

Tax Legislation Updates

No significant amendments have been made in Georgian Tax Legislation in March 2020.

Decree #1 of the President of Georgia of 21 March 2020 on the Measures of State Emergency Throughout the Territory of Georgia

On 21 March 2020 the president of Georgia adopted the decree #1 on the measures of state emergency throughout the territory of Georgia, which contemplated the restrictions on the set of human rights envisaged by the Constitution of Georgia. Provided that the scope and the purpose of the President's decree will be preserved, the following rights have been restricted by the decree: right to freedom, free movement, privacy (in terms of the right to meet the prisoners), fair administrative proceedings and right to recover the damage from the acts and omissions of the state authorities, property right, right to manifestations and gatherings as well as the labour rights. Failure to comply with the President's decree will result in fines of GEL 3,000 for individuals and GEL 15,000 for legal entities. At the same time, in case of repetition of administrative offense, criminal penalty shall be imposed on a person with imprisonment for up to three years term.

The Government of Georgia's Resolution #181 of 23 March 2020

The Government of Georgia's Resolution # 181 of 23 March 2020 on Approval of Measures to Prevent the spread of New Coronavirus in Georgia envisages more detailed regulations in relation to the measures to be taken during an emergency. According to the

aforementioned resolution, until April 21, 2020 the following activities have been suspended or restricted:

- the educational process, except for distance learning;
- holding trainings, conferences and seminars other than through online form;
- cultural and sports events both indoors and outdoors;
- gathering in a public space, with the certain exceptions; also, assembly and manifestation has been prohibited;
- supply and/or sale of any goods other than food, goods with medical prescriptions, electricity, gas, water and fuel;
- activities of restaurants and clubs, except providing delivery services;

Restrictions on private property rights have been imposed through government's resolution and the additional responsibilities for public authorities and private organizations have been anticipated.

The Impact of State Restrictions Imposed for the Prevention of the Spread of New Coronavirus on Employee's Remuneration

The spread of new coronavirus (COVID-19) throughout the world has impacted not only the health and lives of population, but also their employment rights. The same is to be said in case of Georgia. In addition to the recommendations made by health care organizations to circumvent gathering in the common area for the purposes of social distancing, such restrictions have been imposed through government's resolution # 181 of March 23, 2020. According to article 5, paragraph 2, gathering together of more than 10 persons in public space is forbidden. In turn, public space is defined as

any space (both indoors and outdoors), unless it is a place for private use by individuals. Accordingly, organizations with a staff of more than ten persons, whose work is connected with performing their functions within one working space are subject to the restrictions imposed by the above regulation. Violation of the restrictions will give rise to penalty for the organizations in amount of GEL 15,000. This restriction shall not apply to organizations, carrying out activities facilitating public and state needs.

It is important how the employers should treat their employees during the existence of current extraordinary circumstances. A solution might be provision labour activities from distance, through online software, however, for most jobs, online provision of work will be inconsistent with their specific areas of work. Appropriately, it will give rise to the objective impossibility in performing their labour obligations, thus facing remuneration related uncertainties.

Some employers have decided to apply for their employees the terms of unpaid leave of absence, however the legal grounds for application those terms seems to be unsubstantiated. Article 21, paragraph 2 of the organic law of Georgia, Labor code of Georgia **an employee shall have the right** to enjoy an unpaid leave of absence of at least 15 calendar days annually. Accordingly, the labor code envisages the right of employee in leu of employer to enjoy an unpaid leave of absence. Therefore, compelling employee to enjoy an unpaid leave of absence without his or her request, contradicts the said provision of Labour code.

The Labor Code also provides for the grounds for suspension of labor relations, whereby the employee will not be paid. However, the list provided by the Code, which is an exhaustive, does not provide a basis for suspension labor relations in case of force-majeure.

The most dramatic adjustment for labor relations in the current emergency situation may be the application of article 37 (1) (a) of the Organic Law Labor Code of Georgia, which envisages that if economic circumstances, technological or organizational changes make it necessary to reduce the workforce the labor relations may be terminated. In this case the preconditions for termination of the labour relations (i.e. notifying and payment of compensation) should be observed.

It is suggested¹ that the case of self-isolation or quarantine equals the temporary disability of the employee, which entitles the employee to receive monetary support. However, there are many employees beyond self-isolation and quarantine

regimes and are objectively deprived the ability to perform their duties due to state restrictions. It is also noteworthy that the Georgian Labor Code considers temporary disability as a ground for suspending labour relationship, provided that the employee is not compensated by the employer unless otherwise agreed by the parties in the contract.

The Labor Code of Georgia also provides for the notion of idle time, which envisages the remuneration issues in the cases for idle time through the fault of either employer or employee. According to the article 32 (1) of the Labour Code, unless otherwise provided by the employment agreement, an employee shall be fully remunerated for the idle time through the fault of an employer. The second paragraph of the same article stipulates that the idle time through the fault of an employee will not be remunerated. Generally, idle time is caused by the objective events, hindering the employer or employee to perform their ordinary obligations undertaken by the labour agreement. Accordingly, state restrictions prohibiting gathering of more than ten persons within the common area may amount the idle time. Although the Labour Code focuses solely on the fault of the employer and the employee, after logical interpretation of the norm, it may be concluded that any idle time where each of the representative of labour relation is unfaulty the remuneration issue should be decided vice versa. However, it can't be concluded from the Labour Code, whether the remuneration should be paid or not when the idle time is beyond employer's and employee's control and none of them is faulty in causing it. There is, of course, no court practice in this respect, and therefore the employer's refusal to remunerate on the grounds that idle time is not caused by his fault may in future be subject to judicial review, which should assess the issue of remuneration in case of force-majeure.

¹ <https://www.pwc.com/ge/en.html>

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.