

PwC Georgia Tax & Law Brief

13 September 2018

Significant amendments in Georgian Tax Code

According to the amendment which has been published on the Legislative Herald of Georgia on 12 June 2018:

Changing the mechanism of CIT for organizations

- Organizations conducting economic activities are also moving to new Corporate Income Tax (CIT) regime from 2019 and are becoming subject to taxation on the following transactions:
 - Incurring expenses which are not related to economic activities and/or purpose of organization (including the expenses not related to charity activities and/or the purpose of grant agreements);
 - Free of charge supply of goods / delivery of service and/or transfer of funds, when it is not related to purpose of organization;
 - Incurring representative expenses that exceeds the limit determined by Georgian Tax Code (GTC).

Withholding tax applicable on payment to individuals

- For the relations arisen from 1 January 2018, a company/organization or an individual entrepreneur who reimburses the service fee amount to individuals should withhold tax at the source of payment. However, the list of recipients who are not subject to taxation at source will include the following:
 - Individual entrepreneur;
 - Individual registered as a VAT payer;
 - Notary;
 - Private executive;
 - Individuals having micro business / fixed payers status;

Long term contract

- Special regulations requiring to apply Valued Added Tax (VAT) on long term contracts based on percentage of completion are cancelled. The amendment concerns the contracts concluded after 1 January 2018. Contracts put in place before this date is subject to VAT rules effective before 1 January 2018.

VAT exemption with the right to credit

- Technical maintenance provided for the aircraft and vessels executing air and international maritime carriage become exempt from VAT with the right to credit.

Excise refund

- Importer became authorized to refund 100% of paid excise amount, instead of 50%, to the vehicles under the codes 8703 and 8711 of National Commodity Nomenclature of Foreign

Economic Activity. This rule applies in case if the vehicles will be placed into export regime within 90 days, instead of 15 days, following the date of its importation.

- Vehicles under the code 8703 of National Commodity Nomenclature of Foreign Economic Activity became exempt from excise, in case of:

Excise exemption

- It is originally adapted for use of disabled persons; and
- Importer is a disabled person who moves with a wheelchair.

- The date of switching to new CIT regime of commercial banks, credit unions, insurance companies, microfinance organizations and pawnshops is extended from 1 January 2019 to 1 January 2023. Respectively, the changes are made with respect to dividends distributions by such category of companies, specifically:

Corporate Income Tax

- Distribution of dividends received from the above category of companies and related to the profits earned from 1 January 2008 to 1 January 2023 is not deemed as profit distribution;
- Distribution of profits to the above category of companies is deemed profit distribution, if the profits belong to the period from 1 January 2008 to 1 January 2017;
- Distribution of profits to the above category of companies is deemed profit distribution, if the profits belong to the period from 1 January 2017 to 1 January 2023 and are distributed before 1 January 2023;

Appealing of advance tax ruling

- Advance Tax Ruling (ATR) will no longer be appealed at the level of Georgian Revenue Service. Their appeal process will be start from the level of the Ministry of Finance.

Corporate Income Tax

- From 1 July 2018, Purchasing goods/service from an individual having micro business status will be subject to CIT, except for the following:
 - Income earned from supply of goods/provision of service by the individual having micro business status is taxed under the general rule;
 - Supplier issued waybill / special document determined by Ministry of Finance of Georgia.

Taxation of individual's income for supplying specific goods

- Supply of goods determined by Ministry of Finance of Georgia, specifically ferrous and non-ferrous metals, by an individual is subject to taxation at source of payment at 3%, instead of 15%.
- The 721 Article has been added to Tax Code of Georgia according to which a tax document (TD) is the established form of document by Ministry of Finance of Georgia and is issued while:
 - Transportation of goods within the territory of Georgia;
 - Supply of goods;
 - Provision of Service;

Tax document

- When TD has been issued, obligation to issue waybill or VAT invoice (including special tax invoice) does not arise;
- TD is a document entitling to claim VAT deduction for VAT payers;
- Issuing/not issuing TD will be subject to similar consequences as it would have been for issuing and/or not issuing the waybill and/or VAT invoice;
- TD may be issued and presented only electronically;
- The rule of issuing and presenting of TD is determined by the order of Ministry of Finance of Georgia.

Source: The Legislative Herald of Georgia, 24 August 2018.

Amendments to the instruction order N996 established by Minister of Finance of Georgia

Instruction for filling and submission of a Tax Document

According to the amendments published on the Legislative Herald of Georgia

- A new chapter XIII1 was added to the order of Ministry of Finance. The chapter establishes the rule for filling and submission of a Tax Document (TD). The amendment will be effective from 1 November 2018.

An instruction of VAT refund for VAT payers registered in EU is introduced in the order #996 of Ministry of Finance of Georgia. The instruction establishes rules and procedures for VAT refund, specifically:

VAT refund for VAT payer of EU member state

- VAT payer of EU member state (hereinafter as Taxpayer) is liable to appoint Authorized Representative (AE) for VAT refund purposes, particularly:
 - AE acts in the interest of the Taxpayer and needs to hold notarized power of attorney;
 - AE should be Georgian resident and registered as a VAT payer in Georgia;
 - AR is appointed by the Taxpayer and both are jointly responsible for VAT amount if refunded based on the incorrect information;
 - VAT refund application will not be accepted, if the Taxpayers or AR has outstanding tax liabilities;
- List of the documentation which should be presented for VAT refund:
 - An application filled in Georgian reflecting the amount in GEL, that the Taxpayer requests to be refunded;

**List of documents
submitted for VAT
refund**

- A copy of the issued invoice to the Taxpayer by VAT payer registered in Georgia (or adjusted VAT invoice if applicable);
- A copy of import declaration and documents confirming the payment of import duties if VAT paid on import operation is requested to be refunded;
- Power of attorney on appointing of AR;
- Except the above mentioned information, the application should be accompanied with documents issued by authorized tax authorities of EU member state, which should demonstrate the following information of the Taxpayer:
 - Number and date of registration as a VAT payer in EU member state;
 - Used proportion for VAT deduction in respective EU member state;
 - Whether the type of activities of the Taxpayer are VATable transactions over the period for which the request for VAT refund is submitted;
- Reporting period and minimum amount of requested VAT refund:
 - Period for which the VAT refund is requested should not exceed 1 calendar year and should not be less than 3 months of the calendar year. However, request of VAT refund can be submitted for the period less than 3 months, if it includes reporting periods less than 3 month until the end of calendar year. (e.g. from 1 November to 31 December);
 - If the indicated reporting period in application includes less than a calendar year but no less than 3 reporting period, requested VAT amount should not be less than GEL 1,200;
 - If the indicated reporting period in application includes entire calendar year or less than 3 reporting periods until the end of calendar year (for instance from 1 November to 31 December) requested VAT amount should not be less than GEL 120;
- The application can be submitted to the tax authority after the following month of the end of calendar year or the following month of the 3 reporting periods, but no later than six months after the end of calendar year when the VAT taxable transaction took place.
- Additionally, any documentation submitted to Georgian Revenue Service, which is not drawn up in Georgian language, should be accompanied by notarized translation.
- The VAT refund is made in GEL.

Source: The Legislative Herald of Georgia, 24 August 2018.

Order №193/04 on Approval of Registration of Credit Information Bureau at the National Bank of Georgia, Annulment of Registration and Regulation terms

Mandatory registration

Terms for Registration of Credit Information Bureau

- According to the regulation issued by the National Bank of Georgia, a company, which collects, stores, conducts data processing and issues the credit information about the person shall register as a credit information bureau at the National Bank of Georgia (“NBG”).
- Credit Information Bureaus are supervised by the National Bank of Georgia.
- The following key rules apply to Credit Information Bureaus:
 - Credit Information Bureau may be set up as LLC or JSC;
 - The Bureau's authorized capital should be in the amount of 3,000,000 GEL;
 - It is mandatory for bureaus to have insured professional responsibility with at least 5,000,000 (five million) GEL;

Source: The Legislative Herald of Georgia, 7 September 2018

Order №195 / 04 On Approval of the Rule of Delivery of Information to the Credit Information Bureau, Accounting and Availability of Information in the Database of the Credit Information Bureau on the Territory of Georgia

Provide Credit Information Bureaus with data

Data availability for credit information bureaus

The National Bank of Georgia issued a new order, which sets certain obligations for loan issue entities.

- Loan issuer entities (commercial banks, microfinance organizations, non-bank depository institutions - credit union and loan issuers) shall provide all registered credit information bureaus (bureau) with credit information on daily basis.
- Transfer/verification of the information between the issuing entities and the bureau shall serve the evaluation of the creditworthiness.
- Loan issuer entities are entitled to equal access to the data of Bureau;
- As for other entities that are non-loan issuer entities, they have right to receive credit / non-credit information secured in the Bureau only if they provide the Bureau with credit / non-credit or other information.

***Rights and obligations
of loan issuing
organizations***

- The loan issuer entity shall:
 - Have proper policy-procedures regulating the question of to receiving credit/other relevant information from the bureau or to the bureau;
 - Enable access to the Bureau database only for authorized employees;
 - Have technical means of communication with the bureau;
- The loan issuers shall only inform the consumer about transferring his/her credit / other relevant information to bureau and to obtain relevant consent from the customer to check his/her data within the Bureau.
- The loan issuers shall have satisfied the requirements set forth by the order by 31 December 2018. During the abovementioned period the credit / non-credit information about the person will be transferred in accordance with the agreement executed between the loan issuer entity and the bureau.

Source: The Legislative Herald of Georgia, 7 September 2018

**Code No.154 / 04 Code of Ethics and Standards of Professional Conduct
for Commercial Banks**

***Code for Commercial
Banks***

- On 10 July 2018, National Bank of Georgia published the Code of Ethics and Professional Conduct for Commercial banks (Code).
- The Code is mandatory for commercial banks operating in Georgia, shareholders of commercial banks, administrators and employees.
- Commercial banks, shareholders of commercial banks, administrators or employees are required to comply with the following standards of professional conduct:

***Standards of
Professional Conduct***

- Professionalism;
 - Good faith in the financial market;
 - Good integrity in the banking field;
 - Performance of obligations towards the user;
 - Performance of obligations towards the employer;
 - Principles of professional practice;
 - No conflicts of interests;
- Commercial Bank should have an effective system and mechanisms for receiving an application / complaint on violation of the principles and standards of ethics.

***Responsibility for
violation of ethical
principles and***

**standards of
professional behavior**

- A decision made by the relevant structural unit of the commercial bank regarding the complaint/application may be appealed with the Ethics Committee at the Supervisory Board of the Commercial Bank.
- Commercial Bank shall carry out monthly accounting report about the incidents, violations, complaints and measures taken under the Code in connection with National Bank of Georgia.

Source: The Legislative Herald of Georgia, 7 September 2018

Decree No. 381 on Approval of the List of Heavy, Harmful and Dangerous Jobs

**List of heavy, harmful
and dangerous jobs**

- On 1 August 2018, the government of Georgia approved a list of heavy, harmful and dangerous jobs. The law of Georgia on Labor Safety applies to the above-mentioned works.
- Heavy, harmful and dangerous works are:
 - Works related to construction and production of construction materials;
 - Works related to mining industry and quarry processing;
 - Works related to the production of black and non-ferrous metals;
 - Works related to supply of electricity, gas, steam and conditioned air;
 - Works related to obtaining coke (fuel) and oil products;
 - Works related to chemical production;
 - Work related to the processing of timber;
 - Forest related works;
 - Work related to textile and light industry;
 - Works related to production of food products;
 - Transport related works;
 - Wholesale and retail trade;
 - Work related to water supply, sewage, waste management and pollution

Source: The Legislative Herald of Georgia, 10 September 2018

Law of Georgia on Service of State Inspector

State Inspector

- From 1 January 2019, the State Inspector and the State Inspector's Office will replace Inspector of Personal Data Protection.
- Functions of the State Inspector will include the control of the lawfulness of personal data processing. For this purpose, the State Inspector will:
 - Consult on personal data protection;
 - Consider the notices regarding personal data protection;
 - Carry out inspection on the legality of processing personal data;
 - Inform the public;

Authorities of the State Inspector

- Anyone can address the State Inspector's office.
- The State Inspector's Office may, on its own initiative or on the application of an interested person, carry out the inspection of any data processor / authorized person.
- The decision of the State Inspectorate in the field of personal data protection is mandatory.

Source: The Legislative Herald of Georgia, 7 September 2018

Law of Georgia on Control of Entrepreneurial Activities

Controlling entrepreneurial activities without a judge's order

To the list of controlling bodies authorized to control entrepreneurial activities without a judge's order, were added the following:

- Implementation of Labor Safety Regulations for the Protection of Labor Safety and Safety Protection of the Ministry of Labor, Health and Social Affairs of Georgia from Occupied Territories, checking the safety norms of the work whether the inspection is carried out:
 - Once in a calendar year through selective control;
 - Within a reasonable time frame for repeated inspection;
 - For the purposes of inquiry into the work space;
- From 1 January 2019, the State Inspector's Office was inspected under the Law of Georgia "On State Inspector Service".

Source: The Legislative Herald of Georgia, 7 September 2018

Law of Georgia on Accumulative Pension

Obligation to participate in the pension system

- On 6 August 2018, Law of Georgia on Accumulative Pensions entered into force. The law regulates the issues of accumulative pension schemes, determines the terms and conditions of participation in the scheme.
- According to the law, joining a pension scheme from 1 January 2019 will be mandatory for all employees, except for:
 - Individuals who have been 60 years/ in case of women - 55 years before the enactment of the law;
 - Self-employees;

As for those who have reached 40 years before enacting the law, they may refuse to participate in the Pension Scheme no sooner than three months from entering into the pension scheme.

Amount of contribution

- Pension scheme will be financed as follows:
 - Employee and employer in the amount of 2-2 percent of the taxable salary of the employee;
 - The state shall transfer 2% of the income received by the wage / self-employed income on the participant's pension account, if the annual salary of the participant / self-employer does not exceed 24,000 GEL, 1% - if the annual salary / income varies between 24 000 - 60 000 GEL. If the annual salary of the participant / self-employer income exceeds 60,000 GEL then the state will not support the pension.

Administration of pension assets

- Contributions to the pension scheme are mandatory. Violation of the responsibility will result in the liability defined by law.
- Pension assets are managed and administered by the Pension Agency.
- According to the law, it will be possible to transfer pension assets to the respective companies. Participants themselves may choose a company responsible for administrating pension assets.

Use of pension assets

- The participant of the pension scheme may dispose the amount on the pension account at the time of retirement age;
- The property rights of a party's pension shall not be mortgaged or transferred to the third party. These assets are not subject to forced enforcement and should not be included in the bankruptcy proceedings of the participant.

Source: The Legislative Herald of Georgia, 7 September 2018

Order #227 on submission of the guarantee for suspension of goods produced via possible violation of IP rights

The ministry of finance of Georgia issued a new order that establishes conditions and procedure of submitting the guarantee if the goods produced through possible violation of IP rights (the design, the patent, the topography of the integrated circuit, the exclusive rights of the breeder) are disputed in the court and the possessor of the goods requires to release of the goods from suspension.

Types of Guarantees

- The Revenue Service may release the disputed goods if the possessor provides the Revenue Service with relevant guarantee.
- Types of guarantees:
 - Bank Guarantee
 - Insurance certificate.
- The guarantor shall be resident as per the Tax Code of Georgia.
- The principal of the guarantee/ the policyholder shall be the possessor of the goods and the beneficiary/ insured person – the right holder.
- The amount of guarantee shall be:
 - Determined mutually by the possessor of the goods and the right holder;
 - Or
 - At least customs value of seized goods.
- The guarantee shall be irrevocable and unconditional, i.e. the guarantor shall satisfy the beneficiary's claim upon beneficiary's written request.
- The effective period of the guarantee shall exceed minimum 6 months. Additionally, if the decision of court has not entered into force, the possessor of goods shall prolong the guarantee or submit new guarantees.

Persons involved in Guarantee

Essential Terms of Guarantee

Source: The Legislative Herald of Georgia, 7 September 2018

Order #108/04 on issuing and public offering of securities

Conditions of Public Offering of Securities

The National Bank of Georgia issued a new order on regulating the question of issuing and offering securities publicly.

- Public offering of securities does not require approval of a prospectus by the National Bank of Georgia in the following cases:
 - An entity publicly offers securities that are already admitted to trading on one of the recognised foreign stock exchange;
 - an entity's securities that are admitted to trading on one of the recognized foreign stock exchange, intends to publicly offer other securities on Georgian market;
 - The person, who intends to publicly offer securities issued by the international financial institution or/and the development organization;
 - The international financial institution or/and the development organization willing to publicly offer securities in Georgia.
- The person willing to publicly offer securities/international financial institution/development organization shall provide the National Bank of Georgia with written notice on public offering at least 3 days prior to public offering.
- The person publicly offering securities shall provide the National Bank of Georgia with the following:
 - International identification number of securities and the document certifying admission to trading of securities on one of the recognised foreign stock exchange – if the person publicly offers these securities.
 - The document certifying admission to trading on one of the recognized foreign stock exchange – if the person publicly offers other securities. In addition, international financial institute or development organization may provide such proof via referring to the relevant web site.
- If securities are going to be publicly offered on licensed stock exchange of Georgia, the information certifying admission to trading of securities on one of the recognised foreign stock exchange may be provided via licensed stock exchange of Georgia.

Procedure of Public Offering of Securities

Source: The Legislative Herald of Georgia, 7 September 2018

Rulings of Constitutional Court of Georgia

Constitutionality of obligation on labeling non-alcoholic drinks

- The Constitutional Court of Georgia ruled on the constitutional claim of Coca-Cola Bottlers Georgia LLC, Castel Georgia LLC and Healthy Water JSC concerning mandatory marking of non-alcoholic beverages.
- Under the legislation of Georgia, non-alcoholic beverages are subject to mandatory marking, where the nominal value of marking is paid. Until 2020, the payment will be paid by the state, and after the expiration of this period, the companies will have to pay themselves.
- According to the claimants, imposing a tax on companies' conflicts with the right to property under Article 21 of the Constitution of Georgia. In addition, the technical execution of marking has an adverse effect on the production process, thus limiting the entrepreneurial freedom envisaged by Article 30 of the Constitution of Georgia.
- The Constitutional Court ruled that the fee for marking is not tax, but rather reimbursement of the cost of service, proper administration of taxes and protection of consumer rights.
- The Constitutional Court ruled against the claimant's complaint and left the mandatory marking in force.

Source: The Constitutional Court of Georgia, 7 September 2018

Decisions of the Competition Agency of Georgia

Prohibition of undermining a competitor's business reputation

The Competition Agency (Agency) has studied the claim submitted by LLC "Design House" against LLC "DNA" alleging, LLC DNA has spread information harmful to claimant's reputation and interests.

- The Agency found that, LLC DNA has violated competition law by disseminating information harmful to reputation and interests of LLC "Design House". The company was ordered to remove identical/similar post (s) from the social network "Facebook", which disseminated incorrect information about LLC "Design House".

Prohibition of requesting advance bank guarantees issued only by banks

The Georgian Competition Agency satisfied the claim of the Insurance Company "Unison" and found that during state tenders requesting advance bank guarantees issued only by banks violated the Competition Law.

- The Competition Agency issued the following recommendations:

- During state tenders requesting bank guarantees issued only by banks threatens a healthy competitive environment. With this respect, tenders announced by donor funds, which are not governed by law regulating state tenders, are in exception as tender conditions are solely defined by donor organizations;
- The business ombudsman of Georgia was asked to work on the relevant legislative amendments. These legislative amendments must minimize the cases of delay in reimbursement of the warranty amount and with this respect minimize the risks of procuring entities.

Source: The Competition Agency of Georgia, 7 September 2018

Let's talk

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

Sergi Kobakhidze

Director, Tax & Law Practice
E-mail: sergi.kobakhidze@pwc.com
Tel: + 995 32 250 80 50

Vano Gogelia

Head of Legal Practice
E-mail: vano.gogelia@pwc.com
Tel: + 995 32 250 80 50

PwC in Georgia offers Integrated Assurance, Tax, Legal and Advisory services. PwC Network globally employs 208,109 people in 756 locations across 157 countries who share their thinking, experience and solutions to develop fresh perspectives and effective practical advice.

PwC Georgia **Tax Services** includes tax advisory services, tax reviews and tax compliance, transfer pricing compliance, representation during tax disputes, tax structuring, double tax treaty advice, tax due diligence support, customs matters and others.

PwC Georgia **Legal Services** offers a full range of legal support in corporate and commercial law, corporate reorganizations, corporate secretarial work, M&A, competition compliance & litigation, secured transactions, employment law, immigration, construction law and other. With over 3,200 lawyers across more than 85 countries, we have the broadest geographical coverage of any legal services network in the world.

