

## Tax and Legal Newsletter

### Changes in Tax legislation

No amendments were made in Georgian Tax Legislation after December, 2016. Number of the mentioned amendments of December, 2016 have been affective from January 1<sup>st</sup>, 2017.

### Other Legal Updates

#### Organic Law of Georgia on the National Bank of Georgia

On December 29, 2016, new regulations have been added to the Organic Law of Georgia on the National Bank of Georgia, which resulted number of amendments to the Civil Code of Georgia, Administrative Offences Code of Georgia, Law of Georgia on Advertisement and Law on Promissory Note.

Sub articles 2<sup>1</sup> and 2<sup>2</sup> have been added to the article 34 of the Organic Law of Georgia on the National Bank of Georgia which shall be affective from July 1<sup>st</sup>, 2017. According to this amendment when making an offer or advertise services or goods in Georgia by an entrepreneur, pricing of every goods and services shall be mandatory only in Lari. Exceptions from this regulation can be made only by the relevant legal act of National Bank of Georgia.

Article 64<sup>1</sup> have also been added to this Organic Law which is affective from January 15<sup>th</sup>, 2017. Pursuant to this amendment:

National Bank is authorized to require from representatives of financial sector by relevant legal act:

a) Different rules from the following articles of Georgian Civil Code: article 625 subarticle 4 and subarticle 5 (except interest rate), subarticle 7 and subarticle 8 (prescheduled repayment fee) and article 868 subarticle 8;

b) To follow rules regarding providing necessary information to the customer while issuing bank credit/loan or attraction funds.

#### Civil Code of Georgia

Fundamental amendments have been made to the Civil Code of Georgia from January 15<sup>th</sup>, 2017, regarding commissions, penalties, interest rates and limitations in the process of attracting funds:

- Full freedom of determination of penalty by parties have been limited in several cases;
- When determining a loan interest as agreed by the parties, an annual effective interest rate must not exceed 100%, including in case of prolongation of a loan term;
- The monthly interest rate agreed upon by the parties and indicated in a mortgage-backed loan (except for a loan up to GEL 1 000) contract, including the expenses (except for a mortgage notarization and mortgage registration expenses) related to the use of the loan, shall not exceed one twelfth of 2.5 times the previous calendar year's arithmetical mean of the market interest rates of loans issued by

commercial banks posted by National Bank of Georgia on its official website, which enters into force from 1 March each year.

- In case of granting of a loan, the amount of any fees, financial expenses, or of a penalty and any type of financial sanctions imposed on a borrower for each day due to violation of any provisions of a loan contract in total shall not exceed the annual 150% of the remaining principal amount of the loan under the contract;
- A loan/bank credit up to GEL 100 000 (one hundred thousand) shall be granted to a natural person solely in laris. For the purposes of this paragraph, any loan/bank credit attached to a foreign currency or adjusted in any form shall not be considered as being granted in laris;
- In case of granting of a loan, a lender shall be prohibited, in the case of refinancing of a loan granted by it, or in the case of repayment of a loan by the customer with his/her own resources and/or by a third person as determined under this Code, to impose on the customer a fee and/or a penalty for advance payment, or any fine sanctions that, content-wise, is a fee and/or a penalty for advance payment, which exceeds 2% of the remaining principal amount of the loan;
- When granting a bank credit, the abovementioned requirements of the Civil Code with regard to an interest rate, a penalty

and any type of financial sanctions must be complied with;

- Where a seller is an entrepreneur, when selling by instalments, he/she shall comply with the abovementioned requirements of the Civil Code with regard to the interest rate, fee, penalty and the imposition of any financial sanctions
- If an entrepreneur or a group of interconnected entrepreneurs attracts funds in any form from more than 20 natural persons, then the amount of money attracted from each natural person must not be less than GEL 100, 000 (one hundred thousand) laris (or its equivalent in a foreign currency). If the obligation to comply with the requirements under this paragraph arises for an entrepreneur or a group of interconnected entrepreneurs, then it shall pay the amount less than GEL 100 000 (one hundred thousand) laris (or its equivalent in a foreign currency) attracted from less than 20 natural persons within one year after that obligation has arisen.

The abovementioned amendments shall not apply to the legal relations which had been affective before the date thereof.

### **Administrative Offences Code of Georgia**

From July 1<sup>st</sup>, 2017, new article shall be affective in Administrative Offences Code of Georgia which imposes sanctions for entrepreneurs which violate new rules of Organic Law of Georgia on the



National Bank of Georgia, regarding mandatory pricing in Lari when making proposal or advertising goods or services.

## Important Court Cases

Precedents of European Court of Human Rights are not less important than court practice of Georgia. Establishment of international standards of human rights at the national level and using them in local court decisions have great importance for Georgian court reform.

European Court of Human Rights made an interesting decision regarding deprivation of salary to the employer (Paulet v. the United Kingdom; application No. 6219/08):

The confiscation order had the effect of depriving the applicant of all of the savings that he had accumulated during the four years of employment as far as the applicant applied for the job with false passport.

The applicant complained that the confiscation order was a disproportionate interference with his right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1.

It was therefore submitted that to seek the imposition of a confiscation order on the basis of a benefit figure which far exceeded the value of the defendant's crimes could properly be described as disproportionate – either in the traditional sense used in criminal sentencing (“not fitting the punishment to the crime”) or in the language of the Convention – and was therefore an abusive exercise of jurisdiction.

The court stressed that the applicant in the present case was punished for acts which do not fall within the scope of protection of the rights protected by the Convention and its Protocols.



The applicant failed to demonstrate that in the circumstances of the case the Convention required the measure applied to him to be mitigated. Nonetheless, in applying the domestic law criterion of “oppressiveness”, the domestic courts weighed in the balance the general interest of the community and the individual interest of the applicant in retaining the proceeds of his illegal earnings.





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