

Tax Legislation Updates

In March 2021, no significant changes were made to the Georgian tax legislation.

Important Ruling of the Constitutional Court of Georgia

The Constitutional Court has made an important decision regarding the delegation of powers to the Government of Georgia under the Law on Public Health.

The authors of the constitutional complaint pointed out that the Constitution of Georgia establishes the obligation to regulate labour rights on the basis of organic law and, therefore, the restriction of labour rights should be delegated to another body by the Parliament of Georgia in the same way. According to the plaintiffs, the Government of Georgia, instead of organic law, was given the authority to make decisions on the restriction of labour rights on the basis of ordinary law, which contradicts the formal requirements of the first paragraph of Article 26 of the Constitution of Georgia.

The Constitutional Court has clarified that reference to the regulation of an issue by organic law or by ordinary law does not in itself preclude the possibility for the Parliament to delegate the power to regulate the matter to another body, although this should be done directly by the law of similar legitimacy, in this case an organic law. The Constitutional Court did not share the position of the respondent, according to which the organic law, Labor Code of Georgia indicated the possibility of regulating labor rights under special law - in this case, the Law of Georgia on Public Health, and in this regard, delegation of powers was based on organic law. According to the Constitutional Court, such an arrangement is incompatible with the general function and purposes of delegation of authority, as well as with the constitutional logic of regulating a specific issue under organic law. Thus, the Constitutional Court held that the delegation of powers to regulate labor rights to the executive branch was not properly exercised,

which violates the requirements of the first paragraph of Article 26 of the Constitution of Georgia.

Important Judgement of the Supreme Court of Georgia

On March 4, 2021, the Supreme Court of Georgia made an interesting decision, which addresses several important issues:

The moment of concluding the loan agreement - the court clarified that the loan agreement is a unilateral and real agreement. To determine the moment of concluding the contract, not only the agreement between the parties on the essential terms of the contract is sufficient, but also the transfer of the subject of the contract - the generic item to the borrower – is necessary.

Concluding loan agreement alone without the transfer of the subject matter of the contract does not form the loan contract between parties. As a prerequisite for the enforceability and legal force of the loan contract is the actual transfer of money or other generic property to the borrower by the lender, in the event of a dispute, the plaintiff (lender) must prove not only the existence of the loan agreement but also the actual transfer of the item.

Period of Limitation - The issue is interesting in the sense that in the dispute the person specified in the contract of loan and the person actually lending money were different. Since the debtor was required to perform the obligation by the lender, specified in the written loan agreement and not by the de facto lender, the Court of Cassation considered that the period from the date of issuing the loan to the date of the lawsuit exceeded the statute of limitation (even though the lender specified in the written agreement had submitted his pretension within the limitation period).

The court stated that by imposing the statute of limitations, the legislature intended to exclude the risk of disproportionate or abusive exercise of the creditor's rights. In addition: a) the statute of limitations mitigates the process of establishing and examining the facts by the court and, in this way, facilitates delivery of a reasoned judgement; b) contributes to the stabilization of business transactions; c) strengthens the mutual

control of the parties of legal relations and stimulates the immediate restoration of the violated rights.

Non-reversal of the judgment (non reformacio in pejus)
- The Court of Cassation explained that even though the court may be convinced that the part of the lower court's decision, which is not objected, is inaccurate and is delivered in favour of the appellant, the court cannot overturn the appealed decision in that part. Accordingly, although the court found that there were circumstances hindering the claim due to statute of limitations, the part of the plaintiff's claim which was granted by the appellate court and which the respondent did not appeal was reaffirmed.

Request for costs of the proceedings at the main hearing - the court explained that the procedural law does not recognize any special type of proceedings for the consideration of the issue of costs of the proceedings, except in the cases provided for in article

261 of the Code. The court can always decide on the costs of the proceedings, if requested by the parties and confirmed by appropriate evidences. The parties must indicate the request for reimbursement of the costs of the proceedings together with the main claim, otherwise it is assumed that they have no claim for the costs of the proceedings. However, the parties should not be restricted from the right to claim the costs of the proceedings after the preparation of the case, or at the stage of consideration of the case in a higher court, if the issue of costs arose at this stage of and the party was not objectively aware of it. Thus, the Court of Cassation granted the request of the party to charge the costs of the proceedings to the other party at the cassation stage.

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