

## **Tax Legislation Updates**

### **Changes in the Tax Code**

On April 5, 2023 the Parliament of Georgia adopted amendments to the Tax Code of Georgia, according to which:

1. The procedure for publication of the document to the enterprise/organization has been changed. The tax authority has the right to publicise the document, if the taxpayer (except for an individual) has not acquainted with the document within 30 days, from the moment the document is sent by the tax authority to the taxpayer in electronic form through the website of the official authorized user of the Revenue Service. The mentioned amendment will come into effect immediately after its promulgation.

2. An amendment was made to Article 89, according to which, if a person applies to the tax authority to cancel the small business status before the end of the calendar year, the status will be considered cancelled from the first day of the month following the month of the request. Before the relevant amendment, the status of a small business based on a personal statement was cancelled from the beginning of the following calendar year. The said change will come into effect on January 1, 2024.

3. For a non-entrepreneurial individual who does not make deductions from the income received from the sale of an asset, the accounting period for taxation with income tax was determined to be a calendar month instead of a calendar year, and the deadline for submitting an income tax return shall be no later than the 15th day of the month following the accounting month. The mentioned amendment will come into effect immediately after its promulgation.

4. The excise duty rate on several types of goods has been increased. Also, several goods were added to the goods subject to excise duty.

5. From the entry into the free circulation procedure of a passenger vehicle specified in code 8703 of the National Classification of Goods or a motorcycle (including a moped) specified in code 8711, if this means of transport is registered in the export procedure within 180 calendar days and leaves the territory of Georgia, the importer will be authorized in accordance with the established rule to recover the excise duty paid on this vehicle in the amount of 100 percent.

6. A new type of tax offense was defined - failure to submit information about hired persons in the register of hired persons (Article 288<sup>5</sup>). The measure of responsibility for entering incorrect/incomplete information in the register of hired persons is determined in the amount of 200 GEL for each hired person. The mentioned amendment will come into effect immediately after its promulgation.

7. The list of tax offenses for which a warning can be used instead of a fine is increased. In particular, to the list of tax offenses provided for by Article 270, Part 7 of the Tax Code, for which a warning can be used instead of a monetary fine, cases of violation of the rule of registration as a tax payer and failure to submit information about hired persons to the register of hired persons are added. The said change will come into effect immediately after its publication.

In addition to the above-mentioned issues, the changes made in the Tax Code include other issues, which can be found in detail through the link below:

<https://www.matsne.gov.ge/ka/document/view/5771372?publication=0>

### **Amendment to the Order No. 996 of December 31, 2010 of the Minister of Finance of Georgia "On Tax Administration"**

According to the order No. 135 of the Minister of Finance of Georgia, an amendment was made to the order No. 996 of the Minister of Finance of Georgia dated December 31, 2010 "On Tax Administration",

which came into effect from April 20, 2023. With the relevant amendment, the existing edition of the order was edited in several parts, mainly the amendment relates to the rule for determining the retail sales price for the purpose of calculating the amount of excise duty on tobacco products.

## **Important Ruling of the Constitutional Court of Georgia**

According to the Judgement of the Constitutional Court of Georgia of April 11, 2023, the rule of the Civil Procedure Code, which allowed the immediate enforcement of the decision of the first instance court in relation to contractual disputes, if the contract provided for the possibility of immediate enforcement, was declared unconstitutional.

The constitutionality of the first and second sentences of Article 268, Section 1<sup>1</sup> and the second sentence of Article 269 of the Georgian Civil Procedure Code in relation to the first paragraph of Article 31 of the Constitution of Georgia was disputed by constitutional lawsuits.

The plaintiffs in the case "Ikhtiosi LLC", Zaza Pataridze, Nikoloz Beriashvili, Shalva Oniani, Vakhtang Kobeshavidze and Manana Kharkheli v. the Parliament of Georgia, considered that the issue of enforcement of the decision made by the court of first instance before the final decision on the case is problematic, because based on the contested rule, the right to effectively appeal the first instance court's decision is limited, which is a legal component of a fair trial confirmed by the first paragraph of Article 31 of the Constitution of Georgia. Accordingly, according to the position of the plaintiffs, the disputed regulation, from this point of view, violated the first paragraph of Article 31 of the Constitution of Georgia.

The plaintiffs also argued that the opportunity given to the court by the second sentence of Article 269 of the Code of Civil Procedure to consider and decide the issue of immediate enforcement of the decision without conducting an oral pleading and hearing the arguments of the parties on this issue, violates the right to a fair trial protected by Article 31, paragraph one of the Constitution.

The Constitutional Court pointed out that although the enforcement of the decision of the court of first

instance, as a rule, cannot hinder the full examination and proper adjudication of the case by the appellate court, however, the right to a fair trial also requires that the decision made by the court effectively protects the interests of the person. Therefore, the right of appeal ensures that the decision of the court of first instance does not impose such a result, which, by its nature, will be irreversible, which cannot be corrected even by the decision of the appellate court.

The Constitutional Court underlined that although the court's decision on immediate execution is subject to appeal, the execution of the decision of the first instance court is not stopped until the relevant decision is made by the appellate court. The Constitutional Court pointed out that in accordance with the current legislation, a decision can be enforced, the written substantiation of which, as a rule, does not exist at the time of the decision being enforced. Its appeal is related to the delivery of a reasoned decision to the defendant and the preparation of a corresponding complaint. Therefore, it may take several months before the decision is appealed and the appeal is heard by a higher court. Thus, according to the Constitutional Court, the contested norm created a real possibility of enforcement of the decision of the court of first instance before the appellate court deliberated on the issue of irreparable result of an immediate enforcement. The mentioned situation, in some cases, makes it pointless the further consideration and deliberation of the appeal. In case the appeal court decides the issue differently from the first instance court, it might not be possible to enforce the decision, because it would not be practically applicable.

Accordingly, the court considered that the disputed regulation limited the possibility of an effective appeal of the decision of the court of first instance, and also the decision of the court of appeal in favour of the appellant, depending on the individual characteristics of the case, may not ensure the restitution of the person and, as a result, there was a risk that the appeal itself would become a legislative formality with no real effect.

The court further noted that although the parties to the agreement can determine the content of the agreement based on the principle of autonomy of will, allowing that the requirements of the right to a fair trial do not apply to a person just because he/she agreed to do so in the agreement, contradicts the essence of the right of fair trial itself. The Constitution guarantees the access to an effective court, therefore, the effectiveness of the court that hears the case cannot depend on the agreement of two private individuals.

Based on the above, the condition that limits effective access to the court (including the appellate court) is incompatible with the right to a fair trial itself.

Considering the above, the Constitutional Court pointed out that it is important to achieve a fair balance, that the decision of the first instance court is not executed until the Court of Appeals evaluates the impact of the results of immediate execution on the effectiveness of its own decision and discusses the possibility of the use of a interim measure.

The Constitutional Court also evaluated the issue of the constitutionality of Article 269, sentence 2 of the Civil Procedure Code of Georgia, which regulates the procedure for considering the issue of immediate enforcement of the decision, in particular, according to the disputed norm, if the issue of immediate enforcement of the decision was not discussed at the meeting held in connection with the announcement of the judgement, it should be discussed without an oral hearing. Thus, the contested regulation allowed the possibility of consideration of the issue of immediate enforcement without an oral hearing. According to the court's assessment, consideration of the issue by means of an oral hearing is the most important legal component of a fair trial, therefore the disputed norm prevented its realization, which is why the Constitutional Court of Georgia considered that there was a limitation of the right to a fair trial protected by the first paragraph of Article 31 of the Constitution of Georgia.

In this context, the Constitutional Court of Georgia pointed out that "the economy of the process, as well as the prevention of artificial overloading of the court, which ultimately has a negative impact on the quality of justice, are the most important legitimate goals, since the protection of each of them also serves the purpose of effectively enjoyment of the right to a fair trial. However, the need to protect these interests cannot justify the consideration of cases without an oral hearing, if this results in the violation of the rights of specific persons, the impossibility of protecting their rights". Thus, the Constitutional Court considered that the interest of the person, that the issue of immediate enforcement of the decision should not be resolved without an oral hearing, is significantly greater than the interest of the other party participating in the civil legal proceedings on the economy of the process and speedy justice.

The Constitutional Court of Georgia considered that for the implementation of the court's decision, the legislator should be given a reasonable period of time to make the necessary changes and regulate the disputed issue in a new way, so as not to endanger the legal interest of the parties. Accordingly, the first and second sentences of Article 268, Section 1<sup>1</sup> of the Civil Procedure Code of Georgia have been declared invalid from October 1, 2023.

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