

# Your Tax Dispute InfoGuide

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Your Tax Dispute InfoGuide is prepared by PricewaterhouseCoopers (PwC) Georgia, based on decisions undertaken by Georgian Revenue Service (GRS) and the Council of Dispute Resolution (CDR) at the Ministry of Finance. We provide a brief review of the facts on selected cases, including arguments of the parties and the relevant decisions made by the dispute resolution authorities. This publication is prepared for general guidance on matters of interest only, and does not constitute a professional advice.

## In this issue:

**Case #1: Considering the utilization of medical waste as a transaction subject to VAT;**

**Case #2: Taxation of medical residency program with VAT;**

## Case #1: Considering the utilization of medical waste as a transaction subject to VAT

### Facts

The Company carries out the collection, extraction and destruction of medical hazardous waste, which are subject to special epidemiological requirements for the prevention of infection. The company had not considered abovementioned services as transactions subject to VAT and accordingly had not applied VAT on them. The Audit department carried out tax inspection and as a result, these operations were deemed as VAT able transactions.

### Position of the Audit Department

According to the commentary of the Audit department, since the Georgian Tax Code (GTC) does not determine the term of medical service, the tax inspection relied to the definitions defined in the Georgian legislation, namely:

- According to the law of Georgia on Patient Rights, medical care - any manipulation or procedure carried out with respect to patients by medical care providers for providing diagnosis, treatment, preventive health care or medical rehabilitation;
- As per the law of Georgia on Health Care, medical activities (medical services) – activities related to disease prevention, diagnosis, treatment, maintaining a patient's positive health status, improvement and rehabilitation a patient's health, palliative care, medical care of a patient, prosthetics, medical transportation of a patient, a patient's medical education, forensic medical expert examination, forensic psychiatric expert examination, public health measures and provision of supplementary services along with medical activities conducted in medical institutions which shall be carried out in accordance with the established rules;
- Also in the line with the law of Georgia on Public Health, a health care provider – a natural or legal person providing health care, who holds a state certificate for independent medical practice or a license to engage in a specific medical practice;

Based on the all above mentioned, the tax inspection considered that the activities of the company do not represent medical service and are subject to VAT. Accordingly, relevant principal taxes and fine were imposed to the company.

### Arguments of the company

The ultimate purpose of the company's activities is to protect public health and to utilize medical waste according to the standards set by subordinate acts adopted by the Ministry of Labour, Health and Social Affairs of Georgia. According to the company, the aim of the law of Georgia on Patient Rights is to safeguard the rights of citizens in the field of health care and ensure the integrity of their honor and dignity. The law of Georgia on Health Care defines medical activities (medical services) as activities related to disease prevention, diagnosis, and treatment, maintaining a patient's positive health status, improvement and rehabilitation a patient's health, palliative care, medical care of a patient, prosthetics, medical transportation of a patient, a patient's medical education, forensic medical expert examination, forensic psychiatric expert examination,

public health measures and provision of supplementary services along with medical activities in medical institutions which shall be carried out in accordance with the established rules.

According to the company's argument abovementioned norm is cumulative and the legal outcome is related to the combination of two conditions: The activity is the supplementary service related to the medical activities provided in the medical institution and which the company is actually implementing in accordance with the established rule. As a result, the company indicates the following:

- The fact that the management of medical waste is supplementary activity to the medical service is highlighted by list of the requirements stated in the "Infectious Control in Medical Institutions" section on the web-site of the Ministry of Labor, Health and Social Affairs of Georgia, which first of all refers to the disinfecting, sterilization activity, and then to the management of medical waste;
- In relation to the fact that utilization of medical waste is a measure to protect public health and at least represents the related activity to medical service is unconditionally derived from requirements and instructions for the destruction of this type of waste defined by various legislative acts, by requiring to obtain the appropriate permission for the implementation of such activities;

The company pointed to the resolution of the Government dated 2010 - On Approval of the Regulations on the Rules and Conditions of Issuance of Licenses for Medical Activity and Permits for Stationary Institutions. According to the latter, the medical institution is obliged to provide safe segregation, collection, storage, withdrawal, utilization and / or destruction of medical waste under the procedure prescribed by the legislation. This may be carried out directly by the license seeker / owner and / or such other service provider on the basis of a contract, so as to ensure timely and operational implementation of medical activities.

### Decision of GRS

GRS discussed the case. During the decision-making process the Council has guided by the legislative and sub-legislative acts specified by the Ministry of Health and Social Affairs of Georgia. According to the Council, the company defines its argument based on the law of Georgia on Health Care. As per abovementioned law, public health is formalized as the combination of measures directed to improve public health, to prevent and control diseases.

Bases on previously mentioned law, to qualify activity as measure directed to protect public health, the company's activity must be met all three elements cumulatively defined by the law on Public Health, in particular should be directed towards:

- Improvement of public health;
- Disease prevention;
- Disease control;

The Council considers that since the company's activities do not meet those three requirement, its activities should not be considered as the public health measures.

As per Georgian law on health care, in order to consider the company's activities as medical services, it is necessary to satisfy two conditions simultaneously, in particular:

- The company should render supplementary service related to the medical activities provided in the medical institution;
- The services should be implemented in accordance with the established rule;

By the means of the Georgian law on Patient Rights, the recipient of medical service is patient (the object of service). Based on logical explanation subparagraph "Z1" of the Article 3 of the law of Georgia on Health Care is clear that the service recipient is patient because it is impossible to provide medical service to other than the patient. Respectively, the supplementary service should be provided for the patient and not for medical institutions, otherwise every subcontractor of medical institution will be considered as the provider of medical service. For example, a hired person based on a contract that cleans the medical institution.

Derived from all aforementioned, the Council decided not to satisfy the appeal.

*Source: Decision of Dispute Resolution Board of Revenue Service #20334/7/2018*

## Case #2: Taxation of medical residency program with VAT

### Facts

The company in the university hospital carries out training of students in residency program and retraining of nurses.

The company had not considered abovementioned services as VAT taxable operations and respectively had not applied VAT as well. According to the conducted tax inspection, the audit department deemed these operations as transactions subject to VAT.

### Position of the Audit Department

According to the position of the Audit department, medical residency program was considered as transaction subject to VAT. Therefore, the company's income earned from non-medical economic activities in the timeframe of inspected period, which is considered as a VAT able transaction, exceeded 100,000 GEL during continuous 12-month period. As a result, the Audit department imposed principal tax and relevant sanctions within the period under inspection.

### Arguments of the company

Based on the company's position, process of training of students in residency program and retraining of nurses constitutes an educational activity because of the reason that the hospital itself is the university hospital, which has passed relevant state accreditation. The company disagrees with the issue of reviewing these services as the taxable turnover and indicates that:

- The law of Georgia on Medical Practice explains that residency –is the component of the medical practice, the post-higher professional training phase in one of the medical specialties. The resident – a person undergoing a residency program in one of the medical specialties. The university hospital – a high quality multi-profile medical institution having appropriate basic infrastructure with qualified doctors and tutors, participating in state health care programs and focusing on the public health care system, where clinical disciplines are taught and research works are carried out, and where junior doctors gain necessary practical skills. The university hospital belongs to a state-accredited higher medical education institution, which concludes an agreement with such institution on carrying out educational and scientific and research activities as provided for by the legislation of Georgia;

The company draws attention to the article 15 of the law of Georgia on Medical Practice, according to which:

- Course of residency in clinical specialty is permissible only at the university hospital or at the medical institution determined by the Ministry;
- Course of residency in prophylactic medicine specialty is permitted in the relevant chair of higher medical institution, scientific-research institution or medical institution defined by the Ministry;

As for residency, based on article 5 of the law of Georgia on Medical Practice, residency – a postgraduate stage of higher medical education consisting of educational programs and medical practice that aims at providing professional training in one of the medical specialties on the basis of a state order (private financing is allowed for dental specialties). Within the time limits determined for residency programs.

### **Decisions of dispute resolution authorities**

At the initial stage, GRS discussed the case, considered that the Audit Department's position was legitimate and did not satisfy the appeal.

The dispute continued at the CDR at the Ministry of Finance. The Council explained that the following services are exempt from VAT without the right to credit:

- Providing medical services;
- Education services provided by educational institutions;

The Council considered that the education services rendered as for an alternative of postgraduate residency program, could not be regarded as education services provided by the educational institution. Respectively, the company's income from trainings and other similar various exercises is subject to VAT. As per the Council's explanation, the decision of GRS is in line with the requirements of the tax legislation and there is no ground for its cancellation.

Despite the fact that the Council considered the aforementioned accrual as legitimate, the Council concluded that the company's offense was caused by the payer's mistake/lack of knowledge and the company was released from the penalty imposed by the Audit Department.

*Source: Decision of the Dispute Resolution Board of the Ministry of Finance # 14454//9/2018*

PwC Georgia offers clients integrated **audit, tax, legal and consulting services**. The PwC network comprises 255,000 professionals worldwide, employing 756 offices in 158 countries.

We provide effective, innovative and practical tax advice tailored to your specific business needs, whether simple or more complex. Using our knowledge of Georgian tax legislation and in conjunction with international laws and treaties we are able to solve your problems and bring you certainty. We can also help you with the everyday tasks of complying with tax law, cost-effectively preparing your annual and monthly tax returns.

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's **Tax Dispute Resolution** practice comprises leading international and Georgian tax specialists proficient in all areas of pre-trial and judicial tax dispute resolution and draws on the expert knowledge of the world's leading tax consultants. We are ready to assist companies at all stages of an inspection by state authorities, as well as during the appeal process, which includes:

- Diagnostics of tax risks and preparation for a potential inspection by state authorities;
- Supporting during a tax inspection;
- Appeal of an inspection results;
- Tax refunds

**PwC Georgia Tax & Legal team would be delighted to provide you with any additional information regarding to what impact the above-mentioned dispute resolutions might have on your business.**



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