



Important Amendments to the Tax Code of Georgia

Subsequent changes to the enactment of Customs Code

According to the amendment dated 28 June 2019:

- From 01/09/2019 issues regarding the legal relations involved in the movement of passengers, goods and vehicles across the customs border of Georgia, amount of payment of customs duties and the terms of administration will be governed by the Customs Code of Georgia. Due to the enactment of the Customs Code, blanket amendments were made to the Georgian Tax Code (GTC).

Amendment in the notion of sanction

- The enactment of the Customs Code also led to the introduction of new terminology, which takes part in the corresponding provisions of the GTC: the notion of the sanction also includes customs sanction, which participates in the norms governing the credit and refund of the overpaid tax amount/sanction. In particular, the taxpayer is eligible to credit/refund sanction amount, which also covers the amount of the customs sanction. (enacts from 01/09/2019)

Refund of overpaid amount of tax sanction

- In certain cases, by the decision of the head of the Revenue Service, taxpayer may receive refund of overpaid tax/sanction (including customs sanctions) without submitting taxpayer application. Such cases, procedures and conditions are established by Minister of Finance. (enacts from 01/09/2019)

Grounds to present tax notice

- The grounds for issuing tax notice to the person may also be the decision of a customs authority on assessing import duties and/or imposing a customs sanction or a customs offence report. (enacts from 01/09/2019)

Introduction of special regime of the international company

- Under GTC special status of "International Company" was established, for which special reliefs are granted.
- Provision of service by International Company to non-residents shall not be deemed as service provided on the territory of Georgia for VAT purposes.
- The distribution of dividend by International Company should not be taxed at the source of payment and also should not be included in the gross income of the person receiving the dividend.
- Employment:
 - When paying salaries to the employees, international company is not liable to withhold tax at the source.

- Foreign employee of international company, who is not the resident of that foreign country and represents the resident of Georgia, is exempt from PIT.
- For Corporate Income Tax (CIT) purposes:
 - CIT rate is 5%.
 - If International Company incurs costs in Georgia, it may decrease payable profit tax by amount of profit tax calculated on that expense.
- International company is exempt from property (except for land) tax on those property that is intended or used for the execution of its activities.
- Status of the international company is granted by the ordinance of Georgian Government, which also determines the permitted activities for the company.
- International Company cannot be established in the Free Industrial Zone (FIZ).

GTC defined the notion of pharmaceutical enterprise

- The norm defining Pharmaceutical Enterprise was added to GTC, according to which it represents the legal person, which produces pharmaceutical products in Georgia and distributes it.
- Granting the status of Pharmaceutical Enterprise, rules regarding its function and repealing procedure is established by Georgian Government Ordinance.
- Supply of self-produced pharmaceutical products by the Pharmaceutical Company is exempt from VAT with the right to credit.

Advance Tax Ruling (ATR) regarding the determination of the commodity code or country of origin of goods

- As a result of the amendments, GTC no longer provides issuance of ATR for the determination of the commodity code or country of origin of goods by the Revenue Service, upon the request of an interested person.

The benefit amount for the use of the employer's vehicles by employee for his personal use is fixed

- According to the amendments, usage of the employer's vehicles by employees for personal purposes is still considered as salary income, however, Personal Income Tax (PIT) amount is fixed based on the engine category and size. In particular, PIT income amounts to:
 - 300 GEL – for the engine sizes more than 3500 cm3;
 - 200 GEL – for the engine sizes 2500 cm3-3500 cm3;
 - 100 GEL – for the engine sizes less than 2500 cm3;
 - 60 GEL – for hybrid vehicles with any size engine. (enacts from 01/09/2019)
- Usage of electric vehicles for the personal use is not taxed under PIT. (enacts from 01/09/2019)
- For Property Tax purposes, benefits derived from the usage the employer's vehicles by employees for their private use, is not included in income. (enacts from 01/09/2019)

Determination of taxable amount for corporate income tax (CIT) purposes without VAT

- When payments/disbursements are provided for CIT taxable object in a non-monetary form, the object of profit taxation is determined by market price of the object excluding VAT.

The norm regulating the transfer of assets to a legal person in exchange for interest (shares) in that legal person was specified

- Transfer of assets by a person(s) to a legal person (including legal person(s), which are taxed with Estonian Model) in exchange for 50% or more interest (shares) in such legal person is not regarded as supply of assets.

Exemption from VAT with the right to credit of the goods intended for transit

- The transportation of the goods intended for transit and also provision of service related to such transportation is exempt from VAT with the right to credit.
- The stipulation is deemed retroactive and applies to the relations originating from January 1, 2011.

Exemption from VAT

Amendments regarding VAT deduction

- Supply and/or import of electronic book is exempt from VAT with the right to credit.
- VAT may not be deducted based on VAT invoices that are not reflected by the taxpayer (buyer/person who deducts VAT) in the following VAT return filed within the respective time frame:
 - Material VAT invoices reflected in the VAT return (including adjusted returns) filed no later than the three reporting months following the reporting month of taxable transaction or no later than December reporting period of the calendar year when the taxable transaction occurred.
 - Electronic VAT invoices reflected in the VAT return filed no later than December reporting period of the calendar year when the taxable transaction occurred or not later than three years for the adjusted VAT return of the same period.
- The above limitation does not apply to fixed assets.

Limitation on VAT deduction by customs declarations

- VAT may not be deducted based on: i) customs declaration; ii) document evidencing payment of fees for the services rendered by legal entities of public law; iii) the document affirming the purchase of the goods (in the conditions defined by article 1761 – “charging VAT in certain cases” of GTC) which are not reflected by a taxpayer (buyer/person who deducts VAT) in VAT returns filed no later than December reporting period of the calendar year when taxable transaction occurred (that includes filing adjusted VAT return during the same timeframe).

Taxpayer can get full refund of the import duties paid on the lightweight cars

- The importer is entitled, in accordance with the established procedures, to get 100% refund of the import duties paid on the lightweight cars specified in codes 8703 of National Commodity Nomenclature of Foreign Economic Activities, if such transport is registered under export regime and leaves the territory of Georgia within 90 calendar days, upon releasing for free circulation. (enacts from 01/09/2019).

Amendments regarding the alter ego possession

- As a result of the amendment, the norm regulating the alter ego possession was modified and was formed as alter ego of the taxpayer.
- The person is deemed as alter ego of a taxpayer, if it is used for evasion from existing, as well as expected tax liabilities payments.
- The order for establishing the existence of the alter ego of the taxpayer is issued by the district (city) court, according to the location of taxpayer and based on the motion of the tax authority.
- Administrative proceedings regarding establishment of alter ego of a taxpayer is conducted in the manner determined by special provisions of Administrative Offences Code of Georgia (chapter VII16).
- Alongside filing the motion on establishment the existence of alter ego of a taxpayer, tax authority is entitled to impose tax lien/mortgage on a taxpayer's property, within the scope of tax liability.

- To enforce payment of the taxpayer's acknowledged tax liability, the tax authority may enforce tax collection compliance security measures against an alter ego of a taxpayer (imposing tax lien/mortgage; levying a tax on a third person; seizing property; selling seized property; presenting a collection order to a bank account; collecting cash from the cash register of the taxpayer).
- Surety and guarantor are only responsible for the taxpayer's tax liability and are no longer bound to pay sanction amount. (enacts from 01/09/2019).

Reducing the liability of surety and guarantor

Non-excisable goods subject to mandatory affixing of stamps

- When supplying or transporting non-excisable goods subject to mandatory stamping, without affixing the stamp, the amount of fine is established according to the market value rather than customs value of such goods.

Mitigation of sanctions for certain tax offences

- New provision has been added to the norm governing tax sanction, according to which the violation of rules on using cash registers, transportation, sale, and non-accounting of goods without documents, as well as for failure to fulfil obligation provided under GTC, for which responsibility is provided, but the amount of fine is not defined, instead of imposing a cash sanction, warning may be used, if such misconduct is not committed repeatedly. (enacts from 01/09/2019)
- All the above-mentioned amendments have been enacted from July 4, 2019 (except for those amendments, where specific dates of enactments are indicated).

Source: *Legislative Herald of Georgia, 14 August 2019*

Amendments to the Instruction established by the Order N996 of Minister of Finance of Georgia

Notion of estimated assessment and its governing norms were added to the instruction

According to the amendments dated 16 July 2019:

- New provision was added to the norm regulating tax notice, according to which, when estimated tax assessment is made, tax notice is not presented to a taxpayer.
- The content of the estimated assessment was also defined, which replaced norm identifying tax assessment.
- According to the norm, estimated assessment implies the power of the tax authority, to carry out estimated assessment, without tax inspection and based on the information at hand, if there is reasonable assumption that:
 - The tax amount has been decreased unreasonably on taxpayer's tax card;
 - Taxpayer was liable to file tax return/calculation and did not file it within the timeframe established by law (automatic filing).
- In case of automatic filing, it is implied that taxpayer filed tax return/calculation, based upon which the amount of the assessed taxes/fee payments equals to amount of estimated assessment.
- Estimated assessment may be changed by correction assessment:
 - By decision of the tax authority, based on the results of the tax inspection;
 - By decision of the tax authority or court, in case of groundless reduction of tax amount on taxpayer's tax card;

- When automatic filing has not been made - By submitting the tax return/calculation by a person. In such case, tax return/calculation is deemed as submitted late.
- Notice regarding the estimated assessment is sent/presented to the taxpayer in written or electronically.
- Taxpayer is entitled to appeal estimated assessment only if such assessment is caused by groundless reduction of tax amount on taxpayer's tax card.
- Amendment has not affected provisions regarding the form of tax notice, terms of sending it to the taxpayer and presenting corrected tax notice to the taxpayer.

- Amendment affected the issuance of VAT invoices as well. In particular, tax authority is entitled to suspend the taxpayer from issuing/approving VAT invoices or distributing them in material form:
 - In case of revealing characteristics of non-commodity operations or fictitious transactions. In such case, the case materials are transferred to the corresponding investigative body;
 - Upon request of corresponding investigative body (in connection with the criminal cases prosecuted by it).
- In the above-mentioned cases, the taxpayer will not be fined for not issuing VAT invoices.
- The suspension regarding the issuance/acknowledgment/release of VAT invoices is cancelled by the request of the corresponding investigative body (in connection with the criminal cases prosecuted by it) or if the existence of non-commodity operations or fictitious transactions was not confirmed by investigation.
- Above-mentioned stipulations regarding the VAT invoices also apply to the tax documents as well.

Amendment regarding the usage of Waybills

According to the amendments dated 30 July 2019:

- When transporting municipal waste (paper, glass, plastic and metal (aluminum cans)) separately collected according to the Waste Management Code of Georgia, using Waybill is not mandatory.

Amendments to the Order N994 of Minister of Finance of Georgia

Order regulated the cases of detecting the counterfeiting goods by the tax authority

According to the Public Ruling dated 16 July 2019:

- New norm was added to the Order, which regulated the specific type of tax offence – detection by administrative body of unlawful use of trade (service) marks or other commercial designations.
- The holder of the exclusive right or his representative may apply to the tax authority with a request to detect and prevent such violation.
- Application characteristics and list of attached documents, seizure/sealing/storage/affixing procedures of goods, grounds to issue act, its procedure and terms were defined under the Order.

Source: Legislative Herald of Georgia, 14 August 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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