

Tax and Legal Newsletter

Tax legislation Updates

In December, 2018, the following amendments in Tax Code of Georgia have been initiated in Parliament of Georgia:

According to the draft law, an enterprise that performs the activities determined by the Government of Georgia may be granted status of the international company. Entities, with such status will benefit from tax privileges. In particular, the international company performing activity provided by the resolution of Government of Georgia will be exempted from VAT. International company will not have obligation to tax at source of payment wages of hired persons. A foreign citizen who is a resident of Georgia (at the same time is not a resident of the country of its citizenship) will be exempt from income tax provided that its wages are received from the international company. The international company will be subject to profit tax at a 5% rate and the dividends issued by the international company will be exempt from tax. An international company shall be exempt from property taxes (except land plot tax) if this property is intended or used for the work permitted by the Decree of Government of Georgia.

The draft law specifies that if the person conducts non-monetary payments/transfers provided by Articles 98¹-98⁴ of Tax Code, market price excluding VAT (if this price includes VAT) of goods/services provided will be subject to profit tax.

According to the draft law, the transfer of assets to a legal entity by an individual, in exchange for a 50

percent or more shares, is not considered as supply of assets.

Pursuant to the draft law, from 2019, the microfinance organizations, like banks, will be eligible to deduct the possible losses reserves of loans, as determined by the National Bank.

Important Court Cases

The Supreme Court of Georgia has made an interesting decision regarding return of the performance and compensation for damages.

The plaintiff was an individual who had signed four agreements with the defendant legal entity. The agreements were named Real Property Purchase Agreement but actually they were Contracts for Work as the defendant had liability to build residential apartments and parking places and give them to the plaintiff's ownership.

The total value of the contracts had been determined in the amount of USD 1 165 541.

The plaintiff paid advance payment in the amount of 786 656.45 USD equivalent to the GEL. The rest of the amount was not paid.

The defendant sent contract termination letter to the plaintiff due to a violation of the obligation.

The plaintiff claimed for refund and remuneration for unearned income, which he would have received on an annual deposit of 9%.

The first and second instance court satisfied the claim.

The Court of Cassation changed resolution of Court of Appeal and partially satisfied the claim for the following reasons:

- The Cassation Court noted that does not share opinion of the Court of Appeal regarding qualifying agreements as the preliminary purchase agreements and explained that the agreements do not include the characteristic signs of rights and obligations of the purchase agreement. In the determination of a separate type of contract, first of all, the essential rights and obligations that the parties acquire must be considered, name of the agreement is irrelevant. Since the subject of contracts is the result of labor activity, we are dealing with Contract for Work.
 - If one of the parties to a bilateral contract breaches a contractual obligation, then the other party to the contract may repudiate the contract if the obligation is not performed within an additional period of time fixed by it. An additional period of time need not be fixed or a warning need not be issued when it is obvious that it will yield no results.
 - Based on foregoing the Cassation Chamber considers that reimbursement of 786 656.45 USD to the plaintiff is legitimate, since the legal outcome of termination of the contract is restitution.
 - In the present case, a contractor who has obligation of restitution shall refund the money paid by the plaintiff for construction of real property.
- Plaintiff's second request was compensation damages. In order to determine the fact of damage caused by the breaching of restitution obligation, it is important to find out when the parties should have fulfilled their obligations.
 - In the present case, the parties have determined that the amount paid in advance will be returned to the buyer immediately after the sale of the real properties to the third party.
 - Based on the above discussion, the Cassation Chamber considers that the damage caused by the violation of the restitution obligation shall be reimbursed not from the moment of termination, but from the moment of sale of properties to the third parties.

This decision is available on the web-page of Supreme Court of Georgia, with the case number - 56-667-634-2014 .



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