

# TAX DISPUTES COMMISSION UNDER THE GOVERNMENT OF THE REPUBLIC OF LITHUANIA

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## ACTIVITY REPORT 2024

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## CHAIRPERSON'S WORD

The Tax Disputes Commission under the Government of the Republic of Lithuania (hereinafter referred to as the Commission) is an independent pre-trial specialized tax dispute resolution institution.

In performing its functions, the Commission ensures appropriate conditions for individuals to exercise their right to resolve tax disputes through pre-trial proceedings, without resorting to the courts, ensuring rapid legal certainty at an early stage, i.e. it implements the right to cost-effective and expeditious protection of violated rights by alternative non-judicial means.



When examining disputes, the Commission encounters increasingly complex national and international situations, the resolution of which requires the application of EU legislation. Therefore, there is a need to seek clarification from the Court of Justice of the European Union (hereinafter referred to as the Court of Justice or ECJ), which has recognized the Commission as a judicial authority. In pursuit of its main objective – to examine complaints properly and objectively and to take lawful and well-founded decisions – last year the Commission referred the highest number of cases to the Court of Justice in its history, becoming the second institution in Lithuania in terms of the number of requests submitted. The Commission raised questions before the CJEU concerning international artificial entities, the determination of the VAT object in virtual space, and the coordination of sanctioning and criminal prosecution procedures. These topics are relevant not only to Lithuania but also to other EU countries. In 2024, we reinforced the view that referring a case for a preliminary ruling allows disputes to be resolved at an early stage, thus saving time and resources and reducing the workload of the courts.

One of the most important indicators characterizing the Commission's performance is the stability indicator, which reveals the quality of decisions by showing what proportion of the Commission's decisions remained unchanged. In total, 80 percent of the Commission's decisions appealed in court last year remained unchanged, and only 20 percent of the Commission's decisions were overturned or returned to the central tax administrator for reconsideration.

Another important indicator of confidence in the Commission is related to Commission decisions that were not further appealed. In 2024, the number of Commission decisions that were not appealed by the parties to the courts increased by almost 9 percent. In total, such decisions accounted for as much as 72 percent. This means that, thanks to the professionalism of the Commission's staff, as many as three-quarters of the Commission's decisions became enforceable.

Last year, the total amount of tax disputes examined by the Commission amounted to EUR 20.6 million (in 2023 – EUR 15.98 million), i.e. the total amount of decisions taken by the Commission increased by as much as 22 percent. The number of disputes concerning personal income tax increased fourfold, with the amount of disputed personal income tax increasing from EUR 0.86 million in 2023 to EUR 3.45 million in 2024. The amount of VAT increased from EUR 7.86 million in 2023 to EUR 9.13 million in 2024.

In implementing the Commission's objectives, we constantly focus on maintaining the professionalism of our employees and improving their qualifications. We strive to ensure convenient dispute resolution for the parties to the dispute so that the process is effective and fair.

We believe that our activities are important to society, so we strive to inform the public about our activities. We do this by participating in various conferences and public events, using the media, and posting about our activities on social networks. We are expanding the public's knowledge of tax disputes and mistakes made by taxpayers, and we constantly remind them of the possibilities for defending their rights.

The choice of pre-trial administrative dispute resolution results in simpler and more flexible dispute resolution procedures, while ensuring the fundamental principles of judicial proceedings: legality, adversarial proceedings, the right to be heard, etc. During the examination of disputes, the Commission clarifies the facts and presents the conclusions of professional tax analyses, which makes it easier for administrative court judges to examine the circumstances of the case and make decisions.

The Commission employs experienced and qualified staff and is therefore ready to provide expert assistance in tax disputes and tax administration issues. One of the areas of development for the Commission is to make proposals and recommendations when considering problematic tax issues in the country and improving the legal regulation of tax administration.

The current legal regulation of tax disputes no longer meets the expectations and realities of the parties to the dispute and therefore requires a review that would better ensure human rights in the dispute resolution process. Changes should be directed towards enabling individuals to make greater use of the Commission's specialized professional review of their tax situation, not only by expanding the range of tax-related disputes, but also by simplifying procedures that would allow for more effective enforcement of individuals' rights. Expanding the categories of disputes that must be examined in pre-trial proceedings is the most important requirement of a modern model of pre-trial administrative justice.

Chair of the Tax Disputes Commission under the Government of the Republic of Lithuania  
Vilma Vildžiūnaitė

# CHAPTER I

## IMPLEMENTATION OF STRATEGIC AND OPERATIONAL OBJECTIVES

The Commission's objective is to objectively examine the taxpayer's complaint and make a lawful and justified decision. The Commission consists of five state officials appointed by the Government of the Republic of Lithuania (hereinafter referred to as the Government): the Chair of the Commission and four members. In performing its functions, the Commission is guided by the principles of legality, respect for human rights and freedoms, openness, and efficiency. The Commission seeks to strengthen public confidence in the justice system and increase the possibilities for pre-trial resolution of tax disputes, which significantly reduces the workload and deadlines for cases under consideration and increases the quality and efficiency of work.

The Commission's current priorities are as follows:

- 1) properly implement the rights of persons to the examination of tax disputes in pre-trial proceedings;
- 2) objectively examine applicants' complaints regarding tax administrators' decisions and adopt lawful and justified decisions within the established time limits;
- 3) strengthen trust in the Commission, develop educational activities, and increase the professionalism of employees;
- 4) improve tax dispute examination process and its implementation in the electronic space;
- 5) increase international and national cooperation with judicial, pre-trial, or other state institutions and associated organizations.

The purpose of establishing the Commission is to provide an alternative to judicial dispute resolution. Pre-trial dispute resolution bodies ensure the rapid and effective protection of a person's violated rights. Tax disputes in pre-trial dispute resolution bodies are subject to simplified procedures and deadlines, which encourages taxpayers to choose them over the traditional court system.

The Tax Administration Law of the Republic of Lithuania (hereinafter referred to as the TAL) establishes and regulates the mandatory pre-trial tax dispute resolution procedure, and the specific conditions and procedures for the examination of tax disputes are laid down in the MAJ and the Commission's Rules of Procedure (hereinafter referred to as the Rules). The mandatory pre-trial tax dispute resolution procedure does not restrict the taxpayer's right to directly appeal to the court after the relevant central tax administrator has made a decision on the tax dispute. The tax dispute resolution procedure also applies to the examination of taxpayer complaints regarding the tax administrator's decision not to exempt from fines and (or) late payment penalties payment and the tax administrator's offsetting of the taxpayer's tax overpayment.

Taxpayers actively exercise their right to appeal decisions if they are not fair to them. The Commission **adopted a total of 283 decisions in 2024**. Of these, **208 decisions** were made in tax dispute cases. In tax disputes, **54% of** the tax administrator's decisions were upheld, while **46%** of tax dispute cases were returned for reconsideration, and the tax administrator's decision was revoked or amended. The remaining decisions adopted by the Commission concerned the renewal/non-renewal of the tax dispute examination period, complaints left unexamined, and the suspension of tax dispute examinations.

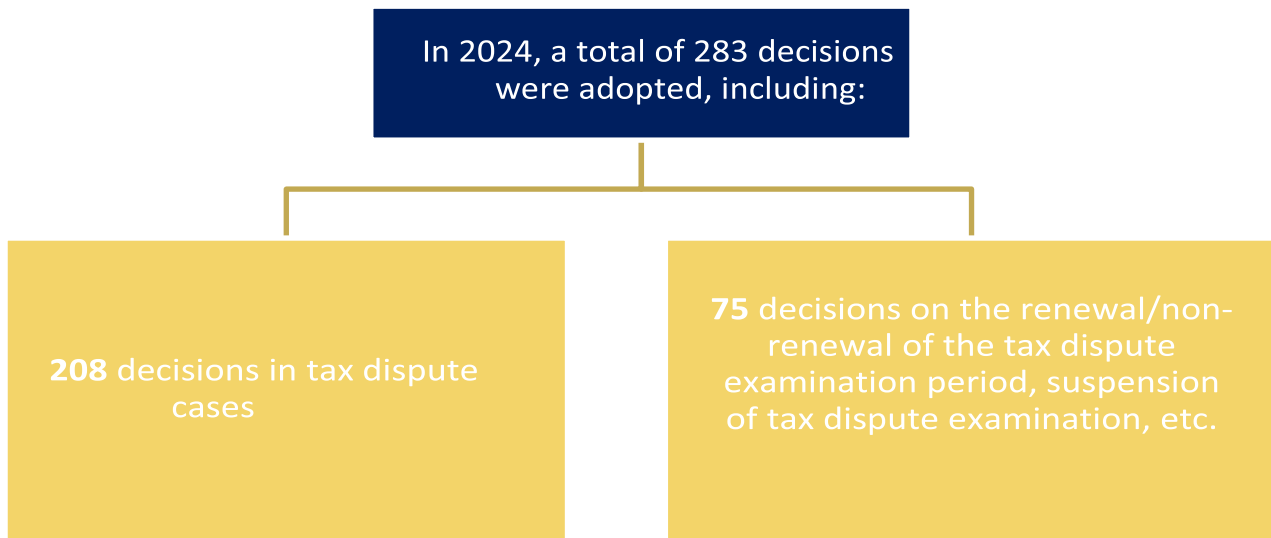


Chart No. 1 Decisions adopted in 2024

A large proportion of the appeals in tax dispute cases on which decisions were taken i.e. **129 complaints (62%)** were submitted by legal entities, and **79 complaints (38%)** were submitted by residents – natural persons.

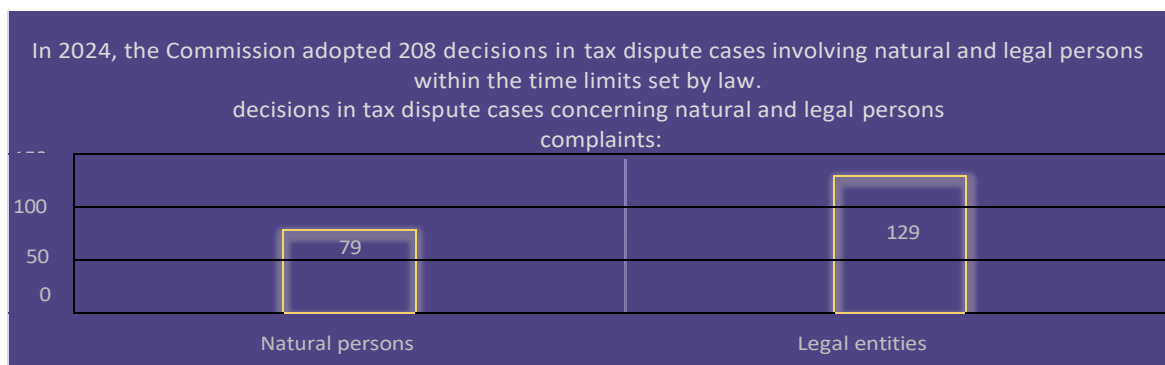
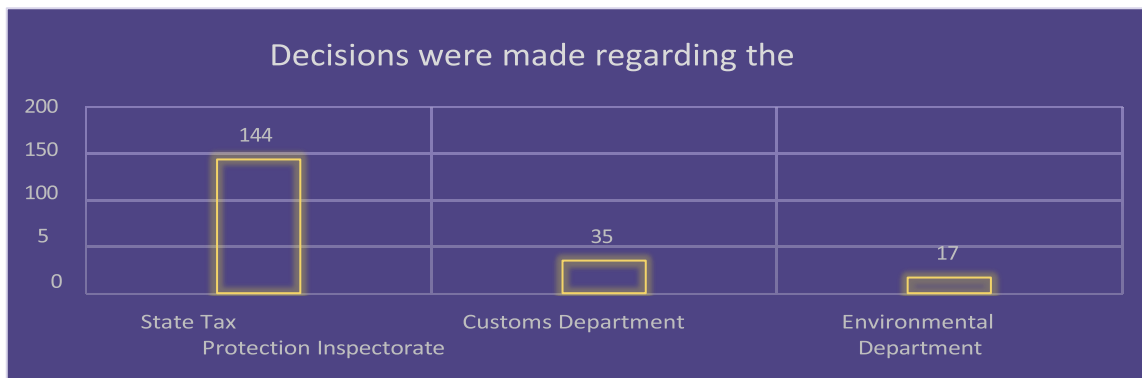


Chart No. 2 Decisions adopted in tax dispute cases in 2024

Just under half of all applicants represent themselves, i.e. they do not hire lawyers or other persons knowledgeable about the law and fees. This demonstrates confidence in the Commission and its objectivity. Competitiveness, the application of general principles of evidence, the confidentiality and efficiency characteristic of case examination (decisions are made within 60 days of receipt of the complaint), and the absence of stamp duty encourage taxpayers to choose the Commission.

Based on the complaints received in tax dispute cases, the Commission made decisions on the following decisions of state institutions: State Tax Inspectorate under the Ministry of Finance of the Republic of Lithuania (hereinafter referred to as STI) – 144 decisions (73.5%); Customs Department under the Ministry of Finance of the Republic of Lithuania (hereinafter referred to as CD) – 35 decisions (17%); Department of Environmental Protection under the Ministry of Environment (hereinafter referred to as DEP) – 17 decisions (8.7%).



Decisions adopted in 2024 by institution

In implementing the decisions adopted by the Government under the IT services agreement with the State Digital Solutions Agency (hereinafter referred to as VSSA) on the consolidation of the state information technology infrastructure and the optimization of its management, in 2024, the transfer of the information and communications technology infrastructure managed by the Commission and data to the centrally provided IT services infrastructure managed by the SDIA and to the state data center "G-Cloud" continued. A secure and controlled computer workstation environment is being created.

The main function of the Commission – examining taxpayers' complaints and making decisions – was performed by five members of the Commission, who were civil servants, other Commission employees – in the reporting year 2024, 14 civil servants and employees working under employment contracts (hereinafter referred to as employees) – carried out preparatory work related to the examination of complaints and performed necessary functions in the areas of general Commission activities (document and information system (IS) management, financial management and control, public procurement, personnel, property and personal data management, internal control, etc.).

**The Commission also implements international cooperation and public awareness initiatives.** On March 14, 2024, the eighth tax dispute simulation, "Tax Dispute Up Close," was organized, in which teams of students from Mykolas Romeris University and Vilnius University (VU) competed in the finals and superfinals. By participating in this traditional event, students experienced what it means to be involved in tax disputes. The aim of the event is to contribute to the training of competent specialists. The *Moot* Court competition is an opportunity for students to gain practical experience and familiarize themselves with the tax dispute resolution process in a real-life situation. Participating in the dispute gave students the opportunity not only to test themselves, but also to better understand tax business situations. The students emphasized that the experience they gained provided them with new knowledge and will be useful in their legal practice or when participating in other disputes in the future.

In order to improve their qualifications, develop international relations, and share best practices, the members and employees of the Commission visited foreign countries. On April 10-11, 2024, they traveled to Estonia and participated in meetings with Estonian tax dispute judges and tax administration staff. The meetings focused on problematic disputes related to value added tax (VAT) chains, VAT deduction, assessment of unfairness in VAT transactions, recognition of artificial arrangements, and aspects of abuse. In addition, the relevant case law of the ECJ related to requests initiated by Lithuania and Estonia was shared. Commission members A. Venius and V. Vildžiūnaitė presented the activities of the Commission, the tax dispute resolution system in the Republic of Lithuania, and current tax disputes. The President of the Tallinn Administrative Court, K. Kruusvee, and judges K. Ikkonen and M. Hallikma presented the court's disputes.

statistics, key tax dispute practices, technical and IT system tools used in court proceedings. During the meetings, it was agreed to develop cooperation in the future: exchange information related to tax disputes, the interpretation and application of laws implementing certain tax directives, and changes in IT systems that help parties to file complaints and participate in disputes more easily and quickly. Representatives of the institutions were invited to visit Vilnius.

In June 2024, Commission members G. Ivanauskienė and V. Vildžiūnaitė participated in the meeting of the Tax Law Group of the Association of European Administrative Judges (AEAJ) on "Challenges (difficulties, problems) of taxation in digital markets." During the meeting (seminar), representatives of the Austrian Federal Tax Court, the Supreme Administrative Court, the Federal Ministry of Finance, and the tax administrator presented the challenges and problems of the digital economy, the latest initiatives in the European Union (EU), and current issues in tax dispute practice. During the visit, the Commission representatives shared their experience of cases involving the taxation of digital services and products with the speakers and judges from other EU Member States and discussed other relevant issues. Participation in such events and the sharing of insights not only deepens tax knowledge, but also establishes professional cooperation with experts and tax case judges from other countries with a view to sharing information in the future.

Commission members also participate in scientific and practical conferences, presenting current issues in taxation, customs, and tax disputes, and offering insights on how to improve tax dispute resolution.

Following the conference "Judicial control as an essential element in ensuring the effectiveness of public administration" held at the Seimas of the Republic of Lithuania on May 10, 2024, published a detailed commentary entitled "Tax Disputes Commission: the justified concentration of expert competencies paves the way for change" on the online media portal "Teisė Pro" on May 16, 2024. The Commission member noted that we should be pleased that the institutions examining pre-trial disputes are properly performing their functions, ensuring that the public's need for an independent/professional dispute resolution method is met. Conference participants representing academia emphasized the following strengths of the Commission: impartiality, quasi-institutional status, member selection, and expert knowledge of staff.<sup>1</sup> It should be noted that academics and court representatives presented the Commission at the conference as a good example of an administrative justice system. The Commission agrees with the conference speakers' statements about the uniqueness of the institution as a quasi-institution and its activities in the specific field of tax disputes. The speakers' insights and proposals are in line with the initiatives launched by the Commission to strengthen the institution: to expand the scope of tax disputes and its administrative functions in order to make dispute resolution even more effective.

On May 23, 2024, Vilnius hosted the 10th anniversary conference of the Customs Practitioners Association, which brought together representatives of business, academia, customs, and other institutions. Commission member A. Venius also participated in the conference and shared his knowledge on customs disputes, reading a report entitled "Completion of transit procedures: problems and practice." The conference focused on customs reform and its impact on changes and digitization of customs systems. The conference discussed key aspects of customs reform, including the impact of technological innovations on customs procedures, the preparedness of businesses for these changes, and the role of intermediaries.

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<sup>1</sup> <https://www.teise.pro/index.php/2024/05/16/j-narkeviciute-mokestiniu-gincu-komisija-pasiteisines-ekspertiniu-kompetenciju-sutelkimas-atveria-kelia-pokyciams/>. Accessed on January 17, 2025.

digitization process. Participants had the opportunity to listen to presentations, participate in discussions and exchange experiences and best practices.

On September 26, 2024, Commission member J. Narkevičiūtė participated in a tax conference where the latest and most relevant topics in the areas of finance, taxation, and sustainability were discussed. The discussion "Latest court practice in tax disputes" focused on such aspects as current issues in the application of legal norms, specific tax situations and their different assessments, and opportunities to improve legal regulation. The Commission member spoke about changes in court practice and their impact on legal regulation and public interests. The conference, aimed at finance and tax managers, shared relevant cases and insights, drawing attention to taxpayers' rights. Tax case practice is also changing due to the constantly changing business environment. The presentations and discussions of the conference participants provided an excellent opportunity to discuss the latest court decisions, hear their analysis, and learn about upcoming changes.

On October 3, 2024, an international practical scientific conference entitled "Tax Sustainability and Certainty: Global and Local Perspectives" was held, organized by the Commission in cooperation with the Faculty of Law of Vilnius University. Presentations were given by scientists and practitioners with extensive experience in the field of taxation and sustainable finance. This conference is the third event bringing together practitioners, scholars, lawyers, and economists in the field of taxation, with foreign speakers from universities in Austria, Poland, and Taiwan participating for the first time. The conference presented various topics related to sustainable taxation and finance, covering the shadow economy, the principles of sustainable development of the tax system, critical insights into tax issues in the areas of profit, VAT and personal income taxation, problems with the tax treatment of derivative financial instruments (DFIs), links between taxation and green initiatives, problems with tax administration, tax dispute resolution and the application of liability, and possible solutions. Presentations were given by Commission members J. Narkevičiūtė ("*Legal tax issues in the area of allowable deductions*") and V. Vildžiūnaitė ("*A look at VAT certainty and sustainability*").

After the conference, a discussion was held at the VU *TechHub* space, where insights on the issues raised at the conference were shared and other relevant issues related to tax sustainability and certainty were discussed. The discussion with the conference speakers was joined by participants from Vilnius University, the Lithuanian Confederation of Industrialists, the Free Market Institute, the Lithuanian Bar Association, the Ministry of Environment, the Ministry of Finance, the State Tax Inspectorate, the State Audit Office, Commission staff, and students. The discussion moderators, Prof. Dr. T. Davulis from the Faculty of Law of Vilnius University and Commission member J. Narkevičiūtė, continued the conference theme by discussing whether the current tax regulations in Lithuania encourage sustainable business initiatives. The discussions highlighted a common understanding that tax certainty and sustainability are interrelated. Although each representative in the discussion gave priority to different aspects, all agreed that a balanced approach is needed to support both business growth and public objectives.

On October 25, 2024, Commissioner A. Venius participated in the international conference "Business Disputes: Problems and Practice," where he presented trends in tax disputes and disputes relevant to business in which the principle of substance over form was applied.

Last year, Commission staff also held meetings with ECJ staff and academics. Such meetings are important for the Commission's work, as the Commission refers questions to the ECJ for a preliminary ruling in order to ensure that national law is interpreted and applied in accordance with EU law.

On September 30, 2024, Dr. D. Prapiestytė, associate professor at the Faculty of Law of Vilnius University and former long-time advisor to a CJEU judge, presented the changes resulting from the reform of the EU courts to Commission staff (who are involved in preparing requests to the CJEU) and shared the specifics of working at the CJEU. The meeting discussed how to make requests to the CJEU more effective and clearer. The meeting discussed how to make referrals to the ECJ more effective and clearer. The discussion covered topical issues of legal regulation. It was mentioned that EU court innovations are relevant to the Commission, as four out of six areas are related to tax disputes examined by the Commission.

At the next meeting, Kristina Savickaitė and Jolita Vanglovskaja, representatives of the ECJ's Directorate-General for Multilingualism, shared the principles of submitting a high-quality request for a preliminary ruling to the ECJ, presented examples of typical mistakes made, and revealed the daily routine of legal linguists.

## CHAPTER II

### IMPLEMENTATION OF PROGRAMS

Program implemented by the Commission – Examination of tax disputes. All appropriations allocated for 2024 – EUR 906,000 – were used during the reporting year.

Implementation of the program implementing the strategic objective and use of the appropriations approved in the Law on the Approval of the Financial Indicators of the State Budget and Municipal Budgets of the Republic of Lithuania for the relevant year					
Program code					
Program code	Program name	Use of appropriations (EUR thousand)			
		Allocation Plan	Plan of appropriations* , including adjustments for the reporting period	Utilized of appropriations	Utilized of appropriations from appropriations indicated Part of the appropriation plan, including adjustments for the reporting period (%)**
1	2	3	4	5	6
13,001	Tax dispute examination	906	906	906	100
Of which EU and other international financial support		–	–	–	–

Table No. 1 Use of budget appropriations

In performing its functions, the Commission focused its activities on the examination of taxpayers' complaints in accordance with the law. The Commission's 2024 Strategic Action Plan (hereinafter referred to as the Strategic Plan) provided that in 2024 all Commission decisions would be taken within the time limits set by law. Under the current legal framework, the Commission must take decisions on complaints in tax disputes within 60 days of receiving the complaint. All complaints were examined in a timely manner and decisions were taken on them. However, during the reporting year, there were also cases where the examination of complaints was suspended for various reasons (due to the receipt of information about court decisions in other cases, the implementation of the taxpayer and tax administrator agreement procedure, etc.).

The relevant criterion for assessing the Commission's strategic performance target is "Final Commission decisions not contested by the parties" (%). 72% of the decisions adopted by the Commission in 2024 were not appealed in court. This indicator is based on the professionalism of the Commission's staff and reflects the level of trust in the Commission.

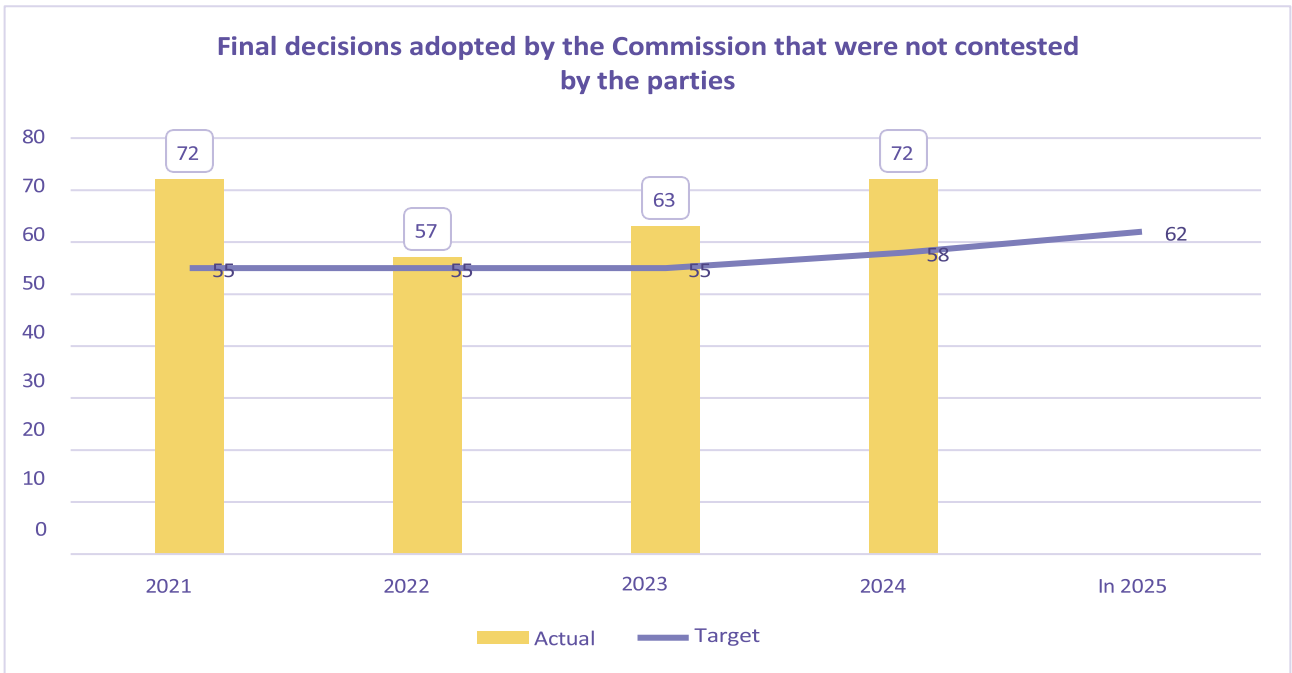


Chart No. 4 Final decisions

As mentioned above, in 2024, the Commission adopted 208 decisions in tax dispute cases, having examined tax disputes involving a **total amount of EUR 20,595,689**. The tax disputes concerned the following taxes calculated by the tax administrators:

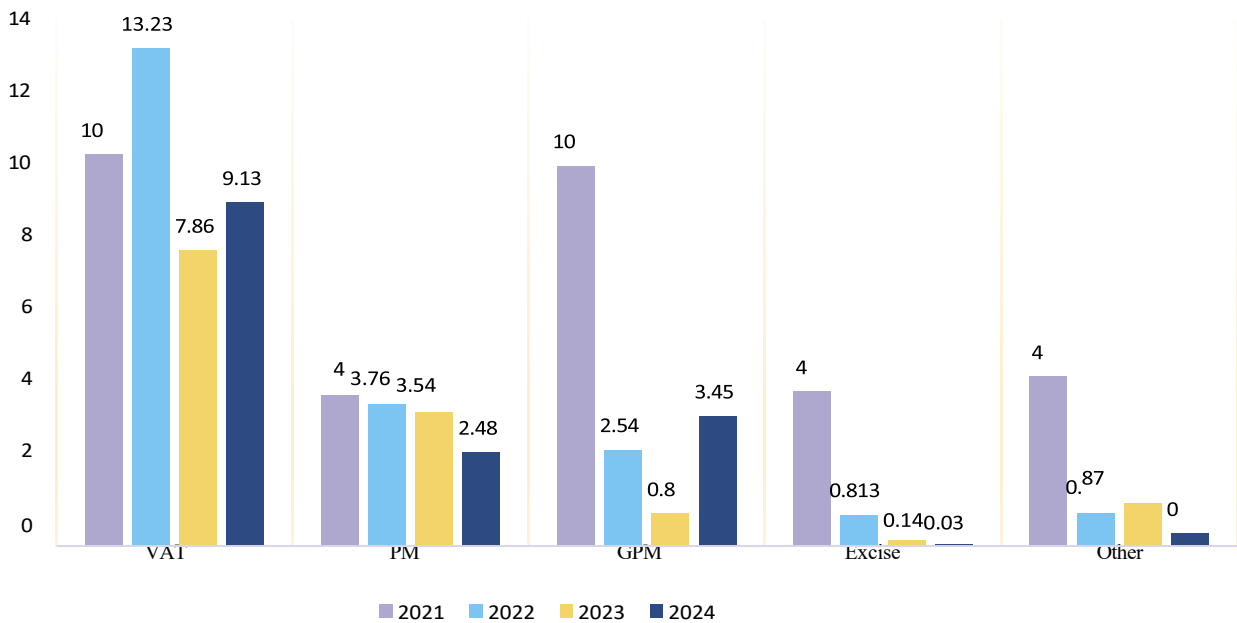


Chart No. 5 Decisions by individual taxes

In 2024, the Commission **approved** tax administrator decisions totaling EUR 16,935,666, **revoked** tax administrator decisions totaling EUR 944,667, and **returned** tax administrator decisions totaling EUR 2,715,356.

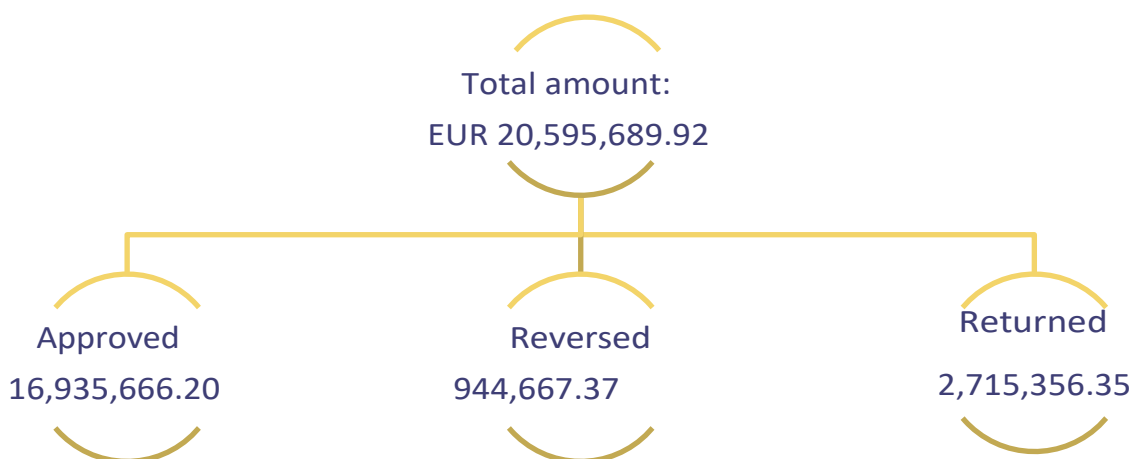


Chart No. 6 Decisions on amounts calculated by tax administrators

In pursuit of its primary objective of examining complaints properly and objectively, the Commission actively exercises its right to refer cases to the ECJ, which it acquired when the ECJ recognized the Commission as a judicial authority. The opinions received from the CJEU allow disputes to be resolved at an early stage within the Commission, thus saving time and resources and reducing the workload of the administrative courts. In 2024, the Commission referred three tax dispute cases to the CJEU for an opinion. The interpretation of the EU legal provisions under review determines the validity of taxation and the tax administrator's right to calculate the tax.

A significant criterion for assessing the Commission's activities under the Strategic Plan is "Decisions of administrative courts in tax dispute cases leaving the Commission's decisions unchanged" (%).

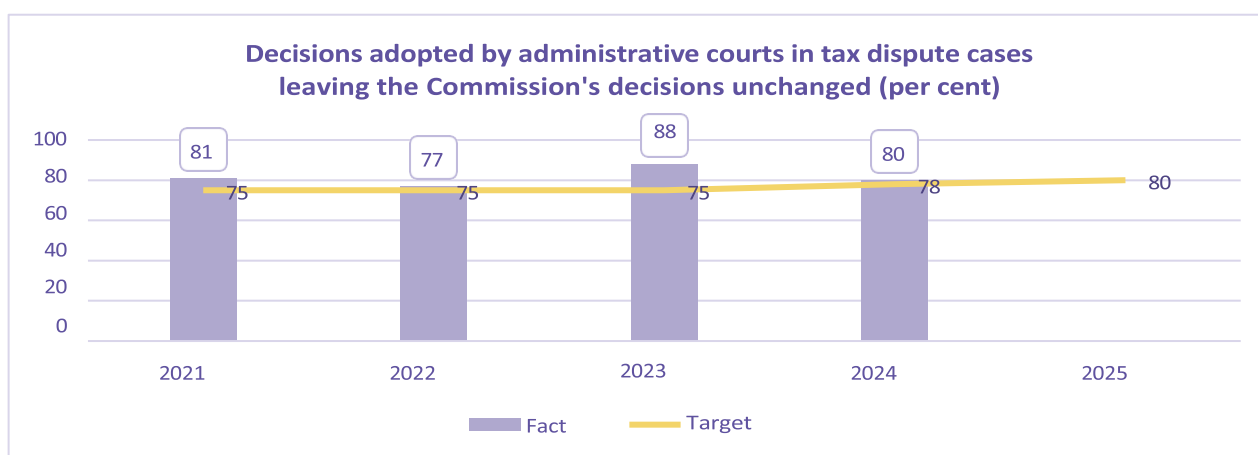


Table No. 2 Decisions of administrative courts

In the strategic plan, the value of this criterion was set **at 78%**. The value of the criterion shows what percentage of the Commission's decisions that were appealed were upheld by the decisions (rulings) of the Supreme Administrative Court of Lithuania (hereinafter referred to as the SAC) or the final decisions of the Regional Administrative Court (hereinafter referred to as the RAC). of the Commission's decisions that were appealed were not changed by the decisions (rulings) of the Supreme Administrative Court of Lithuania (hereinafter referred to as the SAC) or by the final decisions of the Regional Administrative Court (hereinafter referred to as the RAC), compared to all court decisions in tax dispute cases. This criterion shows the quality of the Commission's work. In 2024, the LVAT and RAT made procedural decisions on a total of **60 Commission decisions: 48 decisions (80%) were left unchanged**

% of all decisions); **8 decisions were overturned (13%); 4 decisions were amended (7%)**. Thus, the target set in the Strategic Plan was exceeded. The total amount of taxes in the tax dispute cases examined by the Supreme Administrative Court and the Regional Administrative Court was 6,952,996 EUR, of which 6,340,857 EUR was confirmed, 510,135 EUR was annulled, and 102,003 EUR was returned for re-examination.

The Commission continuously analyzes tax dispute practices and assesses errors and problems. Most disputes arise in relation to value added tax, personal income tax, and corporate income tax, with a significant proportion also relating to the refund of overpaid taxes or the waiver or reduction of fines and penalties. Recently, disputes concerning customs duties and environmental pollution taxes have also accounted for a significant proportion of disputes.

There is a noticeable trend that tax disputes have become more complex and diverse. For example, business disputes arose when the State Tax Inspectorate recognised that transactions were concluded to satisfy the interests of shareholders in terms of content supremacy, tax relief was applied unjustifiably, transaction pricing was inappropriate, or thin capitalisation rules were applied to companies. The most complex disputes are related to international taxation (i.e., arising from transactions with foreign persons) or abuse. These included the first ever dispute concerning the taxation of dividends received from a foreign company with characteristics of an artificial entity. The Commission decided to refer this issue to the Court of Justice for clarification.

There is a noticeable trend in disputes, which reveals that companies have been declaring tax losses or very small amounts of income tax payable for many years, purchases exceed sales, purchase goods from main suppliers, even though according to accounting data they have a large amount of unsold goods in stock, and their activities are financed by loans from shareholders or other natural persons. Tax disputes over loss carry-forwards are becoming more complex, with taxpayers increasingly seeking to reduce their taxable income through limited allowable deductions.

Disputes in the area of VAT most often arose due to VAT deductions, the application of a 0% VAT rate when goods are transferred through a chain of transactions, the reserve rule, the recognition of economic activity, or other issues related to the formation of a VAT object. The number of disputes concerning the recognition of economic activity has increased.

Disputes in the area of personal income taxation arose in situations where residents' official income was lower than their expenses, income in kind, and situations where the tax administrator applied the principle of substance over form, recognizing that residents had abused tax breaks. There is no decrease in tax disputes where it is apparent that taxpayers are living at the expense of the companies they have established. Often, the needs of families are financed at the expense of companies: real estate is purchased, the costs of using and operating vehicles are financed, trips to exotic countries are taken, plane tickets are purchased, personal items are bought, and the costs of personal hobbies are covered (diving or piloting lessons; purchase of quad bikes/motorcycles, buggies, etc.).

Disputes with customs most often arise over evidence of completion of customs transit procedures, classification of goods, or determination of customs value. In 2024, there was a decrease in disputes over incomplete transit procedures where there is insufficient data to prove that the goods have left the EU. The decrease in the number of these disputes was due not only to additional actions taken by taxpayers (transit procedure operators) in response to the lack of confirmation that the goods had crossed the border. Additional actions were also taken by customs officials. In 2024, the Commission resolved a number of disputes where there was no data in the customs system on the removal of goods from the EU territory, but taxpayers provided alternative evidence that the goods had reached third countries. However, given the current

geopolitical situation, it is difficult to obtain written confirmation from the Belarusian and Russian customs authorities regarding the import or transit of goods is difficult to obtain.

In disputes with the AAD, the majority of complaints in 2024 concerned disputes over the environmental pollution tax (hereinafter referred to as MUAT) on packaging waste (12 disputes) and stationary pollution sources (4), with one dispute arising over MUAT on product waste. Practice has shown that MUAT packaging waste is most often charged at an increased rate (after applying the indexation coefficient and the coefficient) because units are mistakenly indicated as the wrong type of packaging (for example, confusing polyethylene terephthalate (PET) packaging with plastic packaging), incorrectly declaring packaging quantities (the actual and declared packaging quantities do not match), confusing packaging codes in declarations (for example, when packaging classified as plastic is indicated as composite), etc. The Commission usually has to assess the nature of the violation when deciding on the reduction of the punitive part of the MUAT.

## Referrals to the Court of Justice of the European Union

In 2024, the Commission referred three cases to the Court of Justice for a preliminary ruling because, in its view, answers to the questions were necessary to resolve tax disputes between companies and the central tax administrator, as it was the interpretation of the EU legal provisions in question that determined the validity of the taxation and the tax administrator's right to calculate the tax.

### 1. On the taxation of dividends after recognizing a subsidiary as an entity.

The tax dispute arose from a decision by the State Tax Inspectorate, in which the tax administrator concluded that the Lithuanian company should have calculated income tax on dividends received from a subsidiary established in another EU Member State. It was found that during the period under review, the subsidiary company met the criteria of a sham entity established for reasons other than valid commercial reasons. According to the tax administrator, the Lithuanian company that received dividends from the subsidiary company obtained a tax benefit, i.e. it violated Article 35(2) of the Law on Income Tax of the Republic of Lithuania (hereinafter – the Income Tax Law) and, by taking advantage of the tax relief (tax exemption) provided for in this article, avoided paying income tax on the dividends received.

The Commission sought to ascertain whether the national practice was consistent with the objectives of the anti-abuse rule in Directive 2011/96/EU (hereinafter ‘the Directive’) and whether it was contrary to the subject matter and purpose of the Directive. In view of the different treatment of tax benefits, the Commission questioned whether the rule in the Directive could be interpreted as meaning that, where a parent company receives dividends from a subsidiary established in another Member State which is recognised as a constituent entity, such recognition alone is sufficient to establish that the parent company, having applied the dividend exemption, has received a tax advantage that is contrary to the object and purpose of the Directive. Furthermore, the Commission questioned whether the fact that the profits earned by the subsidiary were subject to tax in the Member State of establishment was relevant in negating the existence of a tax advantage contrary to the object or purpose of the Directive. At the same time, the Commission questioned whether national practice where the Member State of the parent company refuses to apply the dividend relief on the grounds that the subsidiary is considered to be a mere vehicle, when the profits distributed as dividends in the subsidiary were generated from the distribution of electronic products created by the parent company. This question is important because, if the subsidiary were eliminated, there would be no dividends at all. The Commission is also interested in

to clarifying whether, when recognizing a subsidiary established in another Member State as such, the determination of the entity can be made without assessing the circumstances related to the establishment and activities of the subsidiary prior to the dividend payment period.

## **2. Regarding the application of VAT to virtual settlement instruments used in computer games**

A tax dispute arose over the validity of VAT taxation of sales transactions involving virtual means of payment used in a computer game – gold coins.

Gold coins in the computer game can be purchased not only by playing the computer game directly and, depending on the achievements in the game, accumulating gold coins in the player's virtual account, but also from other players, traders, intermediaries, or even exchanges that sell them.

In the case in question, the legal entity received income from online transactions by purchasing gold coins for a computer game from natural and legal persons and reselling them. It recognised the income received from the sale of gold coins from the game as income from trading in virtual currency, which is classified as VAT-exempt income, and therefore did not calculate VAT on the income received. During the inspection, the State Tax Inspectorate decided that trading in gold coins from a computer game, which players can use to purchase game items or other rights within the narrow space of a single computer game, cannot be considered trading in virtual currency. In the opinion of the Inspectorate, by trading in gold coins in a computer game, the legal entity provided services, and such activity is considered an economic activity aimed at generating income, therefore VAT should have been calculated on the total value.

Since there is no established practice of the ECJ on the taxation of transactions involving the exchange of virtual currencies in computer games as means of payment, the Commission referred the questions to the ECJ. The Commission raised the question of whether gold coins in a computer game can be recognized as virtual currency in essence. If it were clarified that the object of the disputed transactions cannot be recognized as virtual currency, the question arises as to what the taxable value of the game gold coins should be under the provisions of the VAT Directive: the total consideration for the gold coins sold or only the difference between the purchase and sale prices.

## **3. Regarding the imposition of administrative penalties on and criminal prosecution coordination of procedures**

The dispute in the case arose from the STI's decision not to exempt the company from VAT late payment interest and VAT penalties. The STI found that the company had violated the provisions of the Law on Value Added Tax of the Republic of Lithuania (hereinafter referred to as the VAT Law) by participating in transactions related to VAT fraud, which were also the subject of a pre-trial investigation in a criminal case. The company, challenging the STI's decision, requested to be exempted from paying part of the VAT late payment interest calculated for the company, taking into account the punitive nature of the late payment interest.

After assessing the possibility of exempting the company from VAT late payment interest, the STI concluded that the requirement to pay late payment interest for late fulfillment of a tax obligation should not be considered a criminal sanction, and that the late payment interest had been calculated in accordance with the requirements of the Tax Administration Act. If the company fails to pay the VAT calculated during the audit, the tax administrator has the right to calculate late payment interest at a rate of 0.03%. By choosing to apply a late payment interest rate of 0.01% to the company,

the tax administrator would violate the principle of equality of taxpayers before the law (Article 7 of the Tax Administration Act).

The company stated that there is no dispute that the basis for calculating VAT late payment interest stems from the same acts for which the company is subject to criminal prosecution and criminal penalties. In the company's opinion, the severity of all the sanctions imposed (the portion of late payment interest calculated on the basis of the violations identified during the State Tax Inspectorate's audit that exceeds the tax interest rate, and the criminal penalties imposed for the same violations for which late payment interest is calculated criminal penalties are imposed) must correspond to the severity of the criminal offense, and the automatic application of the part of late payment interest exceeding the tax interest rate, as established by the Tax Administration Act, does not comply with the principle of double jeopardy (*non bis in idem*).

The Commission referred the matter to the ECJ in order to clarify whether the provisions of Articles 96 to 99 of the MAJ, insofar as they do not ensure coordination between administrative penalty and criminal prosecution procedures, reduce the additional burden arising from the cumulation of these measures to the extent strictly necessary arising from the accumulation of these measures, and to ensure that the severity of all penalties imposed is proportionate to the seriousness of the infringement in question, where a company is subject to criminal prosecution and criminal penalties for acts on the basis of which late payment interest is automatically calculated exceeding the tax interest rate, and at the same time criminal prosecution and criminal penalties are being imposed, are compatible with Article 325 of the Treaty on the Functioning of the European Union, Article 273 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Articles 49(3) and 50 of the Charter of Fundamental Rights of the European Union, and the principles of *ne bis in idem* and proportionality.

## Relevant examples of tax disputes examined in 2024

### Disputes concerning VAT

1. The tax dispute arose over the validity and legality of applying a 0% VAT rate after the applicants had completed transactions involving the sale of goods to a VAT payer in another EU Member State, but the tax administrator determined that the goods had in fact been exported to a third country by the final purchaser. In its decision, the Commission ruled on the conditions and criteria for applying the 0% VAT rate. The Commission found that, having assessed the evidence in the case file and the factual circumstances of the dispute, in the case in question, on the basis of Article 41(2) of the VAT Act, the 0% VAT rate should not have been applied. The Commission found that, having assessed the evidence in the case file and the factual circumstances of the dispute, in the case in question, the 0% VAT rate under Article 41(2) of the VAT Act This was because the carriers had transported the goods from the EU territory not on the instructions of the purchasers, but on the initiative of the final purchaser, a third-country customer.

2. The tax dispute arose over the validity and legality of applying a 0% VAT rate after the tax administrator determined that the goods actually sold were exported to a third country not by the applicant's buyer, but by the final buyer. The dispute concerns the applicant's export of goods (various models of televisions) to a third country in 2019-2020. The dispute relates to transactions carried out by the applicant in 2019-2020 involving the supply of goods (various models of televisions) to a taxable natural person established abroad. In its decision, the State Tax Inspectorate found that, in the case in question, the applicant had violated the provisions of Articles 41(2) and 56(1) of the VAT Act, and therefore applied the standard 21% VAT rate to the supply of the goods in question. It calculated the VAT payable by the applicant and the related amounts. In its decision, the Commission ruled on the tax administrator's obligation to assess the honesty and diligence of the supplier of goods when supplying goods outside the EU, where, due to possible fraud by the buyer, the goods in question could have left the EU on the basis of subsequent supplies chain about which the supplier of the goods was not informed.

Having assessed the facts of the case, the Commission concluded that, based on the rules established by the ECJ and the Supreme Administrative Court of Lithuania, the applicant's good faith as a supplier of goods should be assessed in the situation at hand, assessing whether the supplier of goods knew or could have known about possible fraud, determining whether the taxpayer was sufficiently diligent in collecting evidence of the removal of goods, or whether he was sufficiently interested in the integrity of his contractor. The Commission decided to annul the contested decision of the State Tax Inspectorate and, in the part concerning the dispute, to refer the applicant's complaint back to the State Tax Inspectorate for reconsideration.

3. The tax dispute arose over the non-refund of EUR 232,511 in overpaid VAT. The issue of the application of Article 63(5) of the VAT Act, which stipulates that a person registered as a VAT payer is not entitled to include the purchase (import) VAT amounts for goods (services) purchased before their registration as a VAT payer, which were used to produce fixed assets, in their VAT deduction. The taxpayer submitted his first application for registration as a VAT payer on May 18, 2022 (reason for registration: rental of real estate by nature), but after consulting with a State Tax Inspectorate employee, he refused the service to register him as a VAT payer in his application dated 26 May 2022. The extract from the database of the State Enterprise Center of Registers shows that the warehouses were registered in the public register on May 4, 2023. On 16 May 2023, the applicant submitted a request to register as a VAT payer, and on 23 May 2023, the Vilnius County State Tax Inspectorate registered him as a VAT payer from 1 June 2023. From 1 June 2023, the applicant chose to rent the building with VAT. From June 1, 2023, to June 30, 2023, the applicant declared EUR 238,272 in purchased goods (services) in the register of VAT invoices received by i.SAF and in the VAT return, consumed before registering as a VAT payer for the manufacture of fixed assets (warehouses), and the purchase VAT, which was included in the VAT deduction. The Commission obliged the State Tax Inspectorate to re-examine the tax dispute and to comment not only on the issue of VAT refunds, but also to assess other circumstances related to the dispute that the administrator did not comment on (for example, the activities carried out by the VAT payer, the rights and obligations of the VAT payer and the tax administrator).

4. Dispute concerning a decision calculating import VAT on the goods in question – an excavator that was temporarily imported for personal use, after completing the temporary importation procedure with partial exemption from import duties, and then, after completing a re-export declaration, was removed from the customs territory of the Union. In its decision, the Commission ruled on the EU legislation relevant to the emergence of the object of import VAT and the provisions of the VAT Act implementing the VAT Directive, which establish the recognition of the importation of goods as an object and the moment of its emergence, as well as on the application of the customs supervision regime.

The Commission rejected the applicant's request to refer the matter to the CJEU in order to clarify whether goods temporarily imported into the customs territory of the Union which, at the time of temporary importation, were used for personal purposes and did not enter into civil circulation in the territory of the Union are to be considered as imported and released for consumption (consumed) for VAT purposes. In the Commission's view, the provisions of the VAT Directive, the provisions of the VAT Law implementing it, and the case law of the ECJ allow for the clear conclusion that the goods in question participated in civil (economic) circulation (were consumed), it is considered to have been imported into the country of importation and is subject to import VAT. The Commission also rejected the applicant's request to refer the matter to the ECJ in order to clarify whether the VAT Directive and its Article 71 were infringed by calculating VAT on these goods at the standard VAT rate and on the total taxable value of these goods, without taking into account the fact that the goods in question were partially exempt from customs duties in accordance with the procedure laid down in Article 252 of the Customs Code, i.e. after it was established that the amount of import duty payable was only 3% of the amount of import duty established for the goods. The Commission noted that the VAT Directive does not provide for any reduction in the amount of import VAT and, moreover, the VAT Directive does not link import VAT

(when temporarily importing goods with partial exemption from customs duties) in accordance with the procedure established by the SMK. Accordingly, the provisions of the national VAT Act implementing the VAT Directive do not (and cannot) provide for the possibility of reducing import VAT, and there are no grounds for claiming that the national provisions have been incorrectly implemented or are unclear in relation to the VAT Directive. Although the Commission has doubts about the correctness of the calculation of the total VAT amount, given that the VAT Directive does not contain any provisions on the possibility of reducing the VAT amount, there is no reason to raise the question that the calculation of the total VAT rate may violate the VAT Directive.

The Commission has stated that the obligation to refer a matter to the ECJ for clarification is not absolute. It is not necessary to refer a matter to the ECJ when the correct application of EU law is obvious and there are no reasonable doubts as to how the dispute should be resolved.

## Disputes concerning income tax

1. Due to different interpretations of Article 561 of the Income Tax Act relating to the transfer of losses between group companies, several favourable decisions were made by the Commission in favour of taxpayers. The Commission, continuing the practice established in the Supreme Administrative Court of Lithuania's decision of 5 October 2017 in administrative case No. A-204-602/2017 and reiterated in its ruling of 13 December 2023 in administrative case No. eA-551-575/2023, overturned the STI's decision not to refund the overpaid income tax of EUR 52,076.54 and found that the STI had incorrectly applied and interpreted the provisions of Article 561 of the Income Tax Act.

2. The Commission did not agree with the tax administrator's position that, in the case of a loss-making sale of shares in subsidiaries, the percentage of interest paid in relation to the loss-making sale of shares is classified as a non-deductible expense (in accordance with Article 31(1)(13) of the Income Tax Act), when taxpayers decided to increase the authorized capital of a subsidiary and contributions to the subsidiary's capital reserve, and later decided to sell the subsidiaries.

3. The Commission examined a tax dispute in which it was established that a taxpayer, having sold real estate to its sole shareholder under a purchase and sale agreement at a price 3.5 times lower than the purchase price (the shareholder sold this real estate to another legal entity 12 days later at a price 3.5 times higher than the purchase price), sought tax benefits, i.e. to reduce taxable income and avoid paying income tax on part of the income from the sale of real estate that would have been received if the property had been sold directly to the end buyer – the real estate project developer. The Commission did not take into account the property transfer transaction formalized by the taxpayer's sole shareholder and considered that the taxpayer had in fact sold the real estate not to the shareholder but to the final buyer of the real estate.

4. The Commission examined the tax case concerning the recognition of goodwill and its inclusion in the limited amounts of allowable deductions and agreed with the position of the State Tax Inspectorate that the taxpayer had unjustifiably included the amortization deductions for goodwill acquired during the reorganization of the taxpayer and UAB X during the reorganization of the merged parent company (UAB X) (the goodwill arose from UAB X acquired the taxpayer's shares). In the case under consideration, both companies were actually operating, and the STI did not dispute that the events associated with the recognition of goodwill and its attribution to limited deductible amounts had formally taken place. The STI did not question the economic rationale for merging the companies (UAB X and the taxpayer). However, the STI assessed the chosen transaction structure (acquisition of the taxpayer's shares through UAB X and subsequent merger of this company with the taxpayer

) and concluded that this method was chosen solely for the purpose of amortizing goodwill, and therefore these transactions were assessed in accordance with the provisions of Article 69 of the Tax Administration Act.

## Disputes concerning the taxation of residents' income

1. The Commission examined a dispute concerning the application of Article 69 of the Tax Administration Act, "Calculation of tax applying the principle of substance over form." The tax dispute arose because a person, seeking tax benefits (not to pay dividends), transferred 100% of the shares to an entity established by him in another country and, over several years, organized and implemented a complex series of transactions (conclusion of a loan agreement, transfer of claims, establishment of a fund, subscription of fund units and settlement for them by way of set-off, redemption of fund units, etc.) in Switzerland, the Netherlands, and Ireland, and as a result, received untaxed dividends (more than EUR 3 million) from the Lithuanian entity in the form of redemption of fund units in 2016–2020. The tax administrator applied the provisions of Article 69 of the Tax Administration Act and taxed the aforementioned income. The natural person, as the sole shareholder (100%) and then-manager of the Lithuanian economic entity, was familiar with the financial results of the economic entity and knew that the economic entity had accumulated undistributed profits, which, if decided to be allocated for the payment of dividends, the natural person (as the then shareholder) would have received taxable income.

2. The Commission resolved a dispute in which taxpayers, using gift agreements and insurance policies concluded with close relatives (daughters), sought to take advantage of the benefits provided for in Article 17(15) and (26) of the Law on Income Tax of the Republic of Lithuania and avoid paying income tax on the taxable income from the transferred investment units. The taxpayers decided to use the income receivable to pay their daughters' insurance premiums, including investment units to cover insurance premiums. The Commission noted that the fact that there was no actual payment of cash (in cash or by transfer) did not affect the recognition of the taxpayers' income, as at the time of the transfer of the assets, the taxpayers received and used the benefit, i.e. they used the investment units (at their respective value) to cover their daughters' insurance premiums. Pursuant to Article 69(1) of the Tax Administration Act, it was decided that the tax administrator had reasonably assessed that the taxpayers had not declared the income received from the transfer of investment units.

3. The Commission examined a dispute arising from a decision by the tax administrator, which calculated and ordered the applicants to pay approximately EUR 187,000 in contributions payable to the State Social Insurance Fund Board under the Ministry of Social Security and Labor of the Republic of Lithuania (hereinafter referred to as the VSDFV), after finding that the applicant had unjustifiably failed to calculate, declare, and pay contributions to the VSDFV budget in Lithuania from per diems paid for work in foreign countries (Sweden, Finland, Norway, the Netherlands, and Germany), from which the Applicant calculated (or should have calculated) personal income tax in those countries in accordance with the procedure established by the laws of foreign countries. The Commission concluded that the Inspectorate had interpreted the legal provision in question broadly and had unjustifiably stated in its decision that the applicant was obliged to calculate and declare contributions payable to the VSDFV budget from per diems paid for employment in foreign countries, which were subject to income tax in the foreign country. The Commission considered that the term "GPM" used in Article 11(1)(4) of the Law on State Social Insurance of the Republic of Lithuania (hereinafter referred to as the VSDJ) did not, from the perspective of a taxpayer applying the law, give rise to any presumption that this term should be understood directly as

covering not only taxes payable in Lithuania, but also abroad. In addition, it was noted that the ECJ has developed an interpretation of the principle of tax neutrality, which, among other things, essentially requires that identical or similar objects in the same country be taxed equally. Different taxation of the same type of income, i.e., per diems, in the same country (in one case applying a tax exemption, and in another case not applying it), depending on whether it is taxed in a foreign country, would result in a different tax burden, which, among other things, would create unequal conditions for entities competing in the market, depending on the country in which the employees physically worked. At the same time, this would not be in line with the principle of equality of taxpayers, as the higher tax burden in Lithuania would be borne by those employees and those entities whose employees are posted to countries that tax daily allowances.

## Disputes over customs duties

1. In 2024, the Commission resolved several disputes where there was no data in the customs system on the export of goods from the EU territory, but taxpayers provided alternative evidence that the goods had reached third countries.

2. The Commission decided on the procedural issue of whether the taxpayer had the right to submit a request for the refund of anti-dumping and countervailing duties for a period that fell outside the three-year limitation period, on the grounds that it was unable to submit the request within the specified period due to unforeseen circumstances beyond its control. After assessing the circumstances of the case, the Commission disagreed with the MD's assessment that taxpayers should have been aware of the information published in the EU Official Journal on 4 March 2019 (regarding the filing of the action), but the information was only published on the MD website after the publication of European Commission Implementing Regulations (EU) 2023/737 and (EU) 2023/738 on 4 April 2023. Customs, as the customs administration authority responsible for providing information, also failed to inform the applicant or other economic operators about the action, the outcome of which could have a direct impact on Lithuanian economic operators. In the Commission's view, requiring an economic operator to check everything that is published publicly is not in line with the principles of rationality and proportionality.

## Tax disputes related to pollution

1. The Commission has resolved a number of tax disputes related to MUAT packaging waste, a significant proportion of which involved disputes with catering companies. The tax was usually not declared and paid because representatives of catering companies only learned about the obligation to pay tax on disposable packaging from tax administrators. The Commission usually decided to reduce the penalty part of the MUAT.

## SUMMARY

Summarizing the results of its activities in 2024, the Commission notes that it has essentially fulfilled the tasks set out in the Strategic Plan and achieved the set operational objectives. The Commission has effectively contributed to the protection of individuals' rights at the pre-trial stage of tax disputes, ensuring that disputes are examined on their merits and that objective decisions are taken in a timely manner. It is important to note that this was achieved both by taking appropriate decisions and by organizing activities effectively.