

PwC Georgia Tax & Law Brief

19 July 2017

Significant Amendments to the Tax Code of Georgia

Amendments to the Tax Code of Georgia entered into force from 13 July 2017, according to which:

Presenting the tax notice

- The statutes of limitations for submitting the Revenue Service tax notice claim shall not be deemed expired if a tax notice has been placed on the taxpayer's electronic portal by the tax authority before the expiration of statutes of limitations.

Recognition of bad debts

- An arbitral award will be treated to have equal force to a court decision with respect to recognition of bad debts.
- Distribution of profit in the form of shares/stocks to the partner is not subject to the Corporate Income Tax. According to the amendment, the value of the shares will not be recognized as a capital contribution. Therefore, in case of decrease of capital, the reduced amount will be subject to corporate income tax.

Corporate Income Tax

- Payments made to purchase non-resident company's shares/stocks listed on a recognized stock exchange in a foreign country shall not be subject to Corporate Income Tax. In addition, this exemption does not apply to the operations performed with persons registered in countries with preferential taxation.
- Before the amendment, securing of the loan received by the individual or non-resident person by a deposit was subject to Corporate Income Tax. The taxable base was the amount of loan taken. According to the amendment, the securing of loan by placing funds on the bank account (not only securing by deposit) would be taxable with Corporate Income Tax only if the loan is received by the partner individual or the partner non-resident person and the taxable base would be the funds placed on the account to secure the loan instead of loan amount.

Tax agreement

- The tax agreement will be permitted also for reduction of unpaid levies and related fines and penalties.
- The obligation to withhold interests on loans paid to the Georgian enterprise will be abolished.

Withholding at source

- From 1 January 2018, a tax agent who compensates the service or transfers the property free of charge to an individual who is not registered as an individual entrepreneur is obliged to withhold tax at source.

Write-off the inventory

Exemption from VAT

The limit of tax obligation

Tax evasion

Abolishing criminal liability

Excise tax

Distribution of profit

- From 1 January 2018, the compensation received by an individual for the supply of certain goods without a waybill would be subject to withholding tax at the rate of 15%. The Minister of Finance would define the list of the goods.
- The taxpayer is entitled to write-off the inventory damaged or lost as a result of force-majeure without notifying the tax authority.
- Selling of the apartment (house) with attached land is exempt from VAT if the third party's property is purchased at the auction as a result of third party loan mortgage enforcement.
- The limit of tax obligation that could be repaid with one-year delay is increased from 5000 to 50000 GEL.
- Understatement of principal tax dues in a tax return in excess of 100 000 GEL will be deemed as tax evasion and entails responsibility in accordance with the criminal legislation.
- Criminal sanctions will be abolished with respect to the following actions: transporting goods for entrepreneurial activity without waybill, the failure to issue a waybill at the request of the buyer or refusing to accept a waybill when purchasing goods; Output, storage, sale or shipping of non-excisable goods without stamps, which in turn are subject to mandatory marking.
- Due to the requirements of the EU Directives, the excise tax structure on alcoholic beverages will be changed from 1 August 2017.
- The person who supplies oil gas to the motor vehicles is subject to excise tax;
- Distribution of dividend from the net profit received within the reporting periods of 2008-2016 will be deemed as distribution of profit and their further distribution by the business entities (except an individual entrepreneur) will not be deemed as distribution of profit. In addition, further distribution of profits from the dividends received within the reporting periods ended by 1 January 2017 also will not be deemed as distribution of profit.

Source: The Legislative Herald of Georgia, 13 July 2017

Amendments to the Organic Law on the National Bank of Georgia

Pricing in Lari

- Requirement that pricing be made in GEL entered into force from 1 July 2017. Under the requirement, when offering and/or advertising property for sale and/or provision of services by an entrepreneur in the territory of Georgia, the price shall be indicated only in GEL.
- The NBG order №93/04 dated 22 June 2017 provides for the list of exceptions from the rule. One of the exception is when

offering/advertising provision of service and/or goods by/to a non-resident person.

- According to the Administrative Offences Code of Georgia, violation of the rule entails warning of offeror or of the advertising customer. The same act committed repeatedly shall carry a fine of GEL 1 000 and GEL 5 000 for each repeated breach.

Source: The Legislative Herald of Georgia, 1 July 2017

Amendments to the Law of Georgia on Agricultural Land Ownership

Ownership of agricultural land

- According to the amendment, the article of the Law on Agricultural Land Ownership, which entitles aliens, legal entities registered abroad and legal entities registered in Georgia to have ownership of agricultural lands in Georgia, will be suspended until the new Constitution of Georgia is entered into force.
- The Parliament of Georgia has already passed the new version of the Constitution on the second hearing. Under the new Constitution, generally, the owner of any land in Georgia can be only State, self-government body, citizen(s) of Georgia. An organic law will provide exceptions from this general rule.

Source: The Legislative Herald of Georgia, 23 June 2017

Amendments to the Civil Code of Georgia

Certificate of financial lease

- According to the amendments, upon expiry or early termination of the financial lease agreement, the lessor may recover the property immediately. If the lessee fails to fulfill this obligation, the lessor may recover the possession of the property through submitting certificate of financial lease directly to the enforcement authority, without applying to the court.
- The lessor may obtain the certificate of financial lease from the Service Agency of the Ministry of Internal Affairs of Georgia if the subject of the financial lease is a vehicle and/or auxiliary equipment of agricultural machines and the lease is registered at the Service Agency.
- The amendments will enter into force from 1 November 2017.

Source: The Legislative Herald of Georgia, 14 July 2017

Draft Law of Georgia on Labor Safety

Labor safety requirements

- The Parliament of Georgia has passed the draft law on Labor Safety on the first hearing, which provides for the general principles and obligations of the employers in terms of workplace safety. The draft law will apply to hard, harmful, or hazardous works. The Government of Georgia will determine the list of hard, harmful, or hazardous works within 6 months from the effective date of the draft law.
- Under the draft law, any person carrying out activities related to hard, harmful, or hazardous work, shall register such activities at the Registry of Economic Activities within the system of the Public Registry.
- Under the draft law, employers will be obliged to appoint one or more employee as a labor safety specialist or create a labor safety unit. The labor safety specialist shall pass an appropriate accredited program. The Minister of Labor, Health and Social Affairs of Georgia shall determine scope, terms and procedures of the program.

Source: The Parliament of Georgia, 23 June 2017

Decision of the Supreme Court of Georgia

Director's salary increase

- Minority shareholders of the company filed a lawsuit against the company and its director, who at the same time owned 51% of the company's shares. The claimants sought invalidation of the shareholder's decision on the director's salary increase. The claimants argued that the provisions for convening of the shareholder's meeting were breached and the decision made by majority shareholders was not justified.
- According to the defendants, director's salary was increased due to his successful managerial skills, minimization of the company's expenses, and increase of USD - GEL exchange rate.
- The court of the first instance, as well as the Appellate and the Supreme courts, ruled in favor of the minority shareholders. The Supreme Court of Georgia pointed to the following:
 - The procedures for calling shareholder's meeting were breached. The director did not give 8-day prior notice to the shareholders regarding the meeting as it was required under the company's charter;
 - In addition, the Supreme Court ruled that successful management and minimization of the company's expenses by the director falls within his fiduciary duty and cannot lead to a direct proportional pay raise, especially when the company's profit is not increased respectively. Moreover, since the director owns 51% of the company's shares, it

seems that he receives a hidden dividend through salary, which infringes the rights of minority shareholders.

Source: The Supreme Court of Georgia, case #sb-839-805-2016, 6 March 2017

Decision of the Constitutional Court of Georgia

Changing the purpose of agricultural lands

- The dispute concerned constitutionality of the compensation obligation towards the State, according to which owners of agricultural lands had to pay compensation amount for changing the purpose of agricultural lands into non-agricultural and using such lands for construction purposes.
- The Constitutional Court of Georgia rejected the constitutional claim and stated that agricultural land is a limited resource and using it for construction purposes reduces this resource. Compensation obligation acts as a deterrent to damaging this resource and serves public purposes of environmental and urban construction policies.

Source: The Constitutional Court of Georgia, case # 1/6/666, 22 June 2017

Let's talk

For a deeper discussion of how this issue might affect your business, please contact us at PwC Georgia

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