

Annual report

2023





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The abbreviations “BOC” and the “Council” are used interchangeably throughout the text of the report to refer to the Business Ombudsman Council.

In cases and feedbacks, published in the report, companies gave permission to disclose their names.



Foreword

Roman Waschuk, Business Ombudsman

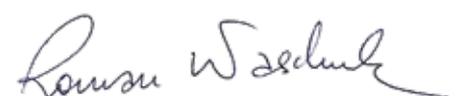
Dear friends, colleagues and partners!

For businesses, the past year has been a period of tax administration unpredictability, pressure from law enforcement agencies on enterprises, and well-known customs issues. Indeed, the most painful issue for entrepreneurs remains the VAT system. In March 2023, the Business Ombudsman Council published a report on the results of its own-initiative investigation into problems in the Monitoring System for Compliance of Tax Invoices with Risk Assessment Criteria (SMKOR), which massively suspended invoices. Despite the government's attempts to regulate the system's operation with technical changes to Decree No.1165, the problem remains alarming. By the end of 2023, there were still two to three times more entrepreneurs facing invoice blockages than tax authorities anticipated.

Thus, the Council continues to actively monitor the situation and expects the state to dare to move from formalism to real changes, which would allow reducing business dissatisfaction and, most importantly, restoring trust of the business community. At the same time, in the last months of the reporting year, we saw a trend towards an increase in complaints about tax audits, especially from companies that suffered from the attacks of the Russian aggressor and lost primary documentation. Even with the impeccable tax history, companies have to deal with negative consequences. Tax authorities

relentlessly search for reasons to penalize, and here the state's selective approach to tax administration is clearly traced. Therefore, in 2024, we began our own-initiative investigation into the phenomenon of tax audits. We will reveal the conclusions of the new in-depth investigation in the upcoming quarterly report. Meanwhile, the law on the administrative procedure that came into force in December 2023 gives hope. The law opens up new horizons to challenge actions or inaction of state bodies, establishing a new government, business and society interaction procedure.

Currently, we are actively working on strengthening our team and expanding our functionality to help the private sector cope with the consequences of the protracted full-scale invasion of the Russian Federation, as well as to get engaged in the processes of rapid recovery and further integration into the European community. We thank our partners, particularly the members of the Supervisory Board, for their constant support, and our donors, including the European Union and the contributors of the EBRD Multidonor Fund, who enable the activities and further development of BOC as a unique independent institution for business protection for nine years in a row. This gives power and, undoubtedly, inspiration to move forward towards our common dream – gaining a victory over the enemy and the soonest postwar reconstruction.



1. Priorities and work format during the second year of the full-scale invasion of the russian federation

The year 2023 was the second year of the full-scale armed aggression by the russian federation and the ninth year of russia's invasion of Ukraine. Ukraine continued its courageous resistance and opposition to the russian occupier. And the Business Ombudsman Council, without ceasing its operations, scaled up its efforts in protecting rights of Ukrainian businesses.



Priorities

In the reporting year, the priorities of our activities were:

- Resolving individual complaints
- Settling systemic business problems
- Approximating Ukrainian legislation to EU acquis
- Involving the private sector in reconstruction



Partnerships

Focusing on anti-corruption and future recovery issues in the reporting year, the Council expanded its partnerships with state bodies through concluding Memorandums of Cooperation with the National Agency for Corruption Prevention, the Restoration Agency and the Ministry for Restoration.



Strategy

In order to increase the effectiveness of its work and adapt to modern developments, the Council held a strategic session in the spring of 2023. Its outcome was internal procedures and operational processes optimization which made it possible to reduce organizational bureaucracy and increase the institution's flexibility in managing business cases and communicating with complainants.



The Council's team is doing its best to protect the rights of Ukrainian business and defend the state



2. 2023 in review

In 2023, the Business Ombudsman Council received



Closed



The investigation in



TOP-5 subjects of complaints

Tax issues



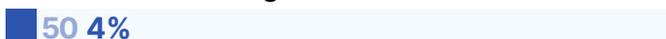
Actions of law enforcement bodies



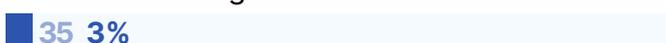
Customs issues



Actions of state regulators



Actions of local government authorities



TOP-5 industries

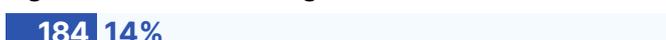
Wholesale trade



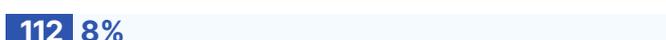
Production



Agriculture and mining



Real estate and construction



Individual entrepreneurs (FOP)



The financial effect in 2023 amounted to

UAH

724

mn.

Since the beginning of the year, the Council has helped businesses return or save more than

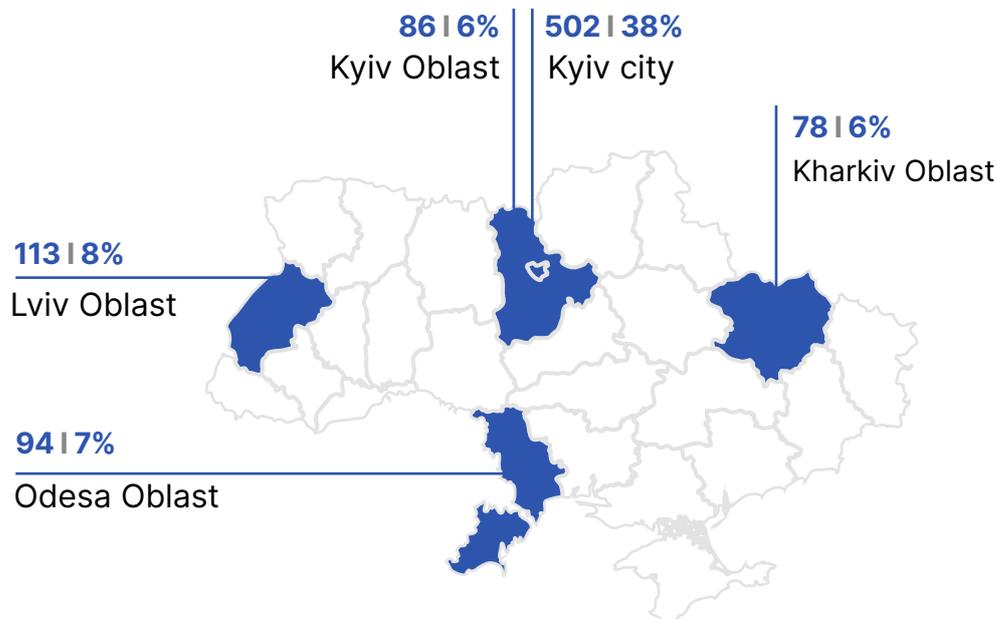
UAH

25,4

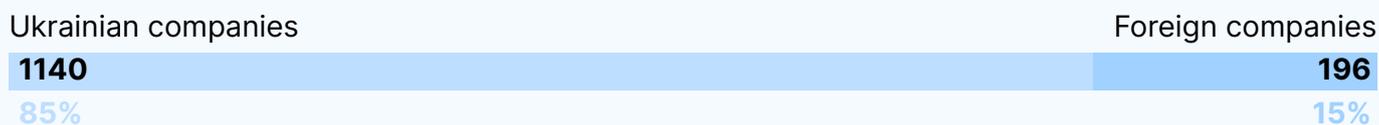
bn



TOP-5 most active regions



Origin of capital

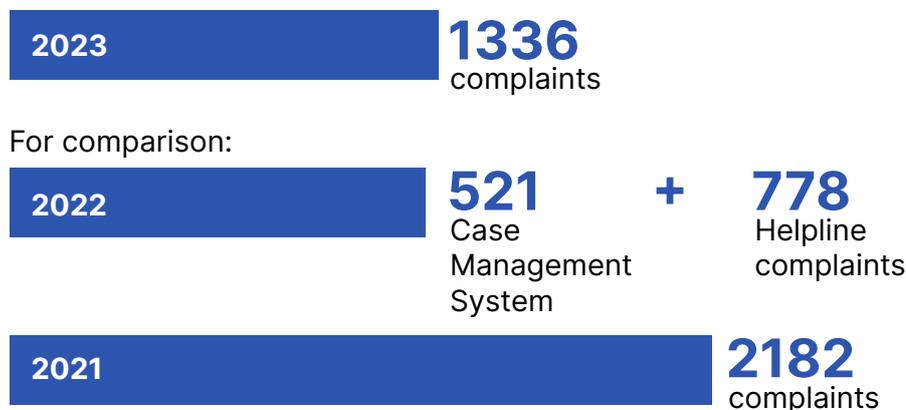


Business size



Number of complaints received in 2023

In 2023, the total number of appeals lodged by entrepreneurs with the Business Ombudsman amounted to



The Council cannot compare war and pre-war periods of business activity. At the same time, we observe liveliness of the business environment, as well as the tendency of businesses to seek professional support from the Business Ombudsman to resolve controversial issues with the state.

97%

is a satisfaction level of cooperation with the Council.

Complaint trends

Tax issues	853	Customs issues	105
Non-enforcement of court decisions regarding registration of tax invoices	231	Customs valuation	57
Tax audits	189	Customs clearance delay/refusal	18
Systemic VAT invoice suspension	187	Administrative proceedings	3
Inclusion in risky taxpayers' lists	131	Customs payments refund	2
VAT refund	12	Customs – other	25
Electronic VAT administration	12	Actions of state regulators	50
Tax termination/renewal/refusal of VAT payers registration	8	State regulators – other	33
Other	83	National Bank of Ukraine – other	6
		Actions of National Energy and Utilities Regulatory Commission (NEURC)	5
Actions of law enforcement bodies	158	Anti-Monopoly Committee (AMCU)	5
National Police – procedural abuse	34	National Bank of Ukraine – inactivity	1
National Police – inactivity	18	Actions of local government authorities	35
National Police – other	6	Allocation of land plots	10
National Police – criminal case initiated	5	Rules and permits	2
Prosecutor General's Office – procedural abuse	42	Local self-government authorities – other	23
Prosecutor General's Office – inactivity	11	Actions of state-owned companies	26
Prosecutor General's Office – criminal case initiated	5	Investment/commercial disputes	2
Prosecutor General's Office – other	5	Misfeasance	4
Prosecutor General's Office – corruption allegations	1	Other	20
Security Service of Ukraine – procedural abuse	4	Legislation drafts/amendments	26
Security Service of Ukraine – inactivity	2	Deficiencies in regulatory framework –state regulators	11
Security Service of Ukraine – other	2	Deficiencies in regulatory framework – tax	5
Security Service of Ukraine – criminal case initiated	1	Deficiencies in regulatory framework – customs	3
Bureau of Economic Security (BEB)	11	Deficiencies in regulatory framework other	7
State Bureau of Investigation (SBI)	8	Actions of the Ministry of Justice	21
National Anti-Corruption Bureau (NABU)	3	State Executive Service Department	14
		State Registration Department	7
		Other	49



Tax issues

In the reporting year, tax issues traditionally topped the appeals list – 64% or 853 complaints. In the reporting year, entrepreneurs were most concerned about tax invoices suspension, particularly, non-enforcement of court decisions on their registration – 231 complaints.

The first months of 2023 fell on the Council's own-initiative investigation of problems in the SMKOR system (Automated system of tax invoices/adjustment calculations' compliance with risks degree assessment criteria), due to which tens of thousands of VAT payers faced invoices suspension and inclusion in risky payers' lists. Having presented its findings in a special report, the Council submitted a list of recommendations for improving the system to the Ministry of Finance and the State Tax Service. Some recommendations were implemented, particularly the procedure for appealing decisions regarding «riskiness» of a VAT payer and non-acceptance of data tables. Meanwhile, other recommendations were implemented formally, so there were no dramatic changes in SMKOR throughout the year.

During the year, tax audits gained momentum. This was, among other things, due to the resumption of various types of inspections since the end of summer 2023. The category of tax audits, alongside SMKOR problems, was the second most common subject of complaints of entrepreneurs. That is why the Council started the new year 2024 by investigating the tax audits phenomenon.

Alongside this, another large category of appeals falling under «other tax issues» category in our rating, concerned various tax issues relevant during the martial law period. We are talking about appeals from business oppressed by tax officials because it could not provide source documentation to which access was lost or which was destroyed as a result of hostilities.

The Council also received many complaints from companies located in the de-occupied territories, which could not take advantage of tax incentives (such as exemptions from environmental tax, land and rent tax and real estate tax introduced as early as spring 2022) due to no list of territories at that moment where hostilities were (are) being conducted. The issue was finally settled after the adoption of the list of territories.



Actions of law enforcement bodies

In the reporting year, complaints about malpractice of law enforcement bodies reached 12%. Most of the companies complained to the Council about procedural abuse of the National Police and the Prosecutor's Office. The companies' appeals mostly dealt with non-return of temporarily seized property or funds seized as a result of searches, pre-trial investigation ineffectiveness, violations during investigative actions, launching groundless

criminal cases and disproportionality of actions of law enforcement officers in relation to entrepreneurs. At the same time, the Council had the competence to take into account only those complaints related to non-return of temporarily seized property and the pre-trial investigation ineffectiveness. This category of appeals could be resolved thanks to the current Expert Group of BOC and the Prosecutor General's Office.



Customs issues

Customs issues hit TOP-3 subjects of appeals of the Council's complainants – their number was 8%. Problems in this area are related to customs valuation, as well as delays during customs clearance. Companies most often faced the customs value adjustment of goods due to formal discrepancies in documents. The Council helps entrepreneurs establish a dialogue with customs officials and prove their case.

TOP-10 state bodies subject to the most complaints

State Tax Service **859**

108	State Customs Service
62	Prosecutor General's Office
62	National Police
35	Local government authorities
31	The Verkhovna Rada, Cabinet of Ministers, President of Ukraine
26	State companies
24	Ministry of Justice
15	Ministry of Economy
15	Other

Given that the lion's share of complaints to the Business Ombudsman Council in 2023, as before, were tax-related, it was the State Tax Service (STS) that hit the ranking of state bodies about which businesses complained most often (859 complaints). Following the STS, the State Customs Service (108 complaints) and the law enforcement bodies – the Prosecutor General's Office and the National Police – with a total of 124 complaints, were in the ranking.

Timelines of the preliminary review of complaints

In 2023, preliminary review of business complaints took an average of

9 working days

Despite the ongoing martial law and security challenges, the Council's team takes efforts to process complaint materials received as soon as possible. In the reporting year, we managed to meet the deadline of our Rules of Procedure – 10 working days.



Number of investigations conducted and grounds for dismissing complaints

Out of 1336 complaints, BOC conducted 716 investigations. 37 complaints remained at the preliminary assessment stage. The Council rejected 583 appeals as not fitting its eligibility criteria foreseen by the institution's Rules of Procedure. Check out the [Rules of Procedure](#).



Main reasons for complaints dismissal

Complaints outside Business Ombudsman's competence	304
Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made	64
The complaint is ungrounded, or other bodies or institutions already consider such a case	50
According to the Business Ombudsman, the Complainant did not provide sufficient cooperation	46
Other circumstances where the Business Ombudsman, in his sole and absolute discretion, determines that an investigation of the complaint is not necessary	40
Complaints in connection with the legality and/or validity of any court decisions, judgments, and rulings	21
Termination of investigation due to complaint withdrawal by the Complainant	13
The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process	13
Complaints arising in the context of private-to-private business relations	9
A complaint filed to the Council again after a decision was made to leave it without consideration, except when the complainant provides really new circumstances, or facts or substantial evidence	7
A complaint relates to an issue that has already been addressed by the Business Ombudsman	5
Investigation by the Business Ombudsman in a similar case is pending or otherwise on-going	5
Failure to meet the complaint form eligibility criteria	3
A complaint filed upon one year expiration from the occurrence of the alleged business malpractice	2
The complaint was not submitted by the business entity	1

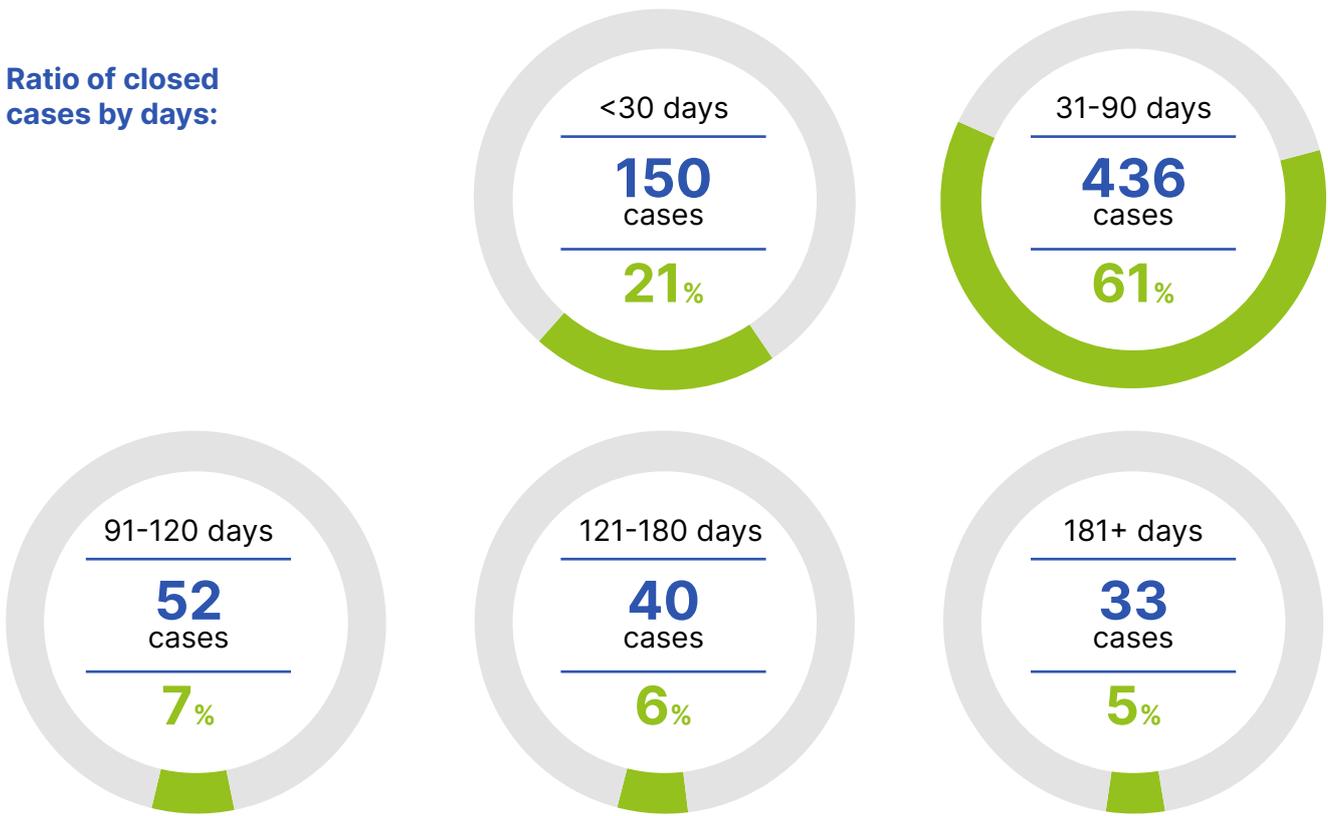
Timelines of conducting investigations

The average duration of investigations was

69 days

which is 21 days less than the standard envisaged by the Rules of Procedure.

Ratio of closed cases by days:

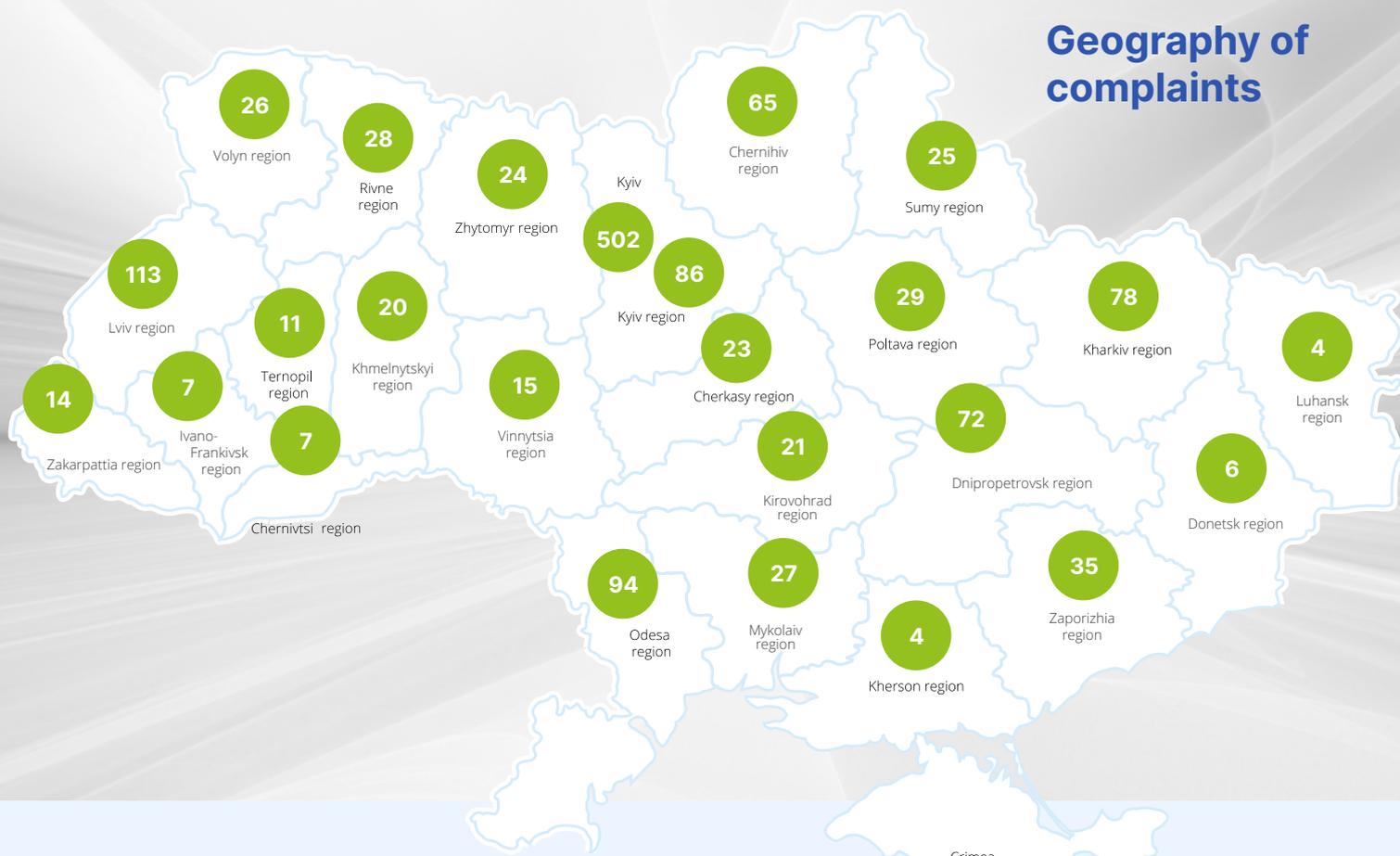


82%

of all closed investigations in 2023 we investigated within 90 days, thus meeting the target of BOC Rules of Procedure.



Geography of complaints



TOP-5 industries



374

Wholesale trade



184

Production



184

Agriculture and mining



112

Real estate and construction



69

Individual entrepreneur

Origin of capital

Ukrainian companies

Foreign companies

1140

85%

196

15%

Size of business

Large business

Small and medium-sized business

472

35%

864

65%

According to the Business Ombudsman Council's statistics, our complainants are mainly Ukrainian small and medium-sized businesses. The share of large companies is only 35%, while only 15% represent businesses with foreign investments.

3. Systemic achievements of 2023

Benefits for unmanned aerial vehicles manufacturers

In the reporting year, a Ukrainian drones producer turned to the Business Ombudsman Council. The company could not apply a preferential tax regime for parts of unmanned aerial vehicles (UAV) (without weapons) that upon import to the customs territory of Ukraine are classified by codes 8802 and 8803 according to UCG FEA.

The UAV manufacturer would be entitled to an exemption from VAT payment according to amendments made to the Tax Code of Ukraine in April 2022. However, in connection with the Law of Ukraine «On the Customs Tariff of Ukraine» in November 2022 enactment, the State Customs Service approved by its order Transition tables from UCG FEA 2017 to UCG FEA 2022 version, in which codes 8803 did not exist. Accordingly, tariff headings under codes 8803 were transformed into codes 8807 and tax benefits were no longer covered by them. The company applied to the State Customs Service and the Ministry of Finance of Ukraine, however the company did not get any response. Therefore, the drones manufacturer faced products cost increase by 20% and risk of non-fulfillment of the contract concluded with the Ministry of Defense of Ukraine.

Having taken up the complaint, the Business Ombudsman and the investigator in charge visited UAV production facilities in Kyiv and talked to the enterprise's CEO. In the course of the investigation BOC concluded that the problem arose due to active legislation asynchrony in the customs and tax spheres. The situation needed immediate settlement, since the state's duty, especially during an ongoing full-scale war against Russian aggressor was strengthening and supporting the defense sector. The BOC investigator



articulated the Council's position – to improve legislation and enable tax benefits for domestic drones producers — in a [special](#) publication in the media.

Ultimately, in May 2023, the Verkhovna Rada of Ukraine accepted Draft Laws No. 9275 and 9276 envisaging exemption from VAT during martial law and import duties on components for UAVs production and repair. The company informed the Council that component parts had been successfully cleared by customs according to the simplified procedure with benefits application.

Tax benefits for business from temporarily occupied territories

With the beginning of the full-scale invasion of the Russian Federation into Ukraine, many Ukrainian entrepreneurs found themselves in the war zone or in temporary occupation. Exactly this business category could not for a long time use tax benefits introduced by the state with the amendments made to the Tax Code in the spring of 2022.

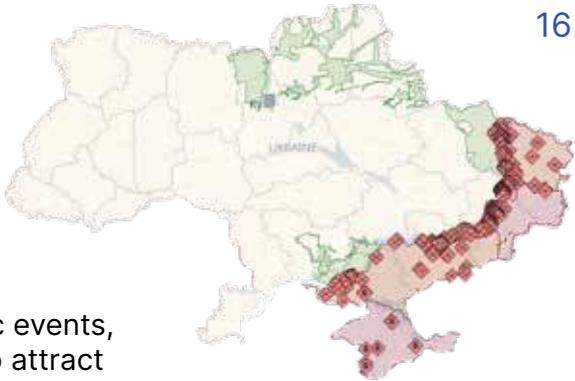
According to the amendments which became effective in March-April 2022, for the period of martial law and during some time after its completion, payers received the right of exemption from real estate and environmental taxes accrual.

For this purpose, the Government had to approve the territories list where hostilities are (were) conducted, as well as territories temporarily occupied by armed units of the Russian Federation (territories list). However, situation remained not fully settled during the year, as from the very beginning the Ministry of Reintegration of Temporarily Occupied Territories and not the Cabinet of Ministers of Ukraine was responsible for maintaining the list.

During that time, the Council was approached by a lot of entrepreneurs, particularly from Kharkiv, Kherson, Chernihiv, Kyiv Oblasts and the city of Kyiv itself – all of them could not take advantage of benefits offered by the state. In addition, in some cases based on tax audit findings, the tax office even charged penalties for real estate tax amounts understatement. The reason for it was no approved territories list.

BOC upheld their complainants' position and jointly with all the stakeholders started a dialogue with the Government of Ukraine in to speed up lawmakers movement towards the list adoption.

Starting from August 2022, the Council addressed written requests to the Prime Minister of Ukraine, the Ministry of Reintegration of Temporarily Occupied Territories, the Ministry of Defense and the Ministry of Finance, requesting to legislatively settle the issue. Besides, the Business Ombudsman met with First Deputy Prime Minister – Minister of Economy of Ukraine Yuliia Svyrydenko. During the meeting, among other things, he stressed the importance of the territories list approval. In parallel, the Council actively covered this issue in the media and



at public events, trying to attract government officials and society attention to the problem. You can read about it in this [publication](#).

In December last year, the Government finally adopted the Decree No. 1364 defining the unified territories list formation mechanism and authorized the Ministry of Reintegration to maintain it. In late 2022, the Ministry of Reintegration approved the updated list. However, by April 2023, in its consultations the State Tax Service, with the support of the Ministry of Finance, continued refusing to acknowledge the opportunity of using the Ministry of Reintegration list for taxation purposes and, accordingly, nor did it give opportunities for such categories of payers to take advantage of benefits for real estate located on affected territories. As a result, the number of inspections and charged penalties started growing rapidly. Formally, the Government had to form a respective list itself and not reassign this task to one of the ministries because it is exactly what the direct norm of the Tax Code says. These points were frequently discussed by the Council both in general and illustrated by certain cases at joint Expert Group meeting with the State Tax Service.

Finally, on April 11, 2023, the Verkhovna Rada adopted the Law No. 3050-IX officially enshrining the territories list was not directly defined by the Cabinet of Ministers but formed according to the procedure established herein. It legalized actions taken by the Government back in December 2022 through entrusting the list formation to the Ministry of Reintegration including tax purposes. Apart from that, the Law retrospectively corrected tax benefits application conditions for 2022-2023, particularly by providing for the opportunity of revoking (cancelling) supervisory authorities' decisions on penalties already charged for payers.

Although it took a long time, concerted efforts of BOC and stakeholders involved contributed to a positive problem resolution on a nationwide scale and it is a good example of the Council's common mediation and dialogue with state bodies.

Enactment of the Law on the Administrative Procedure

During various stages of the development of the law on the administrative procedure, the Council's team joined the process, using its own many years of experience in settling disputes between business and the state. In particular, while constantly emphasizing the importance of implementing the administrative complaint procedure, the Council devoted a separate systemic report published in 2019 to this topic. In the report, our institution clearly formulated its vision regarding the effect of the law on the administrative procedure and called on government officials and people's deputies to adopt the law as soon as possible.

As part of monitoring the implementation of recommendations from the report, the Council's experts first participated in the meetings of the Working Group under the Ministry of Justice of Ukraine. Then the Cabinet of Ministers (CMU) developed a [draft Law No. 3475 of May 14, 2020](#), where the legislative initiative subject was the CMU. The Law was supposed to become that very "general" legal act that will introduce a qualitatively new level of administrative procedures legislative regulation and protection of private individuals' rights and legitimate interests in relations with the state. That is, the following problems should be solved:

- Lack of entity's basic rights in relations with state bodies;
- Dominance of departmental interests in regulation, including mostly by-law regulation of procedures;
- Different approaches in different acts, areas, systems of authorities;
- Inefficiency of many procedures (including administrative appeals) or lack of their regulation.

The Council was engaged in the Working Group of the Committee of the Verkhovna Rada of Ukraine on organization of state power, local self-government, regional development and urban planning, the result of which was Law No. 2073-IX of February 17, 2022, which became effective only one and a half year later – in December 15, 2023.

The adopted law on the administrative procedure should make government bodies' activities more unified, transparent and predictable, while businesses should be given ample opportunities to challenge decisions, actions and omission of officials in a pre-trial procedure with the least time and resource costs. In addition, the document became one of the most anticipated European integration laws in the business environment, because it is aimed at bringing the Ukrainian legislation closer to the European legal traditions of public administration.

However, the adoption of the law on administrative procedure did not immediately solve all the problems in the regulation of relations between business and the state. The next step was to align the relevant legislation to ensure the effectiveness of the law and overcome existing legal conflicts. This work was undertaken by the Expert Group for coordination of administrative services and procedures of the Directorate of Public Administration of the CMU Secretariat, the members of which were the Council's representatives.

In May 2023, the Council became aware that the CMU would discuss the issues of removing the tax area from the scope of the Law, as well as exercising state financial control and some antimonopoly categories of cases. The Council was strongly against such an initiative, since two-thirds of cases with which business was dissatisfied, according to the institution's statistics, were tax-based.

In November 2023, the Council submitted its comments to a comprehensive [draft Law No. 10161 of October 18, 2023](#) regarding aligning special legislation with the requirements of the Law. Then the Council's experts analyzed amendments to over 40 laws related to the business environment and which the Council faced in its activities.

Finally, at the end of the year, the Council received a draft of amendments to the Tax Code of Ukraine to bring it in line with the requirements of the Law. After analyzing the document, the Council issued extensive recommendations to the State Tax Service of Ukraine. Thus, the draft law is currently being prepared by the Government.

Meanwhile, the Council's partners, particularly the European Union project "Support for Comprehensive Public Administration Reform in Ukraine" (EU4PAR), are actively working to educate about the Law. In particular, there is a dedicated website <https://adminprocedure.org.ua/>, as well as a [Scientific and Practical Commentary on the Law](#) and [an online course](#) available on this topic.

The Council is convinced that the Law of Ukraine "On the Administrative Procedure" will positively impact the business climate, as it will enable prompt and transparent settlement of disputes between entrepreneurs and state bodies using pre-trial appeal tools.

The Council will continue promoting practical implementation of the Law's ideas in areas where disputes between business and the state most often arise.

4. Problems in the VAT system: monitoring implementation of recommendations by state bodies based on our own-initiative investigation results

With 70% of «tax» complaints in the structure of business appeals, particularly regarding tax invoices suspension, at the end of 2022 the Business Ombudsman Council initiated its own-initiative investigation into problems in the VAT system.

At the beginning of March 2023, the Business Ombudsman Roman Waschuk presented the results of his own-initiative investigation of problems with SMKOR. He was supported by representatives of leading business

associations – American Chamber of Commerce, European Business Association, Chamber of Commerce and Industry, Ukrainian League of Industrialists and Entrepreneurs and the Federation of Employers of Ukraine, as well as the expert community. In addition, responding to the investigation, the Chairman of the Verkhovna Rada Committee on Tax and Customs Policy, Danylo Hetmantsev, also approved the Council's conclusions and recommendations on fixing the SMKOR.

Press event

"Autumn of Blocked Tax Invoices – What Conclusions Can Be Made for Economic Spring? BOC Own-Initiative Investigation Results"





Based on its own-initiative investigation results, BOC presented a report

In the report, BOC provided a comprehensive analysis of problems and challenges in the SMKOR system, particularly, set forth key principles around which, in the Council's opinion, "work on errors" and further functioning of the system should take place.

The recommendations submitted by the institution to the Ministry of Finance (MinFin) and the State Tax Service (STS) are aimed at improving SMKOR operation and reducing adverse consequences for honest business.

BOC key recommendations on SMKOR improvement:

1. To introduce the genuine SMKOR automation and return risk operations criterion 1 to real risk orientation limits.
2. To perform a thorough analysis and forecast changes impact, especially possible unfavorable consequences for business before accepting any changes to TIs/ACs registration procedures.
3. To establish (not necessarily at the regulatory level, but publicly) clear indicators-safeguards for SMKOR problems similar in scale. It is about controlling other state bodies (parliamentary control of the Verkhovna Rada of Ukraine, interference of Cabinet Ministers of Ukraine) to prevent similar situations.
4. To ensure systematic procedures implementation for reviewing law enforcement practice based on sustainable SMKOR case-law practice formation results directly showing repeated violations of the law.
5. To provide due informing of enterprises of negative decisions within SMKOR operation at the earliest possible stage.
6. To introduce an administrative appeal procedure of Regional Commissions' decisions on riskiness and tax data tables.
7. To introduce tools for informing payers about risky counterparties (to provide opportunity for payers to submit an electronic inquiry on counterparties).
8. To create an additional "ΣDubious transactions" SMKOR indicator to be calculated as the amount of VAT on dubious, in the opinion of the tax authority, payer's transactions. Such a step will allow to differentiate consequences for business depending on the tax authority's doubts and control proportionality and their existence duration.
9. To introduce transparent and effective procedures for taking risky payers out of the list.
10. To provide payers' access to information on key indicators that can indirectly influence the adoption of a negative decision regarding them.

Monitoring implementation of recommendations

Immediately after publishing the report and receiving state bodies' and society primary reactions, the Business Ombudsman started monitoring implementation of provided recommendations.

Throughout the year, the Council's representatives participated in work group meetings at the STS, the Ministry of Finance, and the Verkhovna Rada Tax Committee to fine-tune changes implementation mechanism.

Individual systemic issues were raised by the Council at monthly regular meetings of the STS Expert Group.

In June 2023, long awaited [amendments to Decree No. 1165](#) were made by the Cabinet of Ministers **introducing a procedure for appealing decisions on the VAT payer "riskiness" and non-acceptance of tax data tables**, thus implementing the Council's long-standing systemic recommendations on SMKOR.

In 2023, we noted the following important changes regarding:

- introduction of an administrative appeal of decisions on a payer's riskiness and tax data tables non-acceptance;
- improvement of analysis and forecasting functions relating to legislation amendments;
- active Verkhovna Rada involvement to solve problems;
- operations period limitation in TIs/ACs to consider a payer's riskiness issue (180 days);
- expansion of the positive tax history indicators list (introduced on December 9, 2023);
- availability of data on key indicators (introducing a payer's profile) (partially implemented).

At the same time, during 2023, in its practice, the Council dealt with a considerable number of appeals regarding ungrounded inclusion of entrepreneurs in the risky payers' list. Alongside this, quite often a decision to refuse to register tax invoices was insufficiently substantiated, and a "risky" taxpayer status, due to its virality, threatened other honest payers. There were also cases when the tax authority repeatedly filed numerous appeals against court decisions that had become legally binding. Therefore, according to the Council's assessment, as of the end of 2023 – beginning of 2024, the situation with improving SMKOR still remained at an insufficient level for business.

The Council calls on the Ministry of Finance and the State Tax Service to proceed with further steps in transforming the SMKOR to allow entrepreneurs to get rid of unreasonable pressure and oppression from fiscal authorities and focus on current economic activity. The Council will report on further progress in resolving business tax issues in upcoming reports.

5. Examples of successfully completed investigations

Customs service cancels a decision on incorrectness of a goods' UCGFEA code



UCG FEA – Ukrainian Classification of Goods for Foreign Economic Activity

A logistics services operator imported an extender for a crawler crane for the customer. During customs clearance, Dnipro Customs established the alleged incorrectness of the UCG FEA code, changed it to another one (having established that the goods were not intended for a crawler crane, but for a wheel crane), which entailed an increase in customs duties.

It is of interest that during declaration of goods, the company provided the necessary list of documents to the customs and had a history of customs clearance according to the declared code. However, customs officials examined the goods, and later determined a new UCG FEA product code, referring to examination results and letters from the distributor the company knew nothing about.

BOC upheld the complainant's position and in an appeal to the State Customs Service of Ukraine (SCS) asked to consider his arguments regarding classification of goods. The Council invited the SCS to a joint meeting to discuss the company's complaint.

At the same time, due to the persuasiveness of the Complainant's and the Council's arguments, the State Customs Service canceled the classification decision of Dnipro Customs and agreed with the imported crane extender UCG FEA code previously determined by the company.

The STS transfers mistakenly paid funds to pay off a debt



A construction company from Dnipro mistakenly paid a single tax for the fourth quarter of 2021 in the amount of UAH 20.300 to the budget of the city of Melitopol instead of Dnipro. The company submitted applications for the return of mistakenly paid funds to the Main Department of the State Tax Service in Zaporizhzhia Region three times and also asked to transfer the funds to repay the tax debt to the Main Department of the State Tax Service in Dnipropetrovsk Region. However, all its efforts were unsuccessful.

During the complaint investigation, BOC turned to the MD STS in Zaporizhzhia region and asked to properly consider the company's arguments. In accordance with the provisions of the Tax Code of Ukraine, the tax authority must respond to the complainant's statement and make a refund or transfer funds to the correct account.

After the Council's intervention, the tax office transferred UAH 20.300 to the account of the MD STS of Dnipropetrovsk Region, and thus paid off the company's tax debt that arose due to an error.

The STS takes into account a data table of a welding wires manufacturer



A welding wires manufacturer complained to the Business Ombudsman Council because the tax authority began massively blocking the company's tax invoices. To solve the problem, the company submitted a taxpayer's data table several times, however the tax authority constantly refused to accept it.

Even before the full-scale invasion of the Russian Federation, the company exported products to Russia and Belarus. Despite the absence of this factor as a formal ground for not accepting the data table, it was settlement operations with counterparties in aggressor countries that became the reason for the mass blocking of the company's tax invoices.

BOC brought up the complaint for consideration by the Expert Group with the State Tax Service of Ukraine (STS of Ukraine). During the Expert Group meeting, one managed to find out exactly what information was missing to accept the company's data table. As a result, after the complainant resubmitted the data table, it was taken into account by the STS.

A company confirms the customs value of imported goods



DET UA LLC approached the Business Ombudsman Council because Dnipro Customs had adjusted the customs value of imported rubber hoses.

The first batch of goods was cleared smoothly, but the customs had remarks about the second one. The customs authority refused to accept the declared customs value of goods, allegedly because the company did not provide all the documents, particularly regarding additional expenses for transporting goods and the Ukrainian translation of the quality certificate.

While investigating the complaint, the Council found out the company provided the customs authority with a complete list of documents confirming expenses related to transportation of goods and other papers necessary for determining the customs value. BOC could not understand the reasons for adjusting the customs value of rubber hoses, the first batch of which was cleared by customs officers without any remarks. The Council asked the State Customs Service of Ukraine to impartially consider the company's complaint. As a result, DET UA LLC arguments were taken into account, and the company managed to fully confirm the declared customs value of imported rubber hoses.

A no more “risky” tire manufacturer



Tax authority included a well-known international tire manufacturer in the risky taxpayers’ list. During the investigation, the Council found out that respective decisions on the payer’s riskiness contained only general statements and did not detail specific reasons.

The company also informed the tax authority suspended a large number of adjustment calculations, referring to the company’s compliance with risk criteria.

In particular, since the company allegedly did not provide source documents regarding its relations with counterparties. Despite the successful appeal of the regional level Commission’s decisions on the refusal to register adjustment calculations, the latter did not change its position regarding the large taxpayer’s riskiness.

BOC brought up the complaint for consideration by the Expert Group with the STS of Ukraine, as a follow-up of which the STS agreed with the unreasonableness of the decision on the taxpayer’s riskiness.

After the company submitted the requested documents to the tax office, it was excluded from the list of risky ones.

The STS cancels UAH 1.3 mn fine for late invoices submission



The Business Ombudsman Council received a complaint from an electricity and natural gas supplier. During the inspection, the tax office charged the company with a fine of UAH 1.3 mn. for allegedly violating tax invoices registration deadline.

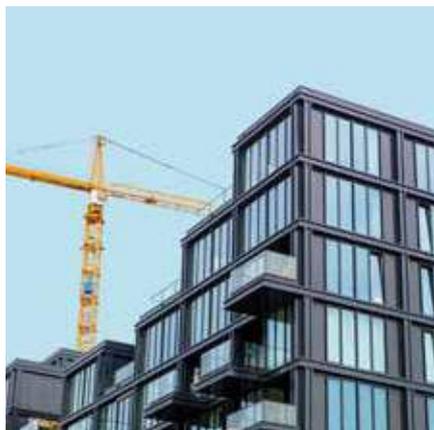
According to the Tax Code, the company had to submit invoices for registration no later than July 15, 2022, and the complainant did so. However, the tax office recorded the deadline violation for one day.

In particular, the company complained the tax authority did not provide an inspection report and, as a result, it was unable to use the right to file an objection. In its complaint, the company also mentioned technical factors possible influence, due to which invoices could reach the server with a delay.

The Council arrived at a conclusion that MD STS claims regarding invoices registration violation terms were unsubstantiated. According to the established judicial practice in disputes on procedural terms calculation, July 15, 2022, should be included in the permitted period of registration of tax invoices drawn up from February 1 to May 31, 2022. Therefore, if the payer submitted invoices within the specified period, there was no reason to impose a fine on him for late invoices registration.

After the Council’s intervention, the tax authority dropped the fine worth UAH 1.3 mn. for late invoices submission. However, the complaint is only 70% satisfied, the company is going to resolve the rest of the issues in court.

A construction company returns mistakenly collected fine worth UAH 167k



The State Labor Service fined a construction company in the amount of over UAH 167k for violation of labor legislation, in particular, failure to calculate salary indexation for employees.

The company successfully appealed the decision on imposing a fine in court. Nevertheless, the Enforcement Service managed to forcefully collect funds for the benefit of the state budget. It was not possible to return the money to the company solely.

After processing the company's complaint, BOC communicated with the State Treasury of Ukraine, the Enforcement Service and the Ministry of Justice of Ukraine.

After the BOC interference, the Ministry of Justice initiated an official audit of the actions of the regional Enforcement Service. As a result, the Enforcement Service returned UAH 167k of a mistakenly collected fine.

The Prosecutor's Office returns temporarily seized laptops



A meat products distributor complained to the Business Ombudsman Council about pressure and non-return of property by the Dnipropetrovsk Regional Prosecutor's Office.

The company reported that due to alleged tax evasion, law enforcers opened two criminal proceedings against the company. They searched the company's office and seized computer equipment and documents. Despite the court order, law enforcers did not return the temporarily seized property, and so the company was forced to suspend its work.

BOC submitted a complaint for consideration of the Expert Group with the Prosecutor General's Office and asked to immediately return the seized property to the enterprise. As a result, the Regional Prosecutor's Office enforced the court decision and returned the temporarily confiscated laptops to the enterprise in full.

Agricompany registers tax invoices worth UAH 434k

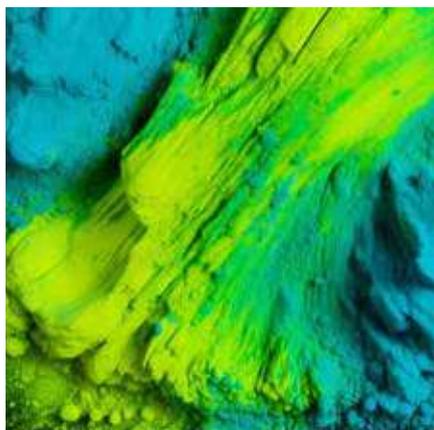


An agricultural company from Odesa region was recognized by a tax office as a risky taxpayer. In addition, the company's invoices amounting to UAH 434k were suspended. The company successfully challenged the actions of tax officials in court, but the tax authority did not enforce the court's decision regarding registration of suspended invoices.

The Council appealed to the regional tax authority and submitted the company's case for consideration at the Expert Group with the STS of Ukraine asking to exclude the company from the risky taxpayers' list and to register tax invoices.

As a result, the tax office informed BOC that it excluded the agricultural company from risky taxpayers' list and registered its invoices.

No drugs contained – expert examination of goods finally completed



Kyiv Customs detained the dye-concentrate imported by the company during customs clearance. It is known the company has been importing concentrate dye from an official manufacturer in Germany over 15 years. This raw material was used by the enterprise in producing components for defense equipment of the Armed Forces. Nevertheless, customs officers questioned the UCG FEA code specified in the declaration, particularly the composition of the product due to alleged presence of drugs in it. An examination of product samples was appointed, which dragged on for a long time. And the goods were kept in the customs warehouse for over a month.

Having looked into the company's complaint, the Business Ombudsman Council turned to the State Customs Service of Ukraine management team and recommended speeding up the expert examination. A week after applying to the main Customs Office, Kyiv Customs Office completed product samples examination. As a result, the goods were successfully cleared.

Exporting is not the same as “smuggling”



Recently, an enterprise trading in waste and scrap turned to the Business Ombudsman Council. It turned out that Volyn Customs, for unknown reasons, did not let the company's goods cross the border at first. The company exported ferrous metal scrap to Poland. When crossing the border, the customs officials refused to pass the goods, later referring to the instructions of the Anti-Smuggling Department of Volyn Customs and the State Bureau of Investigation (DBR). Trucks with goods remained in the paid customs control zone, the company was threatened with a fine for late delivery. The company was waiting for the DBR to inspect the goods and the company's trucks were in the respective area for over five days.

BOC immediately responded to the appeal and held negotiations with the Anti-Smuggling Department of Volyn Customs. The Council asked to speed up the inspection of trucks and to coordinate its duration with the DBR.

In the long run, the goods were inspected, and the customs and law enforcement bodies had no remarks at all. The company's trucks successfully crossed the Ukrainian-Polish border. The company confirmed that in the future, the customs clearance time of their vehicles got significantly reduced.

STS drops company's fine worth over UAH 1.2 mn



Having conducted an audit of an agricultural company with foreign investment, the capital's tax officers found the enterprise had allegedly overestimated the budget VAT refund by over UAH 1.2 mn.

Having processed the complaint, the Council upheld the company's position. During joint complaint review with the STS of Ukraine, BOC investigator drew attention to the fact that the agricultural company had the right to declare the VAT amount before the budget refund for disputed operations. The fact of the company's purchase of corn was confirmed by the tax authority itself while analyzing subsequent goods supply chain. The received logistics services for transporting corn abroad were also confirmed by respective documents. In addition, BOC noted that minor deficiencies in filling out the documents should not create any tax consequences for the enterprise.

The dialogue with tax officers with BOC mediation resulted in a positive decision in the company's case. The STS satisfied the company's complaint and cancelled TNDs (tax notifications-decisions) totally amounting to UAH 1.2 mn.

The Ministry of Economy extends deadlines for goods delivery



A Turkish company engaged in the development of "green" energy in Ukraine ordered components for turbine generators necessary for a wind power plant construction in Lviv Oblast from a German contractor.

The company managed to pay and import part of the ordered equipment to Ukraine in 2021. It expected to deliver the rest of the equipment by May 2022. However, due to the full-scale invasion of the Russian Federation in Ukraine, the wind farm construction project was suspended, and the company decided to postpone the delivery of the remaining equipment.

In order to avoid imposition of a penalty for currency legislation violation, the company had to receive an opinion from the Ministry of Economy on extension of the deadline for goods payments. However, it is known that administrative services provision deadlines and permitting documents issuance during martial law, particularly consideration of applications for maximum payment deadlines extension, were suspended by the CMU Decree of December 28, 2022 No. 165.

Having unsuccessfully submitted all the necessary documents to obtain the opinion from the Ministry of Economy, the company turned to the Council. Thanks to BOC's successful communication with the Ministry of Economy, in March 2023, the company finally received a positive opinion from the Ministry of Economy on its application.

VAT and discounted goods: minus UAH 5 mn. of company's fine



An electrical goods distributor complained to the Business Ombudsman about Kyiv Tax Service. According to the tax audit findings, tax officers charged the company with tax liabilities amounting to almost UAH 5 mn.

According to the tax authority, the company understated the VAT amount and did not register tax invoices. It's all because the company allegedly sold the goods below the purchase price and did not accrue VAT on discounted goods.

The company denied the Tax Service's claims by noting violation of the inspection procedure. In particular, the company stressed it did not sell the cut-price goods, so they did not include VAT, and, at the same time, registering tax invoices was not required.

During the investigation, the Council's investigator participated in the discussion of the enterprise's administrative complaint together with tax officials and the company itself. In addition, the Business Ombudsman Council turned to the State Tax Service of Ukraine (STS of Ukraine) with a letter in which it upheld the complainant's position. BOC noted the Tax Code of Ukraine norms did not provide for the obligation of the payer to accrue tax liabilities in connection with goods valuation, nor did they stipulate charging VAT on the discounted part of such goods value. Thanks to the Council's mediation in the case, the STS of Ukraine canceled the company's tax liabilities worth UAH 5 mn.

The documents are fine — the decision to adjust the customs value of goods cancelled



A foodstuffs distributor sent several complaints to the Business Ombudsman Council about decisions of Odesa Customs. The fact is that during the company's import of food and technical salt from Turkey, Odesa Customs adjusted the customs value of these goods. Customs officials stated an incomplete list of documents as the reason, particularly, the lack of information on the cost of packaging, transportation from the factory to the port, cargo insurance, and also suspected the company of forging the customs declaration and the contract for goods transportation.

Having upheld the company's position, the Council supported it in appealing the customs' decisions. BOC turned to the State Customs Service (SCS) and presented its own arguments.

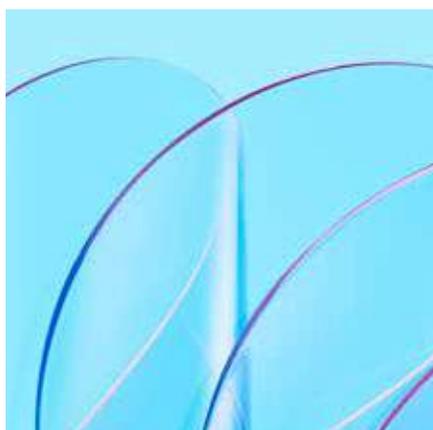
Firstly, the company submitted all the necessary documents to the customs with information on the goods packaging price, transportation from the factory to the port, and cargo handling. Secondly, insuring goods was a right, not an obligation of the complainant, so the company chose not to insure the goods in this case. The rest of the discrepancies and inaccuracies in the documents mentioned by the customs, were unconfirmed in the course of considering complaints.

In a letter to the State Customs Service, the Council emphasized that the company and Odesa Customs already had similar disputes on adjustment of customs value of goods in the

past, and the court ruled in favor of the company. Thus, the situation that the complainant had already encountered once again showed the need to adjust the administrative practice of customs authorities. After all, according to official court statistics, in 2022, over 90% of cases were declared by courts as illegal and decisions on adjusting the customs value of goods were cancelled.

After the Council's intervention, the SCS finally changed its vision of the situation and cancelled the decisions on customs valuation of goods.

Audit of a French glass manufacturer: what is wrong?



It is not the first time that a large French glass manufacturer has turned to the Business Ombudsman Council. Back in 2021, BOC helped the company exclude it from the risky taxpayers' list. This time, the company disagreed with another tax audit findings. The tax authority allegedly established that the company had overestimated the VAT negative value amount included in the tax credit of the next reporting period by UAH 2 mn , as well as the budget compensation amounting to UAH 313,000. Thus, according to the STS, the company did not utilise energy resources (gas and electricity) used in the glass mass production (with simultaneous reflection of cullet formation and use) in its business activity.

The Council upheld the company's position during the joint review of the complaint with the STS of Ukraine. The Council emphasized that the tax office did not provide a proper assessment of the economic operations of the company's placing in property the cullet obtained in the course of production. The company confirmed that as a result of production, in addition to finished products, it received return waste (its own cullet), which was written off, but subsequently brought on charge and further remelted for finished products manufacturing. That is why it should be considered that the company used energy resources in its economic activity. The very next day after considering the complaint, the STS of Ukraine canceled tax notifications-decisions.

A company receives a license for goods import from Mineconomy



A distributor of imported spare parts for refrigeration equipment complained to the Business Ombudsman Council that it could not obtain a license from the Ministry of Economy to import goods containing controlled substances (in this case, ozone-depleting substances and/or fluorinated greenhouse gases).

The company submitted an application to the Ministry of Economy through the electronic services Portal, having enclosed all the necessary documents. However, despite the positive experience of obtaining a similar license within a few weeks last year, this time the process of issuing the document was delayed for two months. The Ministry of Economy explained that the delay was due to the CMU Decree dated February 28, 2022, No. 165 in effect which suspended the deadlines for administrative services provision.

After processing the company's complaint, BOC sent a letter to the Ministry of Economy. The Council emphasized that despite the formal suspension of deadlines for providing administrative services, the service of issuing the license to the company must be provided within a reasonable period of time. Moreover, it was known that last year, despite the effect of the same Decree, the company received licenses within 2-4 weeks. Immediately after BOC intervention, the Ministry of Economy informed of the license issuance that was later confirmed by the complainant.

A company confirms the customs value of imported tableware



Back at the end of 2021, the Council was approached by a Ukrainian importing company that imported various types of tableware from Bulgaria, manufactured by the parent company, i.e. an affiliated company. The point is, the customs office repeatedly resorted to adjusting the customs value of imported tableware, increasing its value almost twice. The company stated that companies' affiliation did not affect the customs value, the customs, in its turn, doubted that fact and also pointed out to numerous discrepancies in the documents particularly related to goods transportation.

While working on the complaint, the Council arranged a tripartite meeting with the local customs and the importer. Meanwhile, the local customs made a request through the State Customs Service of Ukraine to the National Customs Agency of the Republic of Bulgaria to check information on possible discrepancies.

The BOC brought up the case for joint consideration of the BOC Expert Group and the State Customs Service of Ukraine. Later, through the EU Public Finance Management Support Program for Ukraine (EU4PFM), one managed to find out details of the reply letter from the Bulgarian customs agency, which for unknown reasons, had never been received by the Ukrainian recipient since September 2022. Moreover, with the support of the Embassy of Ukraine in the Republic of Bulgaria, one succeeded in confirming authenticity of documents from the exporter and absence of any discrepancies.

In late April 2023, the State Customs Service of Ukraine satisfied the importer's complaints and canceled the adjustment decision.

Then the State Customs Service satisfied the importer's complaints and since May 2023, customs value adjustment had stopped, and the company passed customs clearance at the contractual price declared by it. As a result, business could save over UAH 1 mn. having ensured import and sales of about a dozen deliveries of Bulgarian tableware to Ukraine.

Reservoirs maintenance: STS drops a fine worth UAH 1.2 mn for a well-known international gas stations network



The gas stations network turned to the Business Ombudsman, because the tax office charged it with a fine of UAH 1.2 mn as a result of the audit, as it allegedly sold fuel at one of Kyiv gas stations without using a cash register. Tax officials arrived at this conclusion due to the lack of fuel in the tanks when comparing its balance with the documents submitted for the audit.

The gas stations chain handed documents over to the tax authority confirming that at the time of the inspection, it was performing maintenance works on cleaning the tanks at the gas station. So, in connection with this, the fuel was temporarily moved from reservoirs to maintenance company's tanks.

Disagreeing with the tax authority, the company challenged their decision on charging fines to the State Tax Service of Ukraine (STS of Ukraine). At the same time, the company appealed to the Business Ombudsman Council with a request to participate in its case consideration by the STS of Ukraine.

In a letter to the STS of Ukraine, as well as during a joint review of the complaint with the participation of the tax authority and the complainant, the Council drew attention to the fact that the gas stations chain had sent a notice to the tax authority about cleaning the tanks in advance. Such maintenance works must be periodically carried out by gas stations in accordance with the law, because they contribute to petroleum products safe storage and extend the equipment service life. Despite receiving such a notice, the tax authority decided to check the fact of fuel presence in gas station tanks on that very day.

As for the cash register use, the company had such a device installed at the gas station, but the fact of fuel sale was not proven by the tax authority. The primary documents confirmed that the company was only cleaning reservoirs, so there was no reasonable justification for the fine. Thus, the company did not violate the law on cash registers.

Therefore, the STS of Ukraine agreed with the fact that the company was cleaning the tanks and dropped the regional tax office's fine worth UAH 1.2 mn.

Salt importer from Romania – the decision to adjust the customs value dropped



The company imported salt from Romania and it was not the first time that it had encountered the customs value adjustment. Last year, the court overturned the customs office's decision to adjust the customs value of eight batches of salt imported by the company.

This time, the company underwent an examination regarding imported salt price compliance with the current market situation in advance and attached a document with its results to the customs declaration.

While reviewing the documents submitted for customs clearance, the customs officer requested documents from the company relating to insurance costs and other payment/accounting papers without specifying exactly which documents should be provided and what doubts the customs had. The company refused to provide additional documents, as it had provided the customs with a sufficient package of documents to determine the customs value of goods.

However, the customs decided to adjust the value of goods, justifying that decision by the fact that the company did not apply for transportation and because of discrepancies between the statistical value of goods (in the national currency of Romania) specified in the export customs declaration, and the invoice value shown in the invoice.

After receiving the complaint, the Business Ombudsman Council upheld the company and sent an appeal to the State Customs Service of Ukraine (SCS of Ukraine). Separately, BOC participated in the company's complaint review with the participation of the complainant and the customs authority. The Council noted that the company had paid for the goods in euro under the contract, so the difference in the national currency could have arisen due to fluctuations in the Romanian leu against euro. Therefore, such differences couldn't testify to imported salt declared price incorrectness.

Eventually, joint consideration of the company's complaint, thanks to BOC mediation, made it possible to positively resolve the case. The discrepancies in the documents were eliminated, and the customs dropped the decision to adjust the customs value of goods.

Benefits used. The tax authority accepts it and cancels fines



At the beginning of the full-scale invasion, the state offered tax benefits for businesses. According to the amendments to the Tax Code introduced in the spring of 2022, taxpayers from March 1 to December 31, 2022 were given the opportunity to be temporarily exempted from the accrual and payment of taxes for land plots and real estate located in the territories where hostilities are (were) taking place. In April 2023, the law implied that the state should not fine a business for non-payment of such taxes, and all debts specified in tax notifications-decisions are subject to cancellation.

Nevertheless, during 2023, the Business Ombudsman Council received several complaints from Kyiv enterprises, which were charged fines by the tax authority, despite the fact that they used benefits during the given period. The property of the complainants is located in the city of Kyiv, and the capital was included in the list of territories of active hostilities from 24.02.2022 to 30.04.2022. However, in each case, tax officials detected an understatement of land tax or real estate tax. As a result, the fines ranged from 500k to 1 mn hryvnias.

The Council had raised the issue of applying land and real estate tax benefits at the Expert Group with the State Tax Service of Ukraine (STS of Ukraine) several times. In addition, for each complaint, BOC addressed a letter to the STS of Ukraine and asked to withdraw the tax notifications-decisions, because the companies did not violate the law. Separately, the STS of Ukraine considered administrative complaints of enterprises with the Council's participation.

In the end, thanks to the BOC mediation, the tax authority canceled the relevant real estate tax accruals and fines.

“Risky” supplier – buyer’s tax credit saved



An agricultural company from Kyiv Oblast disagreed with the tax audit findings and complained to the Business Ombudsman Council. According to tax officials, the company allegedly overstated the tax credit amount worth almost UAH 1 mn. That was because of a “risky” supplier and failure to confirm the reality of sunflower seed supply operations, based on the documents provided by the agricultural company.

As it turned out, due to the supplier’s being “risky”, tax authorities had already suspended tax invoices registration for transactions involving sunflower seeds supply before. However, the supplier applied to the Central Level Commission under the STS of Ukraine and provided documents to confirm the supply

reality. As a result of such a supplier's appeal, the Commission registered respective tax invoices within the framework of procedures provided for by Procedure No. 1165. At the same time, the buyer's attempt to create a tax credit against such tax invoices encountered resistance from tax officials on the same grounds.

In a letter to the STS of Ukraine, the Council upheld the agricultural company's position and noted the need for forming a unified approach to the "riskiness" of the supplier both during the tax invoice monitoring procedure within the procedures provided for by Order No. 1165, and during the tax credit legality verification from the buyer. In addition, the Council noted inadmissibility of ignoring facts confirming the economic transaction as well as sufficiency of documents established as part of procedures under Procedure No. 1165 during tax audits.

The Council also took part in complaint materials review with the participation of the complainant and the STS of Ukraine. Thanks to the successful mediation of the BOC, the STS of Ukraine agreed with all the arguments and canceled the contested tax notification-decision.

STS accepts the company's income tax return



At the end of February 2023, the Main Department of the STS in the city of Kyiv (MD STS) refused accepting the company's income tax declaration for 2022. It was all because the complainant was allegedly not an income tax payer, since he had been on the simplified taxation system since 2016, and therefore was not entitled to submit respective declarations. However, the company reported that the year before, in March 2022 it had submitted an application to waive the single tax through the e-office. Since the legislation did not set a clear time frame for considering such an application, the entrepreneur, not having received a refusal to satisfy his application within a year, expected the tax office not to have any objections, so he had switched from the simplified to the general taxation system since April 2022.

While working on the case, BOC participated in reviewing the company's administrative complaint materials and repeatedly discussed the case at the Expert Group meetings with the STS and the MD STS. It turned out that the capital's tax officials, for objective reasons, did not timely process the application submitted by the complainant in March 2022, that is, at the



beginning of the full-scale war. Therefore, the company, without knowing it itself, was further considered a single tax payer. Moreover, in the course of investigating the complaint, the MD STS also decided to exclude the company from the Single Tax Payers Register from April 2023 because of the debt.

Subsequently, the STS managed to find the application submitted by the complainant in March 2022. Since it was drawn up correctly, the STS satisfied the payer's original complaint and canceled the MD STS decision to refuse accepting the income tax return, while obliging the regional tax office to correct the information about the enterprise in the Single Tax Payers Register. This made it possible to restore justice and retrospectively switch the payer to the general taxation system from April 2022.

The STS confirms company's right to budget refund worth UAH 386k



According to the audit results, the tax office detected that the company with Swiss investments allegedly overestimated the amount of the budget compensation by 386k UAH. The company disagreed with the results of the tax audit and successfully challenged its results in court. However, the tax office delayed to display information about the budget refund consistency in the relevant register.

While investigating the company's case, the BOC turned to the relevant interregional State Tax Service department for work with large taxpayers and submitted a complaint for joint consideration by Expert Group. The Council emphasized that according to the Tax Code, the specified amount of budget compensation should be considered as agreed in the Register of applications for the return of the budget compensation amount from the date of recognition of tax notifications-decisions as illegal and/or cancelled.

A comforting piece of news arrived later – after the meeting of the Expert Group with the BOC participation, the tax office reflected the amount of budget compensation in the amount of 386k UAH as consistent and soon the specified funds were transferred to the taxpayer's bank account.

Construction equipment supplier returns UAH 131k of customs duties and UAH 289k of VAT



A construction equipment supplier complained to the Business Ombudsman Council about the decision of Lviv Customs. It turned out that during fire bricks clearance, customs officers adjusted the customs value of goods due to discrepancies in the documents submitted for customs clearance to confirm the declared value. The company tried to challenge actions of Lviv customs officials on its own and submitted additional documents, but the regional customs refused to change its decision.

To help the company, BOC participated in the company's administrative complaint review with the State Customs Service of Ukraine (SCS). The SCS noted the company did not provide all the documents important for considering the complaint, so it additionally sent the company a detailed request, having suspended the complaint consideration period for 20 days.

The company provided all the requested documents, particularly an invoice with explanations about its drawing up peculiarities and terms of payment for goods and expenses related to its transportation.

As a result, the SCS satisfied the company's complaint. Consequently, the company managed to return UAH 131k of customs duties and UAH 289k of VAT.

Return from occupation and to VAT and group 4 single tax payer status



From the first days of the full-scale invasion of the Russian Federation into Ukraine, an agricultural company from the city of Vovchansk, Kharkiv region, found itself under occupation. Subsequently, the company took advantage of tax benefits adopted by the Government in the spring of 2022 and switched to paying a group 3 single tax at the rate of 2%, which did not include the VAT payment. The company made this decision because in the summer of 2022 it was unclear how to continue further operations. And the single tax at the rate of 2% made it possible not to have mandatory tax expenses in periods when the economic activity of agricultural enterprises in the occupied territory was almost frozen.

After the de-occupation of Kharkiv Oblast, in March 2023, the company decided to start a partial sowing campaign. This decision was quite tough, because the leased warehouse of the enterprise with equipment, spare parts for it, planting material, and fertilizers was located in the city of Vovchansk, which daily suffered from occupiers' fire. Therefore, the company decided



to move all equipment and materials away from the border. To do it, the company purchased the respective mobile wagons. In addition, the wheat harvest of 2022 was stolen, and since most of the seed material and plant protection products were purchased in 2021 with deferred payment, the company had substantial debts to counterparties. Also, approximately 40% of the land bank of the agricultural enterprise is located in close proximity to the Russian Federation border, where it had been impossible to plant crops for the second year.

Alongside this, one of the key prerequisites for making the decision to carry out the sowing campaign in the spring of 2023 was that the company was still able to agree with the counterparty on obtaining plant protection products for 2023 sunflower crop with a deferred payment, provided that the counterparty returned protection products for 2022 wheat harvest, which remained unused due to the situation in the country.

From an accounting point of view, to return plant protection agents supplied to the company even before the war, it was necessary to register the adjustment calculation to the previously drawn up tax invoice. In practice, only a VAT payer can do it. In connection with this, there was an objective need to return the single tax group 4 payer and a VAT payer status. The company sent the application and documents to the tax authority through the payer's e-office to confirm the group 4 single tax payer status. However, in response to the taxpayer's request, the tax office informed the company that it would be able to return to group 4 no earlier than after two calendar years, given general restrictions set for agricultural enterprises in the Tax Code of Ukraine.

While processing the company's complaint, the Council's investigator drew the tax authorities' attention to the fact that according to the amendments to the Transitional Provisions of the Tax Code of November 2022, the payer could independently refuse to stay in the 3rd group of the single tax at the rate of 2% and return to the taxation system in which he was before. At the same time, a two-year limit for group 4 single tax payers did not apply in that case.

The Council helped the complainant establish constructive communication with tax authorities on this issue. It turned out that at that time the regional tax authority had limited technical functionality for proper processing of the payer's application to refuse group 3 single tax at the rate of 2%. Finally, after enlisting methodical help of the STS of Ukraine, within a month, local tax officials updated the data on the company's registration as a VAT payer, and also confirmed the group 4 single tax payer status for 2023.

Law enforcers intensify investigation in the criminal case against agricultural company's counterparty



A Kyiv-based agricultural company complained to the Business Ombudsman even before the beginning of the full-scale invasion of the Russian Federation. The company informed the Council law enforcers delayed investigation in the criminal proceedings. The agricultural company cooperated with the counterparty and supplied it with seeds and plant protection products. The counterparty was supposed to make the final payment for the delivery by the end of autumn 2019, but it never did, and eventually launched a bankruptcy procedure. Meanwhile, the agricultural company turned to the law enforcement officers, who initiated a criminal case. At the same time, they neither performed any investigative actions for a long time, nor even interrogated persons who could be potentially involved.

While working on the complaint, the Council appealed to the National Police of Ukraine and the Prosecutor General's Office of Ukraine and asked to intensify the pre-trial investigation in the case. The BOC had brought up the complaint for consideration of the Expert Group with the Prosecutor General's Office five times, of which three meetings already fell on the active period of the full-scale war. The Council emphasized that the delay may have negative consequences on the effectiveness and compliance with the pre-trial investigation time frames.

In the summer of 2023, the agricultural company informed the Council about developments in the pre-trial investigation. In particular, the fact that investigators conducted the necessary interrogations, collected employees' contacts and information about the counterparty's bank accounts, particularly about the funds flow. As some progress was made in the investigation, the Council closed the case successfully.

A company's cargo successfully passes customs control



The Kremenchug private enterprise complained that during the customs control, the Volyn customs officers did not allow 18 of the company's trucks cross the Polish-Ukrainian border. The company imported into Ukraine a complex solvent for use in industry.

Customs officials took samples of goods from each car for examination, but purposefully delayed the investigation. Therefore, the truck downtime was more than 20 days, and the company paid the carriers EUR 100 per day. In addition, the enterprise also paid staff sanctions to buyers for late deliveries.

While processing the complaint, the Council's investigator turned to the Volyn Customs, directly contacted its head and asked him to check the circumstances of the delay of the company's cargo.

It is noteworthy that on the third day after the Council's call to the customs authorities, the Specialized Laboratory issued examination conclusions to the company and all its trucks successfully passed customs control.

Over UAH 2 mn of fine for an agricompany dropped



An agricultural company from Chernihiv region turned to the Business Ombudsman Council. As a result of the audit, tax officials imposed UAH 1.7 mn of VAT on the company as well as a fine of almost half a million hryvnias for allegedly violating the Tax Code.

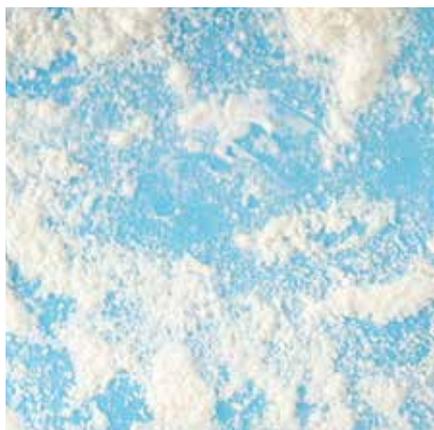
According to the tax authority, the company artificially overestimated the cost of growing grain crops in 2019, which affected the obligation to pay VAT. The tax authority claimed that the company deliberately involved another related company in the sowing campaign in order to overestimate its costs for growing agricultural products and thus reduce the VAT paid to the budget.

The Council's investigator carefully examined all the circumstances of the case. He sent a request to the Main Department of the State Statistics Service in Chernihiv region and checked the average indicators of costs for the production of one quintal of agricultural products in Chernihiv region in 2019. Having compared the data with the complainant's production costs, BOC supported the company and shared the results of its research on the costs of growing grain with the tax office. According to the information provided by the State Statistics Service, the complainant's expenses for growing agricultural products were close to the average expenses of other agricultural companies in Chernihiv region, and the tax department mistakenly did not check this information during the audit.

Also, based on the statistical reporting of the agricultural company, the investigator was able to prove that for many years the company incurred comparable expenses for growing agricultural crops, but for some reason the tax office had questions about only one year of its activity – 2019. This further confirmed the illogic audit conclusions.

BOC took part in the company's administrative complaint consideration by the State Tax Service of Ukraine. In the end, the STS of Ukraine canceled the disputed tax notifications-decisions for a total amount of over UAH 2 mn.

How the company's VAT payer's registration was restored



Since February 24, 2022, due to temporary occupation of the city of Melitopol, a flour producing enterprise has lost access to its assets and source documents, as well as access to its bank account. Due to such circumstances, the enterprise operation was actually suspended.

The company sent an application to the tax authority in the Zaporizhzhia region on inability to fulfill its tax obligations and received a decision confirming this fact.

In the spring of 2023, the company decided to resume its economic activity and for this purpose it found premises in Kyiv Oblast and relocated. The company managed to resume its operations only in June 2023.

Meanwhile, once the enterprise resumed its activities, it learned that its registration as a VAT payer had been cancelled. As it turned out, the tax authority canceled the company's VAT registration at a new location due to the fact that the company had submitted tax returns that showed no business transactions for twelve consecutive months.

The company lodged a complaint with the State Tax Service of Ukraine (STS of Ukraine) and also appealed to the Business Ombudsman Council.

While working on the complaint, the Council sent a letter to the STS of Ukraine and upheld the company's position, emphasizing that the tax authority had confirmed the company was unable to fulfill its tax obligations, as well as there were no VAT-taxable transactions due to the forced cessation of economic activity for reasons beyond the company's control (military actions and temporary occupation of Melitopol city).

As a result of the Council's communication with the STS of Ukraine, the company's VAT payer registration was restored.

Complainant returns his share in the company while dishonest notary was blocked access to Unified State Register



This case is an example of the so-called "share fragmentation". A member of a company engaged in agricultural equipment production turned to the Council. The complainant has a share of about 34% in it. In turn, as of June 2023, this company owned a share in the authorized capital of an insurance company. Therefore, the entrepreneur indirectly owned 14% of this insurance company. In the summer of 2023, the complainant decided to sell his 34% and sent his offer to other members. However, later, from a letter from the NBU in the financial monitoring context, the complainant accidentally learned that his indirect share in the insurance company had decreased from 14% to 3%. And in the fall of 2023, this indirect share decreased to 0%. As it turned out, the company's management team, in which the entrepreneur had a 34% share, alienated

the company's share in the insurance company without his consent to other persons, who later resold their shares. Thus, the company was withdrawn from the insurance company's membership and the complainant's indirect ownership of the insurance company's share ceased.

The complainant approached the Collegium of the Ministry of Justice of Ukraine (MinJust Collegium) for considering complaints about I decisions, actions or omission of the state registrar and asked for the Business Ombudsman Council support.

While analyzing the case, particularly, the charter of the company in which the complainant has a share, the Council found collisions there. However, the Council eventually arrived to a conclusion that the charter restricted the head of this company from entering into agreements based on which the alienation of its property – the share in the insurance company – took place. In addition, it was established that not all documents required by law were provided to the notary for registration actions. Therefore, the notary still had to refuse taking contested registration actions, but he did not do so. According to the results of the appeal against illegal registration actions in the MinJust Collegium, the Council's applicant's complaint was satisfied, and the dishonest notary was blocked access to the Unified State Register for three months.

Arrest from the company's bank account lifted



An agricultural company from Chernihiv region approached the Council with an unusual case. The company received a fine from Ukrtransbezpeka for exceeding dimension and weight standards when transporting cargo. The company paid this fine. However, despite this, the Enforcement Service launched enforcement proceedings and arrested the company's funds. Meanwhile, the following day, since the company paid the fine, the Enforcement Service issued a decision to lift the arrest and closed the enforcement proceedings. However, the funds in the company's bank account remained arrested. The bank demanded an order from the Executive Service on lifting the arrest, although it had already shared such a document. The complainant did not manage to solve this problem on his own for over a year.

While working on the complaint, the Council turned to the Enforcement Service and asked it to re-send the order on lifting the arrest to the bank. As a result of communication between the Enforcement Service and the bank, the company's bank account arrest was lifted.



STS renews the company's fuel trade license



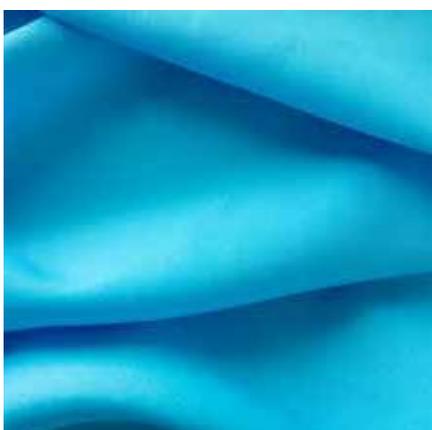
The tax authority revoked the fuel distributor's wholesale fuel trade license due to absence of a company at its location (as indicated in the license).

Tax officers were unable to conduct an audit because the company was allegedly absent from the specified address. In addition, the company's managers were also absent at the time of the inspection.

While working on the complaint, the Council found out that due to regular rocket attacks, the company transferred employees to remote work mode, which was confirmed by documents. Alongside this, the company provided the tax authority with confirmation of office lease at the location address, which was also mentioned in the Taxable Objects Register. At the same time, during the audit, the tax office did not record the fact of the company's "absence" of multimedia devices, which is required by law, and sent the inspection report and the license revocation order as soon as possible to another address next to the company's office.

The Council agreed with the fact that during the audit tax officials committed a number of procedural violations and sent a letter to the State Tax Service of Ukraine (STS of Ukraine). The Council emphasized that state bodies' decisions should be proportionate to the situation or violation, if such was committed by business. The Council participated in the open review of the complaint with the participation of the complainant and the STS of Ukraine. As a result, the Council's arguments were accepted. The tax authority satisfied the company's complaint and renewed its wholesale fuel trade license.

Energoatom returns half a million hryvnias debt to the company



A textile company from Rivne complained to the Business Ombudsman Council that the Enforcement Service did not return money collected from the debtor to the complainant for eight months.

It is known that the Commercial Court of the city of Kyiv decided to collect a debt amounting to over UAH 480,000, including court fees and legal assistance costs, from SE Energoatom in favor of the complainant. Thus, SE Energoatom owed money to the enterprise for goods supply. The court issued orders for enforcement of decisions to one of the State Enforcement Service departments (SES) in Kyiv, but there was no progress in the case with the debtor's seized funds.

While handling the complaint, the Council assumed that the Enforcement Service could postpone returning the company's funds, particularly taking into account the search of the executive service department and the seizure of the executive

proceeding's materials conducted by the Economic Security Bureau. The Council also drew attention to the fact that during the period of martial law in Ukraine, the deadlines for performing enforcement actions might be missed. At the same time, the Council believes that state bodies should be guided by the principles of reasonableness and justice. In order to find a solution to the case, the Council sent a letter to the Ministry of Justice of Ukraine and the Department of Internal Affairs in Kyiv, supporting the complainant's position. As a result, the Enforcement Service transferred about half a million hryvnias of owed funds to the textile company first in part and then in full.

The Council helps defense company cancel UAH 13,2 mn of fine for allegedly untimely import



Synergia, a design and production enterprise constantly helps the Armed Forces of Ukraine with special equipment repair and improvement. To implement one of the projects, the Company ordered a considerable number of armored plates from abroad, transferring the currency to the supplier.

The company realized that it might not have time to import armor within the general 180-day limit set by the NBU, so it used a separate tool and turned to the Ministry of Economy. The Ministry issued a conclusion on extending import transactions settlement deadline by two months, until the beginning of December 2022.

In October 2022, the imported goods crossed the customs border of Ukraine, however there was a delay in customs clearance and the armor was kept in a customs warehouse.

Not having time to complete the customs clearance of goods within the deadline, the company turned to the Ministry of Economy. The Ministry replied that there was no need to extend the deadline for the Enterprise, because the moment of importing was the moment when the goods crossed the customs border. It would seem that the problem did not exist, and the importer could safely complete customs clearance while other factors causing the delay were being eliminated.

Suddenly, at the end of May 2023, the territorial department of the State Tax Service of Ukraine (STS of Ukraine) conducted an

unscheduled on-site inspection of Synergia regarding currency legislation compliance. The reason for the inspection was information from the servicing bank that it had not completed currency supervision on its part in accordance with the NBU Instruction.

According to the tax authority, the Company violated the settlement deadlines, for which the company was charged a fine of UAH 13.2 mn! The penalty amount was almost half of the money paid to the foreign supplier for armor plates.

After receiving the inspection report, the Company again appealed to the Ministry of Economy. The Ministry of Economy did not change its position that the deadline had not been violated in that situation, and noted instead that the moment of importing and the moment of currency supervision completion must be differentiated.

The company contested the penalty charge to the STS of Ukraine, and also enlisted the Business Ombudsman Council support.

The STS of Ukraine held a complaint hearing attended by Enterprise representatives and Council investigators. The Council also sent written proposals to support the defense company.

Relying primarily on the established position of the Supreme Court, the Council noted that the moment when the goods crossed the customs border of Ukraine did not depend on the necessity to go through all the customs clearance procedures of the said goods, completion of which gave the right to be further used by the owner at his or her discretion. In disputes regarding meeting deadlines in such circumstances, it was necessary to refer specifically to the import transaction moment, i.e. to the date of crossing the customs border, regardless of further customs clearance.

The Council also upheld the position of the Ministry of Economy. In this situation, the provisions of the Laws «On Currency and Currency Transactions» and «On Foreign Economic Activity» should be differentiated from the Instructions issued by the NBU as the currency supervision body over authorized banking institutions. The relevant provisions of the Instructions strictly regulate the moment of the bank's currency supervision completion over residents' compliance with settlement deadlines rather than the moment of the import transaction completion.

The STS of Ukraine comprehensively investigated the circumstances of the case as well as law enforcement specifics. The Tax Office did not allow the Company's legitimate interests to be violated and ultimately satisfied the complaint. The STS of Ukraine agreed that the decisive point in such cases is the initial moment of the goods being under customs control – the moment when they physically cross the customs border of the state. Since the company made the delivery without violating the settlement deadlines, the Tax Office dropped the fine worth UAH 13.2 mn.

Feedbacks

When the investigation is complete (a case is closed successfully or not), we send each complainant a feedback form to hear whether they were satisfied with cooperation with BOC.

Complainants evaluate the Council's assistance according to the following criteria:



customer support and carefulness



understanding the essence of the complaint



quality of the provided service

Feedbacks from BOC complainants allows to identify moments in our work that require improvement.

In 2023,

97%

of applicants were satisfied with cooperation with BOC.



We would like to extend our great and sincere gratitude to all the Business Ombudsman Council's employees for their promptness and assistance in solving the issue of non-return of the erroneously transferred tax amount. We wish your team further success and a great victory to all of us.

Dnipro Lucky Stone LLC



We sincerely thank you for your unindifference and active participation of the Business Ombudsman's team in considering our dispute with Dnipro Customs. It is owing to your credibility and active position that together we managed to do the almost impossible thing – to be heard by the state body and have the decisions on customs value adjustment cancelled administratively.

DET-UA LLC



We would like to express our respect and gratitude to the Business Ombudsman Council's team for prompt, professional and effective work in considering our complaint about inaction of the State Tax Service regarding illegal and long-lasting non-enforcement of the court judgement. Thanks to BOC assistance, the State Tax Service complied with the court decision and registered invoices amounting to UAH 308k.

DSM-Agro LLC



We would like to express our special gratitude to the Business Ombudsman Council. While considering our complaint, BOC investigator did her job carefully, promptly and at the highest professional level. We constantly felt support, humane attitude and a desire to help us to address the issue of tax invoices ungrounded suspension as soon as possible, as well as to restore normal economic activity in these very hard times for our country.

Private entrepreneur running veterinary business



I'm grateful to the Business Ombudsman Council for the professional approach and individual support during the appeal of the tax notification-decision (TND) in the STS of Ukraine.

Thanks to your experience, detailed study of arguments and coordinated cooperation, the tax authority canceled the TND with monetary demands to the company worth almost UAH 1.7 mn.

A company engaged in real estate industry



I would like to sincerely thank the Business Ombudsman Council for their incredible work and resolution of a very difficult tax issue of our company. Your effective work and ability to achieve results are important for all the entrepreneurs in the Ukrainian business environment. Your team not only showed a deep understanding of our situation, but also professionalism, patience and great dedication to their work. Your advice and recommendations helped us understand complexity of the situation and find optimal ways to resolve the problem.

Vash Pereviznyk LLC



It was difficult, long, yet with tremendous support, we went the distance of excluding our company from the «risky» category together, that we couldn't do on our own – without your help. We would like to thank the Business Ombudsman Council and everyone who took an invisible part in the common cause. Your assistance and, above all, its results – they inspire and give hope that Ukraine can be changed, set free and saved from outdated «soviet-based» management methods, namely tax administration.

TSEMTO PE



We sincerely thank the Business Ombudsman Council for prompt and high-quality work, as well as quick response. Currently, you are the only institution with which it is possible to resolve the issue, particularly with the STS out of court.

UK Lex Assistance LLC



AYU GROUP LLC would like to extend its sincere gratitude to the Business Ombudsman Council for highly professional assistance in considering the complaint regarding our company's risky VAT payer status assignment. The Business Ombudsman Council promptly and efficiently assisted in establishing productive communication with MD STS in Kyiv, which allowed us to prepare an explanation with the necessary information. As a result, we received a decision about non-compliance with risk criteria. We are grateful to the BOC for its support and help.

AYU GROUP LLC

6. Contribution of BOC to European integration, good governance and overcoming consequences of the russian military aggression

European integration and recovery are the main vectors of the development of Ukraine courageously resisting the full-scale aggression of the Russian Federation for two years. Currently, the country faces not only the need to bring legislation and state policies closer to the EU relevant norms, but also to gradually overcome the consequences of hostilities in infrastructure, life support systems, and build its own economic sustainability.

Ensuring reconstruction and further economic security is impossible without involving the private sector. Therefore, the Business Ombudsman Council, as a Cabinet of Ministers consultative body, supports business in interaction with state bodies and helps entrepreneurs establish a dialogue with the state. Striving to strengthen the stability of Ukrainian business, the Council, in addition to its traditional function of handling complaints, develops systemic solutions to entrepreneurs' problems and is an integral part of the discussion on future post-war reconstruction of Ukraine at the international level.



I. European integration

As an independent institution with over eight years of experience in the legal field, particularly in protecting Ukrainian business rights, the Council offers the Government of Ukraine its professional expertise in bringing Ukrainian legislation closer to EU law and improving the business climate.

The Council is actively involved in working groups and initiatives in areas related to both favorable business conditions development and their alignment with European standards.

In 2023, the main focus areas of the Council's work in the context of European integration were:

Deregulation and reduction of barriers to doing business

The Council participated in discussions under the auspices of the Ministry of Economy on deregulation in various business areas. In particular, the Council's experts took part in the development of sections on labor relations, tax control, foreign economic activities, etc.

BOC representation in the CMU working bodies

The Business Ombudsman Council was re-elected to the renewed composition of the Intellectual Property Council and the International Trade Council under the Government of Ukraine.

At the end of the year, the necessary amendments (developed with the participation of the Council) to more than a hundred laws were supported by the Verkhovna Rada in the first reading.

However, among such amendments there were no changes in the tax sphere. Therefore, the Council once again stresses that the tax sphere must be incorporated in the administrative appeal procedure. The Council is working with experts on the relevant Draft law proposals to expand business opportunities in tax administration procedures.

Good governance

In December 2023, the Law of Ukraine "On the Administrative Procedure" became effective, bringing tectonic changes to interaction of the state and business in many public life areas. With the adoption of the Law, systemic recommendations promoted by the Council for many years, were implemented.

To ensure the effect of the law and align sectoral legislation, the Council continued working systemically with experts from SIGMA analytical center and the EU-funded EU4PAR project as part of the Working Group under the Secretariat of the Cabinet of Ministers of Ukraine.

To promote good governance principles among civil servants, the Council developed the **Declaration of Fair and Reasonable Administration**. The document positively assessed by the Council's stakeholders will become a guideline and a practical tool for applying provisions of the Law of Ukraine "On the Administrative Procedure" to real cases and settling disputable situations.

The Declaration draft was sent to key ministries defining state policy related to business interests, the Office of the President of Ukraine and a number of foreign partners to receive feedback and proposals.



II. Post-war recovery

From the first days of the full-scale invasion and in further interaction with Ukrainian business, the Council made it a priority task to support entrepreneurs in the post-war reconstruction of Ukraine. Therefore, in 2023, the Council began actively working on establishing a partnership with state bodies that will be responsible for reconstruction processes.

Cooperation with the Restoration Agency



In order to support the state's efforts in recovery initiatives, the Business Ombudsman Council signed a Memorandum of Cooperation with the State Agency for Restoration and Infrastructure Development of Ukraine (Restoration Agency).

Consolidating efforts with partners directly involved in reconstruction will allow to render maximum support to the private sector in post-war reconstruction of the country.

Under the signed Memorandum with the Restoration Agency, BOC investigators

helped the Agency to develop tender documentation for the civil engineering works procurement to implement first large reconstruction infrastructure projects.

The Council also joined arranging market consultations on civil construction works procurement. At the event, our investigators presented BOC and its mission in protecting business rights and mentioned cases when entrepreneurs should contact the Council for help.



The Council will advocate the legal rights of reconstruction participants before the state. Such interaction will ensure transparent conditions for reconstruction projects implementation in accordance with legislation and contribute to increasing the level of trust and attracting investors to the reconstruction of Ukraine.

Cooperation with the Ministry for Restoration



At the end of December 2023, the Business Ombudsman Council signed a Memorandum of Cooperation with the Ministry for Communities, Territories and Infrastructure Development of Ukraine (Ministry for Restoration) to introduce clear, reasonable and transparent rules for working with the private sector.

The purpose of the Memorandum is cooperation and consolidation of efforts to ensure transparency in implementing recovery measures during the martial law and post-war reconstruction of Ukraine, as well as improving conditions for involving business in their implementation.

Within the framework of cooperation with the Ministry for Restoration, BOC will attract a group of various qualification specialists and prepare strategic areas of cooperation. This support is expected to also be provided by BOC to strengthen the Business Advisory Group activities under the Ministry for Restoration.

Promoting public-private dialogue

During 2023, BOC attended various events dedicated to reconstruction, attracting investors, economic transformations and overcoming the consequences of Russian aggression.

The Council is a permanent member of the Government Conference on Reconstruction of Ukraine. In 2023, the Business Ombudsman and his Deputy attended the

Ukraine Recovery Conference, which took place in summer in London, Great Britain.

During the conference, the Council's leadership team held working meetings with international partners, Ukrainian and international business representatives, and also joined discussions and events that took place in parallel to the political track of the conference.

In autumn, the Business Ombudsman took part in conferences on the recovery of Ukraine in Warsaw, Poland and Toronto, Canada.



FIT 4 UKRAINE Conference was held within the framework of Rebuild Ukraine 2023 International exhibition on November 15, 2023 with the support of Ukraine Invest.

Rebuild Ukraine Conference took place on November 21-22, 2023 with the support of Canada-Ukraine Chamber of Commerce.



In his messages, Roman Waschuk clearly emphasized his readiness to help Ukrainian and international investors settle disputable issues in interaction with the state. The Council will continue serving business to protect its legitimate rights and interests and strengthen Ukraine's economic potential.

Compensation for damages caused by military aggression of the rf

A separate business problem in the context of a full-scale war is compensation for damages caused by the military aggression of the Russian Federation. The Council had already studied this issue before and advised business on recording losses.

In 2023, the Council joined the discussion on the compensation mechanism development. In particular, during his visit to Brussels,



Belgium, the Business Ombudsman took part in the conference «Justice and Responsibility for the War in Ukraine», held in the Belgian Parliament. He presented BOC's vision for reparations to the war-affected private sector.

Asset management of sanctioned enterprises

In the reporting year, the Business Ombudsman Council established a dialogue with the Asset Recovery and Management Agency – ARMA to resolve urgent issues lying within ARMA's competence.



III. Integrity and corruption prevention

The fight against corruption remains an urgent obligation not only on the way to Ukraine's further integration and accession to the European Union, but also to effective recovery from the consequences of full-scale Russian aggression. In addition, the fight against corruption is directly within the competence of the BOC helping businesses prevent possible cases of corrupt interaction with state bodies. Certain provisions of the State Anti-Corruption Strategy for 2021-2025 affect the activities of the Council, so BOC seeks to develop cooperation with anti-corruption bodies, with which it is ready to share expertise in implementing anti-corruption policy in Ukraine.



Cooperation with NACP



Under Memorandum of Partnership, the Council cooperates with NACP to promote the ideas of integrity in the private sector and prevent public authorities' malpractice in relation to business. In the reporting year, the Council participated in the development of the online course "How the State Interacts: Learn, Communicate, Change", organized by the Integrity Office of the NACP. In particular, the Council supplemented the theoretical part of the course with examples of the classification of unscrupulous behavior of authorities that the institution encountered during its activities.

Also, during the year, the Council participated in events and conferences organized by the NACP, in particular, in the All-Ukrainian anti-corruption forum "Integrity – the Future of Ukrainian Society".

When investigating corruption risks in the tax sphere, the NACP resorted to BOC expertise and held a round table on the topic "Tax Invoices Suspension: Corruption Risks and Ways to Overcome Them", where it presented a relevant study. Many of the findings of this study referred to BOC's own initiative investigation into SMKOR conducted by the Business Ombudsman to address the mass ungrounded tax invoices suspension.

Cooperation with the OECD to bring Ukraine closer to membership in the organization



The Council jointly with the OECD, is a permanent independent member of the Executive Committee of the Ukrainian Network of Integrity and Compliance (UNIC) created in 2017 with the support of the Business Ombudsman Council, the OECD and the EBRD. UNIC, directly supported by BOC, has been promoting business integrity ideas to improve Ukraine's business environment. In November 2023, the Deputy Business Ombudsman Tetiana Korotka was re-elected for the next term by the Network General Meeting.



The Business Ombudsman Council is a permanent panelist in the OECD high-level discussion on finding solutions to strengthen business integrity and combating corruption in Eastern Europe and Central Asia countries.

In 2023, the Deputy Business Ombudsman represented the Council at the regular meeting in the OECD, regarding the development of the network, as well as Eastern Europe and Central Asia regions needs for developing business integrity environment.

7. Cooperation with stakeholders

7.1 Dialogue with state bodies

The Business Ombudsman Council is working to establish a business dialogue with state bodies.

That is why the Council maintains constant communication with the Office of the President, the Government of Ukraine and the Verkhovna Rada of Ukraine as well as state bodies, cooperation with which allows drawing attention to relevant issues of entrepreneurs and finding ways to resolve them.

President of Ukraine



The Business Ombudsman participated in the first meeting of the President of Ukraine with Ukrainian business leaders since the beginning of the full-scale invasion. Unpredictable tax administration, law enforcers pressure, lack of coordination of the state policy towards entrepreneurs were among discussion topics. The President reacted by creating a coordination platform (Commission) for communicating with business regarding problems with law enforcement bodies headed by the Deputy Head of the Office of the President, Rostyslav Shurma. The Business Ombudsman was invited to join the Commission. During the year, the Business Ombudsman supported complainants and their cases brought before the Commission several times.

Government of Ukraine



The Business Ombudsman met with the Prime Minister of Ukraine Denys Shmyhal to discuss systemic business problems during martial law and the Business Ombudsman Council's activity legal formalization.

Ministry of Economy of Ukraine



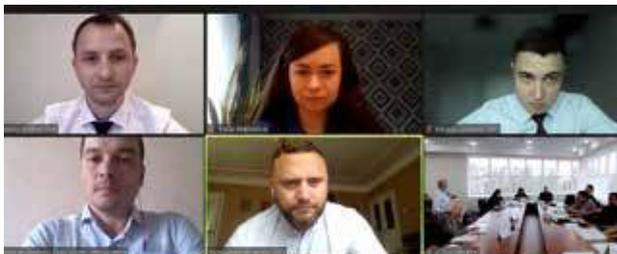
The Business Ombudsman and his Deputy met with the First Deputy Prime Minister – Minister of Economy of Ukraine Yuliia Svyrydenko and Deputy Minister of Economy Oleksii Sobolev. Based on the results of the meeting, it was agreed to deepen the dialogue and cooperation with the Ministry to solve systemic problems of Ukrainian business during the martial law, as well as in the light of post-war recovery and to address business problems in the regions.

Verkhovna Rada of Ukraine



- The BOC team several times met with the Chairman of the Verkhovna Rada Committee on Tax and Customs Policy Danylo Hetmantsev.
- In addition, we also met with the Chairman of the VRU Committee on Economic Development Dmytro Natalukha and his Deputy Dmytro Kysylevskyi.

State Tax Service



State Customs Service



Bureau of Economic Security



Ministry of Health



Anti-Raiding Office



State Bureau of Investigation



National Agency for Corruption Prevention



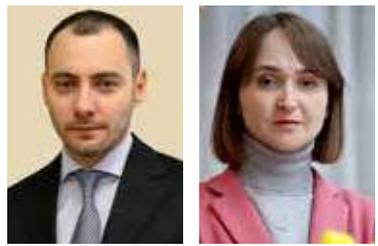
Restoration Agency



State Customs Service



Ministry for Restoration



7.2 Expert groups

	Number of meetings	Number of cases considered
State Tax Service	12	566
Main Department STS in Kyiv city	15	126
Main Department STS in Kyiv Oblast	11	31
Prosecutor General's Office	5	57
Security Service of Ukraine	2	3
State Customs Service	4	15

In the reporting year, investigators intensified interaction with regional tax authorities, which, in particular, is connected with introduction of communication platforms designed to improve interaction of taxpayers with the tax authority. The Council supports STS communication platforms operation, thanks to which it is possible to resolve business tax complaints more effectively. It also demonstrates openness of the tax authority to taxpayers.

In 2023, the Expert Group on STS of Ukraine successfully resolved **48%** of cases (regarding SMKOR problems (tax invoices suspension, data tables acceptance, inclusion in risky payers' list) and VAT refund). **58%** of successfully resolved complaints related to other issues.*

* Note: The rates of successfully resolved cases include resolved cases received via the Helpline.

7.3 Regional visits

Maintaining relations with businesses locally allows to better understand business problems and address them in the Business Ombudsman Council day-to-day activities.

The Council seeks to expand contacts with local authorities and entrepreneurs in the regions, so in 2023 we resumed regional visits.

Poltava

In December 2023, the Business Ombudsman of Ukraine Roman Waschuk visited Poltava.



In Poltava the Business Ombudsman met with Poltava Regional Military Administration management team. During the meeting Poltava business needs were discussed and it was agreed to strengthen the Business Ombudsman Council's cooperation with Regional Military Administration to resolve problematic entrepreneurs' issues in their relations with the state.



In particular, the Business Ombudsman held two meetings with regional entrepreneurs:



Roman Waschuk met with Poltava Association of Business representatives and talked about business protection opportunities against state bodies' abuses.

In Diia.Business regional center in Poltava Roman Waschuk delivered a presentation about the Business Ombudsman Council for small and medium-sized enterprises of the city and region for entrepreneurs to know more about the institution's services.



While in Poltava, the Business Ombudsman together with his team visited the former institution's complainant – **Aurora multimarkets network** support office.



Ivano-Frankivsk



The Deputy Business Ombudsman Tetiana Korotka visited Ivano-Frankivsk.

She participated in “Ivano-Frankivsk Region – a Reliable Partner” international forum organized by the Head of Ivano-Frankivsk Regional Military Administration.

Tetiana Korotka met with local business representatives, as well as Ivano-Frankivsk and Zakarpattia Oblasts heads of military administrations.



At the forum she presented the Business Ombudsman Institution and told about its free services to settle problematic entrepreneurs' issues in their relations with state bodies.

A close interaction with regions remains a priority for BOC. We will keep you updated about new regional visits in our next operational reports.

7.4 Meeting with Swiss business



For the first time since the beginning of full-scale invasion, the Business Ombudsman and his Deputy have met with Swiss business community in Ukraine. The meeting was organized with the assistance of the Embassy of Switzerland in Ukraine.

The Business Ombudsman assured Swiss investors they could count on the Business Ombudsman Council's assistance in case of controversial issues with state bodies.



7.5 Cooperation with Diia.Business national project

The Business Ombudsman Council is actively developing cooperation and establishing ties with partners related to business in Ukraine as well as supporting the private sector development and contributing to business climate improvement.

In 2023, the Council boosted cooperation with Entrepreneurship Development and Export Promotion Office and Diia.Business national project.

An informational section “Assistance from the Business Ombudsman Council” has appeared on Diia.Business portal.



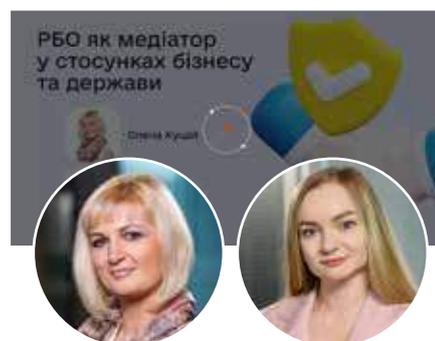
In the section, entrepreneurs can find information about:

- The Business Ombudsman Council and its organization
- Institution's areas of work
- Complaint submission form
- Examples of successful investigations in peacetime and wartime
- Brochures and guides with useful tips for business
- Frequently asked questions about BOC activities

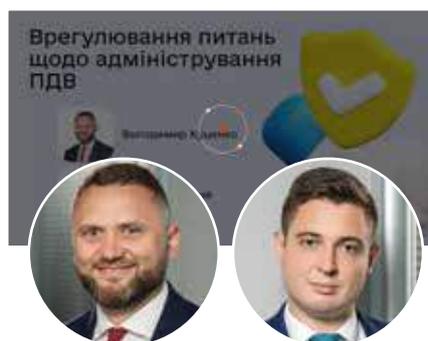
In the fall, in partnership with the Entrepreneurship Development and Export Promotion Office and Diia.Business, the Council implemented a joint project of webinars.

The project aimed to support business with advice from the Council's investigators on the settlement of common issues in interaction with the tax and customs authorities. Three webinars took place within the project:

BOC as a Mediator in Business vis-à-vis State Relations



Settling VAT Administration Issues



Solving Business and Customs Issues



In addition, during the year, the Council held two meetings with entrepreneurs in Diia.Business regional centers in Lutsk and Poltava.



7.6 Lecture to students of Zaporizhia National University

The Deputy Business Ombudsman Tetiana Korotka delivered a lecture to students of the Zaporizhia National University on the topic “The Ombudsman Institution as an Integral Part of the Modern Model of Good Governance.”



The subject of her lecture was issues of the history of creation, evolution of models and present-day functioning of the Business Ombudsman Council in Ukraine. Taking into account that students of law, economics and sociology departments attended the lecture, the questions related to various aspects of the theory of the ombudsman institution and BOC work practice. Raising awareness of future specialists about the best governance standards, European legislation and modern practice is an important component of not only rapid recovery, but also smooth integration of Ukraine into the European Union.

7.7 EBRD communication platform for small and medium-sized businesses

In the reporting year, the Council participated in filling the EBRD communication platform for small and medium-sized businesses.

Business Guide for SMEs is an EBRD initiative created to help businesses in Ukraine. The platform was launched in 2021, but after the full-scale invasion of the Russian Federation to Ukraine, the project became an important source of information for entrepreneurs under martial law. The goal of the initiative is to help citizens better navigate the legislation and inform them about peculiarities of doing business during the war.



7.8 Interaction with ICC Ukraine

The Ukrainian National Committee of the International Chamber of Commerce – ICC Ukraine celebrated its 25th anniversary in September 2023.

The Business Ombudsman was thanked for his contribution to the development of the Ukrainian economy and creation of a favorable business environment at a special event on this occasion.



7.9 Selected important events

During 2023, the Business Ombudsman Council speakers participated in both national and international level events, particularly those organized by international financial institutions, business associations, international technical assistance projects and Ukrainian state bodies.

25.01.2023

Conference “FORESITE for recovery and development of Ukrainian exports”

Organized by

GIZ in cooperation with the United Nations Development Program (UNDP Ukraine)

02.03.2023

Online debate “Post-war Ukraine: embedding liberal democracy”

Organized by

Friends of Europe

31.03.2023

EBRD & UKRAINE: Investing in Resilience, Recovery, Reconstruction. 2022 Review, 2023 Priorities and Projections

Organized by

EBRD

21.04.2023



Roman Waschuk’s report “Business and the Rule of Law in Warring Ukraine” at the Shevchenko Scientific Society in Toronto, Canada

Organized by

Scientific Society named after Shevchenko in Toronto, Canada

25.04.2023



A conversation with the President of the Canada-Ukraine Chamber of Commerce “Security. Reconstruction. Restoration and New Order in Postwar Ukraine”

Organized by

Canada-Ukraine Chamber of Commerce

27.04.2023



SUP DAY FORUM 2023: STAY RESILIENT

Organized by
Ukrainian League of Industrialists and Entrepreneurs (ULIE)

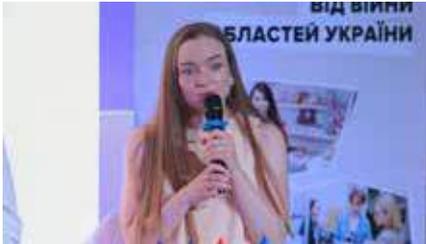
03.05.2023



Conference "Tax Invoices Suspension"

Organized by
Yurydychna Praktyka Publishing House

06-07.06.2023



Fair "East-Expo 2023"

Organized by
United Nations Development Program (UNDP) in Ukraine

15.06.2023

Open dialogue "From Lugano to London: Vision of Honest Business for the Reconstruction of Ukraine"

Organized by
Ukrainian Network of Integrity and Compliance (UNIC)

26.06.2023

Forum of Forbes entrepreneurs
Organized by
Forbes Ukraine

14.07.2023

Conference "Recovery of Ukraine – Energy-Efficient Construction and Economic Policy"

Organized by
Ukrainian Business Council, National Business Coalition

21.09.2023



XII Tax Forum

Organized by
Ukrainian Bar Association

28.09.2023



2nd EU Accession Exchange Forum

Organized by
New Europe Center

15.11.2023



XVIII International Forum "Polish-Ukrainian Business Days"

Organized by
Ukrainian Business Association in Poland

22.11.2023



Presentation "Dialogue Between Business and Government Through BOC"

Organized by
Business Ombudsman Council jointly with USAID and Electronic Republic NGO

05.12.2023

National anti-corruption forum

Organized by
National Agency for Corruption Prevention (NACP)

13.12.2023



Get Business Festival

Organized by
Delo.ua Publishing House, Ekonomika + Holding

8. Public Outreach

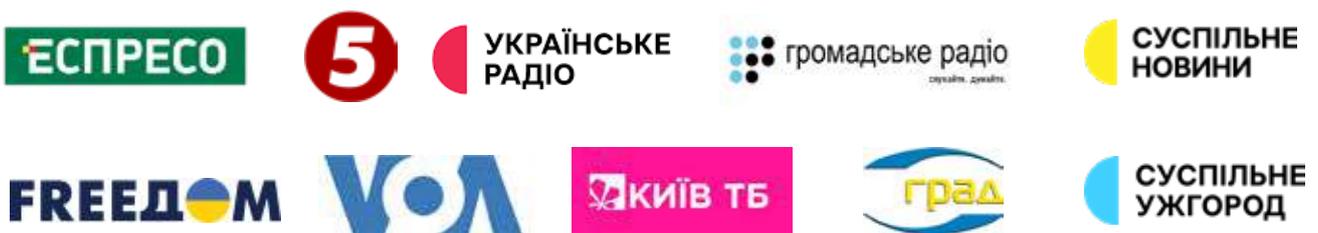
8.1 Cooperation with the media

The Business Ombudsman and his team openly cooperate with the media, give interviews, comments and write publications to draw public attention to the Business Ombudsman Council activities and problems of entrepreneurs that it helps to solve. BOC shares its own view of the situation, assesses the business climate and current events in the country's economic life.

Ukrainian media



TV and radio



International media



Cooperation with Forbes Ukraine

Within cooperation with Forbes Ukraine, the Council launched a series of materials in which its investigators tell different stories of business which turned to BOC for help in overcoming state bodies' malpractice manifestations.

In 2023, six such materials were published in Forbes.



Cooperation with Business Ukraine

The Business Ukraine magazine was released for the first time since the beginning of the full-scale war. A separate page of the magazine was dedicated to the Business Ombudsman Council and its services for business.



Podcasts

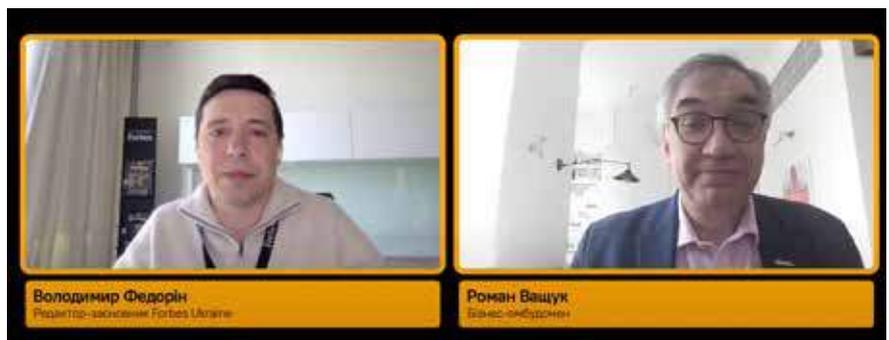
What's Up with the Economy?

Вокс Україна

ЦЕНТР ЕКОНОМІЧНОЇ СТРАТЕГІЇ

громадське радіо

Forbes Business Breakfast





Press briefings



Press briefing on the results of the Council's own initiative investigation into problems of the VAT administration system (March 10, 2023)



Press briefing on the occasion of the quarterly report presentation (July 28, 2023)



Press conference "Blocking the Border: Challenges, Consequences and Prospects Through the Prism of Polish-Ukrainian Economic Cooperation" (November 14, 2023)

Ukraine in Flames



The Business Ombudsman Council participated in the preparation of episode #450 on survival of Ukrainian business during the war



[Interview of Roman Waschuk was published on Krakow City Council website Krakow.pl](#)



8.2 Telegram chat

The Business Ombudsman Council recognizes the importance of promptly responding to appeals from entrepreneurs, so it is crucial for us to make communication with complainants as accessible and flexible as possible.

In the spring of 2023, to make it easier to communicate with the Council, we launched a Telegram chat. In the chat, entrepreneurs can contact the Council in case of possible questions regarding submission of an appeal, clarification of information regarding complaint consideration, and also leave a request to an investigator in charge.



Telegram chat works at the Business Ombudsman Council contact number +380 99 237 37 37.

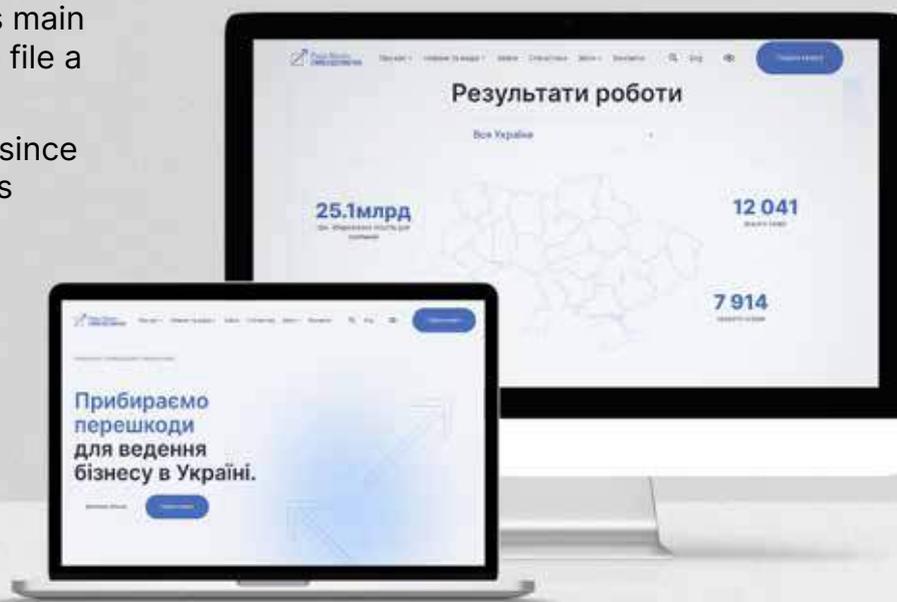
We answer in the chat on weekdays from 9:00 a.m. to 6:00 p.m.

8.3 Website relaunch

In 2023, the Business Ombudsman Council relaunched an updated website.

On the website the user can find:

- Information about the Business Ombudsman Council, its main functionality and how to file a complaint
- Statistics of complaints since launch of the institution's operations
- Examples of closed investigations
- Recordings of webinars
- Contacts



Having enhanced the main functionality, the navigation on the site got simplified. Entrepreneurs can also subscribe to the newsletter from the Business Ombudsman Council.

[Submit a complaint](#)

The complaints requirements are described in detail in the Rules of Procedure available on our website. Schematically these four criteria can be depicted as follows:

Check whether your complaint meets the Council's requirements:



Independently. Confidentially. Free of charge.



www.boi.org.ua