

## Tax and Legal Newsletter

### Upcoming Changes in Tax legislation

On 16 December 2016 new amendment of tax code was adopted by Georgian Parliament, which shall enter in force from 1 January 2017. We would like to single out the most important ones:

#### VAT

From January 1<sup>st</sup>, 2017, advanced payment shall be taxable turnover and subject to issuance a tax invoice. On this basis the recipient shall credit the VAT.

#### Excise

From January 1<sup>st</sup>, 2017, shall increase excise rate on tobacco products, light vehicles, oil products and natural gas.

#### Property

From January 1<sup>st</sup>, 2017, besides of immovable property tax, individuals shall be subject to light vehicle tax.

### Upcoming other Legal Updates

#### Law of Georgia on Entrepreneurs

From January 2017, there are number of upcoming updates in Georgian legislation. New important article will be added to the Georgian Law on Entrepreneurs.

Article 13<sup>1</sup> will regulate setting up of Audit committee at the Supervisory Board of a Person of Public Interest (the "PPI"). Members of Audit Committee shall be elected by the Supervisory Board from its composition.

At a PPI where there is no Supervisory Board, an independent Audit Committee shall be set up, members of which will be independent persons elected by a General Meeting for a definite term. According to this article the Audit Committee shall have the following functions:

- Submission to the Supervisory Board, and in the absence thereof – to the General Meeting, information regarding the results of the audit conducted, the effect of the audit on the fairness of financial statements, and the involvement of the audit committee in this process;
- Making recommendations for ensuring the fairness of financial statements, and for the auditor/audit firm to be selected by the general meeting;



- Regularly submission to the Supervisory Board, and in the absence thereof – to the General Meeting, an activity report, and giving immediately notifications about the hindrances created during the exercise of their functions;

Article 13<sup>1</sup> of Law of Georgia on Entrepreneurs shall not apply to commercial banks, whose activities are regulated under the Law of Georgia on Commercial Bank Activities; accountable enterprises, whose activities are regulated under the Law of Georgia on Securities Market; insurers, whose activities are regulated under the Law of Georgia on Insurance; and founders of non-state pension schemes, whose activities are regulated under the Law of Georgia on Non-State Pension Insurance and Provision.

## Important Court Cases

On November 11<sup>th</sup>, 2016 Court of Appeal made an interesting decision regarding using of provisional measures, namely, seizure of real property, before filing the claim.

The plaintiff (commercial bank) claims against an individual with an indebtedness and intends to seize mortgaged real property of the latter.

Court of Appeals reviewed the application regarding seizure of the real property and partially satisfied it. The court had discussion regarding expediency of seizing of real property as a provisional measure and concluded the following:

- Despite the fact that in the certain circumstances there are grounds for application of provisional measures, in each specific case the court should consider legitimate interests of both parties.
- No rights and legitimate interests of the defendant should be violated. Application of provisional measures shall be implemented by limitation/circumscription of defendant's legitimate interests to the extent appropriate and necessary for protection legitimate interests of plaintiff.
- For keeping fair balance between the legitimate interests of both parties, inappropriate and disproportionate application of provisional measures shall be excluded;
- Seizure of property means description of the property and restriction the owner management as follows – any form of transfer, mortgage, usufruct, easement, superficies, lend, rent or lease.

- In this particular case, legitimate interest of the plaintiff is to maintain ownership of real property of the defendant. For this purpose, it is quite sufficient to restrict the defendant to mortgage and alienate the real property;
- Therefore, provided that protection of the plaintiff's legitimate interests could be less harmful for the defendant, the court made a decision not to seize real property of the owner;
- By restriction the owner to mortgage or alienate the real property: on the one hand, in order to protect subject of the claim, legitimate interests of the plaintiff shall be protected, and on the other hand, legitimate interests of the defendant shall not be infringed; Application of provisional measures in such manner shall insure fair balance between the interests of both parties;

Based on the abovementioned considerations, Court of Appeals partially satisfied the application regarding using of provisional measures before filing the claim. With the decision the owner was banned to sell or mortgage the real property. Application of the petitioner regarding seizure the property was denied.

Full text of the decision on case № 28/5926-16 is available on the web-page of Court of Appeals.



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