

Tax Legislation Updates

The planned amendment to the Tax Code of Georgia envisages postponing the obligation to use cash registers until January 1, 2023, for individuals who do not use hired persons and carries out economic activities from a non-stationary trading area in a market place, including a counter. This Regulation does not apply to individuals who have been granted small business status, or who are registered or are required to register as a VAT payer.

Other Legal Updates

In order to support the development of financial and capital markets in Georgia, the government has initiated a package of legislative changes, the main legislative novelty of which is the draft law on Financial Collateral, Netting and Derivatives. Amendments are also planned in the Civil Code, Civil Procedure Code, The Law on Insolvency Proceedings, The law on International Private Law, Law on Enforcement Proceedings and other legislative acts.

Draft Law on Financial Collateral, Netting and Derivatives

The bill is based on the Modal Netting Act developed by the International Swaps and Derivatives Association. In order to establish more legal guarantees and safeguards for the transactions on the financial markets, the bill introduces the notion of financial collateral. For the minimization of drawbacks, derived from the changes of interest rates or exchange rates of the currencies, the draft law establishes the regulations for the use of derivatives.

All transactions that may be concluded directly within the framework of financial and capital markets, will be subject to special regulation by new

law and in addition to the general rules of the Civil Code of Georgia the provisions of special law will be applicable as well. Such transactions include: derivative agreements (options, futures, swaps and forwards), repurchase or reverse repurchase agreements, financial collateral agreements (including title transfer collateral arrangement and financial collateral of guarantee), a securities lending agreement or a securities buy/sell-back agreement and others.

Financial Collateral

The financial instruments, credit claims and cash (or money) deposited into the account are related to the subject matter of financial collateral by the draft law. One of the parties to the financial collateral arrangement, in any case should be: public institutions, the National Bank of Georgia, foreign central banks, international financial institutions, the representatives of financial sector, local or foreign financial institutions, investment funds, settlement agents or clearing houses. As for the other party to the contract, it may be any person (other than a natural person), including a partnership or non-legal entity.

The draft law provides for a mandatory written form for arrangements of financial collateral. Another prerequisite for its validity is that the subject of the financial collateral must be controlled by the pledgee, in one of the forms provided by the draft law. As to the title transfer collateral arrangements, it is required for the subject of the collateral to be transferred to the pledgee or a person acting on his behalf. Under the bill, the pledgee will not be able to use the collateral to secure other liabilities, with the certain exceptions.

A special enforceability rule will apply to the financial collateral arrangements. The draft law defines the forms for satisfaction creditors' interests by the financial collateral as realization and appropriation. According to the bill, if after realization of a collateral, the funds are insufficient to fully cover liabilities secured by a financial collateral arrangement, the creditor will enjoy the rights of an unsecured creditor under the legislation of Georgia.

Netting and Derivative

As in the case of a financial collateral, in the case of a derivative, one party to the transaction must necessarily be a public institution, the National Bank of Georgia, a foreign central bank, an international financial institution, a financial sector representative, a local or foreign financial institution, an investment fund, a settlement agent or clearing house. As for the other party to the transaction, it may be any person, including a partnership or a non-legal entity. In case of derivative, a natural person is not excluded from the transaction participants (although during passing the bill, the natural persons can also be excluded from the transaction parties).

Unlike financial collateral, a derivative agreement can be concluded both verbally and in writing. In case of verbal form, it should be possible to determine the content of derivative transaction.

The draft law entitles the parties to the contract to choose applicable law for derivative transactions; it also establishes a legal guarantee to ensure the validity and enforceability of such transactions.

Planned Changes to the Civil Code of Georgia

Among the changes, provided for in the bill, it is important that it distinguishes the penalties and the payment or delivery of the net obligations, under a netting agreement and indicates that the latter should not be treated as a penalty or other form of

sanction. The bill also separates derivatives and insurance agreements.

The important novelty in the civil code is that issuing loan or advance payment for the intentional purpose of playing or betting no longer will give rise to the right to claim.

Amendments to the Civil Procedure Code of Georgia

According to the amendment to the Civil Procedure Code of Georgia, the application of the interim measures for securing the claim will be prohibited on the subject of financial collateral, as well as on the account of the participant of tax system and tax service. The amendment does not envisage a restriction on the use of such measures for securing the enforceability of the decision, although insofar as such a restriction is provided for in the Draft Law of Georgia on Financial Collateral, Netting and Derivatives, the relevant amendment should also be reflected in the Code of Civil Procedure.

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