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List of additional technical recommendations

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Report on BOC's own initiative investigation results

Content

1. SMKOR safeguards: technical level

The BOC recommends implementing indicators-safeguards of business problems from excessively active SMKOR functioning, for example, to set a limit on the level of the maximum allowed suspension of TIs/ACs (by the number of affected payers, for example, no more than "X" payers per year), or by a percentage of the total number of payers, or by the number or percentage value of TIs/ACs) and provide separate days for settlement (self-registration of the surplus by state bodies).

It can be noted that the respective maximum allowed indicator should also take into consideration the actual «acceptance rate» of the state in terms of qualitative implementation of relevant payer's documents reviews (both at the regional and central levels), especially taking into account the recently introduced procedure for submitting additional documents before the final decision. adoption

When defining such a rate, the real circumstances of document review by commissions (collegially) should be considered, and not a conditional calculation per 1 person/employee, as is currently done[1].

Perhaps, to implement a due safeguard, it will be necessary to introduce new mechanisms for mass registration of TI/AC (tables, a joint decision of the regional level commission (RLC) and the central level commission (CLC), a joint decision of the Ministry of Finance and the STS, etc.), because it will correspond to the ideas of the law-based state and the rule of law.

For instance, a joint decision by the Ministry of Finance and the State Security Service on simultaneous registration of TI/AC, which will apply to at least 1,000 payers based on a set of single indicators, each of which should apply to at least 100 payers to avoid situations when individual enterprises that do not fall under the general criteria can become beneficiaries.

In the event that the Ministry of Finance and the STS could not come up with an appropriate solution, the following options for mass registration can be automatically applied (to achieve the allowed rate of suspended TIs/ACs and/or payers who have faced problems):

- Remove taxpayers from selection with the largest tax payment within this selection (i.e. among all taxpayers whose TIs/ACs were suspended during the period to be reduced to the specified indicator);

- Apply the tax burden indicator in proportion to turnover, and remove taxpayers with the highest indicators from the selection;

- Remove 10% of the smallest and largest payers (by volume of supply) from the selection;

- Remove from taxpayers having a positive tax history for over four periods in a row over the last two years from the selection;

- Remove payers having tables for at least 50% of their supplies from the selection.

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[1] Regulatory impact analysis (reviewed) of the Draft Resolution of the Cabinet of Ministers of Ukraine «On Amendments to the Procedure for Suspending Registration of Tax Invoices/Adjustment Calculations in the Unified Register of Tax Invoices» dated June 28, 2022, posted on the **Ministry of Finance of Ukraine** website.

2. Working on ROC1

Clarification of the ROC1 wording should be ensured to prevent its distribution to more than X% of taxpayers. In general, the relevant criteria should be developed by the STS and the Ministry of Finance (to provide for a balanced approach), but BOC also offers the following options:

- ■ An increase coefficient should be applied to the mark-up interest indicator, depending on the field of business activity and objective economic circumstances (inflation, exchange rate differences from the NBU, etc.);

- ■ In the case of ROC1 activation, the TI should be processed according to the rule that if there are accepted tables of this payer for 50 percent or more of his outgoing transactions for the last six months, then the TI should be registered with a proposal to the payer to submit the table.

3. SMKOR harmonization process automation and adverse consequences application control

The BOC has frequently encountered cases when, under similar indicators and comparable circumstances of economic activity, the RLC made opposite decisions, which could give the impression of selectiveness or certain negative consequences erroneous application.

The BOC assumes that the volume of tax databases allows the introduction of automatic procedures for «testing» a negative decision of the RLC for the purpose of harmonizing it with its previous decisions, decisions of other RLCs, CLCs both in relation to the same and other taxpayers (with comparable activity indicators).

The indicators comparability for testing should be determined based on data automatically processed at the time of testing (i.e., having no possibility of human influence directly during its implementation). For example, existing or automatically generated indicators can be used to determine comparability: ΣDubious transactions, tax burden, industry/ main Standard Industrial Classification (SIC), Ukrainian Classification of Goods for Foreign Economic Activity (UCGFEA) activities codes, (different SIC, UCGFEA codes can be grouped to find comparables for at least 80% of activities); operating time, turnover, workforce, fixed assets residual value, time since the last change of CEO (and the number of such changes during a certain period), similar performance indicators of counterparties, etc.

The results of such a test can be used and implemented in various formats.

For example, it can be used solely for the following processes of improving RLC work, its assessment (including the public based on publication results of the regional test data segment), informing the relevant RLC of possible selectivity of its decisions in the future. Or completely block a negative decision adoption at once or with the possibility of its approval by other RLC or CLC.

Implementation might be achieved through immediate full functioning or in an experimental format during a certain period (initially extended to individual RLCs, industries, with restrictions on the number of such tests and their distribution based on automatic random selection among all RLCs).

4. Extraterritoriality in SMKOR

As an intermediate stage of appealing against negative decisions on non-acceptance of a data table and classifying it as risky, it is proposed to provide for the right of the payer to request consideration of submitted documents by the other RLC. In order to minimize subjective factors affecting decision-making, region selection should be carried out using an automated distribution, which will take into account proportionality of the RLC's workload in different regions without notifying the taxpayer which reginal commission is going to consider his/her documents.

Such a right should arise in cases where the payer receives 2-3 consecutive negative decisions of the RLC at the place of registration.

If, based on consideration results of the documents submitted by the payer, the other RLC makes a negative decision, the payer can challenge this decision only to the CLC within the administrative appeal procedure.

After the other RLC makes a positive decision on the payer, the RLC at the place of tax registration can make a decision to reclassify such a payer as risky or to exclude the table from the same circumstances that were the subject of an investigation by another RLC, only with the approval of the RLC.

The BOC also finds it expedient to provide all regions with access to taxpayers' databases, as these actions will contribute to harmonizing approaches and supply chains tracking. On a separate note, BOC would like to point out the need for monitoring harmonization of such approaches to avoid different application of adverse consequences for payers in different regions.

5. Business communication and cooperation methods development

Based on business feedback and its own experience, BOC recommends:

1) introduce an STS of Ukraine «hotline», where payers will be able to receive not just general consultations and references, but comprehensive information on actual reasons for adoption of negative decisions by the Central Administrative Court in each individual case.

   Due to the lack of a «hotline» in the STS, similar to a regional tax authorities one, taxpayers are unable to quickly find out the actual reasons for certain SMKOR-related negative decisions made (non-acceptance of data tables, refusal to register TIs/ACs based on the appeal outcomes, etc.).

2) introducing control of lost calls with the obligation of regional and central «hotlines» employees to call back those payers who could not be reached. Identification of payers can be introduced, for example, by a secret word (similarly to the banking sector) or by using Diia portal functionality;

3) treat each non-reference call as an individual request (i.e. assign a number to it, make a call recording, and duplicate tax information provided through the «hotline» to the payer via messenger);

4) making reminders about « hotlines « with phone numbers of the relevant region and STS in the payer's e-office;

5) setting standards for the use of « hot lines « and communication platforms, as different tax authorities have different views on this issue. Thus, from BOC's experience, some regional tax authorities refuse businesses to provide information through communication platforms, citing the fact they are exclusively tailored for civil society institutions appeals; and on some « hotlines» they on the contrary refuse providing information to civil society institutions, stating that they are tailored exclusively for business representatives. In addition, tax officials in different regions have different views on the form of application through the communication platform (e-mail, scanned copy of the application signed by the manager, etc.), which also creates uncertainty for the public.

6) setting a deadline for the tax authority to provide feedback on an appeal sent by the payer to the communication platform and ensure compliance with this deadline;

7) conducting regular surveys of businesses on SMKOR operation in the payer's electronic account.

Questions in such a questionnaire should be formed 50/50 by the STS and the public (e.g. the public council under the STS and the Ministry of Finance, BOC, business associations, other civil society institutions, etc.). The automatic monthly publication of survey results, to be taken into consideration by the STS and the Ministry of Finance of Ukraine when analyzing and forecasting their work, as well as while developing changes in SMKOR functioning, is considered expedient. Besides, it is proposed that every six months the STS posts a report on measures taken by it once survey results are processed on its official website;

8) introducing a feedback form (perhaps by injecting it in a survey - see p. 7 of these Recommendations), with the help of which business representatives and civil society could assess the quality of «hotlines» and communication platforms work, and STS - consider this information to improve these services.

6. The buyer's positive tax history (PTH) indicators application

The BOC finds it appropriate to take into account the buyer's PTH indicators (at least some of them) for registering TI/AC. This would allow to expand the use of automated procedures and simplify the work of business without a significant threat to the interests of the state.

To counteract the abuse of such an approach by dishonest entities, additional restrictive factors for such use can be considered for various types of PTHs. For instance, it is possible to limit the buyer's PTH index application to a certain supply volume (the TI/AC to be registered owing to this

buyer's PTH index), e.g, the smallest allowed volumes for PTH 1 - in the current month no more than UAH 200k; the largest ones for PTH 6 - in the current month, the of supply volume must be no more than UAH 10 mn; for PTH 5 – UAH 1 mn, etc.

The buyer's PTH index can also be proportionally applied alongside ROC1. For example, depending on the buyer's PTH index type, additional coefficients may be applied to ROC1 (which will allow a proportional going beyond the supply coefficient of 1.5).

7. Payer's data tables submission process digitization

In view of the fact that, after changes in October, ROC1 effectively equated all groups of goods to risky and created an extremely high administrative and financial burden on businesses with a considerable number of goods, BOC recommends developing a technical solution to provide for the automatic generation, submission and data tables acceptance by SMKOR itself. It will at least reduce the time spent on their preparation and help avoid being excluded due to technically incorrect filling out of the table.

The automatic table generation criterion can be, for example, the payer's compliance with the current criteria set for the data table automatic acceptance, supply frequency under a certain UCGFEA/State Classifier of Products and Services (SCPS) code, availability of already accepted tables for a certain number of codes, etc.

In addition, it seems appropriate to implement, in case of accepting a data table, the automatic registration of suspended TIs/ACs with the respective UCGFEA/SCPS codes. The BOC believes that such automatic registration should take place both in case of accepting the data table at the RLC level and in the event of its automatic acceptance.

8. All unreasonably suspended TIs/ACs automatic registration

The BOC recommends automatic registration of all TIs/ACs suspended between May 2022 and December 2022 (regardless of their being under appeal):

1) by codes for which data tables were accepted not only by the RLC, but also automatically;

2) which contained other codes, except for those for which the data table was accepted (automatically and by the decision of the RLC) in the period from October 14, 2022 to January 10, 2023, provided these codes were not the reason for suspending the TI/AC according to the receipts received;

3) all taxpayers who, as of February 24, 2022, had a positive tax history according to indicators 2 and 2^2 та 5^3.

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[2] The taxpayer performs registration on a permanent basis during any four reporting months from the last six months in the Register of tax invoices/adjustment calculations for the supply of goods/services under one and the same product/service code in accordance with UCGFEA/SCPS.

[3] The single contribution amount for mandatory state social insurance for one employee was paid, being twice as much as such single contribution amount from the minimum wage for the last twelve months, provided that the CEO and/or founder of the taxpayer has not changed since the beginning of the previous year and the average monthly number of employees over the past twelve months was at least five people.

9. VAT payer's data tables with restrictions

In connection with the fact that the RLCs do not accept data tables for newly created enterprises, since there are still no reporting indicators of their activity, and due to the reluctance to include undefined risks of tax discipline violation by the payer in SMKOR, they are often bound to conduct the first months of activity in extremely unfavorable conditions (due to constant TIs/ACs suspension). In the BOC's view, there is no balance of interests of the state and business, and the compromise may be found in introducing VAT payer data tables, which will have validity period and/or supply volume restrictions, and, accordingly, simplified conditions for their acceptance will be applied.

For example, at the choice of the enterprise, it can submit this type of data table with the possibility of its automatic extension (or transition to an ordinary status).

The supply volumes, validity period and the table prolongation terms may depend on various criteria, for example, regarding activities already performed by the payer, the business reputation of officials and/or beneficiaries (information on previous activities, amounts of taxes paid by enterprises where the same persons were managers/beneficiaries , or personally, etc.), availability of funds on bank accounts, the number of employees, the salary level (at the stage of only launching the activity before submitting the tax calculation, it is possible to introduce additional validation of a certain certificate of the enterprise concerning the number of employees and their agreed salaries with validation of such a certificate by employees themselves through Diia signature services), authorized capital, etc.

10. VAT payer's preventive data tables

The Procedure No. 1165 does not contain any restrictions on the possibility of submitting data tables for those UCGFEA/SCPS codes, against which the TI/AC was not suspended. The CLC also publicly communicates the position that a taxpayer can submit a data table at any time, regardless of the presence or absence of problems with individual TI/AC registration.

However, in practice, BOC often faced situations when the RLC was refused accepting the data table solely because the codes contained herein were not (yet) the reason for suspending the TI/AC.

That is, if the data table is submitted by a taxpayer who was not suspended at all or was blocked due to operation riskiness under certain codes, and the data table also contains other codes that were not the reason for the previous TI/AC suspension, then RLC is highly likely to refuse accepting such a table.

In view of the aforesaid, BOC recommends unifying the RLC approaches at the regulatory level, determining that the taxpayer has the right to submit and accept the data table even if it contains codes that did not serve a reason for suspending issued TIs/ACs registration.

11. Informing taxpayers of effective ways to refute STS doubts when negative decisions are made

The BOC recommends to adhere to the legal certainty principle and in the case of a negative decision for a taxpayer (non-acceptance of the data table and/or compliance with the risk criteria), to directly specify herein detailed effective ways to refute the tax authority's doubts that caused such a decision to be made.

The BOC recommends that supervisory bodies conduct a constant explanatory dialogue with the business and additionally every time after any negative decision for the payer, the latter should be sent a separate (standardized and STS approved) notification with advice on possible further actions (in a video and/or written format with various examples for different industries) as well as information on ways of communication regarding the relevant issue, where the payer can get a professional guidance on the reasons for a negative decision.

12. Riskiness of the payer due to doubts about buyers

The BOC finds it necessary to exclude the possibility of recognizing importers, manufacturers, and sellers (Supplier) as risky because of the tax authority's doubts only about their buyers (especially when the relevant operations do not comprise a significant part of the payer's sales).

Inclusion of the Supplier in the risky list because of doubts about buyer(s), according to BOC, can only occur when questionable outgoing transactions amount to more, for example, than 30% of the total volume of the payer's outgoing transactions, when two conditions are met at a time:

I. The buyer(s) is included in the risk category, and the transaction with him or her was made no more than six months before the date of considering the issue of including the Supplier in the risk category;

II. In the activities of the Supplier itself, doubts can be seen on the part of the tax authority, particularly in terms of:

A. Lack of due care or existence of the intention to select buyers from the list of risky (risky buyer(s) at the time of the transaction with the Supplier already had the status of risky; related to the Supplier; the time frame of the transaction(s) in combination with its volumes show possible tax accounting data manipulations, for example, carried out at the end of periods; reverse sales are traced from the risky counterparty to the Supplier, which shows consistency of actions; operations change the parties' tax reporting indicators, while payment for the delivered goods/works/services is not made);

B. Impossibility of performing economic transaction(s) by the Supplier itself (lack of fixed assets, goods, employees, etc.), which, regardless of information about the Buyer(s), testifies to transaction(s) being fictitious;

C. Lack of a reasonable economic purpose for transaction(s) with risky buyers compared to payer's other common and similar transactions;

D. Availability of information indicating alleged dishonest actions of the Supplier, for example, violations discovered during tax audits in the past (not refuted in administrative or judicial proceedings) by the legal entity itself or its officials; manipulation of stock balances, which may point to the sale of goods without tax accounting.

13. The right to participate in proceedings

One of administrative law basic principles being a key to building public trust in the institutions of state power, is the right to personal participation in consideration of cases of those entities in respect of whom such consideration is taking place.

However, this principle is not implemented as part of RLC and CLC work, as a result of which taxpayers have no opportunity to directly (during consideration of their issue) provide their explanations regarding circumstances that gave rise to doubts among tax officials.

The BOC recommends normatively enshrining the taxpayer's right to participate in the consideration of documents submitted last within the framework of the RLC's review of cases on TIs/ACs registration, data tables, riskiness of the payer, as well as during the review by the CLC of complaints against respective decisions within administrative appeal procedures. Such participation should be ensured, particularly via video conference with the possibility of the taxpayer to provide his explanations.

14. Challenging TI/AC registration suspension by the buyer

Currently, as is known, the buyer, in case of TI/AC suspension, does not have the right to appeal this suspension and/or refusal of the RLC to register the TI/AC. Meanwhile, it is the buyer who suffers negative consequences of such suspensions from the point of view of taxation, since he or she cannot exercise the right to a tax credit.

Such circumstances made business act as a buyer in an economic transaction to seek protection of its interests in economic relations with the supplier, trying to transfer financial risks of the relevant problems to him (by not making a full payment for the supply, applying sanctions, trying to compensate for losses, etc.).

However, according to the BOC, such a situation does not prove to be a full-fledged functioning of administrative procedures: the entity whose rights are violated should have the right to appeal, including an administrative one.

The BOC recommends introducing the possibility of implementing administrative procedures for registering (and participation in them) of suspended TIs/ACs also on the part of the buyer (both with regard to submitting a notification and appealing against negative decisions).

For the introduction of such mechanisms, it is deemed appropriate:

- To provide for the possibility of the buyer joining the supplier's notification (by confirming its content and requirements, providing documents, explanations, etc.), or submitting the notification independently if the supplier has not done so after a month has passed since the TI/AC suspension. In case of submitting a respective notification by the supplier, the buyer will have the right to join it;

- To envisage the possibility of the buyer joining the supplier's complaint (by confirming its content and requirements, providing documents, explanations, etc.) or submitting a complaint independently if the supplier has not done so after five days have passed since the decision of the RLC to refuse the TI/AC registration. In case of filing a corresponding complaint by the supplier, the buyer will have the right to join it.

15. Deadline for inclusion in the risky list due to risky counterparties

The BOC dialogue with business once again confirmed the need for a significant reform of riskiness institution, particularly in terms of reasons such as riskiness of counterparties. In the overwhelming majority of cases, the business reported to BOC about non-compliance of the counterparty with the risk criteria at the time of cooperation with him or her and TIs/ACs against these business transactions were not suspended and were registered.

The BOC is aware of and upholds current discussions concerning introduction of a separate deadline to protect businesses against the prospect of getting risky status due to transactions that took place in the distant past.

For example, the rule according to which inclusion in the list of risky through risky counterparties can take place no later than X months (for example, 6) from the moment of the transaction with such risky counterparty(s) seems proportionate. we).

16. Openness of information on SMKOR operation

The transparency of SMKOR's operation is, probably, the most important aspect for building and maintaining business trust in the system. It is owing to publicity of SMKOR operation that payers will be able to look at the SMKOR performance more objectively, and not shape their understanding based on a negative experience that a certain payer was not lucky enough to have. In addition, publicity will ensure effective public control over SMKOR work, including trends resulting in the system's work algorithms change.

The BOC welcomes the already launched procedures for publishing indicators based on the TIs/ACs automated compliance monitoring results with the criteria **for assessing the risk degree**[4]. Meanwhile, BOC finds the respective information list insufficient to get a complete and objective picture of the current SMKOR functioning.

Taking the above said into account, BOC recommends to publish monthly, for example, the following data on SMKOR work for the previous month (generalized and separately in the regional breakdown):

- The total number of VAT payers;
- The total number of VAT payers who applied for TI/AC registration in the respective month;
- The total number of TIs/ACs submitted for registration and VAT amount of such PNs/RCs;
- The number of TI/AC whose registration was suspended and such TIs/ACs VAT amount;
- The total number of VAT payers whose TIs/ACs registration was suspended for the respective month;
- Information on the reasons for suspending Tis/ACs (by the risk operation criterion number, by the payer risk criterion number);
- The number of VAT payers having a positive tax history (PTH), i.e. met at least one of indicators by which the PTH is identified (and additionally with a breakdown into respective PTH indicators);
- The percentage of VAT payers whose TIs/ACs registration was suspended within three months from the moment of registration as a VAT payer;
- Data on TIs/ACs registration suspension by industry as a percentage of the number submitted by them (5-6 industries with the highest suspension percentage);

- The number of payers who submitted notifications for suspended TIs/ACs registration
- The number of notifications submitted by taxpayers for suspended TIs/ACs registration, and the VAT amount against such TIs/ACs;
- The number of TIs/ACs registered as a result of the review by the CLC of explanations and copies of documents submitted by the taxpayer, as well as VAT amount against such TIs/ACs;
- The number of complaints filed against the decision of the RLC on refusal to register TI/AC and VAT amount against such TIs/ACs;
- The number of decisions of the RLC that satisfied taxpayers' complaints against the decision of the RLC to refuse to register TI/RC, and VAT amount against such TIs/ACs;
- The number of payers included in the risky list as of the last day of the respective month (with specifying the ratio with the total number of VAT payers);
- The number of payers for whom a decision on their inclusion in the risky list was made in the respective month (in terms of risk operation criteria (CRO) and the payer risk criteria (PRC) served as the ground for making the specified decision);
- The number of payers who tried to confirm the absence of risk signs and submitted relevant documents to the RLC (with displaying such data separately for each CRO and PRC);
- The number of RLC decisions, which established the taxpayer's non-compliance

with taxpayer's risk criteria (with displaying of data separately for each CRO and PRC);
- The number of payers who did not submit a TI/AC for registration in the URTI in 30 and 180 days after their inclusion in the risky list (with displaying such data separately for each CRO and PRC);
- The number of risky payers who were registered TIs/ACs and refused to register TIs/ACs based on explanations results considered by the RLC and individual complaints to the RLC (with displaying such data separately for each CRO and PRC);
- The number of payers-contractors automatically excluded from the risky list after the adoption of the decision by the RLC and (separately) the court judgement to exclude the payer whom the counterparty had transactions with from the risky list;
- The number of TIs/ACs and the VAT amount registered for risky payers based on explanations results considered by the RLC and separate complaints to the CLC;
- Number of taxpayers who submitted data tables;
- The total number of data tables submitted by payers for consideration;
- The number of accepted data tables (in terms of RLC and separately for automatically accepted tables);
- The number of non-accepted data tables (in terms of RLC and CLC, as well as separately for tables previously accepted automatically).

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4   In particular, they are posted on the STS website at **https://tax.gov.ua/diyalnist-/rezalt/653575.html**.

17. Collecting statistics on court appeals and their publication

The court appeals statistics is a compelling evidence of SMKOR administrative practices inappropriateness. Meanwhile, despite over 90% success rate of solving court cases, this tool for restoring the taxpayer's violated rights cannot be called a sufficiently effective protection method, since court proceedings last a long time, and decisions in them are implemented purely formally or, in some cases, for years.

One of the most numerous categories of complaints received by the BOC is still non-enforcement of court decisions on Tis/ACs registration. Such a situation does not correspond to both national and international law, particularly to the right to a fair trial[5] .

There are also complaints about the improper execution of court decisions on exclusion from the risky list, cancellation of decisions on non-acceptance of data tables. Quite often, a formal execution of such decisions is quickly followed by a new decision of the tax office to include in the risky list and, accordingly, non-accept data tables.

The BOC draws attention to recommendations provided in the Systemic Report **«How Business Can Seek Execution of Court Decisions in Ukraine»**[6], particularly the recommendation for the STS to amend internal regulatory acts and take appropriate organizational measures by performing:

(1) monitoring of court decisions to be executed by STS bodies,

(2) monitoring such decisions implementation process,

(3) preparing periodic public reports on their implementation, as well as on problematic issues creating obstacles to proper execution of court decisions.

The BOC approached the STS with a request to provide statistics on court proceedings in cases related to SMKOR operation, but in reply it was informed that such statistics were not collected centrally.

Thus, BOC arrives to a conclusion that critically important data directly showing gaps in the work of state bodies are not formed properly and do not allow timely and qualitative correction of administrative practice.

The BOC recommends centrally collecting, analyzing and publishing relevant statistics, as this will allow to objectively assess SMKOR and commissions performance effectiveness, as well as to monitor compliance with taxpayers' rights.

Taking the above said into consideration, BOC recommends monthly publication of the following information:

- The total number and VAT amount against TIs/ACs registered by the STS for the reason of the relevant court decision receipt by a public authority.

- The total number and VAT amount against TIs/ACs not registered with the STS, but in respect of which the court decision has entered into legal force.

- The total number of decisions, according to which the court made a decision obliging the STS to register TI/AC, which entered into force, was received by the supervisory authority, but not implemented; of them – the number of court decisions, execution of which is subject to judicial control.

- The total number of court decisions on the supervisory body's obligation to exclude the taxpayer from the risky VAT payers list, which entered into force and were received by the supervisory body, but not implemented;

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[5]   According to the established practice of the European Court of Human Rights, the right of access to court should definitely include the right to execute a court decision without excessive delays (para. 30 of the Sokur v. Ukraine judgement), otherwise the right to a trial would be illusory (para. 42 of the judgement Romashov v. Ukraine and para. 63 Immobiliare Saffi v. Italy).

[6]   Systemic report «How Business Can Seek Execution of Court Decisions in Ukraine» (February 2021) (p. 61).

- of them – the number of court decisions, execution of which is subject to judicial control.

- The number of taxpayers in respect of whom a decision was made on non-compliance with the risk criteria for the reason of the relevant court decision receipt by the supervisory authority.

- The number of taxpayers in respect of whom, within 30 days after the enforcement of the court decision on non-compliance with risk criteria, a decision on compliance with the risk criteria was adopted again by the supervisory authority.

- The total number of court decisions on the supervisory body's obligation to accept the taxpayer's data table, which entered into force and were received by the supervisory body, but not implemented; of them – the number of court decisions, execution of which is subject to judicial control.

- The number of decisions on accepting the taxpayer's data table, made for the reason of the relevant court decision receipt by the supervisory body.

- The number of taxpayers in respect of whom, within 30 days after the enforcement of the court decision on data table acceptance, a decision on its non-acceptance was made again.

- The number of issued resolutions on imposing fines and the amount of fines imposed and separately paid fines amount within the executive proceedings for supervisory body's non-compliance with court decisions without valid reasons in each of the following categories of cases: TIs/ACs registration suspension, exclusion from the risky taxpayers list, taxpayers data table acceptance.

- The total amount of court costs (court fees, professional legal assistance costs) awarded for collection and separately the amount collected at the expense of budget allocations of the public authority based on consideration results of the following category of administrative cases: TIs/ACs registration suspension, exclusion from the risky payers' list, data tables acceptance.

- The total number of considered court cases in the court of first instance, in disputes on TIs/ACs registration suspension in the URTI;

- of them – with the adoption of decisions in favor of the taxpayer (satisfaction of claims), the adoption of decisions in favor of STS bodies (on refusal to satisfy claims) and how many of them became legally binding.

- The total number of court cases considered in the court of first instance, in disputes on the taxpayer's non-compliance/compliance with risk criteria, of which: with the adoption of decisions in favor of the taxpayer (satisfaction of claims), decisions in favor of STS authorities (on refusal to satisfy claims) and how many of them became effective.

- The total number of court cases considered in the court of first instance, in disputes on consideration the taxpayer's data table acceptance, of which: with the adoption of decisions in favor of the taxpayer (satisfaction of claims), decisions in favor of STS bodies (on refusal to satisfy claims) and how many of them entered into force.

- The total number of court decisions reviewed in the appeal procedure in the reporting period in cases related to: TIs/ACs registration suspension in the URTI, exclusion from the risky taxpayers' list, the taxpayer's data table acceptance.

- The number of appellate instance court rulings by which the appeals of the public authority were satisfied in such category of cases: TIs/ACs registration suspension, exclusion from the risky taxpayers' list, taxpayer's data table acceptance.

- The total number of court cases considered by the Supreme Court in disputes on TIs/ACs registration suspension in the URTI in the reporting period, of which: the appeal was refused and the court decision was left unchanged, the appeal was upheld and the court decision was changed/overturned.

- The total number of returned appeals and cassation complaints submitted by the public authority in connection with non-payment by public authorities of a court fee for lodging relevant complaints in the category of administrative disputes: TIs/ACs registration suspension, exclusion from the risky taxpayers' list, the taxpayer's data table acceptance.

18. Completing decision forms with RLC/CLC identification data

Currently, the decision forms on (non) registration of TI/AC, (non-)acceptance of the data table, the payer's (non-)compliance with the risk criteria do not contain information about which regional commission made the respective decision, but only contain the first name and initials of the official who signed it.

Given the fact that during last year, powers of the main departments of the STS of those regions being in the war zone or partially occupied (Donetsk, Mykolaiv, Luhansk, Zaporizhzhia, Kherson Oblasts, the Autonomous Republic of Crimea and the city of Sevastopol) are delegated to other regions, taxpayers often do not know who to approach (with a written request, to which communication platform or «hotline») to find out the reasons for this or that decision made.

In addition, payers do not always have an understanding of what exactly commission made the decision on data table that non-acceptance that had been accepted before.

Therefore, it is considered expedient to complete commission decision forms with specifying the commission that made the decision (concrete main offices of the STS, of large taxpayers' offices or CLC) and information about the «hotline» and the communication platform of the relevant commission.

The relevance of this recommendation increases with the implementation of another BOC recommendation regarding extraterritoriality of documents consideration by different regional RLCs

19. Expanding business opportunities on the size, quantity and formats of data that can be submitted to the RLC and CLC.

The BOC observes that business frequently spends considerable time resources on preparing documents to be considered by the RLC and CLC, trying to achieve maximum completeness of the description of its activities and position justification.

Meanwhile, technical restrictions of the e-office regarding the maximum size and number of files, their formats, sometimes also cause unnecessary time spending and impose restrictions on providing explanations, for example, with the help of video materials. On the example of individual cases, the BOC saw

the benefit of direct video explanations by payers regarding special circumstances of their work, which are difficult to understand based on written explanations and separate documents.

According to the BOC, it is expedient to enhance the system throughput capacity, both in terms of the number and volume of individual files. It is also considered expedient to introduce the possibility for businesses to submit video explanations, particularly by providing links to external sources and the corresponding possibility for commissions to view this onformation.

20. Resolving the problem of signing the TIs/ACs by a new CEO

As you know, the electronic system does not accept TIs/ACs for registration digitally signed by the newly appointed CEO, drawn up during the tenure of his/her predecessor. The provisions of Articles 192, 201 of the Civil Procedure Code do not prohibit signing of TIs/ACs by one CEO and their subsequent sending by a new CEO of a legal entity that acquired authority in accordance with the legally established procedure.

The case-law in this category of cases is in favor of payers, since drawing up the TIs/ACs in electronic form and their registration in the URTI are two separate actions. The taxpayer has the right to submit a TI/AC within a certain time (clause 201.10 of article 201 of the Tax Code of Ukraine), accordingly, the date of occurrence of the event is submission of tax invoices to the electronic system and not the date of their drawing-up. of tax legislation Norms do not stipulate the payer's obligation when the enterprise CEO is changed to register all TIs/ACs drawn up before the CEO dismissal and before the period specified in clause 201.10 of the Tax Code of Ukraine. In addition, the courts pay attention to the fact that TIs/ACs signatory is a legal entity, and not its CEO, acting only as a legal entity representative, therefore the CEO change has no legal effect in this case.

The Tax Office proposed the following algorithm of actions for registration of such TIs/ACs: sign TIs/ACs with an invalid e-signature of the former CEO; receive a receipt with registration rejection; apply the e-signature of a new CEO to the TI/AC rejected.

In the BOC's view, this approach is inappropriate, as it does not take into account the fact that the former director could withdraw his e-signature after dismissal, and therefore the enterprise does not have the opportunity to sign the TI/AC with the signature of the CEO who is already out of office.

In view of the above-mentioned, the BOC recommends standardizing the procedure for registering TIs/ACs drawn up during CEO tenure, who was later dismissed, but which were not submitted for registration because the deadline has not yet arrived. In order to prevent abuses by dishonest persons, BOC recommends changing the approach from refusing to accept the TI/AC to its registration suspension with the proposal to the taxpayer to provide documents to confirm the reality of the transaction for which the TI/AC was issued.

This proposal will give an opportunity for a bona fide taxpayer to confirm the reality of a business transaction. Currently, the taxpayer and the tax office are spending time and resources on considering this issue in court, which does not contribute to the automated system effectiveness. In addition, court decisions execution of this category is also problematic.

The BOC is convinced that the system should contribute, where possible, to pre-trial resolution of disputed issues and effective communication between the taxpayer and the tax authority.