

Tax and Legal Newsletter

Tax legislation Updates

No significant amendments have been made in Georgian Tax Legislation in November, 2018.

Other Legal Updates

Amendment in Pension Reform

Draft amendments to the Law of Georgia on Accumulative Pensions, which enters into force since January, 2019, has been submitted In the Parliament of Georgia. In case of approval of this project, the name of the law will be changed to - Law of Georgia on "Solidarity Between Generations and Accumulative Pension". The new concept is introduced in the draft law – System of solidarity between generations. Joining the Generation Solidarity Scheme is mandatory for any employee in the amount of income received as a salary.

According to the draft, each employee becomes a member of the accumulative pension scheme upon receiving the first salary after enactment of the law, if more than 12 months are left before its retirement age. The employees have no right to refuse participation in the Accumulative Pension and Generation Solidarity Scheme (according to the current version of the law, employers aged over 40 years have the right to refuse to participation in the scheme). Each self-employed may participate in accumulative pension scheme voluntary.

The draft law also provides different rules for workers on harmful or hazardous work, in particular – employees, working on harmful or hazardous work

are authorised to receive pensions and pension benefits 5 years earlier before retirement age. For such employees, the employer shall transfer to the Pension Fund on the account of Solidarity Between Generations and Accumulative Pension of the person two-point five (2.5 %) percent of the gross salary of employee (instead of 2 percent).

Important Court Cases

The Supreme Court of Georgia has made an interesting decision on annulling the pledge agreement and validity of representative authority.

The plaintiff requested annulment of pledge agreements with bank.

The Plaintiff was a limited liability company registered in Georgia whose founder is a German citizen who has registered the company through a representative (hereinafter "the company"). The trustee of the founder was also appointed as the director of the company.

The defendant was one of the commercial banks of Georgia.

The company's founder transferred on the account of Company 5 558 925 Euros in June and July 2013, and afterwards - 1 441 075 Euros. The director of the Company firstly opened a term deposit in TBC Bank with these funds and then cancelled the deposit agreement and signed new deposited agreement with the respondent bank.

In June 2013, a limited liability company (hereinafter "LLC") was founded in Georgia by the spouse (33%

shareholder) of the above-mentioned company director.

The Director of Company used his authority and made an amendment in the Company charter, entrusting the himself to conclude a pledge contract on behalf of the Company.

Director of the Company used deposit accounts of the Company as provisional measures to secure liabilities of his wife's company in the defendant bank without notifying the partner of the Company.

Company disputes the invalidation of the pledge agreements on the grounds that the director did not have the authority to conclude such agreements.

Courts of first and second instance satisfied the claim. The courts shared opinion that the founder issued Power of Attorney only with the purpose of registration of Company and signing founding documents and the Director was not authorised to register any amendments in the Company's charter without consent of the founder.

The Court of Cassation clarified that the four deposit pledge agreements, which secured fulfilment of the obligation of a third party (the bank's principal debtor), were "unusual" and "harmful" for the Company. Because principal's failure to perform a monetary liability would automatically cause "loss to the company". Consequently, the court concluded that former director of the Company did not act in the company's interests and abused representative authority.

The Supreme Court considered that under the circumstances when the unusual transaction and the damaging nature of the transactions had been concluded, would the bank be aware of the nature of

the unlawful conduct of the former director? How honestly and legitimately was acting Bank when issuing a loan to the third party?

Were the credit risks considered - whether it was a creditworthy credit and whether there were any prerequisites for credit issuance (credit - any commitment to disburse monetary funds in consideration of their repayment, value, security and definite terms).

If the Court of Appeal establishes that the Credit Borrower did not have sufficient revenues at that time, then it was obvious that the bank remained only a pledge, and he had to be conscious of the abuse of the former director. Such action could not satisfy the standards of good faith.

Thus, the Court of Cassation abolished the Decision of Court of Appeals and returned the case to the Second Instance Court to review the case for further investigation.

This decision is available on the web-page of Supreme Court of Georgia, with the case number - 36-1219-1139-2017.



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