

PwC Georgia Tax & Law Brief

31 January 2019

Important Amendments to the Tax Code of Georgia

According to the recent amendments to the Tax Code of Georgia dated 27 December 2018:

Changes in definitions

- The term "pawnshop" defined for the purposes of Georgian Tax Code has been replaced by the term - "loan issuer entity". Under the Organic Law of Georgia on the National Bank of Georgia, a loan issuer entity is any person, or group of related persons, to whom more than 20 people (including individual entrepreneurs) have obligations for loans/credits simultaneously.

Deduction of loan loss reserve by microfinance organizations

- As per the legislative amendments, microfinance organizations are entitled to deduct loan loss reserves from the gross income in accordance with the relevant rule set by the National Bank of Georgia.

Excise Tobacco Products

- A single excise rate, equaled to 1.7 GEL per 20 cigarettes, has been set on filter and non-filter cigarettes.
- For the purpose of calculating excise amounts the following has been defined as well:
 - The excise amount for 20 filter cigarettes shall be the sum of the excise rate and the 30 percent of the product's retail price;
 - The excise amount for 20 non-filter cigarettes shall be the sum of the excise rate and the 10 percent of the product's retail price;
 - The excise amount for 20 pieces of capsules and similar products, with tobacco content and tobacco products, without burning process, to be used for obtaining steam shall be the sum of the excise rate and the 30 percent of mentioned products' retail price.

Sanctions related to the violation of the deadlines for filing of tax returns

- The amendments refer to the sanction of violation of the due dates for the filing of tax returns, namely:
 - If the overdue period of submission of a tax return does not exceed 2 months, imposed fine shall be equal to 5 % of the chargeable taxes;
 - If the overdue period of submission of tax return exceeds 2 months, imposed fine shall be equal to 10% of the chargeable taxes;

***Understatement of
taxes in tax returns***

- The changes have been concerned the sanctions for understatement of taxes in tax returns. According to the amendments:
 - A taxpayer will be fined with 10 percent of the understated tax amount if it does not exceed 5 % of the tax amount filed in the tax return;
 - If the understated tax amount is more than 5 percent of but does not exceed 20 percent of the tax amount filed in the tax return, a taxpayer will be fined with 25 % of understated tax;
 - The understatement of the tax amount, except for the above mentioned cases, shall be subject to a fine of 50 % of the reduced tax amount;
 - The total amount of fines assessed as a result of a tax inspection shall not exceed the amount of principal taxes accrued as a result of the tax inspection;

***Partial cancellation of
tax sanctions***

- 50 % of fine imposed during tax inspection shall be canceled, if tax arrears originated from inspection have been acknowledged and the taxpayer has paid taxes and 50% of the fines accrued as a result of tax inspection within 30 days after the tax notice has been served.

***Limitation for the
accrual of late
payment interest***

- The period of late, payment interest accrual has been limited up to 3 years.

VAT exemption

- The VAT exemption period on the supply of immovable property and delivery of construction-installation services, on which construction permit was issued prior 8 August 2008, has been prolonged by 1 January of 2023.
- In addition, the statutory period of limitation on aforementioned transactions being held between the period 1 January 2015 and 1 January 2019 is increased accordingly. Namely, the periods of limitation are defined as:
 - 8 years for an exempt taxable transaction performed during the following periods 1 January 2015 - 1 January 2016;
 - 7 years for an exempt taxable transaction performed during the following period 1 January 2016 to 1 January 2017;
 - 4 years for an exempt taxable transaction performed during the following period 1 January 2017 to 1 January 2018;
 - 3 years for an exempt taxable transaction performed during the following period 1 January 2018 to 1 January 2019;

**Personal Income Tax
exemption on debt
forgiveness
undertaken by banks
or microfinance
organizations**

- The benefit derived by a natural person as a result of waiver of the loan issued before 1 January 2019, as well as the interest and penalty accrued on this loan, is exempt from Personal Income Tax, if the waiver of the loan was made by a bank or a microfinance organization.

Source: The Legislative Herald of Georgia, 31 January 2019

Amendments to the Civil Code of Georgia

The Parliament of Georgia passed the amendments to the Civil Code of Georgia published on the legislative herald of Georgia on 22 December 2018.

**Restrictions on
receiving fees tied or
indexed to the
foreign currency**

- The amendments change the rule of tying or indexing fee to foreign currency. In particular, the limits of contract price set by law are increased from 100 000 GEL up to 200 000 GEL, besides, limits will no more be tied to the price of transaction but rather to the total amount of obligations. In addition, unlike previous rules, the new regulation will apply to agreements executed by any person. Similar changes were also introduced to the rules on issuance of loan/credit in foreign currency.
- In case of installment sales agreement and lease agreements, if total obligations of the buyer or lessee respectively does not exceed 200 000 GEL, the item price or fee may not be tied/indexed to foreign currency.

**Restrictions on issuing
loan/bank credit in
foreign currency**

- The loan/bank credit amount which does not exceed 200 000 GEL, shall be issued only in GEL, except the cases when total obligations of the borrower toward the lender exceeds 200 000 GEL.
- The law does not apply to agreements that were executed prior to the entry into force of the amendment and to loans/bank credits that are extended, refinanced, restructured after entering into force of the amendments.

**Restrictions on lease
agreements**

- If the lessor is an entrepreneur, APR of the lease agreement shall not exceed 50%. Therefore, the lessor shall follow the regulations set by the Civil Code of Georgia on commissions, financial costs, penalties and any type of sanctions.
- The law does not apply to lease agreements executed prior to the present amendment, which are extended, restructured, refinanced or the object of the lease was bought out after entering into force of the amendments.

Source: The Legislative Herald of Georgia, 31 January 2019

Order of the National Energy and Water Supply Regulatory Commission of Georgia N 39 on “Approving of Service Quality Rules”

On 28 December 2018, the National Energy and Water Supply Regulatory Commission of Georgia (“Regulatory Commission”) published the order N 39 that sets rules for quality of services related to electricity, water supply and natural gas supply.

Persons to whom the service quality rules apply

- The order applies to companies, which provide electricity distribution, water supply, distribution of natural gas and supply of it to the retail customers. The order also applies to customers who receive relevant services from these companies.

General principles of service quality

- The principles of service quality inter alia include:
 - Obligation of the company to serve any customer in accordance with the rules set by the order;
 - Customer’s right to contact the company in written/electronic form at the legal address /service centers/official website of the company;
 - Company’s responsibility on disruption of supply which is not caused by external reasons;
- Service quality is divided into reliability of the service and commercial standards of the service.
- Performance of the overall standard of service quality does not depend on the services provided to one particular user. The target indicators of the overall standard of service quality are set for an unlimited number of customers during the calendar year for the following services:

Standards of service quality

- Informing customers regarding date and duration of disruption;
- Restoration of the supply which was occurred due to internal unscheduled disruption;
- Time needed for the operator of the call center to answer the phone call;
- Reduce of average length of supply disruption;
- Performance of guaranteed standards of commercial quality of service shall mean performance of the following services to an individual customer:

Guaranteed standards of commercial quality of service

- Restoring the supply to the customers, with whom disruption of services was due to non-payment of debt;
- Providing justified answer/sending a text message and/or reacting on written/electronic request of the customer;

- Inspection of the recording tools upon the customer's request;
- Registering an user and providing supply in accordance with requested conditions;
- Accession of a new customer/increasing capacity;
- Inspection of technical quality of supply upon the customer's request;
- Issuance of technical conditions for accession of the new customer;
- Arrangement of recording knot and network penetration;
- The company shall identify reason of scheduled/ unscheduled disruption in the electronic journal in accordance with the following classifications:

Types of disruption

- Internal;
- External (excluding force-majeure);
- Force-majeure;

Recording information about service

- The company shall record information concerning service quality in the electronic journal in real time.
- Failure to fill in electronic journals, recording incomplete or inaccurate information and/or delay in recording the data is deemed as violation of the order.
- The company shall place information regarding scheduled/unscheduled disruption on geographical map existed on their websites in real time.

Electronic journals

- The Regulatory Commission shall provide companies with software for running electronic journals. While performance services indicated in the present order, the company shall use only the electronic journals developed by the Regulatory Commission.
- Only the Regulatory Commission is entitled to make changes to the software developed by itself. The company is not entitled to change software or attempt to do so.
- Database (server) of electronic journals will be placed at the Regulatory Commission.

Compensation for non-performed services

- If the company does not perform services in accordance with guaranteed standards indicated by the present order due to internal reasons, the company shall compensate the customer for non-performed services.
- Compensation shall be paid to the customer's user card as a credit for next payment.

- Compensation shall be paid to the user card of the customer within 15 working days after violating guaranteed standards of services.

Source: The Legislative Herald of Georgia, 31 January 2019

Order of the National Bank of Georgia №281/04 on „Approving the Rule on Issuing Loans to Natural Persons”

On 24 December 2018, the NBG issued a new order, which sets rules for issuing loans to natural persons.

Scope of the order

- The order applies to all types of loans/credits issued to natural persons (including individual entrepreneurs) also to receiving suretyship and/or mortgage/pledge.
- The order does not apply to:
 - Loans secured with movable property;
 - The natural person if after issuing the loan, amount of total obligations toward the lender exceed 2 000 000 GEL or its equivalent in foreign currency;
 - Restructured loans if the loan is restructured in the same or another loan issuer organization, provided that total amount of obligations is not increased;
 - The cases, when occupied immovable property is to be returned to former owner or his/her family member, when the loan is issued;

Exceptions to the order

- If natural persons supply legal entities with suretyship/pledge/mortgage provided that these natural persons are shareholders/member of the board or member of household;
- The loans secured with financial instruments or/and monetary funds;
- Purchasing new apartment on the part of mortgage loan, which will be repaid via realization of existing apartment;
- The person providing mortgage of immovable property, if the loan is issued in accordance with the present order and the mortgaged property is not his/her living place.
- Despite exceptions, the calculating principles of the monthly income and maximum repayments provided by the order shall apply to the abovementioned products.

Maximum terms of loans

- The order sets maximum terms for loans in particular:
 - For mortgaged loan – 15 years;
 - For customer loans secured by the immovable property – 10 years;
 - Transport loan – 6 years;
 - The rest customer loans (Excluding revolving products) -4 years;

Creditworthiness analysis

- The loan issuer entity shall issue the loan and/or receive suretyship/pledge/mortgage only after analyzing creditworthiness of the borrower. Creditworthiness analysis shall include:
 - Checking and analyzing customer's income, expenses and total obligations and need of loan;
 - In a reasonable sense, checking accuracy of the provided information;
 - Check credit history in the database of the bureau;
 - Taking into consideration all additional factors, which may have negative effects on the loan;
 - Based on the received information, define/conclude that the customer will be able to cover the loan without significant financial difficulties;
- The decision to issue the loan shall not be solely based on the fact that, value of pledged/mortgaged assets exceed the amount of loan.

Principles of responsible lending

- If the natural person is a co-borrower and a member of household, then total income shall be considered while calculating coefficients for loan services set by the order.
- The difference between the monthly net income of the borrower and the monthly obligations should exceed the subsistence minimum of the household established by the National Statistics Office of Georgia.
- The loan issuer entities may issue loan and/or receive suretyship/pledges/mortgages if coefficients of loan services and pledges/mortgages set by the order will be satisfied.

Assessment of income

- Bank extracts/certificate from the Revenue Service shall be used for proving income of the natural person. If there is no such document, the loan issuer entities may assess stability of income and conduct financial analysis based on their internal policy.

Results of violating provisions of the order

- If the loan issuer entity, issues the loan without having conducted creditworthiness analysis, the loan/credit is deemed to be satisfied after performing the relevant actions on the

secured object as indicated by Georgian legislation (inter alia in case alienation or occupation of property).

- If loan issuer entity violates the provisions set by the present order, the NBG may apply sanctions imposed by the legislation.

Source: The Legislative Herald of Georgia, 31 January 2019

The order N 01-1/N of the Occupied Territories, Labor, Health and Social Affairs of Georgia on “Functioning and Production of Electronic Health Record System”

On 3 January 2019, the order determining rules for electronic health record system (EHR) was published.

Electronic record system (EHR)

- EHR system is a digital database of health records, which includes data about hospitalizing of any patient and data collected during an ambulatory visits by the person having right on independent medical practice.

Access to the EHR system

- Access to the EHR system is available from the following electronic resources:
 - EMR system (the role of a doctor);
 - EHR system doctors page (the role of a doctor);
 - EHR system patients page (the role of a patient);
 - EHR system analytical page (the role of an authorized user granted by the owner);

Terms for providing data to the EHR system

- Medical institution/doctor shall:
 - Provide the data about ambulatory visits to EHR system within 1 working days after finishing the visit;
 - Provide the data about hospital cases to EHR system within 5 working days after discharging the patient from the hospital;
- Medical records are stored in EHR system for the patient's life and 15 years after death.
- After the patient's death, medical records are marked as hidden and the status of the patient is canceled.

Storing data

- Data processing in EHR system is logged at the customer level. Logs are stored for 3 years after conducting the relevant action.
- The doctor shall register for access to the EHR system. Besides, each access to the EHR system is subject to authorization.

***Access to the EHR system
for doctors***

Rights of the patient

- Authorized doctor is entitled to process data only:
 - For the purposes of medical activities;
 - For editing patients' electronic health records;
 - Upon the patients' request;
- The patient has the right to receive records, his/her personal data from the EHR system, also logged data related to processing of the patient's information.
- The patient has right to request correction of the data from the person who has provided data to the EHR system.

Source: The Parliament of Georgia, 31 January 2019

Decisions of the Competition Agency of Georgia

***Predatory pricing by
an economic agent***

***MFN clauses in
agreements***

“Caucasus Agro Company” LLC submitted the claim to the Competition Agency (Agency) against “Geo Fresh Group” LLC concerning predatory prices on imported bananas.

- The applicant alleged that, “Geo Fresh Group” LLC systematically and massively sold bananas at a price 20%, 30% or 50% lower than the cost of products themselves, which put other companies in non-competitive position.
- The Agency determined market of bananas as the permanent and independent product market (independent from other fruits) existed on the whole territory of Georgia.
- The Competition Agency assessed the complaint from the prospective of Article 6 (2) (a) of the law of Georgia on competition that refers to abuse of dominant position, which resulted in imposing, directly or indirectly, unfair purchase or selling prices;
- Based on the data provided by the Revenue Service, the Agency reckoned that “Geo Fresh Group” LLC was not in dominant position, as its share of the market did not exceed 40%. Consequently, the Agency refused to study the complaint.

The Competition Agency (Agency) has completed monitoring of the online platform market for hotels reservation.

- The Agency deemed that usage of wide MFN clauses (Guaranteed most-favored prices) in agreement executed between hotels and online platforms for hotels reservation violated the law of Georgia on competition.

Source: The Competition Agency of Georgia, 31 January 2019

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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