

Tax and Legal Newsletter

Tax legislation Updates

No significant amendments have been made in Georgian Tax Legislation in August, 2018.

Important Court Cases

Tbilisi City Court has made an important decision regarding personal data protection.

The plaintiff was the State Services Development Agency (Agency), and the Respondent - Limited Liability Company (LLC). The dispute was related to a contract which was signed between the plaintiff and the defendant on the delivery of information on the physical persons from the electronic database of the Agency. The Agency accused LLC of breaking the contract for which the penalty amounted to 500 GEL. The complainant pointed out that the defendant violated the article of the contract, which envisaged the obligation to obtain consent from individuals to process their personal data (Article 5 (a) of the Law on Personal Data Protection).

The Court has established that the information submitted to the LEPL State Services Development Agency by the LLC about 17 persons, including 15 written consents, cannot be considered as the lawful consents.

According to the subparagraph "G" of Article 2 of the Law on Protection of Personal Data, a "consent" means a voluntary consent of a data subject, after receipt of the respective information, on his/her personal data processing for specific purposes expressed orally, through telecommunication or other appropriate

means, which enables clearly establishing the will of the data subject. According to the subparagraph "H" of Article 2 of the Law on Protection of Personal Data, written consent of the data subject means a voluntary consent expressed by a data subject, after receipt of the respective information on his/her personal data processing for specific purposes, which was signed or otherwise acknowledged by the data subject in writing or in any other equivalent form.

The consent expressed by the data subject, shall be voluntary and consciousness. The data subject shall be fully informed. The informed consent implies that the data subject expresses consent after receiving the relevant information: the information must be provided in advance and in full, otherwise the consent expressed by her/him may not be considered voluntarily expressed and conscious.

In the case of written consents of 15 individuals submitted by LLC, there is no confirmation that the consents were issued by informed individuals before requesting the personal data, since the written consents are not dated and it is impossible to determine whether these consents from the physical persons are received in advance or not.

In addition, the text of the written consents are not perfectly established - the contents of the text do not show that full information is provided to the individual. Subparagraph "G" of Article 2 of the Law on Protection of Personal Data says that a "consent" means a voluntary consent of a data subject, after receipt of the respective information, on his/her personal data processing for specific purposes expressed orally, through telecommunication or other appropriate means, which enables clearly establishing the will of the data subject. Consequently, in the written consent must be perfectly and clearly visible who and for which



purpose is authorised to obtain the personal information, process or verify the personal data.

According to the agreement, LLC was equipped with more powers regarding requesting and processing personal data than individuals expressed in their consents.

Furthermore, Article 4 of the Law of Georgia on Personal Data Protection defines the principles of data processing. According to this article, data may be processed only for specific, clearly defined and legitimate purposes. Further processing of data for purposes that are incompatible with the original purpose shall be inadmissible; data may be processed only to the extent necessary to achieve the respective legitimate purpose. The data must be adequate and proportionate to the purpose for which they are processed.

The principles stated by the law are neglected by the LLC as long as they retain unlimited authority over personal data, since it has no clear goal and the capacity required for achieving the appropriate intention.

Accordingly, the claim was satisfied and the defendant was imposed to pay the penalty in the requested amount.



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Contact Information

Baker Tilly Georgia Ltd, 44, Abkhazi St.
(Meidan Palace BC) 0105, Tbilisi.
(+ 995 32) 2438 999
office@bakertillygeorgia.ge
www.bakertillygeorgia.ge

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