



Georgian Legal News

Refer to the Law

Code of Administrative Offences

In its resolution made on 18 April 2019 in Case No.1/3/1263, the Constitutional Court of Georgia declared Article 273 of the Code of Administrative Offences unconstitutional in the part setting a 10-day limit for appealing court resolutions in administrative offence cases. The court was aiming to cure the existing practice, whereby a court resolution is deemed issued on the day when its operative part is announced, while the reasoning part can be delivered to the offender later, making it impossible to legally assess and appeal a resolution before it enters into force – which, according to the Constitutional Court’s interpretation, is against the Right of Court guaranteed by Article 42 of the Constitution.

Following the resolution, a bill was submitted to the Parliament of Georgia to amend Article 273 of the Code of Administrative Offences. According to the suggested new wording, the period for appealing court resolutions in administrative cases will be counted, starting from the date such resolution is delivered to the offender.

Law “On Protection of Customers”

Bill “On Protection of Customers” has been submitted to the Parliament of Georgia. It is aimed to ensure protection of the rights of customers. The bill defines the terms “Agreements made outside of ventures” and “Remote agreements”. If this bill is passed, the Civil Code and Laws “On Competition” and “On Advertising” will be amended accordingly.

Law “On Control of Tobacco”

A bill imposing additional anti-tobacco restrictions has been submitted to the Parliament. additional consumption rules for so called traditional tobacco, as well as for new tobacco products (including a form of electric cigarettes) has been submitted to the Parliament. Proposed amendments make non-traditional tobacco products equal to traditional ones and deploys them into one uniform frame. The bill envisages respective amendments to the Tax Code, the Code of Administrative Offences, and the Law “On Advertising”.

Law “On Advertising”

Amendments have been suggested to regulate advertising of gambling and betting services. If the respective bill is supported, Law “On Broadcasting” will also be amended. Non-compliance will be penalised according to Article 158⁸ of the Code on Administrative Offences.

The bill envisages changes to Law “On Payment Systems and Payment Services”, forbidding payment service providers to process payments to foreign gambling services companies. Moreover, payment service provider will be forbidden to allow any payments made through a payment card issued by its own to a foreign gambling business operator.

Labour Code

A bill on organic law regarding to amendments to the Labour Code of Georgia has been submitted to the Parliament recently. The amendments relate to the working time length and recording process, overtime regulations and its compensation, as well as night shifts and work on holidays.

Pursuant to the proposed bill, admissible weekly worktime is still 40 hours, except the entrepreneurs of a specific regime. A significant additional clause is remarkable, which implements a maximum of 6-days work week for an employee.

Additionally, a rule concerning break regulation is proposed, namely: for a working day of four to nine hours, a break of at least 45 minutes must be provided; if the working day exceeds nine hours, the minimum break is 60 minutes. Additional 60 minutes must be provided to night shift workers if they work for more than 4 hours. It is the employer’s responsibility to record the hours worked.

The bill suggests banning compulsory overtimes, except where stipulated by the law. Parties shall agree on overtimes in advance, no earlier than 1 week in writing, except the cases when such agreement cannot be made due to the circumstances. Last but not least, minimal fees for overtimes has been envisaged by law, namely: the fees for overtimes shall be agreed between the parties, but the amount shall not be less than the increased amount by 50% of the hourly salary. It is noteworthy, that working on holidays is considered as overtime and shall be compensated by an increased amount.

Amendments shall be made to night shift regulations and payment rules, according to which the night shift compensation shall be agreed between the parties, but it shall not be less than the salary increased by 25% of an employee working on the same position on a day shift.

Organic Law “On Ownership of Agricultural Land Plots”

On 25 June 2019, the Parliament adopted Organic Law “On Ownership of Agricultural Land”, which was published in the Legislative Herald of Georgia on 2 July 2019. The Organic Law introduced the procedure for transfer of ownership over the agricultural land to an alien and a legal entity of private law whose majority shareholder is an alien and/or a legal entity registered abroad, or in the event it is not possible to identify a majority shareholder.

The restrictions provided for under the Organic Law do not apply to international financial institutes as determined by the Resolution of the Government of Georgia or financial institutes as determined by the laws of Georgia, if they obtained ownership rights over the agricultural land in the course and within the scope of activities authorised under the laws of Georgia (including the purchase of the collateral by the creditor).

It must be noted that the restrictions under the Organic Law do not suspend the pending applications on registering rights over agricultural land so long as such applications were made in line with the laws of Georgia.

Lastly, two provisions of the Organic Law, which will enter into force on 1 January 2020, concerns:

- a) the obligation of sale of the agricultural land in case of failure to comply with the obligations under the investment plan; and
- b) subject to approval by the government of Georgia of the investment plan, a change in shareholding of a legal entity of private law who owns an agricultural land, whereby the majority shareholder is a foreigner and/or a legal entity registered abroad, or it is not possible to identify a majority shareholder.

Tax Code and Customs Code

On 4 July 2019, new amendments to the Tax Code entered into force. Importantly, the Customs Code was separated from the Tax Code and exists as an independent legal act (the main part of the legal document takes effect from 2020). Hence, while the essential customs matters are regulated by the Customs Code, all tax-related matters remain regulated by the Tax Code.

The new amendments abolished the concept of an International Financial Institute, which was substituted by an International Company. The scope of regulations applicable to an International Company is much broader than to an International Financial Institute. The right to assign this status was vested with the Government of Georgia. Instead of the former International Financial Institute, the Financial Company will not be exempted from income tax. Remarkably, the profit tax burden for the International Company will amount to 5 percent.

The definition of a Pharmaceutical Enterprise was introduced into the Tax Code (this status is also assigned by the Government of Georgia). Various tax privileges are granted to such enterprises, including a VAT exemption.

Amendments were made to Article 97 of the Tax Code to cure the existing practice: e.g., non-cash payments/disbursements will be taxed for income tax purposes according to the market price of goods/services. If the goods/services are priced including VAT, their market price exclusive of VAT will be used – this provision was not included into the earlier wording; such occasions had been interpreted in way that determination should have been determined by including VAT – this approach is omitted by current provision.

Clause 101.2.a, dealing with any types of corporate vehicles used for private purposes, was deleted. According to the amended regulations, any benefits received from usage of vehicles by an employee are considered as income and are subject to income tax pro rata the vehicle's engine replacement volume. Interestingly, the use of electric vehicles will be exempt from income tax.

Provisions on input VAT were amended, too: input VAT is not allowed on the tax invoices that are not reflected by the taxpayer (buyer/recipient) in a declaration submitted within the respective timeframe:

- a) for paper VAT invoices included in a VAT declaration (including corrected declarations) submitted within the timeframe determined according to either 3 accounting periods after completion of the accounting period of an operation subject of taxation or no later than December of a respective calendar year;
- b) electronic tax invoices included in a VAT declaration submitted within the respective timeframe, according to the accounting periods no later than December of a respective calendar year or no later than 3 calendar years, in a corrected declaration of the same period.

An important amendment is that the Tax Authority will not be entitled to identify an alter-ego, while the courts will be.

Contacts

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