

## Tax Legislation Updates

No significant amendments have been made in Georgian Tax Legislation in January, 2019.

## Other Legal Updates

### Pension Reform

On January 1, 2019, the most important part of Law on Accumulative Pension of Georgia has entered into legal force.

Transfer of money to the accumulative pension account and its declaration shall be conducted immediately, otherwise the wage issuer or self-employer (in case of participant self-employer) will have material liability for the first time of breach - in the amount of 500 GEL and in case of repeated violation - 1000 GEL.

## Important Court Cases

Tbilisi Court of Appeals has made an important decision regarding imposition of penalty and inadmissibility of requesting of payment penalty and fulfilment of the obligation simultaneously.

The Chamber of Appeals explained that the penalty is a provisional measure of the demand that the debtor pays in cash if it fails to fulfil the obligation timely or otherwise breaches the agreement. Thus, the existence of the following prerequisites is necessary for the imposition of penalty, in particular, according to the Civil Code of Georgia, the penalty may only be a monetary amount. In addition, the amount of money should be identified. There should be a certain agreement on a certain amount of money in the form of a penalty. The agreement requires a written form. Prerequisite for the use of the penalty as a provisional measure of the demand is the failure to fulfil the obligation or liability. The aim of the penalty is to prevent the failure to fulfil the obligation or the liability, and in case of violation of the obligation ensuring reimbursement of "presumed minimal damage" which does not represent the equivalent amount of actual damages and does not actually compensate for the damages. Consequently, the demand of fulfilment of the obligation in parallel with the demand of a penalty is inadmissible if the violation is not in delay, in such case the demand of reimbursement of damages with the penalty is quite possible. Main function of penalty is ensuring enforcement of obligation. It is a lever of creditor to carry out "pressure" on the debtor for the purpose of fulfilment of the obligation, and in case of failure to fulfil the obligation or in improper performance, the creditor is exempt from the burden of proof of damages.

The Chamber considered it appropriate to draw special attention to the conclusion of the first instance court, which implies that it is inadmissible to request the fulfilment the obligation and the imposition of a penalty at the same time. Chamber approved the conclusion of the court of first instance, however, it added that, Civil Code establishes imposition of agreed penalty in case of improper performance of liability, consequently, imposition a penalty in case of

improper fulfilment of the obligation is lawful and legitimate.

In the context of Article 419 of the Civil Code of Georgia, the creditor is not able to demand the proper execution of the obligation and payment of penalty simultaneously. In case of improper fulfilment of the obligation the demand of a penalty is excluded when the creditor demands a fair performance instead of improper performance.

The Civil Code of Georgia gives a possibility to reduce the penalty. The Court has the right to reduce the penalty. This is a rare exception when the law considers interference in contractual freedom as

admissible. However, such interference is subject to certain restrictions. As a result of the literal interpretation of the law, high penalty can not be decreased. Only "irrelevant high" penalty can be subject to decrease. Inadequacy of the penalty shall be established case by case. In addition, for the purposes of the assessment, the obvious inconsistency of penalty with the outcome of the obligation violation should be considered, Which may arise from a particularly high percentage of the penalty, from the insignificant amount of damage, short term of liability violation, etc. Burden of proof regarding the "obvious discrepancy" of the penalty will be on a party asking for its reduction.

### Contact information

bakertilly  
7 Bambis Rigi, 0105, Tbilisi.  
(+995 32) 2438 999

office@bakertilly.ge  
www.bakertilly.ge

This newsletter contains information about Legal, Tax and court practice latest updates. Every effort is made to provide accurate and complete information. However, Baker Tilly Georgia cannot guarantee that there will be no errors. These informational materials are not intended, and should not be taken, as legal or tax advice on any particular set of facts or circumstances. Please, contact our professionals for specific Tax or Legal issues.

Baker Tilly Georgia Ltd trading as Baker Tilly is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities.