



Business
OMBUDSMAN
Council

Q2 2024



Report focus:
Tax inspections

QUARTERLY REPORT

April 1–June 30, 2024



www.boi.org.ua

CONTENTS

1	Q2 2024 in review	05
2	Own-initiative investigations: tax inspections	14
3	Problems in the VAT system: monitoring implementation of recommendations by state bodies based on own-initiative investigation results	19
4	Examples of successfully closed investigations	22
5	BOC's support in reconstruction of Ukraine	27
6	Cooperation with stakeholders	31

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.





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FOREWORD



Roman Waschuk,
Business Ombudsman

Tax Inspections and Fair and Reasonable Administration. These were the two big analytical and advocacy themes of the second quarter. At the same time, we've been building out our teams to deliver more and better individual and systemic problem-solving.

Together with our stakeholder business associations, I presented the results of our own-initiative investigation titled "Tax Inspections: Rebuilding tax trust by dropping the presumption of bad faith". Audit activities may not sound like the most exciting investigative focus out there, but our tax team's deep dive found that, in Ukraine, most of them produce few, if any, additional revenues, while consuming vast amounts of time and money:

- Management mindshare and corporate resources diverted from resilience and growth to defending against often spurious or formalist findings of non-compliance;
- State Tax Service personnel driven to punish first, ask questions later by an organizational culture that prioritizes finding violations over reinforcing positive compliance;
- Courts overwhelmed by a flood of tax audit appeals, which the government side mostly loses.

You can read our key, statistically backed, findings on pages 14-18 of this report. So what's the upshot? "Consult First", for a start. This is a paradigm applied successfully in other transition economies, where government agencies commit to practical, tangible culture change. If you,

as a tax or customs officer, see a technical error or minor variance in a company filing – don't immediately issue a fine or send out an audit team that will paralyze company activities for at least the inspection period. Instead, pro-actively contact the client [yes, client, not suspect!] and point out the discrepancies, giving time to rectify them. It may be an extra 15 minute effort by the case officer, but it can save months or even years of administrative and legal wrangling that now drain the energies and resources of both business and the Ukrainian state.

Reasonableness, proportionality, clarity, effectiveness and legal certainty are among the principles we have inscribed in our draft Declaration on Fair and Reasonable Administration. This is a series of positive expectations that we have derived from existing Ukrainian laws – but that require a concerted government implementation effort for business to feel their effect. We may be biased by working primarily in the field of administrative appeals – but getting public administration right, including by giving officials the confidence to make sensible, lawful decisions, would go a long way to reducing downstream problems in law enforcement and the courts.

This second quarter also saw the recruitment of the initial members of our Renewal Team, as well as the final interviews for the position of Deputy Business Ombudsman/Chief Legal Officer. We've also had some rotation and refreshing in our investigator ranks. While outcomes and new team members will be featured in our next report, I am already confident that we and our stakeholders will all get a boost in capacity and focus.

1 Q2 2024 IN REVIEW

1.1 Key performance indicators

In April-June 2024, the Business Ombudsman Council

received **299** complaints

185 cases closed

The investigation of **80** cases is ongoing

The financial effect in the second quarter reached

UAH **194** mn

The total financial effect amounted to

UAH **25.6** bn



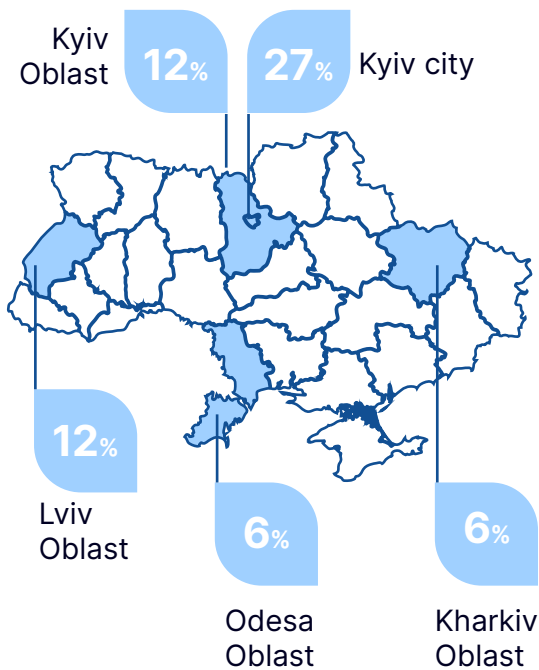
TOP-3 subjects of appeals

Tax issues **62%** **186**

Actions of law enforcement bodies **11%** **34**

Customs issues **7%** **20**

TOP-5 most active regions



TOP-5 industries



Origin of capital

262

88% Ukrainian companies

37

Foreign companies 12%

Business size

113

38% Large business

186

62% Small and medium-sized business



In Q2 2024, the satisfaction level of complainants with BOC services was

95%

(based on feedbacks received in feedback form).

1.2 Volume and complaints trends

In Q2 2024, the Business Ombudsman Council received 299 complaints from companies about abuses by state bodies. This is 13% fewer as compared to 345 complaints in Q1 2024.

Our quarterly report will traditionally focus on the top three concerns of the business community. Based on the Council's statistics, these are: tax, law enforcement, and customs issues.

186 Tax issues

54	Tax audits
51	Non-enforcement of court decisions on tax invoices registration
25	Systemic tax invoices suspension
23	Inclusion in risky taxpayers' list
5	VAT refund
4	Electronic VAT administration
2	Tax termination/renewal/refusal of VAT taxpayer's registration
22	Other

34 Actions of law enforcement bodies

6	Bureau of Economic Security (BEB)
6	Prosecutor's Office - procedural abuse
4	Prosecutor's Office bodies inactivity
4	National Police - inactivity
3	National Police - procedural abuse
2	National Police - criminal case initiated
2	National Police other
2	State Bureau of Investigation (SBI)
3	National Anti-Corruption Bureau (NABU)
1	Prosecutor's Office bodies other
1	Prosecutor's Office – corruption allegations

21 Actions of state regulators

3	Actions of National Bank of Ukraine
3	Actions of National Commission for State Regulation of Energy and Public Utilities
14	State regulators – other

20 Customs issues

- 14 Customs valuation
- 4 Customs clearance delay/refusal
- 1 Customs administrative proceedings
- 1 HS code changes
- 1 Customs other

10 Actions of local government authorities

- 2 Local authorities/municipality - land plots
- 8 Local authorities/municipality - other

6 Legislation drafts/amendments

- 3 Deficiencies in regulatory framework - state regulators
- 3 Deficiencies in regulatory framework other

6 State companies (other)**6 Other issues**

- 3 Other
- 3 B2B complaints

3 Actions of the Ministry of Justice**3 Territorial Recruitment and Social Support Center Military Commissariats and Military units****2 Licenses and permits (subsoil)****1 Courts (other issues)**

Tax issues



During April-June 2024 tax issues amounted to 62% of entrepreneurs' complaints (186 filed) to the Business Ombudsman Council. Although in the reporting quarter we observed a decrease in the number of "tax" complaints compared to previous quarters (-20 complaints vs Q4 2023 and Q1 2024), business remains very much a target for tax officials.

From the current complaint structure, in Q2 2024 tax audits were the leading form of business complaints – 29% of tax related complaints. It turned out that at the beginning of the year, the Council had good reason to concentrate on its new own-initiative investigation on tax audits, that resumed after a moratorium had been lifted. The Council investigated both the impact of tax audits on the business environment and results for the state in terms of budget revenues. The Council dedicate pp. 14-18 of this quarterly report to the conclusions of the investigation.

Meanwhile, complaints about the SMKOR system demonstrated a decreasing trend: from 66% (136 complaints) in Q4 2023 to 58% in Q1 2024 and 53% in Q2 2024 respectively. However, such incremental changes barely scratch the surface of dissatisfaction on the part of business, which continues to face hurdles in VAT invoice registration.

Traditionally, SMKOR complaints include issues of court decisions enforcement regarding invoices registration, systematic invoice suspension, and inclusion in risky taxpayers lists. SMKOR, as well as changes in the VAT system, were top-of-mind in 2023. Since then, the Council conducted its first own-initiative investigation and issued a report on its results including recommendations for tax authorities.

From that point on, the Council has been monitoring implementation of recommendations to the Ministry of Finance and the State Tax Service on improving SMKOR operation. The Council shares recent observations about SMKOR performance on pp. 19-21 of this report.

Other tax issues of the reporting quarter included appeal of tax claims for the payment/repayment of tax debt and decisions on the description of property as a tax lien, cancellation of licenses for wholesale fuel trade, correction of information in the integrated taxpayer card, suspension of excise invoices.

Actions of law enforcement bodies



In the reporting quarter, business complaints against law enforcement agencies amounted to 11%. Compared to previous quarters, a slight decrease in law enforcement-related complaints received by the Business Ombudsman Council can be observed.

To improve business interaction with law enforcement agencies, the Council regularly holds public meetings with the Prosecutor General's Office with the participation of leading business associations. On April 24, 2024, a second joint meeting was held under the theme "Prosecutor's Office and Business: Dialogue on Legality", which provided an opportunity for businesses to speak frankly with the Prosecutor General about pressing issues during martial law. Among other things, the Prosecutor General signed Order No. 84, which made the Standards of Prosecutor's Activity in the Field of Investment Protection binding.

At the same time, during April-June 2024, companies filed complaints with BOC about procedural abuse and inaction by the Prosecutor's Office and the National Police, which were related to non-return of temporarily seized property.

Customs issues



In April-June the number of complaints remained at the proportion of 7% (20 appeals). For comparison, in Q1 2024 the Council received 23 appeals (7% respectively). Hence, customs issues once again hit TOP-3 of business complaints to the Council.

The majority of complaints related to customs value adjustment. The Council accompanies entrepreneurs in appealing customs decisions and helps to confirm the declared customs value of goods being imported.

In addition, to solve complex systemic issues with customs authorities, the Council conducts regular meetings of its Expert Group with the State Customs Service. During such meetings in the reporting quarter, the Council discussed problems of customs value adjustments, including the issue of sampling of goods at customs and delays in customs clearance.

1.3 Timelines of the preliminary review of complaints

In Q2 2024, the preliminary review of business complaints took an average of

10 working days

We managed to meet standards of our Rules of Procedure – 10 working days.

1.4 Number of investigations conducted and reasons for rejecting complaints

In Q2 2024, out of 299 complaints, BOC conducted 136 investigations. 53 complaints remained at the preliminary assessment stage. The Council rejected 101 appeals due to not meeting complaint criteria contained in the institution's Rules of Procedure.

136

Investigations

53

Complaints in preliminary assessment

101

Dismissed complaints

1.5 The main reasons for dismissing complaints in Q2 2024

- | | |
|-----------|---|
| 54 | Subject of the complaints is outside Business Ombudsman's competence |
| 12 | The complaint is ungrounded, or other bodies/institutions already consider such a case |
| 9 | According to the Business Ombudsman, the Complainant did not provide sufficient cooperation |
| 10 | Complaints subject to any court or arbitral proceedings, or in respect of which a court, arbitral or similar type of decision was made |
| 2 | Other circumstances where the Business Ombudsman, in his sole discretion, determines that an investigation of the complaint is not necessary |
| 3 | A complaint was withdrawn by the complainant |
| 3 | 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 |
| 1 | The party affected by the alleged business malpractice has not exhausted at least one instance of an administrative appeal process available under the current legislation |
| 3 | Complaints arising within private business entities relationship |
| 1 | A complaint relates to an issue that has already been addressed by the Business Ombudsman |
| 1 | Complaints in connection with the legality and/or validity of any court decisions, judgements and rulings |
| 1 | An investigation by the Business Ombudsman in a similar case is pending or otherwise on-going |
| 1 | A complaint filed upon expiration of one year from alleged malpractice event occurrence |

1.6 Timelines of conducting investigations

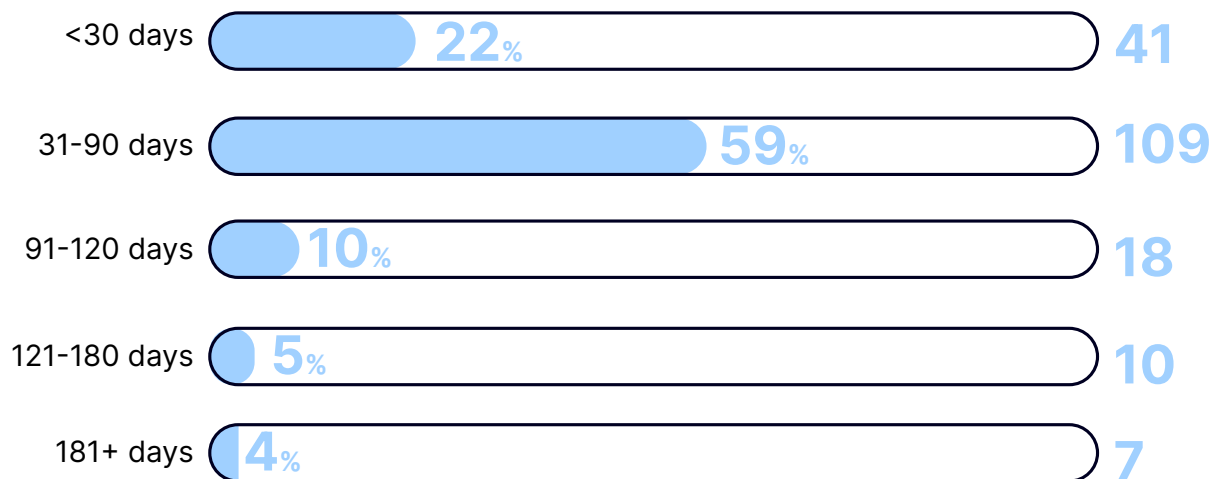
The average duration of investigation was

64 days

that is 26 days less than the period stipulated in BOC Rules of Procedure.



Ratio of closed cases by days:



81%

of all closed investigations in Q2 2024, we investigated within 90 days, thus fulfilling the norm of BOC's Rules of Procedure.

1.7 Geography of complaints



Size of business

113 186

38% Large

62% Small and medium-sized

Small and medium-sized businesses make up the majority of complainants to the Business Ombudsman Council - 62% of complaints.

Appeals from large companies in Q2 2024 amounted to 38%.

Origin of capital

262 37

88% Ukrainian business

Foreign investments 12%

Ukrainian companies lodged 88% of complaints with the Council in the reporting quarter. The share of complaints from foreign businesses was at the level of 12%.

2 OWN-INITIATIVE INVESTIGATIONS: TAX INSPECTIONS

Own-initiative investigations is the Business Ombudsman Council's special working tool to address structural business problems developed at the end of 2022 to replace systemic reports. In such investigations, the Council pays special attention to topical problems of entrepreneurs, diving into which the institution develops targeted recommendations for government bodies to solve them.

The Council has already highlighted certain procedural deficiencies and violations in the way the Ukrainian tax system is organized in previous systemic reports. Thus, back in 2015, the Council first issued the report "Problems with Administering Business Taxes in Ukraine". In 2020, having examined a total of over 4000 tax complaints at that time and received a cross-section of typical problems, the next systemic report "Administration of Taxes Paid by Business" was issued. Focusing on micro-level problems did not lead to global changes in approaches to tax administration.

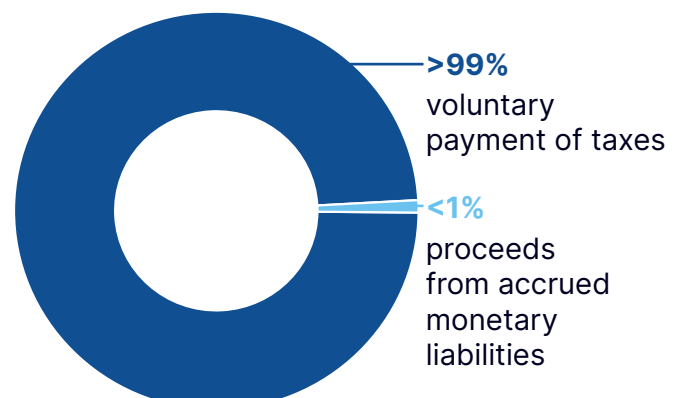
Therefore, at the beginning of 2024, the Business Ombudsman, Roman Waschuk, gathered the BOC's investigators to study the phenomenon of tax inspections in the format of an own-initiative investigation. It focused on tax inspections, which were resumed once the moratorium was lifted in 2023. Initially ranking second after complaints about SMKOR in the tax complaints structure, inspections now top the list.

Based on business complaints statistics on contesting tax inspections findings over the last seven years, as well as statistics and reports of STS bodies, the Council's team investigated how tax inspections influence the business environment, as well as actual results for the state in terms of revenues to the budget.

Own-initiative investigation conclusions

1

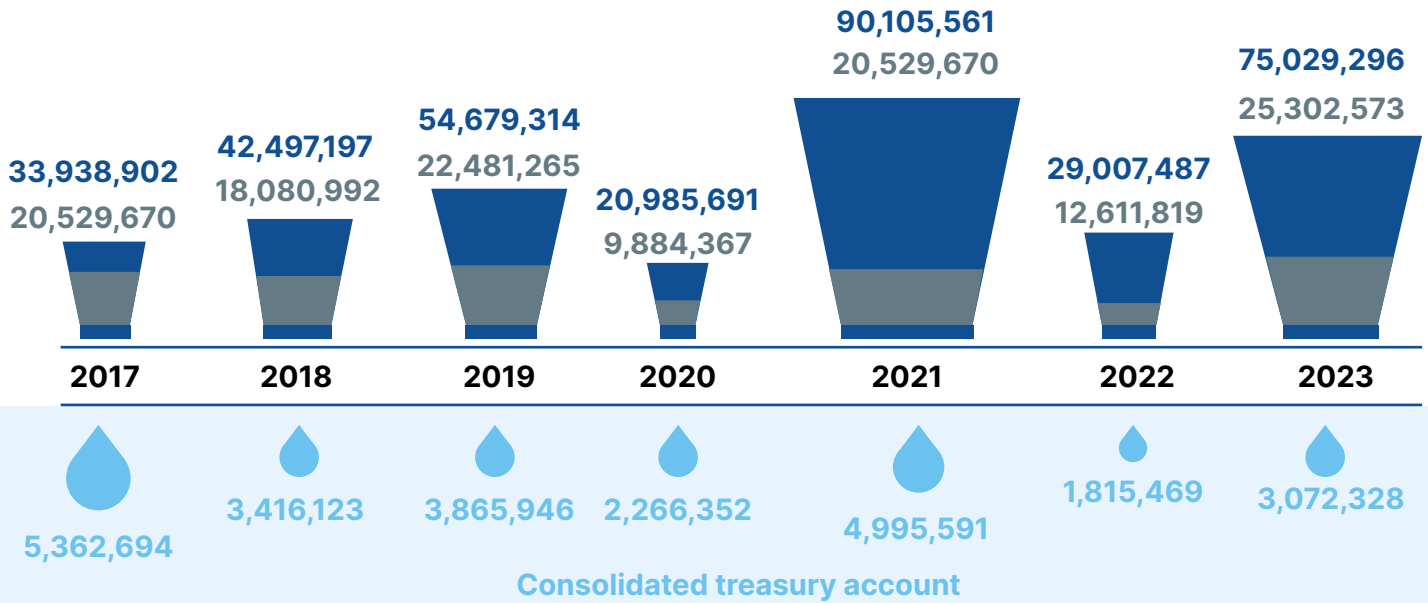
The Council found out that 99+% of tax budget revenues were generated thanks to voluntary payment of taxes, while the share of income from reassessments and penalties as a result of inspections for the last 7 years did not even reach 1%.



2

The Council also noted significant “gaps” between additional reassessment amounts, agreed settlements and actual revenue amounts in the budget.

In 7 years, annual reassessment and penalties increased from UAH 34 bn in 2017 to UAH 90 bn in 2021 and to UAH 75 bn in 2023. However, the agreed settlements level in 2017-2023 fluctuated from 23% (2021) to 64% (2017), and budget revenues - from 4% (2023) to 16% (in 2017).



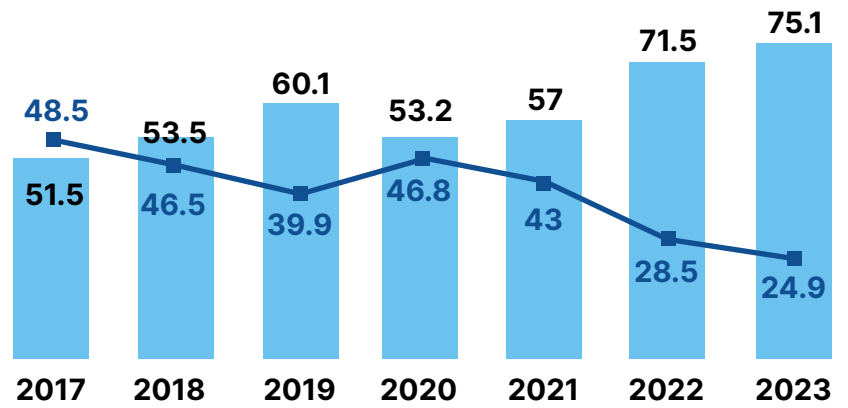
- Reassessments and penalties in total
- Received in the budget
- Agreed in total



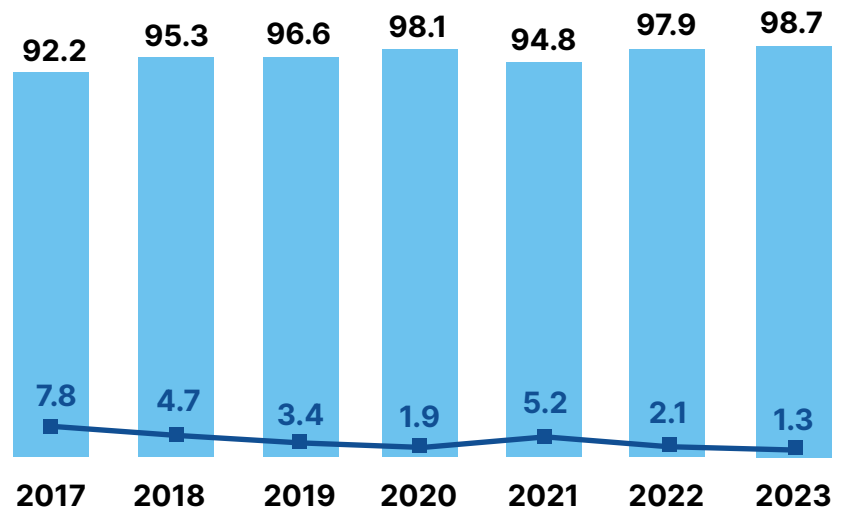
3

More than 90% of actual and scheduled inspections end with drawing up a non-compliance report. A dramatically different trend can be traced in unscheduled inspections – since 2018, the proportion has started to shift from about 50% to a gradual increase in non-compliance reports, growing to a maximum figure 75% in 2023.

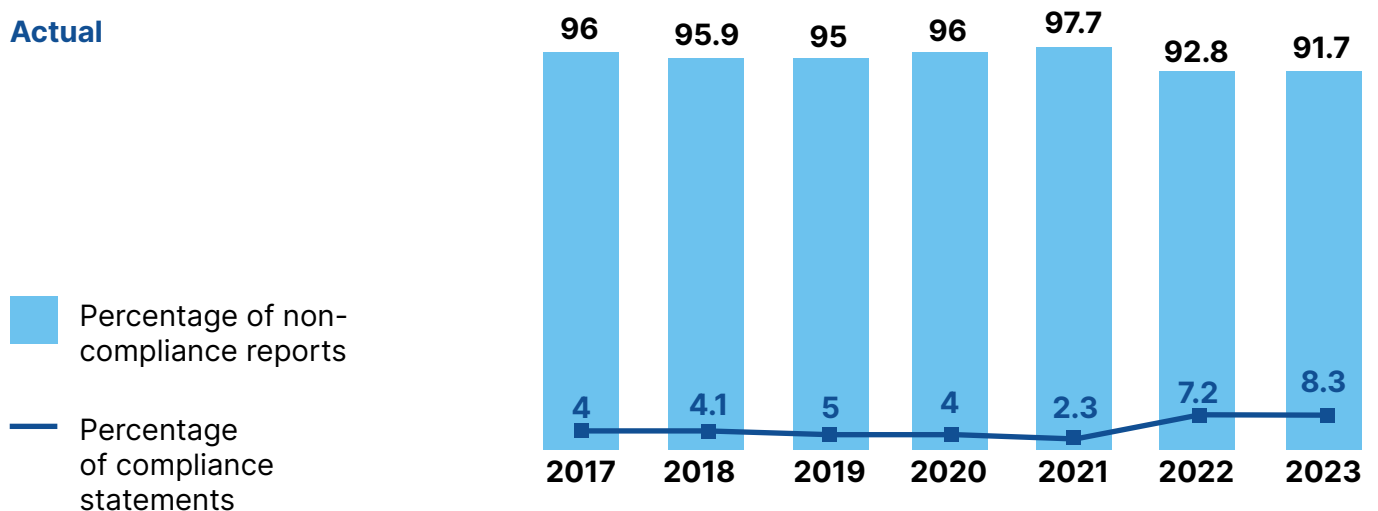
Documentary unscheduled



Documentary scheduled



Actual



Percentage of non-compliance reports

Percentage of compliance statements

4

Based on tax audit complaints processed by the Business Ombudsman Council and analysis of the outcomes of administrative and judicial appeals, we have concluded that: during 2017-2023, out of 1430 complaints, the Council accepted and reviewed 1152 complaints (81%): 408 complaints (35%) were closed by the Council as a result of a successful administrative appeal at the STS level; the rest of these cases were closed as a result of administrative appeal failure. The Council's complainants then went on to court in **644 cases, i.e. in ~87% of cases closed without success, and the share of cases where the court completely or largely ruled in favour of business, is ~85%**. Thus, as can be seen from the Council's statistics, **court-confirmed administrative appeal outcomes in favour of the STS account for only ~15%**, despite the fact that for 2017 the Ministry of Finance set the KPI at 50%, and the strategic goal at 85%.

Considering the aforementioned conclusions, business and professional community mostly perceive tax inspections as a punitive fiscal tool of the state, and, according to the Council's findings, assess their trust in regional tax authorities in context of audits at the level of 13%, and 19% as regards the State Tax Service (STS) Head Office.

Presentation of own-initiative investigation results

The Council presented its own-initiative investigation results on tax inspections in April 2024. The Business Ombudsman Roman Waschuk publicly presented a Report based on our own-initiative investigation results at a press event, enlisting the support of leading business associations.



The press briefing was joined by representatives of the American Chamber of Commerce, European Business Association, Ukrainian League of Industrialists and Entrepreneurs, Chamber of Commerce and Industry, Union of Ukrainian Entrepreneurs and Federation of Employers of Ukraine.

Considering the results of discussions and consultations with industry experts, business and stakeholders, the Council outlined a number of ideas in the report that can positively influence tax audits effectiveness and contribute to improving relations between business and the state.

Based on own-initiative investigation results the Council sees the following steps are important to improve the situation:

- 1 Adhering to fair and reasonable administration principles – [Declaration](#)
- 2 Implementing “**CONSULT FIRST**” principle (preventive communication with taxpayers)
- 3 Implementing alternative dispute resolution methods (tax mediation)
- 4 Developing targets and ambitious KPI (particularly for assessing court trial consequences)
- 5 Strengthening legal departments’ roles at the inception stage of tax audits
- 6 Improving transparency of information for taxpayers and society
- 7 Regular feedback from entrepreneurs



[Read the report](#)



The Business Ombudsman Council is currently actively promoting ideas of fair administration and calls on fiscal bodies to adhere to good governance principles in interaction with taxpayers. Preventive communication with taxpayers instead of ungrounded onerous allegations is the basis for building trust between business and the state.

3

PROBLEMS IN THE VAT SYSTEM:

MONITORING IMPLEMENTATION OF RECOMMENDATIONS BY STATE BODIES BASED ON OWN-INITIATIVE INVESTIGATION RESULTS

Since investigation results on problems in SMKOR (March 2023) were published, the Council has been constantly tracking changes in the VAT system, as well as their impact on business. The Council maintains communication with the Ministry of Finance and the State Tax Service, raising questions regarding specific steps to eliminate deficiencies in SMKOR and improve interaction of tax bodies with taxpayers.

During the last year the Council noted significant incremental changes:

1

Administrative appeal of decisions on riskiness of a taxpayer and refusal to accept data tables introduced (a BOC recommendation issued in 2019 finally taken into account)

2

Analysis and legislative changes forecasting functions improved which contributed to decreasing the number of tax invoice suspensions

3

The Verkhovna Rada of Ukraine involved in getting feedback on business proposals

4

The form of decisions on taxpayers' riskiness and non-acceptance of data tables improved

5

The period during which transactions are taken into account when considering riskiness of the taxpayer limited to 180 days

6

Positive tax history indicators list expanded

7

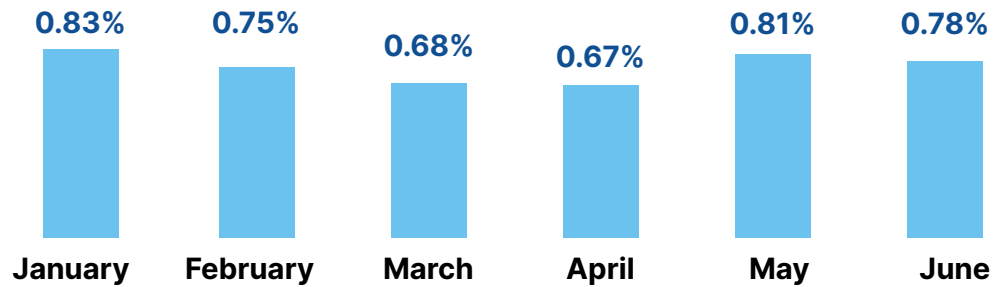
Work on the taxpayer's profile started

8

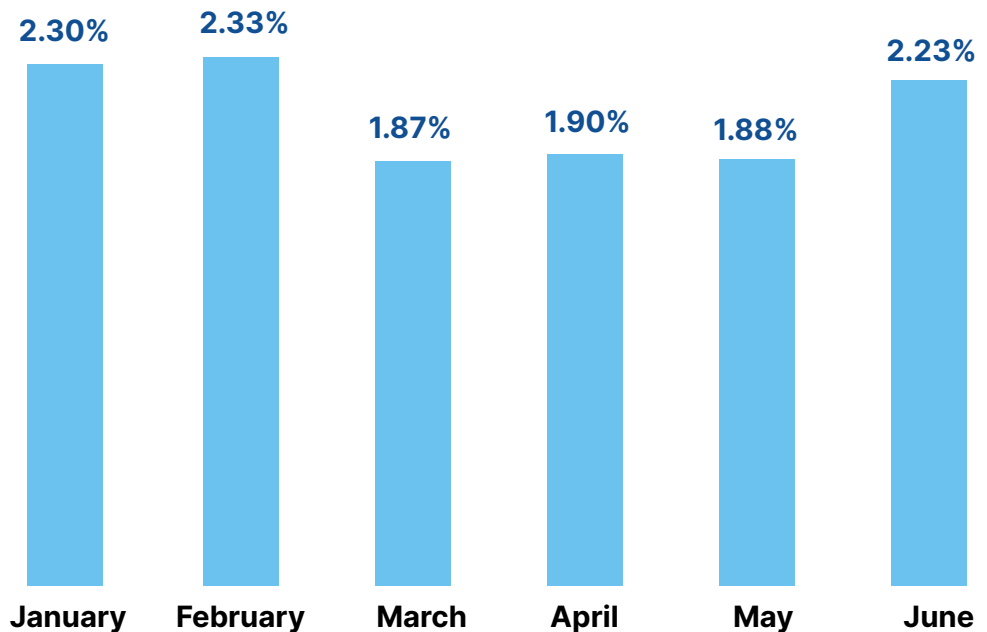
Created regional communication platforms and "hot lines" for taxpayers and public organizations.

However, despite moderate formal changes, taxpayers still remain firmly in the sights of tax officials in terms of SMKOR operation and inspections. A positive trend towards TIs/ACs reduction that we observed during Q1 2024, faltered in Q2. As a result, in June, the number of suspended TIs/ACs (0.78%) almost returned to the January level this year (0.83%), and the amount of blocked VAT in June (2.23%) almost reached January-February indicators this year (2.30%, 2.33%, respectively). We are going to present a more thorough analysis after receiving additional statistical information from the STS of Ukraine in months to come.

Percentage of TIs/ACs suspended by SMKOR:



Percentage of suspended VAT:



Tax invoices suspension still affects about 10% of the total number of VAT payers, with a downward trend: 10.31% in January to 8.74% in June 2024. The number of business complaints to the Council regarding SMKOR continues to decrease: from 58% in Q1 2024 to 53% in Q2 2024, but there is room for improving tax authorities' approaches to business.

In Q2 2024, according to the Council's observations, there is a trend of including enterprises in risky taxpayers' lists and non-acceptance of data tables mainly based on formal insufficient (according to the tax office) tax burden of both VAT and income tax. Meanwhile, in decisions on refusal to exclude from the risk list and accept data tables completely different grounds are often specified, resulting in their successful appeal in courts.

The Council reiterates the relevance of the following recommendations contained in its report on SMKOR:

- 1 Genuine automation and risk orientation
- 2 Analysis and forecasting, particularly in researching information on taxpayers
- 3 Intermediate stages before applying negative consequences to payers
- 4 Taxpayer's riskiness: transparency, proportionality, procedural effectiveness
- 5 Administrative practice adjustment to court practice
- 6 Availability of data on key indicators
- 7 Balanced attitude towards taxpayers and adherence to good governance principles



[Read the report](#)

The Council again urges the Ministry of Finance and the State Tax Service to take strong action to fix the SMKOR system, so that entrepreneurs could focus on their own economic activities.

The Council is going to report on further progress in settling business tax problems in our upcoming reports.

4

EXAMPLES OF SUCCESSFULLY COMPLETED INVESTIGATIONS



Tax authority corrected prematurely accrued debt

A company engaged in the sale of machinery for the mining industry filed a complaint with the Business Ombudsman Council. The reason for this was the tax authorities' decision to charge the company with a tax debt of 84k UAH, which arose as a result of an audit in 2023.

The company initially attempted to challenge this tax notification decision (TND) independently, first through administrative procedures and then in court, strictly adhering to the appeal deadlines. This is important because timely challenging of TND means it remains unagreed, i.e., it is not subject to payment and does not acquire the status of tax debt until the matter is finally resolved.

Thus, on the eve of the New Year, the company filed a lawsuit through the e-court to the Kyiv District Administrative Court (KDAC) to declare the TND illegal. Although the lawsuit reached the court, it was not registered, and the case number was not assigned. As a result, at the beginning of February 2024, without any information regarding the appealing of TND in court for over two months, the Kyiv tax authorities decided it was time to collect the debt from the company.

With the support of the Business Ombudsman Council, the company immediately decided to use the administrative appeal and challenged the tax demand of the Kyiv tax authorities. The Council sent a letter to the Head of KDAC, reminding about the reasonableness of the deadlines in procedures such as registering a lawsuit and assigning a case number. The complainant's lawsuit regarding the TND had remained unregistered for over 40 working days. Meanwhile, the actions of the tax authorities towards the company were hasty, as highlighted by the Council during the administrative complaint hearing.

Furthermore, the Council discussed the case and the issue of delays in procedural decisions at KDAC during the regular monthly meeting of the Expert Group with the State Tax Service of Ukraine (STS).

Already in March 2024, KDAC issued a ruling to open proceedings in the complainant's administrative case, and the STS of Ukraine decided to adjust the tax debt charged to the company. Now, the court will decide the fate of the 84k UAH charged.

Agricultural company's right to budget refund and negative VAT value worth UAH 35 mn. defended



The Business Ombudsman Council received a complaint from an agricultural company from Kyiv Oblast. This is not the first time the company has approached the institution and challenged tax audit findings.

This time, the Main Department of the STS in Kyiv Oblast denied the whole budget refund and the negative VAT value amounts for the agricultural company stated in the declaration. This position was based on the allegation that the agricultural company did not provide some documents, in particular, related to grain storage.

While processing the company's complaint, the Council found the agricultural company tried to provide the necessary documents during the inspection, and also provided documents with objections to the inspection report. Thus, the Council drew attention to the point that facts of failure to provide documents before the audit were unconfirmed.

The Council also noted the information provided by the agricultural company was sufficient to confirm withdrawn budget refund and negative VAT value amounts.

Therefore, the Council sent a letter to the State Tax Service of Ukraine (STS) upholding the agricultural company's position. The Council also participated in the administrative complaint consideration at the STS of Ukraine together with the complainant and his lawyer.

As a result, at the level of the STS of Ukraine, the Council managed to defend the company's right to a budget refund and a negative VAT value totalling over UAH 35 mn.

Tax dispute over computer software: IT company case



The Kyiv tax authority conducted an audit and denied the IT company's expense claims for profit tax amounting to more than UAH 15.5 mn. As a result of the audit, the complainant also received a fine of UAH 315k.

The tax officials refused to recognize software development expenses and the purchase of other services from individual entrepreneurs as deductible expenses.

The tax authorities stated that the IT company had not obtained a software copyright certificate and had also sold the piece of software. Therefore, in their opinion, the company could no longer continue to attribute the cost of such software to expenses. As for other services from individual entrepreneurs,

the tax officials noted that the company did not provide documents to confirm cooperation with these contractors.

Having taken up the complaint, the Business Ombudsman Council (BOC) sent a written request to the State Tax Service of Ukraine (STS) and supported the complainant's position.

The Council pointed out that the IT company rightfully continued to attribute the cost of the software to expenses for tax records, as the company did not transfer exclusive intellectual property rights for the software to anyone. The legislation does not require obtaining an intellectual property rights certificate for software to attribute its cost to expenses. The Council also supported the complainant regarding filling in documents correctly and cooperation with individual entrepreneurs.

The BOC investigator participated in the administrative review of the complaint on tax notifications-decisions (TNDs), involving tax officials, the complainant, and his lawyer. As a result, the STS agreed with the IT company's right to account for software development expenses in tax records and canceled the company's fine.

Thus, according to the Council's calculations, it managed to defend more than 60% of the expenses amount previously disputed by the Kyiv tax officials.

How the Business Ombudsman Council helped a mirror importer resolve a dispute with customs



The Business Ombudsman Council received a complaint from a mirror-importing company. It reported issues with customs authorities, who consistently adjusted the customs value of mirrors to a higher rate than the company had declared. Because of this, the importer had to pay more duties and VAT. These actions were carried out regularly by customs, significantly increasing the company's expenses. Moreover, this situation jeopardized the normal operation of the company.

The company attempted to resolve the issue with customs independently. It provided all necessary documents proving the true value of the goods, but customs continued to increase it. The complainant even went to court and won several cases against customs authorities, but with each new supply of mirrors, the same situation repeated. Due to these constant legal battles, over a million hryvnias of the company's funds were tied up in the judicial system.

Exhausted by this draining struggle, the company decided to turn to BOC for assistance.

After carefully examining the complaint and all documents, the Business Ombudsman Council reviewed the customs authorities' arguments for adjusting the customs value. BOC concluded that the customs position was insufficiently substantiated, while the complainant had provided evidence supporting the declared customs value.

Furthermore, the Council noted that customs had unjustifiably used the fallback method for determining customs value. Judicial precedent in similar situations has consistently favored businesses.

Considering all these factors, the Council prepared an official letter to the State Customs Service of Ukraine, requesting to review the case with the participation of the company representatives and the Council itself. The BOC's intervention brought more attention to the case, and the position was thoroughly conveyed to the State Customs Service.

As a result, the State Customs Service canceled the decision to adjust the customs value of goods. This means that the initial customs value declared by the complainant was recognized as correct, and additional customs charges were canceled.

When the law is on business's side: tax authority cancelled half-million fine

A company specializing in real estate leasing approached the Business Ombudsman Council. The company disagreed with the results of a tax audit.

The Kyiv tax officials concluded that the company belatedly registered the invoices drawn up on the eve of the Russia's full-scale invasion and in the period until January 2024. The enterprise attempted to appeal the tax audit results independently. However, the tax authority did not change its decision and also imposed a fine of over half a million hryvnias on the company.

During its investigation, the Council discovered that the company had already paid a fine for late registration of tax invoices. The tax authorities, however, conducted a second audit and essentially doubled the fine. Furthermore, the Council found that the tax authority had erroneously applied for an increased fine for late registration of invoices related to transactions involving the use of non-current assets.

The Council sent a letter to the State Tax Service of Ukraine (STS) and supported the company's position. Additionally, the Council participated in the review of the complaint via video conference. The Council noted that the Tax Code prohibits penalizing an individual twice for the same tax violation, especially considering that the company had already paid its initial fine.

Consequently, with the Council's assistance, the STS decided to cancel a significant part of the penalties in the sum of UAH 539k which amounted to 87% of the total amount.



VAT inheritance: Chronicle of a battle with the system for the right to refund



A factory approached the Business Ombudsman Council with a complaint after finding itself in an atypical situation for which tax legislation and the system had no answer.

The story began in 2020 when the factory faced an unusual problem after acquiring another company (a research and manufacturing society). This company had the right to VAT budget refunds and the transfer of a negative value in subsequent periods, which the tax service refused.

The factory, as the legal successor of the society, appealed the decision of the state body. The court ruled the tax service's refusal was illegal. However, after the court decision, the complainant faced problems with its practical implementation. The current legislation does not provide for the possibility of VAT refunds to a legal successor based on applications formally submitted by another taxpayer. Moreover, in this situation, there were certain technical difficulties with the correct transfer of overpayment balances between the taxpayers' account cards.

Unable to solve the problem independently, in January 2024, the complainant turned to the Business Ombudsman Council (BOC) for help.

It turned out that the regional tax authority, where the acquired enterprise was registered, since March 2021 had ten times requested technical and legal assistance from the central apparatus of the State Tax Service (STS). However, by the end of 2023, no responses had been received from the STS. Similarly, another tax authority, where the plant is already registered, contacted the STS in October 2021 and twice at the end of 2023, but did not receive a response.

The Council accepted the complaint for consideration and submitted it for discussion to the joint Expert group with the STS.

As a result of this cooperation, a solution was found: the tax service thoroughly worked on the issue and agreed on a method to transfer the indicators to the factory's integrated card. This meant that with BOC assistance the factory officially received the right to use the VAT overpayment.

5 BOC'S SUPPORT IN RECONSTRUCTION OF UKRAINE

Ukraine's recovery and overcoming the consequences of military aggression, particularly for the private sector, is a long-term process requiring coordinated efforts, first, at the national level, as well as among local and state authorities. Although the government has formed a certain "infrastructure recovery model" including the Ministry for Communities, Territories and Infrastructure Development (the Ministry for Restoration) and the Restoration Agency, a single "voice" of the private sector was presented by the Business Ombudsman Council, being an equidistant institution and promoting balance and transparency of the regulatory field and business protection in relations with the state in the broadest sense.

While business suffer from hostilities on the front lines, regular missile attacks, and serious energy problems as a result of destruction, there are also other domestic private sector obstacles to full-scale reconstruction that the Business Ombudsman Council is helping to eliminate. The role of BOC in recovery is based on two components:

1. Eliminating obstacles to doing business (particularly in terms of reducing regulatory barriers and facilitating European integration)

For this purpose, the Council builds stable relations with the Government of Ukraine and state bodies that will manage the reconstruction process, and joins the dialogue with partners regarding recovery plan updates.

The Council regularly participates in the Ukraine Recovery Conference, URC (2022-2024). Our institution joined both the preparation process and high-level international consultations on the eve of forums in Lugano (Switzerland), London (UK) and Berlin (Germany).





In particular, this year's conference, which was held in Berlin, became an important event for coordinating further steps and an action plan in the context of overcoming the consequences for Ukrainian infrastructure of energy system destruction by the russians.

At URC 2024, topics like military assistance as a civilian infrastructure protection guarantee, small and medium-sized enterprise support and development, European integration of Ukraine, power restoration, human capital development, strengthening territorial communities and cooperation with other countries' municipalities were in focus as key to reconstruction processes.

Over a hundred agreements concluded at the Conference provide guarantees through financing different sectors of Ukraine's economy, particularly aid in restoring Ukrainian energy system capacities.

Simultaneously, Ukraine continues steadily getting closer to membership in the European Union by adapting domestic legislation to EU law and implementing sectoral reforms.

BOC, in turn, shares its expertise with government officials in the field of business protection and advises state bodies on legislative work to implement best international practices.

The Council is aimed at rendering maximum support to business and help build dialogue with the state. For this purpose, the Council also promotes good governance principles. The main principle state bodies should adhere to in administration and communication with business.

Declaration of Fair and Reasonable Administration

The Declaration is based on established system of behavior principles between the state and business taking into account European good administration standards.

The draft document won approval with government bodies and stakeholders. In particular, OECD SIGMA provided a highly positive assessment of the Declaration and confirmed its conformity with good governance best practices.



OECD experience in supporting countries in the post-war restoration period, as well as sustainable partnership with Ukraine will help strengthen the economic potential of Ukraine. In turn, the Business Ombudsman Council is going to continue working with the OECD to exchange experience in protecting and developing the private sector, promoting ideas of integrity, as well as good governance principles.

ARMA

ARMA is the central body playing a key role in deciding the fate of Russian residents' arrested assets on the territory of Ukraine. The institution's activity is expected to grow along with the strengthening of sanction policy.

The Business Ombudsman Council became a part of the Collegium of the National Asset Recovery and Management Agency dealing with assets obtained from corruption and other crimes (ARMA). In April, the first meeting of the Collegium was held.



2. Granting support and protection of business rights within recovery-related projects

Currently, there is no consensus on what exactly the “recovery projects” are in the private sector, therefore, for purposes of this report, we use a broad understanding of this notion. BOC not only created a special category in our internal CMS, but a dynamic dialogue with stakeholders is being established as well.

The Council’s leadership team also regularly meets and consults with business associations, embassies and international business delegations, keeping abreast of the current problems and needs of both Ukrainian and international business and investors.

In the reporting quarter, Roman Waschuk and Tetiana Korotka participated in meetings with delegations of Denmark, Estonia, Latvia, Germany, Austria, the USA, Canada and Great Britain. The Business Ombudsman also had consultations with the President of the EBRD regarding recovery issues and business engagement in the private sector.



6 COOPERATION WITH STAKEHOLDERS

6.1 Meeting of the Business Ombudsman Council and the Prosecutor General's Office with leading business associations and members of the Council for Entrepreneurship Support in the Conditions of Martial Law

For nine years in a row, the Business Ombudsman Council has been acting as an independent institution for resolving complex issues in B2G relations.

The Council offers its platform for establishing a dialogue between entrepreneurs and state authorities and, as a mediator, helps the parties reach an understanding.



On April 24, 2024, with the assistance of the Business Ombudsman Council of Ukraine, the second quarterly meeting of the Business Ombudsman Roman Waschuk and the Prosecutor General's Office with leading business associations and members of the Council for Entrepreneurship Support in the Conditions of Martial Law took place.

The main theme of implementation of the meeting was the assessment of the President's Decree implementation on urgent business issues in interaction with law enforcement agencies. The meeting was moderated by the Deputy Business Ombudsman Tetiana Korotka.



In his opening remarks, the Head of the Office of the President, Andrii Yermak, confirmed that pressure on honest business is unacceptable and approved the dialogue arranged by BOC between the Prosecutor General's Office and leading business associations.

At the meeting, the Business Ombudsman presented [the Declaration of Fair and Reasonable Administration](#), developed by BOC. The document, based on principles of good governance, is designed to regulate the interaction between the state and business. A key element in implementing the ideas of the Declaration is the **"Consult First"** approach, which signifies a shift from archaic punitive practices towards prevention and correction of

potential errors. The **"Consult First"** idea was also endorsed by the Prosecutor General in his speech.

In addition, at the event, Andriy Kostin signed an updated version of the **Standards for Prosecutors' Activities in the Field of Investment Protection during Pre-trial Investigations**, which have now become mandatory for prosecutors to follow. The improved Standards take into account the recommendations of the Business Ombudsman Council regarding making the Standards binding when prosecutors perform procedural guidance of pre-trial investigations, as well as the application of "safeguards" against unjustified searches.

As a result of the meeting, the Business Ombudsman Roman Waschuk and the Prosecutor General Andriy Kostin outlined priority steps to reduce pressure on business:

- 1 Implementing the "consult first" principle in the practice of state bodies
- 2 Joint appeal to state authorities to select honest heads for the State Tax Service and the State Customs Service
- 3 Rebooting the Bureau of Economic Security (BEB), conducting transparent management team selection, selecting new detectives, and creating regional divisions of the Bureau

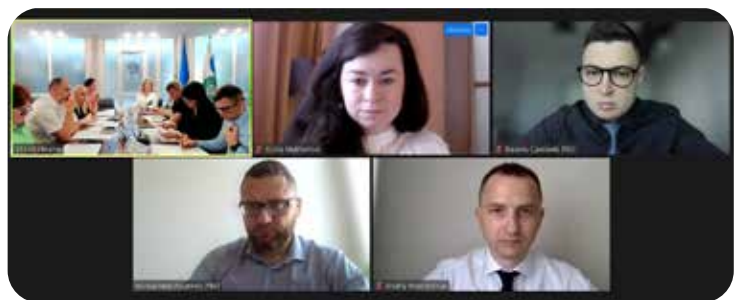


The Business Ombudsman Council supports the format of regular meetings between the Prosecutor General's Office and representatives of the business community, which will contribute to a more effective resolution of long-standing problems of entrepreneurs during the ongoing war.

6.2. Expert Groups

Our Expert Group format functions under Memoranda of Partnership and Cooperation signed by the Council with respective state bodies at different times.

	Number of meetings in Q2 2024	Number of cases considered in Q2 2024
State Tax Service (STS)	3	99
Main Department of STS in Kyiv city	3	17
Main Department of STS in Kyiv region	3	6
Prosecutor's General Office	1	16
State Customs Service	2	14



6.7 Calendar of events

03.04.2024

Round table "The Fiscalization of the Vending Industry, its Implementation and Obstacles"

Organized by:
Ukrainian League of Industrialists and Entrepreneurs (ULIE)

09.04.2024



Conference "Interaction Between Business and Law Enforcement Agencies: Key Necessary Amendments to the Criminal Procedure Code for Business Protection"

Organized by:
Ukrainian Chamber of Commerce and Industry (UCCI)

10.04.2024

Meeting "Supporting Business in Ukraine – Combining Vision and Opportunities"

Organized by:
Ministry of Economy of Ukraine

11.04.2024

Round table at the request of G7 ambassadors

Organized by:
Ministry of Justice of Ukraine

11.04.2024



Ukrainian Recovery Construction Forum Ukraine
Organized by:
Confederation of Builders of Ukraine

17.04.2024

Discussion on the Reconstruction of Ukraine

Organized by:
Ministry for Restoration

18.04.2024



XIII Conference of Corporate Lawyers (Legal Counsels)

Organized by:
Ukrainian Bar Association (UBA)

19.04.2024

Presentation of the "Made in Ukraine" platform in Kamianets-Podilskyi

Organized by:
Ministry of Economy of Ukraine

22.04.2024

Discussion "How to Help Ukrainian Exporters in War Conditions?"

Organized by:
Institute for Economic Research and Policy Consulting, Entrepreneurship and Export Promotion Office

24.04.2024

Report presentation "Unlocking Investment in Ukraine"

Organized by:
The British Institute of International and Comparative Law (BIICL)

30.04-01.05.2024

Toronto Annual Meeting

Organized by:
20-20 Investment Association

10.05.2024

Meeting with the leadership of State Bureau of Investigation

Organized by:
State Bureau of Investigation

16.05.2024

Conference "Anti-corruption Reforms and Measures in Ukraine to Improve Business and Defense"

Organized by:
Eastern Circles in partnership with the French-Ukrainian Chamber of Commerce and Industry and NAKO

30.05.2024

CSIS event on Ukraine's private sector

Organized by:
Center for Strategic and International Studies (CSIS)

31.05.2024

High-level discussion "Declaration of Fair and Reasonable Administration as a kind of Social Contract between Business and the State"

Organized by:
Ukrainian Network of Integrity and Compliance (UNIC)

07.06.2024

I Investment Forum

Organized by:
Ukrainian Bar Association (UBA)

14.06.2024

Meeting with Acting Head of Lviv Customs, Andrii Kuznik

Organized by:
Lviv Customs

18.06.2024

Meeting with CEO of Victory Drones Maria Berlinska

Organized by:
Business Ombudsman Council

18.06.2024

Meeting with USAID partners

Organized by:
USAID

19.06.2024

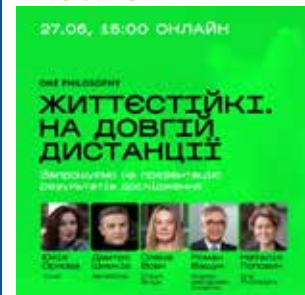
2nd Meeting of the Advisory Board on Establishment of the State Pharmaceutical Control Authority

Organized by:
Ministry of Health of Ukraine

27.06.2024

Meeting with the Permanent Representative of the President of Ukraine in the Autonomous Republic of Crimea Tamila Tasheva

Organized by:
Business Ombudsman Council

27.06.2024

Presentation of the study results: "Resilient. Over a Long Distance"

Organized by:
One Philosophy

28-29.06.2024

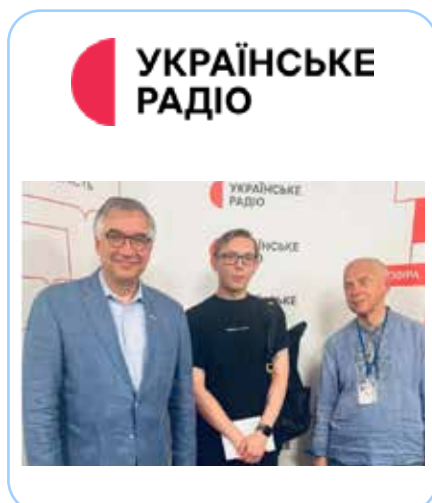
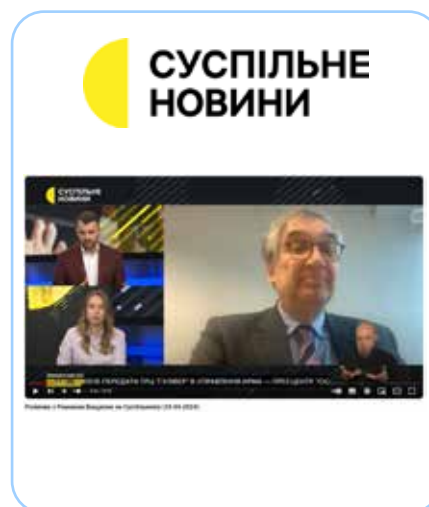
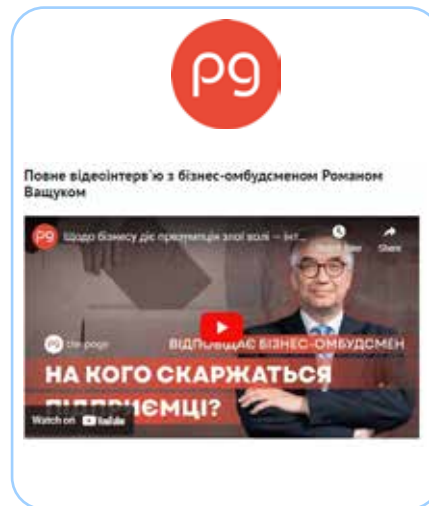
Mind Invest Summit 2024 (Lviv)

Organized by:
Business portal Mind.ua

6.4 Cooperation with media

The Business Ombudsman and his team use external communications to inform about trends in business complaints, highlight systemic problems of entrepreneurs and propose ways to solve them. We cooperate with the media exclusively based on free information exchange, providing expert views, legal analysis and up-to-date statistics of business appeals.

In April-June, we cooperated with:



6.5 Cooperation with Forbes Ukraine


Business Ombudsman Roman Waschuk's second Forbes Business Breakfast (viewed by over 55k of entrepreneurial audience)



On June 27, 2024, the Business ombudsman Roman Waschuk took part in a special panel of the **Forbes Business Forum** named "Entrepreneurs and Culture: A History of Complex Relationships". Together with historian, researcher of Ukrainian entrepreneurship history Tetiana Vodotyka, they discussed the complex historical relationships between the state and entrepreneurs in Ukraine.




FEEDBACKS




We express our sincere gratitude and appreciation for the fruitful work of the Business Ombudsman Council. Following the review of our complaint, the company had the opportunity to ascertain the effectiveness and efficiency of the Council's operations, as well as its fair, unbiased, and timely consideration of complaints by the Business Ombudsman aimed at effective protection of the rights and interests of business entities before the state. We also appreciate the comprehensive, objective, and direct investigation conducted by the Business Ombudsman Council into all available evidence concerning the disputed issue.

A mining company



We would like to thank you for your assistance and productive work in helping to resolve our issue. With your help and direct involvement, the criminal proceedings were closed and the seizure of the company's property was lifted.

Ukrayinska Syrovyna LTD



We express our gratitude and deep appreciation to the team of the Business Ombudsman Council. Your authority, coordinated, high-quality, and timely work of the team allowed us to achieve a positive result. Thanks to your high professionalism, we managed to be heard by the state body.

LLC "Ghelamko Ukrayina"



Business
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