

## Tax and Legal Newsletter

### Upcoming 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.

### Upcoming other Legal Updates

#### Civil Procedure Code of Georgia

From March 14<sup>th</sup>, 2017, articles 391, 396 and 401 will be changed in Civil Procedure Code of Georgia. Sub-article 1<sup>1</sup> will be added to article 391:

“A cassation appeal shall be filled to the court which made the appealed decision. Cassation appeal shall be printed and comply to template approved by the High Council of Justice of Georgia. Considerations of appellant regarding appealed decision shall be laid out in a successive manner.

In article 391.5 eligibility conditions of cassation appeal shall be put out in the following way:

- a) “The case in question is of significance for the development of the law and the establishment of uniform judicial practice;
- b) The Supreme Court of Georgia has never made decision with regard to the cases of this category.
- c) After reviewing cassation appeal it is presumable that the Court of Cassation will make differ decision from previous decisions of the Supreme Court of Georgia with regard to the cases of this category.
- d) The decision of the Court of Appeals differs from previous decisions of the Supreme Court of Georgia with regard to the cases of this category;

- e) The Court of Appeals has reviewed the case with serious procedural violations that could have affected the outcome of the hearing;
- f) Decision of the Court of Appeals contradicts to the Convention of Human Rights and human rights case law.
- g) A second default decision of the court of appeals or a judgement of the court of appeals on confirming the default decision is being appealed.

Article 396.4. shall be added with the following content:

“Within 10 days after a cassation appeal has been received, the reporting judge shall check whether the cassation appeal has been filed in compliance with the requirements of this Article. The reporting judge shall decide the matters provided in this paragraph without an oral hearing.”

Article 401 of this code will be changed in the following manner:

- a) “The admissibility of a cassation appeal shall be reviewed based on Article 391 of this Code by a panel of judges. The panel may decide this matter without an oral hearing;
- b) The Court of Cassation makes a reasoned judgement if cassation appeal has been overruled as inadmissible. The judgement shall include reasoned rejection of the admissibility grounds set out by an appellant.
- c) The admissibility of a cassation appeal shall be reviewed based on Article 391 by the Court of Cassation within three months after a cassation appeal has been received and within one month with regard to a case on recovery of the property from illegal ownership. If the cassation appeal complies to the mentioned requirements the court shall find it admissible.
- d) If the cassation appeal has been overruled as inadmissible 70% of the state fees paid shall be refunded to the appellant.

## Administrative Procedure Code of Georgia

From March 14th, admissibility terms of administrative cassation appeal will be determined as follows:

- a) The case is important for the development of law and formation of a uniform judiciary practice;
- b) The Supreme Court of Georgia has never made decision with regard to the cases of this category;
- c) After reviewing cassation appeal it is presumable that the Court of Cassation will make differ decision from previous decisions of the Supreme Court of Georgia with regard to the cases of this category;
- d) The appellate court decision differs from the previous practices of the Supreme Court of Georgia in cases of this type;
- e) The case has been considered by the court of appeals with significant procedural violations, and it is assumed that it may have substantially affected the case outcome;
- f) Decision of the Court of Appeals contradicts to the Convention of Human Rights and human rights case law.

## Important Court Cases

Tbilisi Court of Appeals made an interesting decision regarding recognition of the commercial secret on case # 38/374-15.

The court stressed that everyone has freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. Maximum transparency of state institutions is typical for democratic system. Transparency of administrative bodies is proportional to the legality and legitimacy state government and is a feature of democratic society.

Gathering information from various official documentation is subject to statutory regulation. Freedom of information is not absolute and unlimited.

The court explains that according to article 28 of General Administrative Code of Georgia, Public information shall be open except as provided by law and as determined by the procedure to be considered as personal data, state or commercial secrets. Article 2 of the same code specifies that secret information is any information stored at a public institution or received, processed, created, or sent by a public institution.

When submitting information, a person shall be obliged to specify that the information is his/her commercial secret. A public institution shall, within 10 days, be obliged to consider the information under the first paragraph of the article 27<sup>2</sup> as a commercial secret unless the requirement of open information is determined by law.

The court explains that for considering commercial secret it shall comply to the terms stated in article 27<sup>2</sup>.1. Commercial Secret is means of a commercial value or other information that may prejudice the competitiveness of a person if disclosed.

The court referred to the article 42 (m) of Georgian General Administrative Code which explains that Everyone shall have

the right to be aware of all other information that shall not be considered a state or commercial secret, or shall not be personal data in the cases provided for, and in the manner determined by law.



This newsletter contains information about Legal, Tax and court practice latest updates. Every effort is made to provide accurate and complete information. However, Baker Tilly Georgia cannot guarantee that there will be no errors. These informational materials are not intended, and should not be taken, as legal or tax advice on any particular set of facts or circumstances. Please, contact our professionals for specific Tax or Legal issues.

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