Apparently, this was due to the fact that, as a result of the quarantine in Ukraine, [29% of domestic companies have temporarily suspended their activities, while 6% have completely closed their business](https://bit.ly/ukrinform_covid-19).*

At the same time, the topic of inclusion of entrepreneurs in the list of high-risk taxpayers ranked first by the number of complaints received.

*https://bit.ly/ukrinform_covid-19

Entrepreneurs often did not understand and could not get a proper explanation from the STS – why they had been put on such a list and how to be excluded therefrom. Moreover, there is sometimes a suspicion that such inclusion is used by tax authorities as a harsh tool to penalize business for other possible violations. This quarter, we received 64 appeals from businesses in this regard (for comparison, we had only 16 complaints a year ago). That is why we have devoted a separate section of the report to a deeper study of this issue.

The number of complaints against the National Police and the Prosecutor's Office went down compared to the previous quarter, although insignificantly: by 9% and 14% respectively. Businesses complained less about procedural abuse, but more about inactivity and unreasonable criminal proceedings initiated. At the same time, the number of complaints against the State Security Service went up by 75% (from 4 to 7 complaints).

In the reporting quarter, we closed 297 cases, which is 2 more than in the previous quarter. However, the following is of concern: only 38% of investigations were successful for complainants (while in 2019 this figure was 59%). Our key “partner” in the number of cases and, accordingly, the key driver of this trend is the State Tax Service (STS). Upon closing the case supported by the Council, but not satisfied by the STS, we monitor its further developments in courts. We observe that companies often use our arguments in the court. Moreover, about 80% of such cases are eventually ruled in favor of businesses. Given that court proceedings are long and costly for both parties, we urge the State Tax Service to pay more attention to the BOC’s arguments at the administrative appeal stage. We understand it has become more difficult to consider cases without personal meetings, as quite often civil servants do not dare to provide certain information by phone or other electronic means of communication. In some regions, the use of such communication channels is still uncommon. Nevertheless, it is encouraging that in June 2020, during our meeting with the Head of the

STS, he stressed the importance and readiness to use online tools to actively address current issues and hold expert groups meetings via video conferences.

In a new systemic report “Administration of Taxes Paid by Business”, the Council set for itself the ambitious task of covering the most “painful” tax issues faced when considering 4241 complaints received from entrepreneurs since May 2015. In particular, the Council touched upon specific problematic aspects of VAT, unified social contribution, single and corporate profit tax administration. The report is going to be published in August 2020.

We continued to actively work on the preparation of the document for the BOC activities to be enshrined in the law. On May 29, the Verkhovna Rada rejected the old draft law on the institution to give way to a new, updated and revised one. On June 5, 2020, the Verkhovna Rada registered a new Draft Law No. 3607 “On the Business Ombudsman Institution in Ukraine”. The authors of the Draft Law No. 3607 are Dmytro Kysylevskyi, Ihor Marchuk, Dmytro Natalukha and supported by a total of 39 deputies from different factions. The Verkhovna Rada dedicated Committee on Economic Development supported the document, voted for it almost unanimously and sent it to the plenary session of the Verkhovna Rada. Adoption of the Draft Law will make a positive signal for Ukrainian and foreign investors, it will reassure that Ukraine is governed by the rule of law and uses all the tools to protect business interests against state bodies malpractice.

Responding to the demands of time, we have mastered the format of webinars. Jointly with our partner, the American Chamber of Commerce in Ukraine, we held two online meetings with businesses: on tax issues and effective communication with government agencies. Later this year we will raise new topical problems to be analyzed and highlighted in co-operation with professional and business associations.

Marchuk Ihor

Q2 2020 AT A GLANCE

385

COMPLAINTS
RECEIVED

297

CASES
CLOSED

DIRECT
FINANCIAL
IMPACT:

UAH **46** MN

98%

OF COMPLAINANTS WHO
PROVIDED FEEDBACK
WERE SATISFIED WITH
WORKING WITH THE BOC

89%

OF CASE-BY-CASE
RECOMMENDATIONS
WERE IMPLEMENTED BY
STATE BODIES



TOP-5 BLOCKS OF COMPLAINTS

68% Tax issues

12% Actions of law enforcement bodies

5% Actions of state regulators

3% Customs issues

2% Local government authorities

TOP-5 INDUSTRIES

22% Wholesale and Distribution

14% Manufacturing

13% Agriculture and Mining

11% Real Estate and Construction

10% Individual Entrepreneur

TOP-5 MOST ACTIVE REGIONS

41% Kyiv

10% Kyiv Oblast

9% Dnipro Oblast

9% Kharkiv Oblast

7% Odesa Oblast

SIZE OF BUSINESS

27%
Large

73%
Small/
Medium

ORIGIN OF INVESTMENT

14%
Foreign business

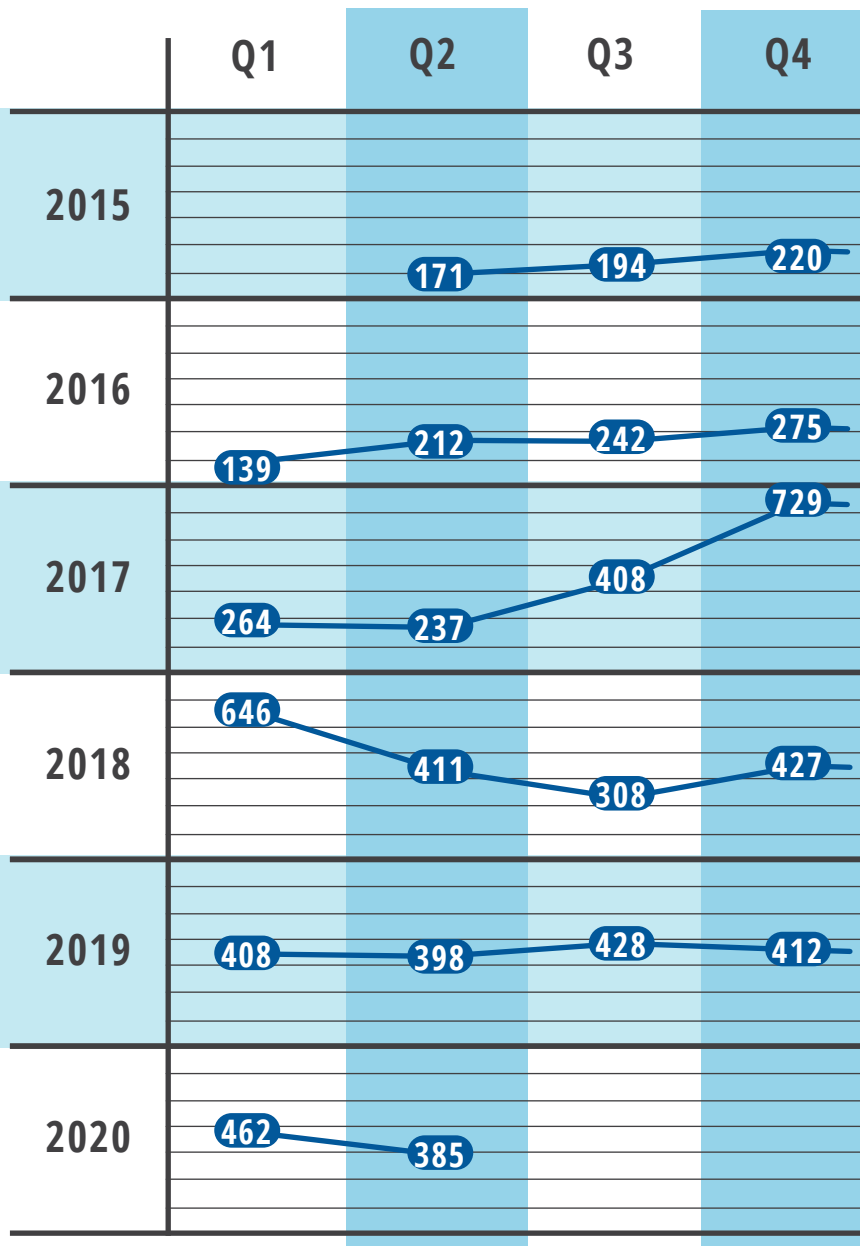
86%
Local business

1. COMPLAINTS TRENDS

1.1. VOLUME AND NATURE OF COMPLAINTS RECEIVED

(Clause 5.3.1 (a) of Rules of Procedure)

VOLUME OF COMPLAINTS RECEIVED



In the reporting quarter
the Council received

385

appeals from
entrepreneurs
concerning malpractice
of state bodies.

TOTAL NUMBER OF COMPLAINTS
RECEIVED SINCE MAY 2015:

7375

TOP-10

SUBJECTS OF COMPLAINTS IN Q2 2020

SUBJECT	Q2 2020	Q1 2020	Q2 2019
TAX ISSUES	261	270	239
Inclusion in lists of risky taxpayers	64	49	16
Tax inspections	55	90	90
VAT invoice suspension	53	19	33
Non-enforcement of court decisions on VAT registration	21	41	19
VAT electronic administration	17	11	14
Tax criminal cases	7	14	12
Tax termination/renewal/refusal of VAT payers registration	2	1	1
VAT refund	1	1	2
Tax termination of agreement on recognition of electronic reporting and Tax status 09	0	2	2
Tax other	41	41	50
NATIONAL POLICE ACTIONS	29	32	27
National Police procedural abuse	16	19	12
National Police inactivity	10	8	11
National Police criminal case initiated	0	3	1
National Police corruption allegations	0	1	0
National Police other	3	1	3
ACTIONS OF STATE REGULATORS	18	20	36
Antimonopoly Committee (AMCU)	4	1	2
State Architectural and Construction Inspectorate (DABI)	4	2	5
StateGeoCadastre	0	4	4
National Energy and Utilities Regulatory Commission (NEURC)	0	1	1
National Bank of Ukraine (NBU)	0	2	0
Other state regulators	10	10	24

SUBJECT	Q2 2020	Q1 2020	Q2 2019
CUSTOMS ISSUES	13	18	19
Customs valuation	7	9	9
Customs clearance delay/refusal	4	6	5
Customs other	2	3	2
PROSECUTOR'S OFFICE ACTIONS	12	14	22
Prosecutor's Office procedural abuse	6	9	11
Prosecutor's Office criminal case initiated	3	2	6
Prosecutor's Office inactivity	2	2	5
Prosecutor's Office corruption allegations	1	0	0
ACTIONS OF LOCAL COUNCILS/MUNICIPALITIES	8	33	20
Local councils/municipalities land plots	2	5	5
Local councils/municipalities other	6	17	11
MINISTRY OF JUSTICE ACTIONS	8	13	14
MinJustice Registration Service	6	6	7
MinJustice Enforcement Service	2	2	7
ACTIONS OF STATE-OWNED ENTERPRISES	7	10	15
State-owned enterprises investment/commercial disputes	4	1	0
State-owned enterprises abuse of authority	3	7	2
STATE SECURITY SERVICE ACTIONS	7	4	3
State Security Service procedural abuse	5	3	3
State Security Service corruption allegations	1	1	0
State Security Service other	1	1	0
LEGISLATION DRAFTS/AMENDMENTS	5	5	1
Deficiencies in regulatory framework state regulators	2	2	0
Deficiencies in regulatory framework tax	1	2	0
Deficiencies in regulatory framework other	2	1	1

TAX ISSUES

For the first time in 5 years of operations, inclusion of enterprises in lists of risky taxpayers became the most widespread (with a 17% share) subject of appeals to the Council. We received 64 complaints on this matter, which is one third more than in Q1 2020 (QOQ) and four times more than in Q2 2019 (YOY). Understanding the urgency of the matter, we devoted a special section of the report to its analysis ([pages 22-27](#)).

At the same time, the number of appeals on tax inspections in Q2 2020 went down by 39% both QOQ and YOY. This was mainly a consequence of a moratorium on inspections introduced for the period from March 18 till May 31, 2020 in order to support business and help it cope with quarantine restrictions. A moratorium was established on conducting documentary and factual inspections of business entities, except for inspections related to budget VAT refunds. Such a decrease in the number of appeals, for the most part, led to the decline in the total number of complaints received by the BOC in Q2 2020.

In the reporting quarter, the number of appeals concerning classic suspension of tax invoices, which seemed to perform a downward trend in 2019-2020, increased considerably: +179% (from 19 to 53) QOQ and +61% (from 33 to 53) YOY.

As compared to Q1 2020, businesses submitted twice less complaints on non-enforcement of court decisions concerning the registration of tax invoices, but the number of such cases is still rather high — 21 in the reporting quarter.

As for other tax subjects, we received more appeals on VAT electronic administration and termination of VAT payers' registration QOQ, but twice less regarding tax criminal cases.

ACTIONS OF LAW ENFORCEMENT BODIES

In total, in Q2 2020, we received 48 complaints from businesses regarding malpractice of law enforcers, which is, in absolute figures, 2 cases less QOQ. However, with respect to separate subjects and even state bodies we observed an increase in the number of appeals.

While the total number of complaints concerning the National Police went down by 9% (from 32 in Q1 2020 to 29 in Q2 2020), driven mainly by a decrease in the number appeals related to its procedural abuse, businesses submitted 25% more appeals concerning its inactivity (from 8 to 10).

Companies lodged less appeals with respect to actions of the Prosecutor's Office. In particular, as compared to Q1 2020, we received one third less appeals (from 9 to 6) concerning procedural abuse of this state body.

On the contrary, the number of appeals regarding the State Security Service was 75% up QOQ and 133% up YOY. However, in absolute figures the increase was not that remarkable: from 4 to 7 and from 3 to 7 appeals respectively.

ACTIONS OF STATE REGULATORS

In comparison with Q1 2020, the number of appeals regarding this block decreased by two complaints, from 20 to 18. Businesses submitted more appeals concerning the AMCU, the DABI, but didn't complain about StateGeoCadastre, NEURC and NBU at all. The number of appeals related to other state regulators remain stable — at the level of 10 appeals.



CUSTOMS ISSUES

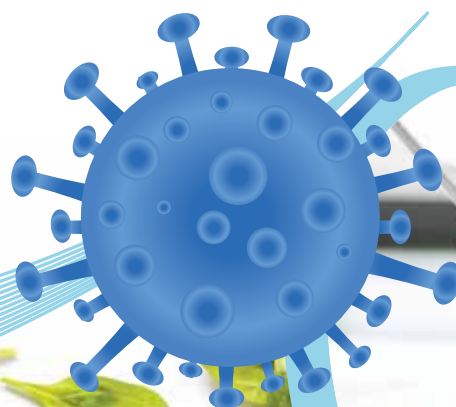
In Q2 2020, the number of complaints concerning all subjects of customs issues went down QOQ: customs valuation (-22%), delays in customs clearance (-33%) and other issues (-33%). In total, it resulted in the decrease of the number of business appeals regarding the block by 28% QOQ.

OTHER ISSUES

As compared to Q1 2020, a considerable (-76%) decrease in the number of appeals was recorded with respect to local government authorities: from 33 to 8 complaints. Businesses also lodged less appeals concerning malpractice of the Ministry of Justice (-38%) and actions of state-owned enterprises (-30%). At the same time, the number of amendments to legislation suggested by business remained unchanged: 5 appeals in the reporting quarter.

1.2. APPEALS CONCERNING THE COVID-19 LOCKDOWN

In Q2 2020, we continued to receive complaints from businesses which originated from the lockdown restrictions, introduced in order to slow the spread of COVID-19.



Two separate companies,

THE FREIGHT-FORWARDING COMPANY AND FRUITS AND VEGETABLES SUPPLIER

informed that they could not appeal the decision of tax audits of the State Tax Service (STS) due to expiration of a 10-day deadline set in the Tax Code.

The matter was that on 30.03.2020 the 10-day deadline was removed for the duration of quarantine by the law № 540-IX. However, the respective technical changes were not made to the STS system. For that reason, the complaints of the entrepreneurs were automatically rejected. This is a systemic issue that concerns a great number of entrepreneurs and requires making respective changes to the STS software. The Council started consideration of these complaints.



PRIVATE ENTREPRENEUR (PE) FROM DNIPROPETROVSK REGION

could not get unemployment benefits from the state. In accordance with the legislation, PEs that had to suspend their entrepreneurship activities because of the quarantine have a right to unemployment benefit in the same way as employees who lost their job due to the quarantine.

Furthermore, the Cabmin has recently made an amendment to the respective Resolution and specified that even those PEs who did not pay a Unified Social Tax, particularly those who are retired persons by age or disability, have a right to such unemployment benefit. They have a right to get assistance (payments) in the amount of two thirds of the minimal wage (UAH 2872) for the period of up to 4 months when they did not make profit during the quarantine.

Our complainant (disabled PE) points out that she tried to get such assistance, but the employment center refused to accept the submitted application. According to her, other PEs are in the same situation. The Council considered this complaint and initiated the respective communication with the Ministry of Social Policy.

REGIONAL ASSOCIATION OF LANDLORDS AND ENTREPRENEURS

made a collective complaint. If PEs of the first group (Group I and II) who pay the fixed tax rate notwithstanding the fact of making profit, decided to suspend registration of PEs due to the quarantine and a couple of months later decide to restart their activity and re-register as PEs, they would not be able to enjoy the simplified tax regime until the end of 2020. That is how the respective norm is interpreted by the tax authority. At the same time, there is a little number of court decisions in favor of the payers who insist on illegitimacy of such interpretation of the norm. We sent letters to the STS, Ministry of Finance and the Verkhovna Rada Committee with a request to reconsider the current approach to application of the respective norm. This is a systemic issue that we included in the new systemic report.

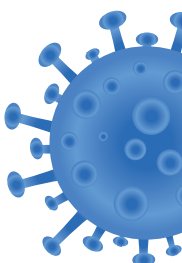
On the other hand, some of the issues that lasted for years were successfully settled with a start of the pandemic. Hence,

MANUFACTURERS OF ANTISEPTICS

finally managed to obtain registration documents for their goods.

Since 2018, the registration procedure of disinfectants changed: instead of the State Sanitary and Epidemiological Service the responsibility for the registration of antiseptics was shifted to the MOH.

Due to absence of the regulatory framework the new procedure had not come into operation. Since then no manufacturer could register or re-register its goods. In March 2020, the Cabinet of Ministers of Ukraine adopted the Regulation No. 908 that facilitated the state registration mechanism of disinfectants. On this ground, two complainants successfully re-registered disinfectants that had a registration expired last year. The products important for the quarantine period appeared in stores.



1.3. TIMELINES OF THE PRELIMINARY REVIEW OF COMPLAINTS

(Clause 5.3.1 (b) of Rules of Procedure)

In the reporting quarter, the average time for preliminary review of a complaint was

7.7

working days, which is two days less than in the previous quarter.

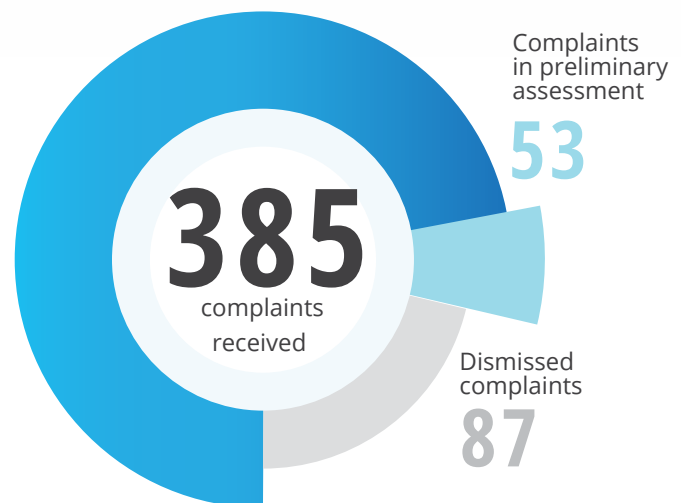
For reference — according to our Rules of Procedure, the time for preliminary review should not exceed 10 working days.

1.4. NUMBER OF INVESTIGATIONS CONDUCTED AND GROUNDS FOR DISMISSING COMPLAINTS

(Clause 5.3.1 (c) of Rules of Procedure)

In Q2 2020, the BOC undertook 245 investigations out of 385 complaints received (64%). The rest remained at the stage of preliminary assessment (14%) or was dismissed as not fitting the Council's eligibility criteria (23%) as of June 30, 2020.

245
Investigations



NUMBER OF INITIATED INVESTIGATIONS:

Q2 2020	245
Q1 2020	248
Q2 2019	217

RATIO OF DISMISSED COMPLAINTS:

Q2 2020 — 23%

Q1 2020 — 26%

Q2 2019 — 30%

MAIN REASONS FOR COMPLAINTS DISMISSAL IN Q2 2020

	Q2 2020	Q1 2020	Q2 2019
Complaints outside Business Ombudsman's competence	49	69	51
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	14	20	22
In the opinion of the Business Ombudsman, the Complainant did not provide sufficient cooperation	10	12	13
The complaint had no substance, or other agencies or institutions were already investigating such matter	4	11	8
Complaints in connection with the legality and/or validity of any court decisions, judgments and rulings	1	6	5
A complaint filed repeatedly after being decided by the Business Ombudsman to be left without consideration	4	6	4
Complaints arising in the context of private-to-private business relations	1	2	3
The party affected by the alleged Business Malpractice has not exhausted at least one instance of an administrative appeal process	0	2	3
All other	4	8	10

The predominant reason (57%) for complaints dismissal — they were outside the Business Ombudsman's competence. Active court proceedings (16%) and lack of cooperation from the complainant (12%) were also common in Q2 2020.

1.5. TIMELINES OF CONDUCTING INVESTIGATIONS

(Clause 5.3.1 (d) of Rules of Procedure)

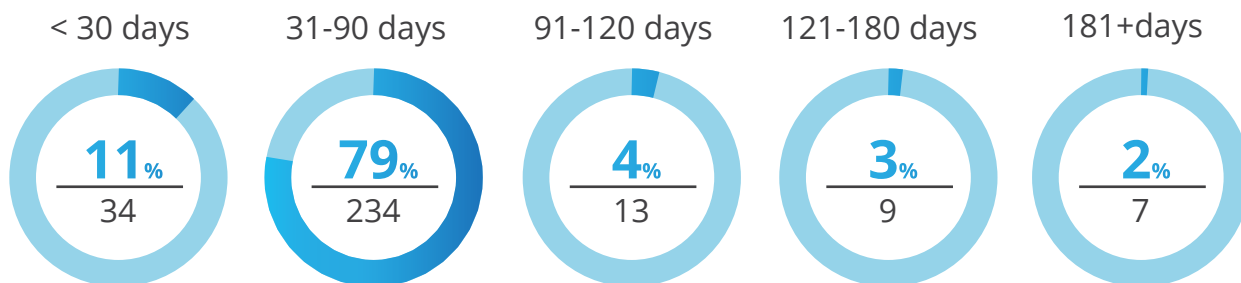
In the reporting quarter, the BOC closed 297 cases (+2 cases as compared to Q1 2020). Average duration of these investigations was 75 days, which means that we perfectly fit our Rules of Procedure's target investigation duration of 90 days.



AVERAGE TIME FOR CONDUCTING INVESTIGATIONS:

Q2 2020	75 days
Q1 2020	74 days
Q2 2019	72 days

RATIO OF CLOSED CASES BY DAYS:



The majority of cases — 268, which is 90% of all closed investigations in Q2 2020, were investigated within 90 days, as standardly envisaged in our Rules of Procedure. Individual extensions were applied to only 9% of complaints.

WE WOULD LIKE TO SINCERELY THANK THE BUSINESS OMBUDSMAN COUNCIL FOR THE PROMPT RESPONSE, APPROPRIATE CONSIDERATION OF OUR COMPLAINTS AND PROFESSIONAL ASSISTANCE THAT WE GOT IN SETTLING THE ISSUE.

YAROSLAV DEMCHUK
ATTORNEY
4 SEASONS OF GRAIN LLC

1.6. GOVERNMENT AGENCIES SUBJECT TO THE MOST COMPLAINTS

TOP-10 COMPLAINNEES

	Q2 2020	Q1 2020	Q2 2019
State Tax Service, State Customs Service, State Fiscal Service:	275	290	259
State Tax Service	255	256	228
State Customs Service	13	18	19
Tax Police	7	14	12
National Police	29	32	27
Prosecutor's Office	13	12	22
Parliament, the Cabinet of Ministers, the President	8	7	4
Local government authorities	8	33	22
Ministry of Justice	8	14	15
State Security Service of Ukraine	7	4	3
State Enterprises	5	9	2
Ministry of Social Policy	5	4	7
Antimonopoly Committee	4	1	2

In Q2 2020, companies submitted 255 complaints on malpractice of the State Tax Service, which is only 1 appeal less QOQ. At the same time, the number of complaints on the State Customs Service and Tax Police went down: by 28% and 50% respectively.

As for law enforcement bodies, companies lodged less appeals with respect to the National Police (-9%), but more with respect to the Prosecutor's Office (+8%) and the State Security Service (+75%)

The number of appeals concerning local government authorities considerably went down both QOQ and YOY. Obviously, this may be due to the forced closure of business, especially in the regions, in connection with the COVID-19 outbreak and related restrictive measures imposed for businesses.

OTHER COMPLAINÉES INCLUDE:

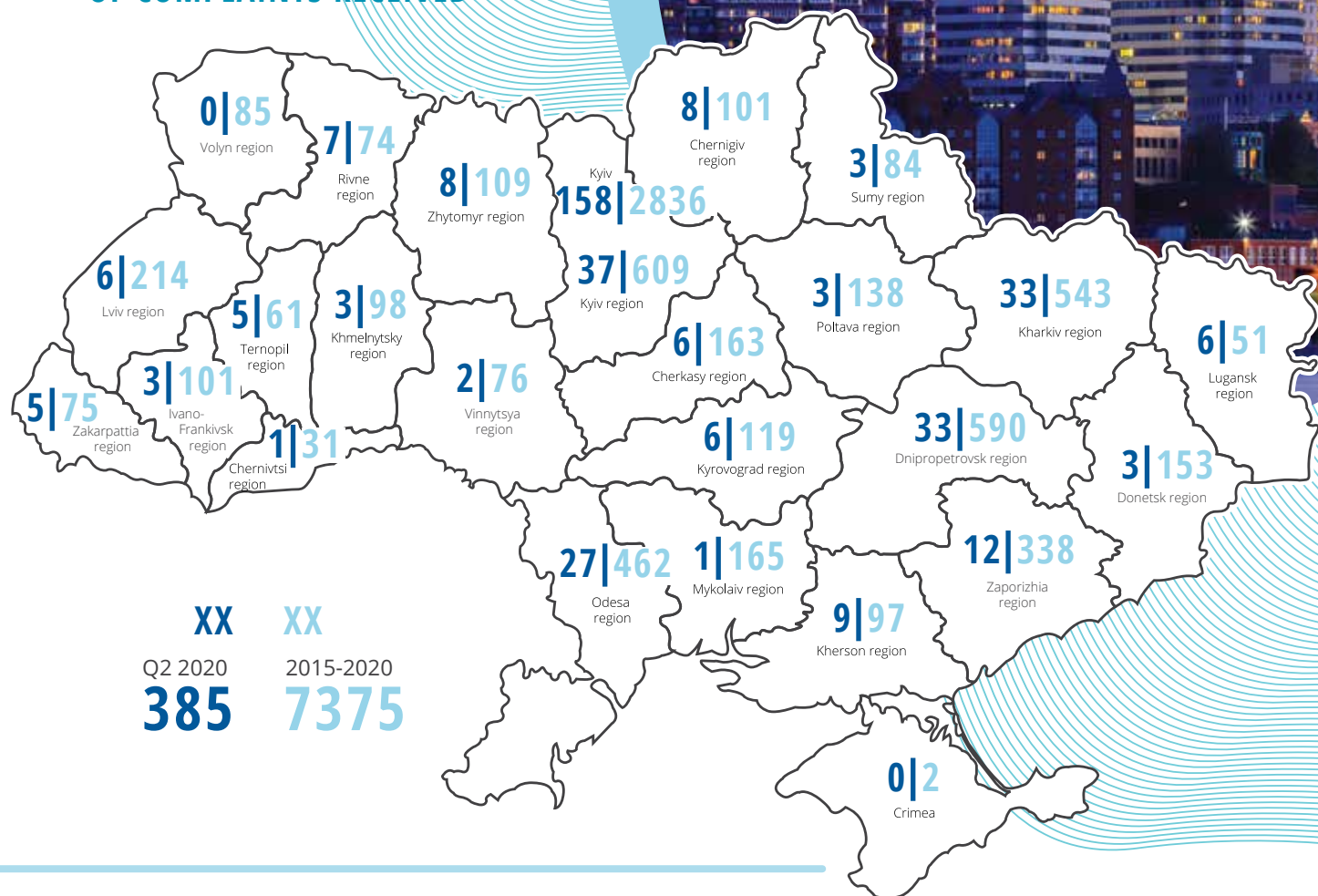
	Complaints received in Q2 2020	Complaints received in Q1 2020	Complaints received in Q2 2019
Ministry of Communities and Territories Development	4	3	5
National Bureau of Investigation	3	10	1
Ministry of Energy and Coal Mining	2	9	1
Ministry of Finance	2	5	2
Communal Service	2	3	0
NABU	2	2	1
Ministry of Education and Science	1	0	0
State Emergency Service	1	0	0
State Border Guard Service	1	0	0
Ministry of Health	1	1	2
State Funds	1	1	0
Ministry of Infrastructure	1	4	2
Ministry of Internal Affairs	1	0	1
Other	1	2	3

A HIGH LEVEL OF PROFESSIONAL EXPERTISE AND PRACTICAL EXPERIENCE OF THE AUTHORIZED INVESTIGATORS ALLOWED TO FINALLY SOLVE THE PROBLEMATIC AND EXTREMELY IMPORTANT ISSUE WITHOUT APPEALING TO THE COURT, BUT THROUGH A CONSTRUCTIVE DIALOGUE WITH THE REPRESENTATIVES OF THE CONTROLLING AUTHORITY.

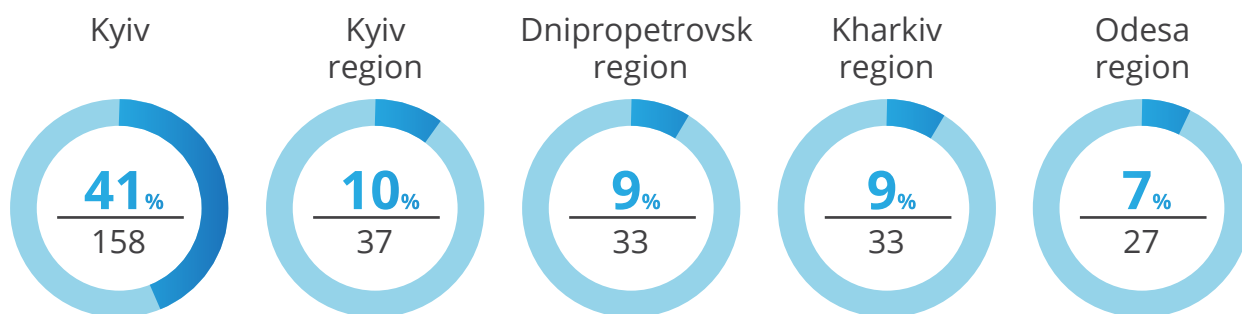
V. AVERKIN
DIRECTOR GENERAL
STATE ENTERPRISE "BEST ALTERNATIVA"



1.7. GEOGRAPHICAL DISTRIBUTION OF COMPLAINTS RECEIVED



TOP-5 REGIONS



75% of all complaints came from 5 key regions. Moreover, the distribution of complaints concentrated: shares of the city of Kyiv, Dnipro, Kharkiv and Odesa Oblasts increased by 1 pp as compared to Q1 2020, while Kyiv Oblast gained 2 pp.

1.8. COMPLAINANTS' PORTRAIT

LOCAL VS FOREIGN COMPLAINANTS

53	332	
14%	86%	
Foreign companies	Ukrainian companies	Contrary to a widespread myth, the prevailing majority of our complainants are Ukrainian companies. In the reporting quarter, the share of local companies even gained 2pp, growing up to 86%.

SIZE OF BUSINESS

103	282	
27%	73%	
Large	Small/ Medium	As compared to Q1 2020, the share of appeals from SMEs increased by 4 pp — three out of four complaints in Q2 2020 were submitted by small and medium enterprises.

TOP-5 COMPLAINANTS' INDUSTRIES

	Q2 2020	Q1 2020	Q2 2019
WHOLESALE AND DISTRIBUTION	86	120	88
MANUFACTURING	55	58	54
AGRICULTURE AND MINING	49	33	37
REAL ESTATE AND CONSTRUCTION	41	52	43
INDIVIDUAL ENTREPRENEUR	40	42	42
ALL OTHER	114	157	134

The majority of appeals to the Council pertained to wholesalers (22%), agribusiness and mining (13%), developers (11%) and individual entrepreneurs (10%). In comparison with Q1 2020, we observed 48% more appeals in agriculture and mining sphere, whilst 28% less in wholesale and distribution sphere, and 21% less in real estate and construction sphere.

OTHER INDUSTRIES INCLUDE:

Retail	17
Autotransport	13
Energy and Utilities	11
Physical Person	7
Financial Services	6
Repair and Maintenance Services	6
Electric installation works	4
Supply of electricity, gas, hot water, steam and air conditioning	4
Education	3
Information and Telecommunications	3
Printing and reproduction activity	3
Public Organizations	3

Technical testing and research	3
Transportation and Storage	3
Advertising	2
Banks	2
Consulting	2
Engineering, geology and geodesy areas activity	2
Farming	2
Health, Pharmaceuticals, and Biotech	2
Hire, rental and leasing	2
Investment companies	2
Waste collection and disposal	2
Activity in the field of architecture	1
Computer and Electronics	1
Fishing services	1
Forestry and logging	1
Freight maritime transport	1
Maintenance of buildings and territories	1
Oil and Gas	1
Processing industry	1
Publishing and printing services	1
Other	1

WE WOULD LIKE TO EXPRESS OUR SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR THE HIGH LEVEL OF PROFESSIONALISM, EFFORTS TAKEN TO IMPROVE THE ENTREPRENEURSHIP CONDITIONS AND PREVENT VIOLATIONS OF LEGAL INTERESTS OF THE ENTERPRISE.

M.B. DUBYNA
ATTORNEY

1.9. REPORT FOCUS: LISTS OF HIGH-RISK TAXPAYERS

Since launch of operations the Business Ombudsman Council received 1673 complaints from businesses concerning VAT invoice suspension, which is almost a quarter of total number of complaints.

VAT invoice suspension means that an enterprise cannot add this amount to its tax credit (a tax credit, in turn, makes it possible to reduce the amount of VAT that the enterprise must pay to the budget, or, if it doesn't have to pay anything, allows to refund this amount from the budget).

In Q2 2020, we received 138 complaints on this subject. Although the number of complaints did not even come close to the peak burst observed in Q4 2017, the Council cannot ignore the fact that this category of complaints performs growth for the sixth consecutive quarter. Thus, in Q2 2020 the number of appeals has increased by one third as compared to Q1 2020 (from 109 to 138) and doubled as compared to Q2 2019 — from 68 to 138 complaints.

DYNAMICS OF COMPLAINTS ON VAT INVOICE SUSPENSION (Q3 2017-Q2 2020)

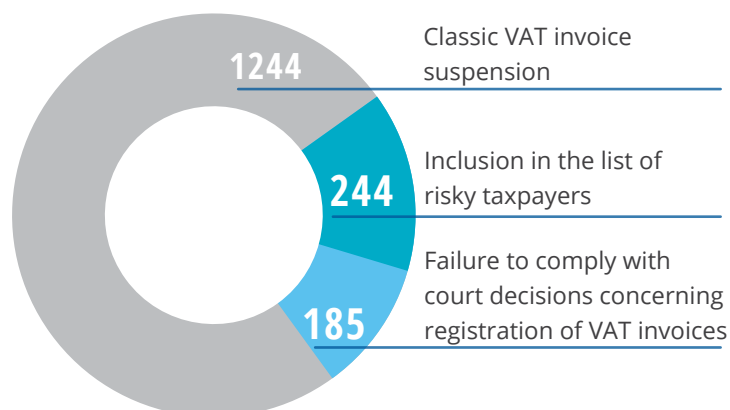
	Classic VAT invoice suspension	Inclusion in the list of risky taxpayers	Failure to comply with court decisions concerning registration of VAT invoices
Q3 2017	164		
Q4 2017	368		
Q1 2018	303		
Q2 2018	108	6	1
Q3 2018	45	1	5
Q4 2018	89	3	12
Q1 2019	26	13	24
Q2 2019	33	16	19
Q3 2019	16	45	31
Q4 2019	20	47	31
Q1 2020	19	49	41
Q2 2020	53	64	21
TOTAL	1244	244	185

Enterprises began to approach the BOC concerning suspension of VAT invoices soon after a new automatic system for monitoring and suspension of registration of VAT invoices was launched. Until operations of the system finally became normal, we were receiving hundreds of complaints from businesses per quarter on this issue — the peak of complaints (368) was recorded in Q2 2017.

Obviously, starting from Q2 2018, the system started to operate at a stable effective level. However, two more interrelated subjects of complaints emerged in our portfolio: inclusion of companies / entrepreneurs in the lists of risky taxpayers and failure of the tax authority to comply with the court decision on registration of VAT invoices.

STRUCTURE OF COMPLAINTS ON VAT INVOICE SUSPENSION (Q3 2017-Q2 2020)

Thus, as of June 30, 2020 almost three quarters of complaints of business regarding suspension of VAT invoices related to the "classic" type — complaints arguing about suspension of registration of particular VAT invoices. In 15% of cases, entrepreneurs complained about being included in the list of risky taxpayers. Another 11% of complaints concerned the failure of the tax authority to comply with court decisions on registration of VAT invoices.



SUSPENSION OF VAT INVOICES: STATUS OF CLOSED CASES (JULY 2017-JUNE 2020)

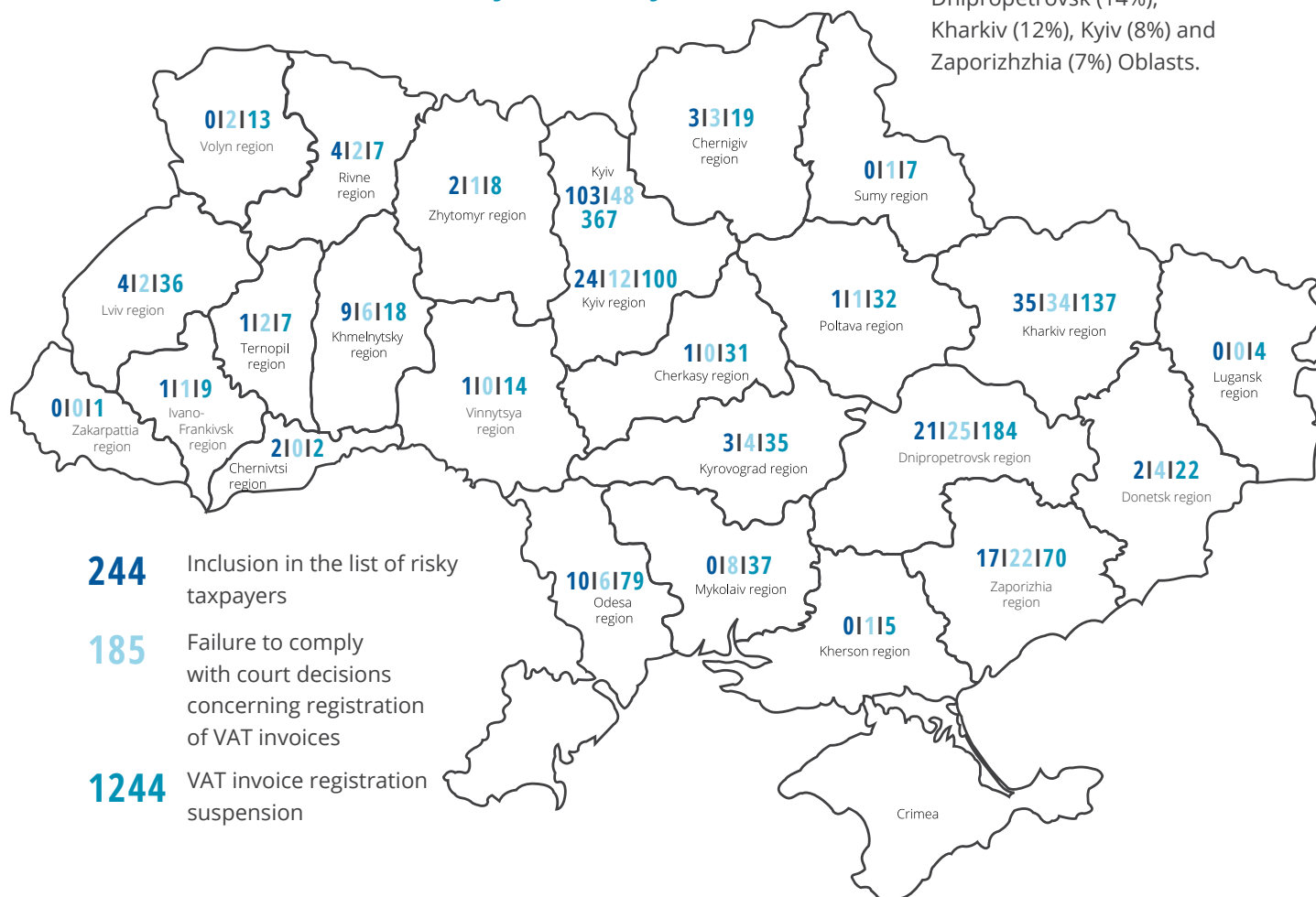
	Classic VAT invoice suspension	Inclusion in the list of risky taxpayers	Failure to comply with court decisions concerning registration of VAT invoices
Cases closed successfully	800	86	146
Cases closed with recommendations	2	10	11
Cases discontinued	198	57	3
TOTAL	1000	153	160

We had to reject some of complaints we received because they did not meet the formal eligibility criteria of the Council. Some complaints were at the stage of preliminary assessment as of the end of Q2 2020. In total, we have already closed 1,313 cases (78%) of all complaints received.

Most of them (79%) were closed successfully for entrepreneurs. It should be noted that the share of successfully closed cases on this issue was 15 pp higher than our average success rate on all types of complaints (64%). At the same time, within the block, the highest success rate (91%) was recorded in cases that required the implementation of a court decision by a tax body, which had already entered into force. The lowest success rate (56%) concerned exclusion of entrepreneurs from the list of risky taxpayers.

VAT INVOICE SUSPENSION: GEOGRAPHY OF COMPLAINTS RECEIVED (JULY 2017-JUNE 2020)

Most of complaints came from Kyiv city (31%), Dnipropetrovsk (14%), Kharkiv (12%), Kyiv (8%) and Zaporizhzhia (7%) Oblasts.



- 244** Inclusion in the list of risky taxpayers
- 185** Failure to comply with court decisions concerning registration of VAT invoices
- 1244** VAT invoice registration suspension

VAT INVOICE SUSPENSION: LOCAL VS FOREIGN COMPANIES (JULY 2017-JUNE 2020)

	Inclusion in the list of risky taxpayers	Failure to comply with court decisions concerning registration of VAT invoices	Classic VAT invoice suspension	Total
UKRAINIAN COMPANIES	240	179	1209	1628
FOREIGN COMPANIES	4	6	35	45
	244	185	1244	1673

Almost all the complainants (97%) who approached us with the VAT invoice suspension issue were Ukrainian companies.

CHANGES OF THE INTERNAL STRUCTURE OF COMPLAINTS ON VAT INVOICES SUSPENSION

A growing tendency of increase in a number of complaints related to the VAT invoice suspension for the sixth quarter in a row makes us take a deeper dive into this category of complaints.

When looking deeper, it becomes apparent that “typical” complaints the Council mostly dealt with in 2017-early 2018 (complaints where businesses asked the Council to help unblock one or several VAT invoices) have gradually become extremely rare.

The Council attributes this trend to the fact that the total number of suspended VAT invoices in Ukraine is decreasing (what the STS of Ukraine likes reporting on) as well as to the fact that some businesses are accustomed to procedure for unblocking VAT invoices and now treat it as a routine bureaucratic process going through which does not require lodging a complaint with the Business Ombudsman.

- Almost complete disappearance of “typical” complaints has been offset by the rise of another type of complaints in this category — complaints in which businesses ask to facilitate implementation of **court decisions** obliging tax authorities to register suspended VAT invoices. This trend is natural. After all, court trials on thousands of VAT invoices blocked in 2017-2018 have currently been completed. Most court decisions in this category of cases are in favor of taxpayers. Therefore, issue of implementation of these court decisions becomes relevant.
- The growing number of complaints in which a business complains about being included in the so-called **“lists of high-risk taxpayers”** (which, in turn, is a prerequisite for VAT invoices suspension) is even more clearly seen. This subcategory is of particular concern, so we will consider it in more detail.

WHAT “RISKY TAXPAYERS LISTS” HIDE BEHIND

These lists have started to be maintained since March 22, 2018, with the launch of a new version of the automated VAT invoice monitoring system (commonly known under “SMKOR” abbreviation). The amended regulation empowered regional level tax authorities (special commissions composed of their officials) to maintain such lists. It was established that SMKOR suspends practically all VAT invoices drawn up by taxpayers included in such lists.

In fact, if the first version of the SMKOR was almost completely automated (trying to find risky business transactions solely based on analysis of their objective parameters, such as adequacy of volumes and types of goods and services purchased and sold), in the second version, artificial intelligence gave the leading role to tax authorities’ officials. It was up to them to analyze VAT payers’ activities and to

manually include those who, in their opinion, were involved in VAT fraudulent schemes, in the respective lists.

As of February 7, 2020, according to the State Tax Service of Ukraine, 24 767 VAT payers in Ukraine were included in lists of high-risk taxpayers. It is unclear precisely what share of them are sham businesses existing exclusively for VAT fraudulent schemes, what are real businesses, but nevertheless significantly involved in VAT fraudulent schemes, and what are law-abiding businesses not involved at all, or not significantly involved in such schemes.

Based on its own observations, not being devoid of subjectivity but based on big data, the Council generally agrees with the tax authorities that most

of taxpayers on the list are highly likely sham businesses, or real businesses, but significantly involved in VAT fraudulent schemes.

However, it does not in any way relieve the State of the obligation to ensure respect of basic rights of such allegedly non-compliant entities, in particular as regards transparency of administrative procedure, legality and due reasoning of public authorities' decisions (moreover, failure to ensure procedural transparency subsequently results in the adoption of court decisions against the State, which is currently observed in the court practice).

In addition, there are reasons to believe a significant number of taxpayers on the list (generally hundreds of businesses and entrepreneurs across Ukraine)

are real businesses not involved or only slightly involved in VAT fraudulent schemes and have been erroneously or unsubstantially put on the list.

The Council managed to facilitate exclusion of many such enterprises from "high-risk" lists within its cases. However, the state of affairs when resolution of such issues requires involvement of the Business Ombudsman, holding special working meetings and official correspondence, does not generally indicate a favorable business climate. Therefore, there is a pressing need to minimize such unwanted cases and create conditions for their prompt correction (quick exclusion of law-abiding businesses from high-risk list, where they were put on in error, by applying a simple procedure).

A RATHER COMPLICATED MATTER

In the Council's view, the complexity of the problem is caused, in particular, by the following factors:

1. There are no clear criteria who should be considered a "high-risk taxpayer". The wording "availability of tax information indicating risky transactions" is too "blurred" and leaves excessive discretion to regional tax authorities.
2. Tax authorities often do not substantiate in sufficient detail (though they have to, especially under the new regulation having become effective since February 1, 2020) why they believe someone is a "high-risk" entity. The Council was able to get familiar with dozens of decisions of relevant commissions under STS territorial bodies from different regions of Ukraine. Unfortunately, only some tax authorities (such as the Main Department of the State Tax Service in Kyiv city) practice more or less qualitative reasoning for their decisions. The vast majority of decisions are not substantiated at all (in the appropriate space, where the reasoning should be, there are often dashes, quotes from legislation or meaningless information instead).
3. There is no appeal mechanism (to a higher-level tax authority) against the "high-risk" decision made. The existence of such a mechanism is mentioned in the new decision form. The obstacle to its implementation was the lack of a clearly regulated appeal procedure. Despite existence of declarative provision of the Tax Code of Ukraine guaranteeing a right to appeal against any tax authorities' decisions, in practice the State Tax Service of Ukraine does not consider such appeals comprehensively — they are forwarded to territorial bodies, or provided with formal replies with references to legislation norms.

POSSIBLE SOLUTIONS

Summarizing the Council's observations, lists of high-risk taxpayers, despite the real need to maintain them, are currently built not transparently enough and are not always used as intended either.

This state of affairs contributes mainly to the negative attitude towards this phenomenon not only on the part of representatives and lobbyists of grey economy sector, for whom the SMKOR is an obstacle to committing tax fraud, but also on the part of law-abiding business.

The Council has a number of suggestions for improving the situation in this area. Back on the eve of recent legislative changes in this area, the Council addressed the basic ones to the STS of Ukraine in its letter Ref. No. 22192 dated November 29, 2019. For instance, the Council suggested clarifying the list of instances, when taxpayers should be qualified as "risky" (this should be possible in case of signs of sham business transactions in regard of which a taxpayer issued VAT invoices to buyers - VAT payers, thus enabling the latter to form a VAT tax credit at the expense of probably "sham" VAT or transfer an allegedly "sham" VAT to third parties).

The Council suggested establishing clear minimal standards of substantiation (justification) of decisions on inclusion in the "risky" list (such decisions must include at least the following information: exact sources of tax information used; what business transactions are "risky", indication of names of counterparties and their Tax IDs; types of business transactions; codes of types of goods or services; reference to specific signs evidencing risky nature of such business

transactions).

The Council also suggested stipulating clearly that decisions of regional tax authorities on inclusion in the "risky" list should be subject to appeal to the tax authority of the central level.

However, in its letter Ref. No. 11727/6/99-0006-05-01-15 dated December 3, 2019, the STS of Ukraine rejected most of the Council's suggestions.

The Council will continue communicating with the STS of Ukraine in this area, and will get back to this issue and cover it more thoroughly in its new systemic report, which is planned to be published in August 2020.



In the reporting period
we received

120

feedback forms from
our applicants.

COMPANIES ASSESSED OUR WORK BASED ON SEVERAL CRITERIA:

- client care and attention to the matter
- understanding the nature of the complaint
- quality of work product

They also indicated what they are
satisfied the most in dealing with
us and specified areas that require
improvement.

**WE ARE CONVINCED THAT THE
BUSINESS OMBUDSMAN INSTITUTION
IS ABLE TO ENSURE EFFECTIVE
MEDIATION BETWEEN BUSINESS AND
THE STATE, PREVENT CORRUPTION
AND OTHER VIOLATIONS OF
THE RIGHTS AND INTERESTS OF
ENTREPRENEURS, BECOME THE FIRST
AND MAIN ADVISER TO THE STATE ON
LEGAL REGULATION OF BUSINESS.**

**OKSANA ORYNCHAK
EXECUTIVE DIRECTOR
NATIONAL ASSOCIATION OF MINING
INDUSTRY OF UKRAINE**

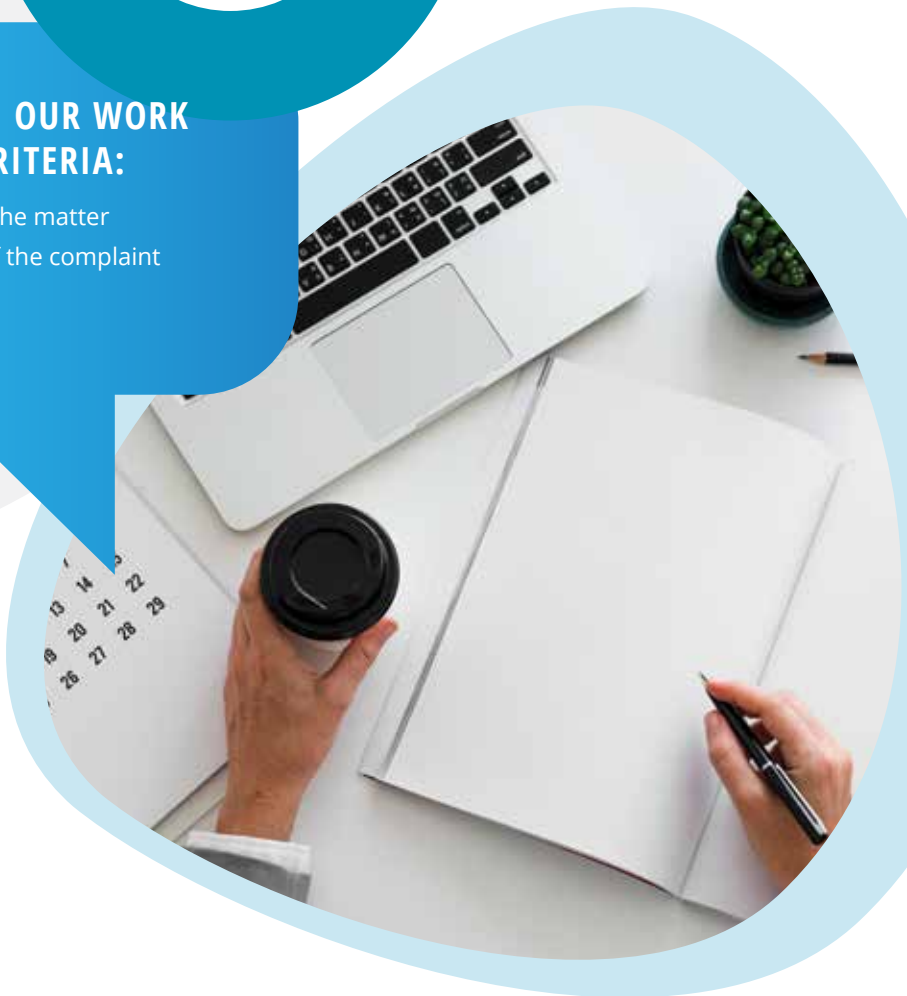
**I BELIEVE THAT YOUR LETTER TO
THE CONTROLLING AUTHORITY AND
PROFESSIONAL POSITIONING OF THE
COMPANY BY THE INVESTIGATOR
ALLOWED TO RECEIVE AN OBJECTIVE
AND JUSTIFIED DECISION IN FAVOR
OF THE TAXPAYER.**

**A.M. GRYNYOV
KYIVTRANSBUD LLC**

98%

1.10. FEEDBACK

of them said they were
satisfied with working
with us



**ON BEHALF OF THE AVELLANA GOLD LTD. TEAM I SINCERELY
THANK THE BUSINESS OMBUDSMAN COUNCIL FOR PROMPTNESS
AND EXCEPTIONAL PROFESSIONALISM IN CONSIDERING
OUR CASE. IT IS MUCH APPRECIATED THAT THE BUSINESS
OMBUDSMAN COUNCIL IS THE ONLY TRULY INDEPENDENT
INSTITUTION THAT HAS THE EXPERIENCE AND KNOWLEDGE TO
STUDY THE MOST COMPLEX CASES IN DETAIL.**

**BRIAN C SAVAGE
CHIEF EXECUTIVE OFFICER
AVELLANA GOLD LTD.**

I WOULD LIKE TO THANK YOU AND THE BOC TEAM FOR THE PROFESSIONAL APPROACH IN SETTLING OUR COMPLAINT.

ZINOVIA GOLUBINKA
PRIVATE ENTREPRENEUR

WE ARE VERY GRATEFUL FOR YOUR HELP. YOU ARE ALMOST THE ONLY INSTRUMENT IN THE COUNTRY ABLE TO ENSURE COMPLIANCE WITH THE RIGHTS OF BUSINESS.

«M&P» LEGAL GROUP»

ON MY OWN BEHALF AND ON BEHALF OF THE LSC GROUP PERSONNEL, I WOULD LIKE TO EXPRESS MY GRATITUDE FOR THE ATTENTION PAID TO THE PROCEEDING ON THE COMPANY'S COMPLAINT ABOUT UNCONSTRUCTIVE ACTIONS OF THE CONTROLLING AUTHORITY.

DIRECTOR OF LSC GROUP
YULIIA SHAPOVALOVA

SOKIL-KYIV CYSS WOULD LIKE TO EXPRESS ITS SINCERE GRATITUDE TO THE BUSINESS OMBUDSMAN COUNCIL FOR SUPPORTING OUR SCHOOL IN THE FIGHT AGAINST ILLEGAL ACTIONS OF THE STATE BODIES THAT TRIED TO SEIZE THE PART OF THE TERRITORY THAT IS A BASE FOR OLYMPIC, PARALYMPIC AND DEAFLYMPIC TRAINING.

THANKS TO THE TIMELY INTERVENTION OF THE BUSINESS OMBUDSMAN COUNCIL, WE MANAGED TO DEFEND THE TERRITORY OF THE SPORTS COMPLEX AND PREVENT THE AUTHORITIES FROM COMMITTING ILLEGAL ACTIONS.

PARENT COMMITTEE OF SOKIL-KYIV CHILDREN'S YOUTH SPORTS SCHOOL (CYSS)

PLEASE LET ME THANK YOU FOR YOUR HELP AND WISH YOU GOOD HEALTH AND SUCCESS IN YOUR ACTIVITIES.

THE OPERATION OF THE BUSINESS OMBUDSMAN COUNCIL GIVES FAITH IN THE FUTURE SUCCESS OF UKRAINIAN BUSINESS AND BRINGS HOPE FOR JUSTICE IN OUR COUNTRY.

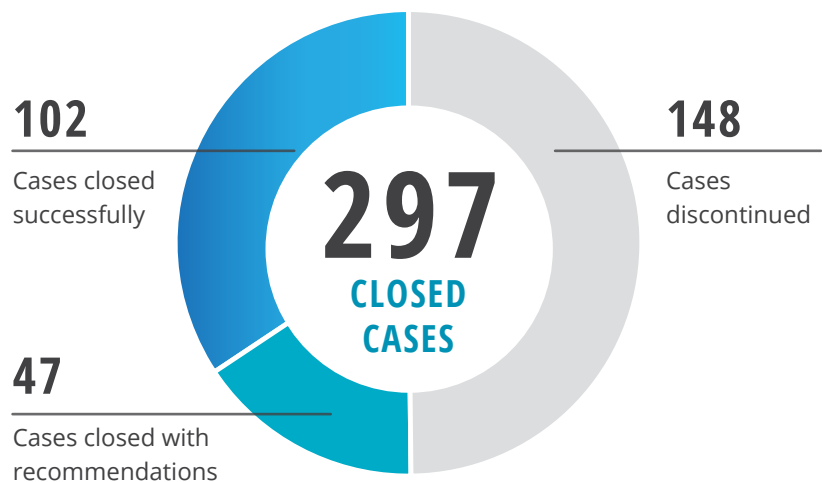
EUGENE BALASHOV
CEO
EU-TRANS LLC

THANKS TO YOUR FULL SUPPORT AND ACTIVE POSITION THE REPORT ON THE INVENTORY OF POLLUTANT EMISSIONS INTO THE AIR BY STATIONARY SOURCES OF THE COMPANY WAS REGISTERED, AND WE RECEIVED A PERMIT FOR EMISSIONS OF POLLUTANTS INTO THE AIR. WE SINCERELY THANK YOU FOR YOUR SUPPORT AND LOOK FORWARD TO FURTHER FRUITFUL COOPERATION.

O.I. AFANASYEV
DIRECTOR GENERAL
UKRAINIAN MINERAL FERTILIZERS LLC

2. SUMMARY OF KEY MATTERS AND FOLLOW-UP OF RECOMMENDATIONS

2.1. INFORMATION ON CLOSED CASES AND RECOMMENDATIONS PROVIDED



NUMBER OF CLOSED CASES BY QUARTERS

Q2 2020	297
Q1 2020	295
Q2 2019	286

**TOTAL NUMBER OF CLOSED CASES
SINCE LAUNCH OF OPERATIONS:**

4339

In Q2 2020, we closed 297 cases, which is 2 cases more than in Q2 2019.

TOP-10

SUBJECTS OF CLOSED CASES IN Q2 2020:

SUBJECT	Q2 2020	Q1 2020	Q2 2019
Tax issues	207	201	193
Actions of the National Police	26	17	15
Actions of local government authorities	15	6	16
Customs issues	12	22	18
Actions of State Regulators	10	28	14
Ministry of Justice actions	6	4	5
Permits and licenses	4	4	3
Actions of state companies	2	3	3
Prosecutor's Office actions	1	12	8
Other	11	6	4
TOTAL	297	295	286

In the reporting quarter the Council closed

1%

more cases QOQ and

4%

more YOY

Tax issues constituted

70%

of all closed investigations, which is 8 pp than in Q1 2020

Actions of local government authorities and customs issues were in focus of 5% of all closed cases

5%

Actions of the National Police was the second most common subject with a

9%

share

4%

of all closed cases were customs related issues

**TOTAL FINANCIAL IMPACT
OF BOC'S OPERATIONS
MAY 20, 2015 –
JUNE 30, 2020:
AMOUNTS TO**

**UAH
18,2 BN**

In Q2 2020, over the half of the financial impact (58%), which is UAH 27 mn, resulted from cancellation of ungrounded decisions of tax audits. We also helped entrepreneurs to refund VAT worth almost UAH 10 mn.

The financial impact from fixing problems with the electronic administration of VAT was almost UAH 6 mn, while from registering VAT invoices — over UAH 2.3 mn. With the Council's facilitation in closing unreasonable tax criminal cases companies saved over UAH 1.2 mn.

	Q2 2020, UAH	GRAND TOTAL 2015-2020, UAH
Tax inspections	26,839,804	7,360,149,077
Tax VAT refund	9,886,141	6,190,208,926
Tax VAT electronic administration	5,873,563	207,183,005
Tax VAT invoice suspension	2,306,467	323,416,551
Tax criminal cases	1,265,600	30,658,325
TOTAL	46,171,575	18,206,520,411

**FINANCIAL IMPACT
IN Q2 2020:**

**UAH
46 MN**

NON-FINANCIAL IMPACT OF BOC'S OPERATIONS IN Q2 2020:

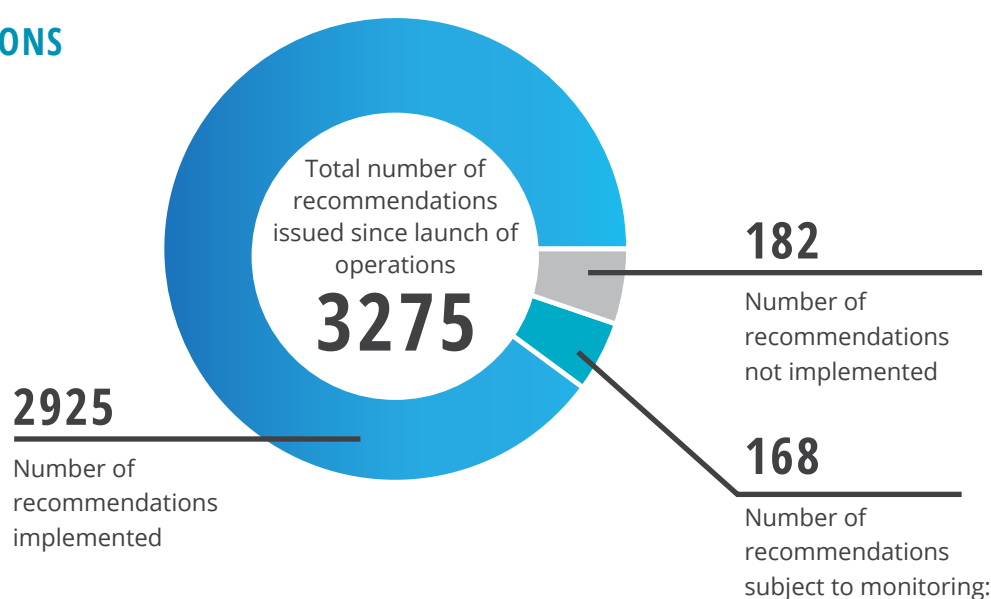
NON-FIN IMPACT ISSUE	Q2 2020	Q1 2020	Q2 2019	TOTAL, 2015-2020
Malpractice ceased by complaine	45	44	50	626
Permit/license/conclusion/registration obtained	4	5	4	104
Criminal case against the Complainant closed; property/accounts released from under arrest	4	3	4	130
Legislation amended/enacted; procedure improved	3	3	5	73
Tax records reconciled, tax reporting accepted	3	5	4	178
Criminal case initiated against state official/3rd party	2	2	0	24
Claims and penalties against the Complainant revoked/Sanctions lifted	1	0	2	25
State official fired/penalized	1	1	1	35
Contract with state body signed/executed	1	1	1	52
Other issues	30	26	33	461

In Q2 2020, we ceased dozens episodes of state bodies malpractice, helped companies to obtain licenses and permits and close ungrounded criminal cases.

RECOMMENDATIONS PROVIDED

Recommendations issued in Q2, 2020:

152



GOVERNMENT AGENCIES WHOM THE BOC ISSUED RECOMMENDATIONS IN 2015-2020 (CASE-BY-CASE BASIS) AND RATIO OF IMPLEMENTATION

COMPLAINTEE	MAY 2015-JUNE 2020		Cumulative implementation rate since May 2015 to a respective period		
	Issued recommendations	Implemented recommendation	Q2 2020	Q1 2019	Q2 2019
State Tax Service, State Customs Service, State Fiscal Service	2241	2073	93%	93%	93%
National Police	180	139	77%	80%	80%
Prosecutor's Office	141	113	80%	80%	78%
Ministry of Justice	109	101	93%	92%	92%
Local government authorities	131	92	70%	74%	71%
Ministry for Development of Economy, Trade and Agriculture	102	88	86%	89%	85%
State Security Service of Ukraine	55	54	98%	98%	98%
Ministry of Environmental Protection and Natural Resources	59	55	93%	88%	96%
Parliament, the Cabinet of Ministers, the President	33	29	88%	87%	90%
State Enterprises	33	28	85%	88%	85%
Ministry for Communities and Territories Development	27	27	100%	100%	98%
Ministry of Social Policy	31	27	87%	93%	91%
Ministry of Finance	22	17	77%	79%	89%
Ministry of Infrastructure	21	14	67%	70%	73%
Ministry of Health	14	13	93%	86%	100%
Ministry of Internal Affairs	14	11	79%	79%	81%
National Commission for State Regulation of Energy and Public Utilities	11	10	91%	91%	91%
Antimonopoly Committee	10	7	70%	70%	70%

COMPLAINTEE	MAY 2015-JUNE 2020		Cumulative implementation rate since May 2015 to a respective period		
	Issued recommendations	Implemented recommendation	Q2 2020	Q1 2019	Q2 2019
Commercial and other courts	7	7	100%	100%	100%
NABU	7	5	71%	83%	100%
State Funds	5	2	40%	40%	50%
National Bank	5	2	40%	40%	40%
National Council on Television and Radio Broadcasting	1	1	100%	100%	100%
State Emergency Service	1	1	100%	100%	100%
State Border Guard Service	1	1	100%	0%	0%
National Bureau of Investigation	1	1	100%	100%	0%
Ministry of Education and Science	1	1	100%	100%	100%
Ministry of Defense	1		0%	0%	0%
Communal Services	1	1	100%	100%	50%
Other	10	9	90%	89%	90%

Overall, by the reporting quarter state bodies have implemented 89% of case-by-case recommendations, provided by the Council. Out of all state bodies, the block of the ex-State Fiscal Service (State Tax Service, State Customs Service, State Fiscal Service) received most of recommendations from the Council and following the dynamic of the previous two quarters, it implemented 93% of them. The similar stable and record-high ratio is kept by the State Security Service of Ukraine (98%).

In Q2 2020, the following state bodies among those whom we issued 30+ recommendations improved their performance as compared to the previous quarter: the Ministry of Justice (+1pp), the Ministry of Environmental Protection and Natural Resources (+5pp), the Parliament, the Cabinet of Ministers and the President of Ukraine (+1 pp) and the Ministry of Health of Ukraine (+7pp).

At the same time, a minor slowdown in the ratio of implemented recommendations was performed by the National Police of Ukraine (-4pp), Local government authorities (-4pp), the Ministry for Development of Economy, Trade and Agriculture (-3 pp), State Enterprises (-3pp), the Ministry of Social Policy (-5 pp), the Ministry of Finance (-2pp), the Ministry of Infrastructure (-3pp), state-owned enterprises (-3pp). The more obvious slowdown in implementing the Council's recommendations is observed with respect to the NABU (-12pp).

The rest of state bodies on the list remained in the same position as compared to Q1 2020.

2.2. SYSTEMIC ISSUES IDENTIFIED AND SOLVED



Systemic Report

November 2016

CHALLENGES AND PROBLEMS IN THE SPHERE OF COMPETITION PROTECTION AND OVERSIGHT

Issue

A full and objective consideration of appeals (including in public procurement sphere) depends on the ability of participants of the appeal procedure to submit necessary documents for proving violation of their rights or legitimate interests (if any).

However, in practice it is not uncommon for the Antimonopoly Committee of Ukraine (AMCU) to refuse accepting additional documents that leads to unsubstantiated violations of companies' rights.

BOC's recommendation

To enable a complaining bidder or any other participant of the appeal procedure to submit additional documents related to the merits of the complaint.

Actions taken by government agencies

On April 19, 2020 the Law of Ukraine "On Introducing Amendments to the Law of Ukraine "On Public Procurement" and Other Selected Legislative Acts of Ukraine Aimed at Improving Public Procurements" No. 114-IX (the "Law") entered into force.

The Law introduced a number of changes to the legal framework governing public procurement, including, inter alia, the respective appeal procedure.

In particular, from now on, the complaining bidder and other participants of procurement procedure are entitled to add materials that they consider necessary for due appeal consideration (see para 16, Article 18 of the Law of Ukraine "On Public Procurement").

Participants of the appeal procedure shall submit such materials no later than three working days prior to the date of consideration of the appeal by the AMCU's Permanent Administrative Board (Boards) Tasked to Consider Appeals Alleging Violations of Legislation in Public Procurement Sphere.



Systemic Report

October 2015

PROBLEMS WITH CROSS-BORDER TRADING IN UKRAINE

Issue

Increasing transparency in export-import operations with scrap metal

BOC's recommendation

To study the requirements for the classification of scrap metal, such as the Green List of waste materials for procedure simplification according to the Basel Convention on the Control of Cross-border Transportation of Hazardous Waste and Their Disposal

Actions taken by government agencies

On June 4, 2020, the Verkhovna Rada of Ukraine registered the Draft Law of Ukraine No.2207-1-d "On Waste Management", which will regulate cross boundary transfer of hazardous waste



Systemic Report

July 2016

REDUCING THE RISK OF CORRUPTION AND ATTRACTING INVESTMENT TO THE CONSTRUCTION INDUSTRY

Issue

Ensuring transparency and accountability of public procurement during construction of complex infrastructure projects

BOC's recommendation

Develop amendments to the Law of Ukraine "On Public Procurement" regarding:

- A** Expansion public procurement law terminology and include the term "consortium" to ensure the possibility of joint submission of bids by several participants without creating a separate legal entity;
- B** Reduction (and subsequent abolition) the mandatory minimum weight of the criterion "low price" from 70% to 50% for procurement of works

Actions taken by government agencies

On April 19, 2020, a new edition of the Law of Ukraine "On Public Procurement" came into force, which was previously approved on September 19, 2019 by the Law of Ukraine № 114-IX:

- A** Provided legal enforcement of participation of a business entities group (consortia) as participants in public procurement;
- B** Life cycle criterion was introduced in the new edition of the Law "On Public Procurement" as an alternative solution of the problem to have mandatory minimum weight of the criterion "low price".
 - The lifted restrictions concerning use of the non-price criteria of bids for subject matters of procurement that are of complex and specialized nature;
 - The list of assessment criteria of bids (price, life cycle cost or life cycle cost along with other assessment criteria) is extended;
 - In order to prevent dumping the Law foresees defining abnormally low bid price and the opportunity of its rejection by the customer



Systemic Report

March 2020

BIG CHALLENGES FOR SMALL BUSINESS

Issue

Provide SME's employee with the possibility to work part-time, work in shifts, remote work, etc.

BOC's recommendation

Review and initiate amendments to the legislation, providing flexible forms of employment regime particularly in the context of part-time work, shifts, weekends and holidays, remote work etc.

Actions taken by government agencies

On April 2, 2020, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Aimed at Providing Additional Social and Economic Guarantees in Connection with the Spread of Coronavirus Disease (COVID-19)" (№ 540-IX of March 30, 2020) entered into force.

In particular, this Law enforced a new edition of Article 60 of the Labor Code, which regulates the flexible forms of employment regime starting from 02.04.2020.

The Article 60 of the Law regulates a regime of flexible working hours. For instance, (i) fixed time, during which the employee has to be present at the work place; (ii) shift schedule, during which the employee on his own defines time for work under the established norm of the working hours, (iii) remote work

Provide comprehensive business information on funding opportunities

Consider creation of a separate section on state web resources on SME access to finance.
Ensure aggregation of relevant information on funding and educational programs for SMEs.

Donor, banking and budget support programs are posted on the SME.DO platform https://sme.gov.ua/support_programs/

The website of the Ministry of Economy contains a list of SMEs support programs <https://www.me.gov.ua/Documents/List?lang=uk-UA&id=5dee0c19-31f9-4a56-9f86-c05dc322cbb4&tag=ProgramiPidtrimkiPidprintsiv>

2.3. NEW SYSTEMIC REPORT ON TAX ISSUES “ADMINISTRATION OF TAXES PAID BY BUSINESS”

After publishing 15 systemic reports, each dedicated to a separate unique topic, this time Council for the first time returns to the issue of **taxation** already attended to in the past. In the new systemic report, the Council set for itself an ambitious task of covering the most painful tax issues for business it has encountered in its practice since its inception back in 2015.

The Report commences by focusing on specific problems related to administration of the following four taxes paid by businesses in Ukraine: **value added tax (VAT)**, **unified social contribution (USC)**, **single tax** and **corporate profit tax**.

As far as **VAT** is concerned, the Council primarily attended to problems faced by business due to the manner in which newest tools of its administration are functioning, namely — **the Unified Register of Tax Invoices (URTI)**, the **System of Electronic Administration (SEA)** and the **System of Monitoring Tax Invoices Compliance with Risk Criteria (SMKOR)**. Besides, the Council examined problems “traditionally” ascribed to this tax — i.e., **completeness of declaration and payment of VAT during tax inspections** and delays with its **refund**.

While analyzing complaints related to USC, the Council started with the issue (which emerged in 2017) of **a single contribution accrual to “dormant” (non-operating) entrepreneurs**. Thereafter the Council highlighted several issues related to application of **USC privileges**. At the end of the chapter, the **problems related to USC arrears recording system** were scrutinized.

Turning to the study of **simplified taxation system (single tax)** — which plays an extremely important role in the life of small business in Ukraine — the Council begins with the problematic aspect of **determining and applying rates** of this local tax. Thereafter, the Council raises a comprehensive set of issues stem-

ming from the fact that minor violations of businesses can often result in a **loss of their right to remain on the simplified taxation system** and, in addition, gives rise to an extremely strict **liability**.

In the chapter devoted to **corporate profit tax**, it was decided to selectively touch upon several problematic aspects that businesses frequently report to the Council: (i) the practice of non-recognition of **expenses having “no business purpose”** by tax authorities; (ii) controversial issues related to calculation of **advance payments** of this tax; and (iii) disputes arising from accounting certain common types of financial transactions carried out within groups of companies.

The Report then proceeds to consideration of selected **procedural aspects of conducting tax audits** (particularly, **formation and periodic adjustment** of inspection **plans-schedules**, **ordering of unscheduled inspections**, performing such procedural actions during inspections as **requesting documents**, **taking physical inventories of tangible assets**, etc.). Attention is also paid to the importance of establishing the correct **key performance indicators (KPIs)** for control and audit activities.

In the chapter on **tax authorities’ decisions appeal** the Council, without going into detail of general issues already covered in the last year's specialized systemic report, dwelled on a number of tax specific aspects of this sphere. In particular, we addressed both the procedure for **considering objections to tax audits reports** as well as the **actual administrative appeal of tax authorities’ decisions to the State Tax Service of Ukraine**.

The remaining chapters of the systemic report deal with **generalized tax consultations (GTC)**, **disclosure of public information by tax authorities** and **maintenance of taxpayers’ integrated cards (TIC)**.

2.4. SUMMARY OF IMPORTANT INVESTIGATIONS

In this chapter you may read illustrations of recommendations the BOC issued to various government agencies and the results of their implementation.

TAX ISSUES

Subject: Inclusion in lists of risky taxpayers

Leading rice supplier is no longer a risky taxpayer

Complainee:

State Tax Service (STS), Main Department of STS in Kyiv (MD STS)

Complaint in brief:

The Council received a complaint from the leading supplier and producer of grain for supermarket chains. The enterprise complained about blocking of tax invoices and its further inclusion in the list of high-risk taxpayers.

The issue emerged when the MD STS started to systemically block the tax invoices of the company. From November 2019 till January 2020 there were around 64 blocked tax invoices. However, there was another unpleasant news ahead — the complainant was included in the list of risky taxpayers. In order to prove the decision was ungrounded the company appealed to the STS, although unsuccessfully. The Council commenced to consider the case.

Actions taken:

The Council's investigator examined the case and concluded that the complaint was substantiated. In the letter to the STS the Council supported the position of the complainant. The investigator highlighted that the enterprise must be excluded from the risky taxpayers list. The Council assisted the complainant to organize a meeting with the leadership team of the tax authority. As a result, MD STS informed the enterprise that it needed to send additional documents to prove operations with the counterparties. The Council recommended the tax authority to objectively and impartially consider the documents of the complainant in order to exclude him from the list of risky taxpayers and unblock tax invoices.

Result achieved:

Having considered the documents provided, the controlling authority decided to exclude the enterprise from the risky taxpayers list. The complainant thanked the Council: "On my own behalf and on behalf of the numerous staff, I would like to express my gratitude for the attention paid to consideration of the complaint of our company. I believe that the selected strategy of compromise and mutual respect directly affected the outcome of the work done. I sincerely wish you victories in further protection of business interests". The case was successfully closed.

Subject: Tax inspections**Bank manages to avoid income tax repayment****Complainee:**

Large Taxpayers' Office (LTO)
of the State Tax Service of
Ukraine (STS)

Complaint in brief:

A Ukrainian bank turned to the Business Ombudsman Council with a complaint about LTO actions. The institution disagreed with the tax audit findings according to which it had to pay additionally UAH 1 mn in taxes.

At the end of 2018, the Complainant acquired another bank and thus inherited all the rights and obligations of the latter. Both institutions paid taxes for 2018. However, following the tax audit, the LTO concluded that the Complainant had understated its financial result before taxation and had not paid an income tax for the affiliated bank.

Actions taken:

The Council's investigator carefully investigated the materials of the complaint, as well as the Complainant's tax reporting. The Council found out the LTO conclusions on the financial result understatement before taxation was not true, because they did not take into account that the respective part of the financial result was shown in the affiliated bank's tax declaration for the last reporting period before acquisition. This institution, in turn, properly paid all the necessary taxes. If the tax decision was left in force, it would require the income tax to be re-paid.

The Council's investigator participated in the complaint materials review at the STS. The Council also asked the tax authority in writing to properly consider the bank's complaint and consider the Council's proposals.

Result achieved:

The STS accepted the Council's arguments and cancelled the decision in favor of the Complainant. The institution managed to avoid double income tax payment. The case was closed successfully.

Subject: Tax inspections**Tax additional payments dropped for Zaporizhzhia agrocompany****Complainee:**

The Main Department of the State Tax Service in Zaporizhzhia Oblast (Zaporizhzhia STS)

Complaint in brief:

An agrocompany from Zaporizhzhia Oblast approached the Council. The Complainant disagreed with the additional tax payments worth over UAH 600k.

During the audit, Zaporizhzhia STS found out the Complainant had violated a number of the Tax Code provisions, namely he had understated the VAT subject to be paid to the budget and had not registered the relevant tax invoices.

Thus, Zaporizhzhia STS's conclusions were based on the following:

- the Complainant wrote off the grain as "dead waste" in respect of which there were no sorting and drying certificates to confirm the quality, weediness and humidity as well as permits that would confirm the existence of the waste as such, their location and disposal;
- excessive use of mineral fertilizers, which could reduce sown crops yield or cause their death;
- the company's tractor drivers made inaccuracies in naming agricultural works performed in the primary documents drawn up during transportation of hay, firewood and waste, baling straw, disking, gardens plowing, in connection with which Zaporizhzhia STS established an inappropriate diesel fuel use;
- the Complainant did not accrue tax obligations, deducting costs due to loss of crops as a result of the drought.

Disagreeing with the tax authority's conclusions, the company appealed them in the STS and asked the Council for help.

Actions taken:

Having examined the case file, the Council upheld the company's position. The Council asked the STS in writing to properly consider the company's complaint and consider the respective arguments. The Council's investigator also participated in the company's case consideration at the STS.

Result achieved:

The STS accepted the Council's arguments and satisfied the company's complaint. Additional payments worth over UAH 600k were dropped successfully. The Complainant thanked the Council for participating in the consideration and resolution of the case.

Subject: Tax inspections**State Tax Service drops additional payments worth UAH 727k for equipment manufacturer****Complainee:**

The Main Department of the State Tax Service in Ivano-Frankivsk Oblast (STS)

Complaint in brief:

A machine-building enterprise Poberezkyi Press Aggregates Manufacturing Plant PJSC addressed the Council. The Complainant disagreed with the tax audit findings, according to which he had to additionally pay about UAH 1 mn in taxes.

The tax authority stated the Complainant had understated his VAT liabilities. In particular, according to tax officers, the Complainant's transactions with certain counterparties were non-commodity, which resulted in the formation of a "sham" tax credit for VAT payment. Therefore, the STS accrued the company VAT and penalties.

Disagreeing with these findings, the company appealed them in the STS and also sought assistance from the Council.

Actions taken:

After examining the circumstances of the case, the Council fully supported the company's position.

As regards a transaction with one of the counterparties, the Council's investigator in charge drew the STS's attention to the fact of presence of a CMR not checked by the local tax office, which confirmed the origin of goods and the fact of shipment.

As for sham nature of the Complainant's other counterparty, the Council refuted the supervisory authority's arguments by referring to the respective company's active participation in a significant number of tenders during which other customers had the opportunity to thoroughly check the company's legal identity.

The Council's investigator also participated in the administrative hearing of the company's complaint at the STS, where he upheld the company's position again.

Result achieved:

The STS upheld the Council's arguments regarding the Complainant's transactions with one of the counterparties and dropped additional payments worth UAH 727k. The case was closed successfully.

Subject: Tax inspections**The State Tax Service drops fine for Kyivtransbud construction company****Complainee:**

The Main Department of the State Tax Service in Kyiv (STS)

Complaint in brief:

A Kyivtransbud construction company approached the Council. The Complainant disagreed with the conclusions of the in-house tax audit, according to which he had to pay a fine of about UAH 60k.

The tax authority stated that the Complainant had violated tax invoices registration deadline in the Unified Register of Tax Invoices (URTI). Despite tax invoices timely submission for registration by the Complainant, the supervisory authority rejected their acceptance due to alleged Complainant's lack of the necessary VAT registration limit amount.

Disagreeing with such conclusions, the company appealed them to the STS and also sought help from the Council.

Actions taken:

After examining the circumstances of the case, the Council fully upheld the company's position.

The Council's investigator in charge first of all drew the STS attention to the fact that the Complainant had a sufficient VAT registration limit amount to register tax invoices. It was confirmed by a letter from the State Treasury Service of Ukraine on the receipt of funds on the Complainant's account in the VAT Electronic Administration System (SEA VAT).

When addressing the STS, the Council also referred to the relevant practice of the Administrative Cassation Court of the Supreme Court and STS explanations in the public information and reference source. Thus, the respective authorities pointed out that a taxpayer could not be held liable for a delay in registration of a tax invoice if the funds were untimely transferred to such taxpayer's electronic account in SEA VAT.

Having suggested holding a meeting by teleconference, the Council's investigator also participated in the administrative consideration of the complaint, where he upheld the company's position again.

Result achieved:

The STS accepted the Council's arguments regarding illegal application of fines to the Complainant. The case was successfully closed.

Subject: Tax inspections**Over UAH 2 mn. fines
for a leading producer
of sauces rescinded****Complainee:**

State Tax Service of Ukraine
(STS), Office of Large
Taxpayers of STS (OLT)

Complaint in brief:

The Business Ombudsman Council received a complaint from a leading Ukrainian producer of sauces and margarine. The complainant disagreed with the decision of the tax authority to impose a fine on the complainant due to late registration of its VAT invoices. According to the company, it could not register tax documents on time because of the seizure of the company's account in the VAT electronic administration system. Once the court lifted the seizure, the company sent all the pending VAT invoices for registration. At that moment the number of stuck VAT invoices was close to 3,5k of files.

However, following the tax audit results, the OLT imposed a fine in the amount of more than UAH 2 mn on the company. Disagreeing with such a decision, the company immediately appealed to the Council.

Actions taken:

Having examined the complaint, the Council supported the position of the complainant. The Council recommended in writing to ensure a comprehensive and impartial consideration of the case.

The investigator ascertained that late registration of the VAT invoices was not the fault of the company. Furthermore, the company did not avoid its tax duty and registered all the VAT invoices at its earliest opportunity.

The investigator participated in the case consideration. In view of quarantine restrictions, the discussion of the case file took place by trilateral audio conference.

Result achieved:

the STS upheld the arguments of both the complainant and the Council, and satisfied the company's complaint. By such a decision the STS has demonstrated its consistency while considering similar complaints. Additional payments worth over UAH 2 mn were dropped.

Subject: Tax inspections

"Family contract" in the tax officials' spotlight

Complainee:

The Main Department of the State Fiscal Service of Ukraine in Kyiv Oblast (MD STS Service in Kyiv Oblast)

Complaint in brief:

A private entrepreneur from Kyiv Oblast turned to the Council. The entrepreneur disagreed with the tax audit findings, according to which he had to additionally pay almost UAH 90k in taxes (and, besides, another UAH 65k of the unified social contribution (USC).

The entrepreneur-son bought freight services from his entrepreneur-mother — that's the way they decided to structure their business. The mother owned trucks, and the son traded in goods. When he needed a truck to carry goods, he bought freight services from his mother. Although such a business model is a bit unusual, however, it is quite legal and not aimed at tax evasion.

Notwithstanding that fact, the tax authority did not like something in this scheme. They decided that the transportation price included two components, the first of which — the actual cost of transportation of goods from the loading point to the unloading point — could be treated as deductible expenses of the customer. The second part — the cost of the vehicle's arrival for loading and its return to the parking lot after unloading — in view of the tax authority, could not be deducted by the customer.

Disagreeing with the tax authority's conclusions, the individual entrepreneur appealed to the SFS of Ukraine and asked the Council for assistance.

Actions taken:

After examining the case file, the Council upheld the complainant's position. The Council concluded that division of the freight price into two components by the tax authority was artificial and did not correspond to the established business practice in the car transport field, according to which the cost of the so-called "empty" or "zero" mileage (legs of the route on which the truck moves empty) is always included in transportation costs. But even if we move away from this practice and allocate a separate cost of the truck's arrival for loading and its return to the parking lot after unloading — these components would still be integrally linked to the actual transportation of goods (and, accordingly, would be in the same way connected with the customer's economic activities as the transportation itself). Therefore, the conclusion that the private entrepreneur had no right to deduct a part of his transportation costs seemed unreasonable to the Council. The BOC informed the SFS of Ukraine in writing thereof and proposed to cancel disputed decisions.

Result achieved:

The Council's investigator managed to convince the SFS of Ukraine to cancel ungrounded additional payments for the private entrepreneur.

Cancelling tax authority's decisions on additional tax accruals would logically have as a consequence cancellation of USC additional payments — another problem with similar origins faced by the complainant. However, due to the deficiencies of certain procedures related to the USC administration, this part of the complaint continues being addressed in a separate case.

Subject: Tax other

The tax authority enforces court decision in favor of private entrepreneur

Complainee:

The Main Department of the State Tax Administration in Kyiv city (MD STS in Kyiv)

Complaint in brief:

A private entrepreneur from Kyiv engaged in legal activities and paying considerable taxes amounts to the local tax office, turned to the Business Ombudsman Council. The tax authority refused to comply with the court decision, which canceled the private entrepreneur's debt worth UAH 180k. It is interesting that due to failure to enforce the court decision the entrepreneur actually could not officially conduct his activities and respectively pay taxes to the budget.

The way how the complainant's debt appeared is a separate story. Back in his day, the entrepreneur, when paying taxes, transferred money to the bank on time and in full. However, further the bank went bankrupt failing to transfer money to the tax authority. The case-law in such cases is in favor of the taxpayer — if he submitted payment orders to the bank, it is considered that he has fulfilled his obligations to the budget.

Therefore, in July 2017, Kyiv City District Court (Court) obliged the tax authority to amend the private entrepreneur's personal single tax account card to show a single tax in the mount of UAH 180k. The decision came into force in May 2018.

However, the tax authority was in no hurry. The Complainant had to seek help from the BOC.

Actions taken:

The Council's investigator asked the MD STS in Kyiv and the STS in writing to take comprehensive actions to enforce the court decision. However, the STS replied it was not obliged to enforce the court decision because it was not a party to the Complainant's

administrative case. The MD STS in Kyiv also tried to find formal grounds for refusing to enforce the decision.

The Council held a meeting devoted to this issue with the MD STS in Kyiv representatives and the Complainant.

The Council also brought up the private entrepreneur's case for consideration of the expert group meeting with the STS representatives. The STS stated they had no technical capability to enforce the decision, but the supervisory authority was working on developing the corresponding tool.

Result achieved:

In March 2020, the STS informed the Council in writing the Complainant's debt is not accounted any more. With the Council's facilitation, the private individual managed to defend his legal rights and avoid re-payment of UAH 180k.

ACTIONS OF STATE REGULATORS

Subject: Other state regulators

The State Treasury pays the debt to the construction company

Complainee:

The State Treasury Service of Ukraine Department in Darnytskyi district of Kyiv (State Treasury)

Complaint in brief:

The Council received a complaint from a Kyiv-based construction company. The enterprise complained about the State Treasury that did not pay a debt of UAH 2.5 mn for the work the complainant had performed for the utility company.

The debt was confirmed by the order of Economic Court of Kyiv. The court decision on debt repayment had already become effective and was sent to the State Treasury for enforcement. Despite numerous Complainant's appeals, the State Treasury delayed debt amortization.

Actions taken:

Having examined the circumstances of the case, the Council's investigator in writing addressed a chief budget funds administrator in the respective district of Kyiv. The investigator asked to arrange a meeting engaging all the parties to solve the company's issue.

Result achieved:

The meeting turned out to be surprisingly effective. The debtor's utility company director informed the debt of the Complainant was repaid in full. The company confirmed the funds came to its account on the same day. The case was closed successfully.

Subject: Other state regulators

With the support of the Council disinfectants of two manufacturers re-registered

Complainee:

Ministry of Health of Ukraine (MOH)

Complaint in brief:

The Council received complaints from two well-known antiseptic manufacturers that could not re-register their disinfectants. The companies have been present in Ukrainian personal hygiene market for years. According to the legislation, they updated registration of their products every five years. However, since 2018 the procedure of the state registration of disinfectants changed: instead of the State Sanitary and Epidemiological Service the responsibility for the registration of antiseptics was shifted to the MOH. Due to the absence of the regulatory framework the new procedure had not come into operation. Since then no manufacturer could register or re-register its goods. In this way, disinfectants continued to store and their expiry date was slowly approaching. The manufacturers appealed to the Council for help.

Actions taken:

Having examined the case file, the Council acknowledged that the complaints of the enterprises were reasonable. The investigators concluded that the situation had signs of a systemic problem that affected interests of all manufacturers of disinfectants. The Council took the issue under control and recommended the MOH to complete the preparation of regulatory acts for registration of disinfectants. To discuss the complaints, the Council conducted a working meeting with the deputy minister and chief sanitary doctor.

Result achieved:

The outbreak of coronavirus in the world triggered the resolution of the issue. The MOH upheld recommendations of the Council. In March 2020 the Cabinet of Ministers of Ukraine adopted the Regulation No. 908 that facilitated the state registration (re-registration) mechanism of disinfectants. On this ground, our complainants successfully re-registered disinfectants that had their registration expired last year. The products important for the quarantine appeared in stores. The case was successfully closed.

CUSTOMS ISSUES

Subject: Customs other

Fapomed Ukraine cargo successfully crosses the border

Complainee:

Zakarpattia Customs of the State Customs Service of Ukraine

Complaint in brief:

A garment factory producing surgical gowns turned to the Business Ombudsman Council. The company's cargo was detained at the border.

Fapomed Ukraine LLC is a company with 100% foreign investment. It was established by Portuguese investors in 2007 by opening a factory in Rivne Oblast. As of now, the company employs over 260 employees.

According to the complainant, all garments, which were shipped according to the customs regime of "re-export", had been made from the foreign raw materials. Fabric, lining, velcro fasteners, packaging paper and other accessories come from a foreign customer and cleared as "to be processed in the customs territory of Ukraine". In March 2020, the goods made from raw materials which had been received for processing in 2019 were sent for re-export. It should be pointed out the medical gowns detained at customs were intended to be used by surgical team members in the operating room to prevent transmission of bacterial agents, not viruses. These medical products were not anti-epidemic and suitable for use against Covid-19.

However, after products having been detained at the border, the further company's operations in Ukraine were under threat. The point is that provisions of the Cabinet of Ministers of Ukraine Resolution No.1109 dated December 24, 2019 (the "Resolution No. 1109") relating to restrictions on export and import of certain products, did not give a clear idea of whether restrictions also apply to re-export of products.

Actions taken:

The Council's investigator carefully examined complaint materials and the legislation regulating it. In particular, according to the Customs Code of Ukraine, re-export and export are two different customs regimes. At the same time, the Law of Ukraine "On Foreign Economic Activity" defines re-export through the concept of export.

Upon the complaint receipt, the Council addressed the State Customs Service of Ukraine ("SCS") and drew the attention to the existing inaccuracy in the text of the Resolution №1109 and possibility of its double interpretation. The SCS confirmed that, in their opinion, the provisions of Resolution №1109 should not apply to re-export. Afterwards, the SCS sent a corresponding letter to the Cabinet of Ministers of Ukraine ("CMU").

Result achieved:

As a result, in early April, the CMU adopted the Resolution No.268, which amended the Resolution No.1109. It was clearly stated in the new document that restrictions in the Resolution No.1109 did not apply to re-export.

After the respective changes and clarifications of the SCS, the complainant sent a new truck with a batch of goods abroad. In early May, the complainant confirmed successful customs clearance and thanked the Council for assistance in resolving the issue: "This period of time was extremely tough for our company — we reduced our activities, broke delivery terms and risked losing customers and markets. In addition, Goshchanskyi District and Rivne Oblast budgets have already been underfunded by a substantial tax revenues amount, which will have an adverse effect in the periods to come, and all this is taking place in the background of a growing economic crisis. We thank the Council's team for their support and assistance in resolving this case".

ACTIONS OF THE NATIONAL POLICE

Subject: National Police inactivity

Property returned after triple arrest cancellation

Complainee:

The Main Investigations Directorate of the National Police of Ukraine (MID NP)

Complaint in brief:

The Council received a complaint against law enforcers' inaction from the capital city IT company. The company complained that MID NP officers did not return temporarily seized property to it for a long time.

Particularly, at the end of 2018, in the framework of the pre-trial investigation, law enforcers searched the office rented by the complainant. During the search, inter alia, the HR documentation and computer equipment were seized. Law enforcers did not have a relevant permit to do so, hence the Prosecutor General's Office of Ukraine (PGO) subsequently filed a petition for the property's arrest.

An investigative judge almost immediately arrested the company's property, but two months later the company managed to cancel this arrest in court. However, the investigating judge re-arrested the same property again already in a week. After filing an appeal for the second time, in June 2019 the complainant again succeeded in overturning such a decision.

Despite the fact the complainant couldn't return the property — the MID NP stated it did not receive the relevant appellate court ruling on arrest cancellation. Therefore, the company challenged inactivity of the MID NP to the investigating judge, who satisfied the complaint and obliged the MID NP's investigators to return the property, which was temporarily seized from the owner more than six months ago.

Further on, the complainant submitted petitions to return the property, but only received refusals from the MID NP. The reason for that was non receipt of either the appellate court's ruling on the arrest cancellation, or the investigating judge's order to return the property. At the same time, responding to the complainant's attorney's letters of inquiry, the District Court confirmed the fact of sending copies of the rulings to the MID NP for their enforcement.

Seeking support, at this stage the company turned to the Council with this issue.

Actions taken:

After examining the case files, the Council asked the MID NP and the PGO in writing to find out whether law enforcing officers complied with the court order. The PGO replied briefly: there were no legal grounds to return the property seized from the complainant. At the same time, the MID NP reported no court rulings for execution were received.

It is noticeable that after the Council's involvement in the fall of 2019, the complainant became aware that a few months ago his property had been arrested for the third time, although neither such investigating judge's decision was reported about anywhere nor was it available from the Unified State Register of Judgments. Following the complainant's appeal to the appellate court, the arrest was canceled for the third time before the New Year holiday season.

So in January 2020, the Council's investigator brought up the company's issue for the Expert Group discussion with participation of the Council's and MID NP's representatives. The Council's experts emphasized that property that was not under arrest, could not be illegally kept by law enforcement agencies and must be immediately returned to the enterprise. As a result, the MID NP officers assured they would comply with the court ruling after the complainant applied to the investigator with the relevant application.

Result achieved:

In February 2020, the PGO reported on the return of property to the enterprise. However, the story did not end there: the complainant informed the Council that during February of 2020, the MID NP

indeed returned all the money and some of the equipment seized. This property, however, did not belong to the complainant but to third parties against whom a search and other procedural actions were also conducted in December 2018. The complainant's equipment, as was reported to its lawyers, was in the expert institution at that time, which meant that the MID NP had to take additional actions to return it to its owner.

The complainant reported on the successful return of its property in full only in March. Thus, thanks to mutual efforts of both the company's lawyers and the Council's team, after more than a year temporarily seized property and equipment were returned to the legitimate owner.

The company thanked the Council's team for their help: "Highly professional Business Ombudsman experts [...] managed to successfully provide support of the Company's relationship with the representatives of the Prosecutor General's Office of Ukraine and the National Police of Ukraine that resulted in a full return of the property illegally seized from the Company".

Subject: National Police criminal case initiated

Everyone should do his job: jurisdiction changed

Complainee:

Investigative Department
of the Main Directorate of
the National Police in Odesa
Oblast (Odesa NP)

Complaint in brief:

The Business Ombudsman Council received a complaint against Odesa law enforcers' actions. The Complainant is a group of companies specializing in servicing construction objects sought help to change the criminal case jurisdiction initiated against its former CEO.

According to the Complainant, the ex-chairman of the cooperative abused her office, defrauded investors and misappropriated the company's assets. The Complainant turned to the National Police with a relevant application, criminal proceedings against her were initiated.

However, the investigation was entrusted to a department usually dealing with completely different categories of cases. That set the Complainant on the alert. Besides, according to the cooperative, law enforcers deliberately delayed consideration of the case. The

Complainant got even more surprised when several counter criminal cases were opened against him.

Convinced that the department's investigators were personally interested in protecting the ex-CEO, the Complainant appealed to the Council.

Actions taken:

Having carefully examined the case file, the Council concluded the Complainant's appeal was substantiated. In particular, several court decisions showed that officers investigating the former CEO case could be a concerned party to the relevant criminal proceedings.

The Council addressed the PGO in writing asking to consider the Complainant's appeal and to make an impartial decision thereon. The investigator stressed another department should be in charge of the case investigation.

Result achieved:

The PGO accepted the Council's arguments and referred further case investigation case to the State Bureau of Investigation located in Mykolaiv. The Prosecutor General's Office took control of the pre-trial investigation of mentioned criminal cases. The case was closed successfully.

Subject: National Police criminal case initiated

BIIR Property finally becomes the legal owner of purchased real estate

Complainee:

The Main Department of the National Police in Odesa Oblast (National Police)

Complaint in brief:

BIIR Property, a subsidiary of BIIR Danish engineering company approached the Council. Due to active criminal proceedings, the complainant could not become the legal owner of the recently purchased real estate.

In order to expand business in Ukraine, in September 2019, the investor purchased a building in Odesa with an area of almost 2000 m². The premises purchase agreement was concluded through "Prozorro" electronic bidding (procurement) system. In total, the building for the future office cost the company over UAH 9 mn.

However, the complainant was unable to register his legitimate right to his own real estate.

Actions taken:

As the Council's investigator found out, a part of the building (1/10) was arrested by the court after it had been purchased by the complainant. The reason for this was the appeal of citizen D. and, accordingly, criminal proceedings under the article "fraud" were initiated. According to the complainant, the criminal case had been opened absolutely groundlessly, and the information of citizen D. was untrue. According to the company, this indicated that the applicant had provided a deliberately false information to prevent the complainant from registering his ownership right of the acquired object.

Indeed, six weeks later the arrest was lifted. However, criminal proceedings against the part of the building were ongoing. Therefore, at the beginning of 2020, the company's lawyer turned to the National Police with a request to submit additional documents to the case file as evidence, as well as to conduct investigative actions, particularly questioning the citizen D.

The BOC asked the Prosecutor's Office in Odesa Oblast and the Main Department of the National Police in Odesa Oblast in writing to check the legality of the preliminary investigation. In particular, the investigator stressed the importance of compliance with the consideration terms of the attorney's motion on investigative actions.

The Council brought up the company's case for consideration at the meeting of the expert group set up pursuant to Memorandum of Cooperation between the BOC and the Prosecutor General's Office.

Result achieved:

In February 2020, the Prosecutor's Office in Odesa Oblast rejected the complainant's attorney's petition, but instructed the investigator to intensify the pre-trial investigation.

Investigation intensification brought the anticipated desired result — at the end of March 2020, the criminal proceedings were closed. The case was successfully resolved.

ACTIONS OF THE MINISTRY OF JUSTICE

Subject: Department of State Registration

**Raider attack against
enterprise from Kharkiv
Oblast fought back**

Complainee:

Notary and State Registration
Department of the Ministry
of Justice of Ukraine

Complaint in brief:

Spouses from Kharkiv, founders of the company dealing with carrying passengers turned to the Business Ombudsman Council. A hostile takeover of the company was performed through making amendments to corporate documents and public registers.

The couple learned by chance that the state registrar changed the company's shareholders, CEO and the signatory on the basis of forged documents. The only shareholder of the company was the other legal entity; the Complainants' immovable property was transferred to the company's share capital as a contribution.

Since the Complainants neither participated in the shareholders meeting as set forth in forged documents nor applied to notaries, nor did they initiate any mentioned registration changes or signed relevant documents, it was obvious they had been attacked by raiders.

The entrepreneurs immediately contacted the Ministry of Justice State Commission for Consideration of Complaints in the Field of State Registration (Commission) and filed a complaint with the BOC.

Actions taken:

After examining the circumstances of the case, the Council's presented its position in a letter to the Commission and requested that it provide a full, comprehensive and impartial consideration of the Complainant's case.

Result achieved:

The Ministry of Justice reported on a full satisfaction of the complaint. The challenged registration actions were cancelled and up-to-date information in state registers was restored.

3. COOPERATION WITH STAKEHOLDERS

One of the Business Ombudsman Council's key goals is providing effective systemic communication of business with the authorities, government and local self-government agencies, as well as state-owned enterprises or subordinate to government agencies.

3.1. DRAFT LAW #3607 "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE"

WHY IS IT IMPORTANT TO ADOPT THE LAW?

On June 5, 2020, the Verkhovna Rada registered a new Draft Law №3607 on the Business Ombudsman Institution in Ukraine. The authors of the Draft Law No. 3607 are Dmytro Kysylevskyi, Ihor Marchuk, Dmytro Natalukha and supported by a total of 39 deputies, representing almost all Parliamentary factions and groups.

The Draft Law enhances Business Ombudsman's opportunities to protect business, defines a clearer procedure for reviewing complaints, establishes an independent status of the Business Ombudsman Institution as a non-profit organization, unlike the current status of an advisory body under the Cabinet of Ministers.



We have prepared a short video presenting the Draft Law #3607 and explaining why it is important to secure the status of the Business Ombudsman institution in the law.

WATCH IT HERE: [HTTPS://BIT.LY/BOC_3607](https://bit.ly/BOC_3607)

In this respect,
THE BUSINESS OMBUDSMAN
MARCIN ŚWIĘCICKI NOTED:

'ADOPTION OF THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE" WILL BE A GOOD SIGNAL FOR UKRAINIAN AND INTERNATIONAL INVESTORS, IT WILL REASSURE THAT UKRAINE IS GUIDED BY THE RULE OF LAW AND USES ALL THE TOOLS TO PROTECT BUSINESS INTERESTS AGAINST POSSIBLE GOVERNMENT AGENCIES MALPRACTICE'.

Previously, the Deputy Chairman of the Committee on Economic Development of the Verkhovna Rada Dmytro Kysilevskyi suggested deputies withdrawing the previous version of the law being a transitional one from the Rada of the eighth convocation.

'THE OLD VERSION HAS BECOME IRRELEVANT, WHILE THE BUSINESS OMBUDSMAN'S ACTIVITY IN UKRAINE HAS NOT. THE NEW VERSION OF THE DRAFT LAW TAKES INTO ACCOUNT PREVIOUS VERSIONS DEFICIENCIES AND MEETS PRESENT-DAY REALITIES. LEGAL STATUS SETTLEMENT OF THE BUSINESS OMBUDSMAN WILL HELP BETTER PROTECT UKRAINIAN BUSINESS',
SAID DMYTRO KYSILEVSKYI.



KEY NOVELTIES OF THE DRAFT LAW OF UKRAINE #3607 "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE"

Current basis of operations — the Resolution of the Cabinet of Ministers of Ukraine

Required basis of operations — the Law on the Business Ombudsman Institution

1. CHANGE OF A LEGAL STATUS

- From a permanent advisory body to the Cabinet of Ministers of Ukraine, the Business Ombudsman Council (BOC) is transformed into a non-governmental non-profit organization: the Business Ombudsman Institution.
- The special status of the Institution is needed for guaranteeing its independence from state bodies that can interfere in its activities.
- The establishment of territorial offices of the BOC will become possible in the regions and the Autonomous Republic of Crimea.

2. INTRODUCTION OF MECHANISMS FOR IMPLEMENTING SYSTEMIC RECOMMENDATIONS

One of the BOC key tasks is the development of recommendations to state bodies in order to improve conditions for conducting business in Ukraine, prevent corruption and other malpractice of state bodies. With this objective, the BOC submits proposals and recommendations to the Cabinet of Ministers of Ukraine on how to solve systemic business issues. However, the Resolution lacks mechanisms through which the Council could influence the implementation of its systemic recommendations.

In this respect, the Draft Law sets forth the following important changes:

- as a matter of priority, the BO has the right to meet all officials of all state bodies, local government authorities, etc.
- a quarterly reception with the Prime Minister of Ukraine to discuss the most pressing obstacles to doing business in Ukraine based on the view of the Business Ombudsman.
- a right to attend (and to speak) at the meetings of the Verkhovna Rada of Ukraine, the Cabinet of Ministers of Ukraine, governmental committees, etc. in accordance with the parliamentary procedure of these institutions.

3. ESTABLISHING A PROCEDURE FOR COMPLAINTS REVIEW AT THE LEGISLATIVE LEVEL

The procedure for submission, processing and consideration of complaints from businesses is determined by the BOC Rules of Procedure. This document is approved by the Supervisory Board and may be amended by its decision at any time.

- The Draft Law establishes mandatory eligibility criteria for complaints review, an exclusive list of grounds for termination of the complaint and the types of decisions that the BOC may adopt.
- It ensures the procedure for complaints review is more stable, unified and well-defined, so that complainants will have realistic expectations of the BOC intervention.
- These provisions will create a firm duty for the BOC to deal with individual complaints, the non-compliance with which may be challenged by interested parties in court.

4. REGULATING THE OBLIGATION TO COOPERATE WITH THE BUSINESS OMBUDSMAN OFFICE

State authorities and local self-government bodies, their officials are obliged to act only on the basis and in the manner provided by the Constitution and laws of Ukraine. Therefore, for example, in order to get necessary documents for investigation, the BOC has to use the General Act on Access to Public Information.

- The Draft Law establishes a duty to cooperate with the Office of Business Ombudsman.
- The Draft Law obliges those bodies that are not subordinated to the Cabinet of Ministers of Ukraine (in particular, prosecutors, law enforcement, local self-government bodies, etc.) to cooperate with the BOC.
- The Draft Law extends administrative responsibility for unlawful refusal to provide information, untimely provision of information, provision of untrue information at the request of the BOC.



5. RENEWED INSTRUMENTS TO GIVE RESPONSE TO STATE BODIES MALPRACTICE

- The Resolution does not impose any obligations to respond to requests of the BOC, so the proper response of the authority so far is mostly the result of its "good will".
- The Resolution does not give the BOC the right to participate in the administrative appeal procedures.
- The Council sometimes faces situations when state bodies do not allow it to attend personal receptions with public officials or refuse to arrange working meetings. Such refusals are motivated by the fact that the BOC employees are not authorized representatives of the business.
- The Draft Law provides that the appeal of BOC is a document for mandatory consideration and requires a reasoned answer.
- State bodies are required to respond to a BOC appeal by providing it with information describing measures or actions taken to remedy malpractice or a reasoned explanation why such actions were not taken.
- The Draft Law gives a right to the BOC representative to take part in the administrative appeal procedures.
- The Draft Law will solve this issue since it establishes the right of the Business Ombudsman to freely visit state bodies, state companies, and court hearings.

6. SUPERVISORY BOARD

- The Supervisory Board of the BOC consists of the representatives of the Government (block 1); EBRD and OECD (block 2); and 5 Ukrainian business associations (block 3). The Supervisory Board provides a general review without a right to intervene in investigations and recommendations of the BOC.
- Block 3 consists of the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Employers of Ukraine, the Ukrainian Chamber of Commerce and Industry and Ukrainian League of Industrialists and Entrepreneurs.
- The Resolution does not foresee inclusion of other organizations in the Supervisory Board and is limited to the participants who signed the Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative dated 12 May 2014.

In addition to present regulations the Draft Law:

- Defines the criteria and mechanism for other business associations to join the BOC Supervisory Board.
- Provides the possibility of voluntary withdrawal of business associations from the BOC Supervisory Board.



MEETINGS REGARDING THE DRAFT LAW WITH THE VRU COMMITTEE ON ECONOMIC DEVELOPMENT AND DEPUTIES

The need to adopt the law concerning the Business Ombudsman Institution was voiced by leading business associations in Ukraine — they sent letters of support with respect to the Draft Law to key responsible state bodies.

Prior to the registration of the Draft Law the BOC team, headed by Marcin Świąćicki, took part in two meetings of the Verkhovna Rada's Committee on Economic Development — the dedicated committee responsible for the draft law — as well as personally met with members of the several political parties and non-affiliated people's deputies. Deputies of the Verkhovna Rada Committee on Economic Development almost unanimously recommended the Draft Law for the first reading at the plenary session of the Verkhovna Rada.

03/06

**BUSINESS OMBUDSMAN MADE
A PRESENTATION OF THE DRAFT
LAW TO THE VRU COMMITTEE
ON ECONOMIC DEVELOPMENT**

26/06

**THE VRU COMMITTEE ON
ECONOMIC DEVELOPMENT
RECOMMENDED THE DRAFT
LAW FOR THE FIRST READING
AT THE PLENARY SESSION
OF THE VRU**



WE WOULD LIKE TO EXPRESS OUR SUPPORT FOR THE ADOPTION OF THE DRAFT LAW ON THE BUSINESS OMBUDSMAN COUNCIL №3607. THIS LAW WILL STABILIZE THE OPERATION OF THE BUSINESS OMBUDSMAN COUNCIL, EXPAND OPPORTUNITIES FOR PROTECTING BUSINESS AND WILL CONTINUE FUNDING OF THE INSTITUTION BY INTERNATIONAL DONORS. THE LAW WILL GIVE A POSITIVE SIGNAL TO UKRAINIAN AND INTERNATIONAL INVESTORS, STRENGTHEN UKRAINE'S IMAGE AS A STATE IN WHICH ALL MEASURES FOR MAINTAINING THE RULE OF LAW ARE USED.

ARTEM KOSTETSKYI
DIRECTOR OF INITIATIVE GROUP
"CENTER OF DEVELOPMENT OF KHARKIV
ENTREPRENEURSHIP"

NGO BUSINESS COMMUNITY CLUB SUPPORTS THE DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE AS THE ONE THAT SUPPORTS THE DEVELOPMENTS OF SMEs IN UKRAINE.

NGO BUSINESS COMMUNITY CLUB

REPRESENTATIVES OF THE BUSINESS ALSO HIGHLIGHTED THE NECESSITY OF THE LAW ADOPTION:

OUR ORGANIZATION SUPPORTS THE DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE. SINCE THE BOC ESTABLISHMENT IN UKRAINE, THE INSTITUTION CONSIDERED A LOT OF COMPLAINTS FROM BUSINESSES AND HELPED ENTREPRENEURS TO PREVENT HUNDREDS OF MALPRACTICE EPISODES BY CIVIL SERVANTS, AND CLOSED DOZENS OF CRIMINAL CASES.

NGO WOMEN'S UNION OF CHERNIHIV REGION

THERE IS A NEED OF THE FULL ESTABLISHMENT OF THE BUSINESS OMBUDSMAN INSTITUTION AS AN INDEPENDENT THIRD PARTY AT THE LEGISLATIVE LEVEL THAT ENSURES PROTECTION OF RIGHTS OF BUSINESS ENTITIES IN THEIR RELATIONSHIPS WITH PUBLIC AUTHORITIES. WE ARE CONVINCED THAT THE BUSINESS OMBUDSMAN INSTITUTION BASED ON THE STABLE REGULATORY FRAMEWORK, WILL BECOME A SIGNIFICANT FACTOR FOR STRENGTHENING THE RULE OF LAW IN THE BUSINESS ENVIRONMENT OF UKRAINE.

ANDY HUNDER
PRESIDENT OF AMERICAN CHAMBER
OF COMMERCE IN UKRAINE

AS OF TODAY, THE BUSINESS OMBUDSMAN COUNCIL IS THE MOST EFFECTIVE BODY FOR PROTECTING THE INTERESTS OF BUSINESS IN GOVERNMENT AGENCIES. THE KEY ISSUE FOR ENSURING FURTHER EFFECTIVE FUNCTIONING OF THE COUNCIL IS THE ADOPTION OF THE DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION.

UKRAINIAN BAKERS' ASSOCIATION

THE BOARD OF THE UKRAINIAN ASSOCIATION OF FURNITURE MANUFACTURERS SUPPORTS THE BUSINESS OMBUDSMAN COUNCIL AND THE ADOPTION OF THE DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION. THIS LAW WILL STABILIZE THE WORK OF THE INSTITUTION AND EXPAND OPPORTUNITIES FOR PROTECTING BUSINESS WHICH WILL ALSO BE A POSITIVE SIGNAL FOR UKRAINIAN AND INTERNATIONAL INVESTORS.

V. PATIS
UKRAINIAN ASSOCIATION OF FURNITURE MANUFACTURERS

ADOPTION OF THE DRAFT LAW ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE WILL STABILIZE THE WORK OF THE INSTITUTION, EXPAND THE OPPORTUNITIES FOR PROTECTING BUSINESS AND MAKE THE FUNDING OF THE INSTITUTION POSSIBLE WITH THE SUPPORT OF INTERNATIONAL DONORS.

ACTING PRESIDENT V. BYKOVETS
UKRAINIAN ASSOCIATION OF EMPLOYERS

CURRENTLY THERE IS AN URGENT NEED FOR THE FULL ESTABLISHMENT OF THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE AT THE LEGISLATIVE LEVEL. DESPITE THE PRACTICAL APPLICATION OF THE LAW, ITS EXISTENCE WILL AIM AT SUPPORTING THE POSITIVE IMAGE OF THE COUNTRY FOR BOTH NATIONAL AND FOREIGN BUSINESS"

ANATOLIY KINAKH, PRESIDENT OF UKRAINIAN LEAGUE OF INDUSTRIALISTS AND ENTREPRENEURS

HENNADII CHYZHOV, PRESIDENT OF UKRAINIAN CHAMBER OF COMMERCE AND INDUSTRY

CURRENTLY THE KEY ISSUE TO ENSURE FURTHER EFFECTIVE FUNCTIONING OF THE COUNCIL IS THE ADOPTION OF THE DRAFT LAW "ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE" №3607, WHICH WAS REGISTERED IN THE VERKHOVNA RADA OF UKRAINE ON THE INITIATIVE OF 39 DEPUTIES FROM DIFFERENT FACTIONS AND GROUPS. WE ARE ENCOURAGING THE DEPUTIES TO ADOPT THE LAW AS IT WILL EXPAND THE OPPORTUNITIES TO PROTECT BUSINESS.

S. BYKOVETS
DIRECTOR GENERAL, THE UNION OF ENTREPRENEURS OF SMALL, MEDIUM-SIZED AND PRIVATIZED ENTERPRISES OF UKRAINE

THE ASSOCIATION OF SHIPBUILDERS OF UKRAINE "UKRSUDPROM" SUPPORTS THE LAW ON THE BUSINESS OMBUDSMAN INSTITUTION IN UKRAINE №3607, BECAUSE THE BUSINESS OMBUDSMAN COUNCIL IS AN EFFECTIVE TOOL FOR PROTECTING BUSINESS AND FIGHTING CORRUPTION, THAT IMPROVES THE BUSINESS CLIMATE FOR BOTH UKRAINIAN AND FOREIGN INVESTORS AND ESTABLISHES A CONSTRUCTIVE AND TRANSPARENT COOPERATION BETWEEN BUSINESS AND GOVERNMENT BODIES.

VIKTORI LYSYTSKYI
PRESIDENT OF THE ASSOCIATION

3.2. COOPERATION WITH STATE BODIES

THE BOC
HAS SIGNED

12 MEMORANDA
OF COOPERATION
WITH

the State Tax Service
the State Customs Service
the State Fiscal Service
the Prosecutor General's Office
the State Security Service of Ukraine
the Ministry of Environmental Protection and Natural Resources
the State Regulatory Service
the Ministry of Justice
the National Anti-Corruption Bureau
Kyiv City State Administration
the National Police
the National Agency on Corruption Prevention

EXPERT GROUP MEETINGS

Expert groups are a platform for open and transparent consideration of specific complaints, as well as improvement of the legislation that regulates entrepreneurial activity and removal of obstacles to conducting business in Ukraine.

STATE TAX SERVICE

Number
of meetings

7

Number of cases
considered during
these meetings

105

STATE CUSTOMS SERVICE

4

9

STATE FISCAL SERVICE (TAX POLICE)

1

3

MINISTRY OF ENVIRONMENTAL PROTECTION AND NATURAL RESOURCES

2

12

TOTAL

14

129

3.3. ONLINE KNOWLEDGE SEMINARS FOR BUSINESSES

Jointly with the American Chamber of Commerce in Ukraine (ACC) we continued a series of educational events for businesses. Adapting to challenges of the time with respect to the COVID-19 restrictions, we have changed the format — now we meet online. Just like before, our investigators, based on experience gained during the consideration of thousands of appeals, share expertise and relevant practical advice with business representatives.

29.05.2020 KNOWLEDGE SEMINAR "EFFECTIVE INTERACTION WITH STATE BODIES: HOW TO GAIN THEIR APPROVAL"



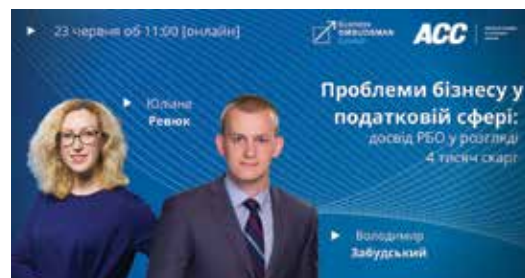
During the webinar investigators raised the following issues:

- Setting goals and planning interaction with the state body
- What must be done before meeting with the state official
- Monitoring consideration of appeals to state bodies
- Soft skills, hints and tips for the administrative appeal procedure
- How to effectively file complaints to the BOC

23.06.2020 KNOWLEDGE SEMINAR "PROBLEMS OF BUSINESS IN THE TAX SPHERE: THE BOC EXPERIENCE IN REVIEWING 4,000 COMPLAINTS"

During the webinar investigators raised the following issues:

- How the Council can help businesses in case of problems with tax authorities and what to keep in mind when approaching the Council. The most common tax related complaints lodged by businesses with the BOC
- Problematic issues faced by businesses during tax audits and their results appeal
- VAT administration related issues addressed by businesses to the Council
- Specifics of business complaints related to SMKOR system functioning: tax invoices suspension, high-risk taxpayers' lists
- Peculiarities of complaints pertaining to SEA VAT functioning



**MORE EVENTS
ARE COMING
IN Q3 2020 —
STAY TUNED!**

3.4. PUBLIC OUTREACH AND COMMUNICATIONS

The Business Ombudsman Council uses public communication to report trends of appeals, submitted by companies, voice systemic business issues and suggest ways to solve them. It is worth mentioning that we cooperate with media only on the free of charge basis, providing from our side expert opinions, legal analysis and recent statistics concerning malpractice of state bodies.

THE MEDIA

Given the mission to protect legal rights of entrepreneurs and improve the business climate in Ukraine, we enjoy the willingness of journalists to communicate our work results. The level of legal expertise and the skill to convey the message through is also highly appraised by media channels — our experts are frequent authors at major online platforms, speakers at forums and seminars, guests in TV and radio studios.

Since launch of operations in May 2015, the Business Ombudsman and his Office were cited in the media

26000+



with
100%
mentions being
positive or neutral

THIS QUARTER OUR INTERVIEWS WERE PUBLISHED IN:

INTERNATIONAL ORGANIZATIONS PLATFORMS:

EBRD



SPECIALIZED LEGAL MEDIA:

Legal Newspaper



Ukrainian Lawyer



Legal Practice



BUSINESS MEDIA:

UA-Times



Law and Business



The Page



The Page



Journal "Business"



DOU.ua



Taxlink



Interfax-Ukraine



Private Entrepreneur



Suspilne



Ukrainian radio



Channel 24



The Business Ombudsman Council communicates with the media to exchange information and does not, in any shape or form, provide financial compensation to editors or journalists for mentioning its activity or its speakers.

WE WERE ALSO PRESENTING RESULTS OF OUR OPERATIONS ON TV:



The Page



Ukraine 24



EBRD



UA-Times



Channel 8



Channel 4



Ukraine 24



Channel 8



First Business Channel



Delo.ua



Channel 8



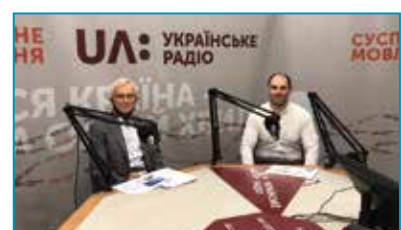
AND RADIO



Radio NV



Ukrainian Radio



SOCIAL MEDIA

FACEBOOK

(@Business
Ombudsman
Ukraine)

LINKEDIN

(@Business
Ombudsman
Council)

TWITTER

(@bus_ombudsman)

WHAT WE DO IN SOCIAL MEDIA:

- Showcase successful stories.
Learn lessons from unsuccessful ones.
- Communicate systemic business issues.
Suggest possible solutions.
- Post important news. Share thoughts and views.
- Produce our own content. Capture videos.
- Share our articles, columns
and other useful content.
- Announce our events. Livestream them.
- Communicate with followers.
Swiftly respond to their questions.

INSTAGRAM

(@business_
ombudsman_
council)

YOUTUBE

(@Рада
бізнес-
омбудсмена)



EVENTS

13/05/2020

Webinar

Anti-corruption and integrity: safeguards
for a resilient COVID-19 response and recovery

Organized by:
OECD

26/05/2020 — 28/05/2020

Online conference

FinConf2020
Panel: Global Banking Regulation —
Challenges Ahead
Panel: Capital Markets
Panel: Digital Transformation

Organized by:
FinConf
(Bosnia & Herzegovina)

02/06/2020

Online conference

Virtual EBRD Investment Councils
Conference — Day 1

Organized by:
EBRD



04/06/2020

Meeting

Meeting with the Minister
of Foreign Affairs Dmytro
Kuleba

Organized by:
The Ministry of Foreign
Affairs

Following the meeting,
we prepared the brochure for
foreign companies conducting
business in Ukraine, on how to
submit appeals to the BOC.





04/06/2020

Webinar

Double-Edged Sword
in Post-Covid Period:
How Can We Reshape Risks
for PPPs?

Organized by:
DEİK İletişim

04/06/2020

Meeting

Meeting with the Head of the State Tax Service of
Ukraine Oleksii Liubchenko

Organized by:
The State Tax Service
of Ukraine

10/06/2020

Webinar

Supporting Recovery and Enhancing Resilience-
Supporting Private Sector Recovery in Central Asia
-Regional webinar

Organized by:
OECD

12/06/2020

Online discussion

Online Panel Discussion "Ukraine's Path Forward:
Reality for Investors in the Context of COVID-19"

Organized by:
ACC

18/06/2020

Online roundtable

Eurasia Competitiveness Roundtable
Peer review of Ukraine — Monitoring SME
strategy implementation

Organized by:
OECD

19/06/2020

Meeting


Meeting of the Temporary Special
Commission of the Verkhovna Rada
for protecting rights of investors. The
proposals of the BOC for the new anti-
raidership draft law were presented

Organized by:
Temporary Special
Commission of the
Verkhovna Rada of
Ukraine for protecting
rights of investors









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