

Tax Legislation Updates

There were no significant changes made in the Tax legislation in September.

Other Legal Updates

The Law of Georgia on Mediation

On September 18, 2019, the Parliament of Georgia passed the Law on Mediation with the third reading. Detailed information on the law is provided in our Tax and Legal Update of April 2019. The date of entry into force of a law is determined by January 1, 2020.

Amendments to the Code of Civil Procedure

As a result of passing the law on Mediation, relevant amendments have been made in the Code of Civil Procedure, which determine the additional grounds for recusal of a judge, as well as the restrictions for a representative to participate in the proceedings; in particular, judge or representative, who took part in mediation process as a mediator in the same dispute, may not participate in the civil proceedings. According to the amendments, the amount of state fees is determined: for the provisional measures to secure parties` agreement reached during the mediation proceedings; for the applications, about execution of mediation agreements; for the claims, on which judicial mediation may apply. The amendments establish the norms applicable to judicial mediation, it also determines the types of disputes (which are not exhaustive), subjected to the judicial mediation. Thus, the judicial mediation additionally may apply to a property disputes, the value of which does not exceed GEL 20 000; for banks and microfinance institutions, the value is limited to GEL 10 000 (in the case of a loan or credit agreements only); Labour disputes, disputes arisen from realization co-ownership and non-pecuniary disputes have also been added to the number of disputes that are subject to judicial mediation. In addition, the amendments set out the outcomes of the completion of judicial mediation, as well as the issues related to the enforcement of the

mediation agreement. The amendments will be effective from January 1, 2020.

Special regulations on the protection of minors' rights are added to the Law of Georgia on Civil Procedure, by the amendments of September 20, 2019. The amendments will be effective from January 1, 2020. The postponement of the entry into force of the law is due to the fact that the participants of civil procedures (lawyers, judges, social workers or other professionals) should be trained in the methods of juvenile affairs and other related matters.

Amendments to the Law of Georgia on Accounting, Reporting and Auditing

With the adoption of the Law on Mediation, the relevant amendment will be enacted in the Law of Georgia on Accounting, Reporting and Auditing, in particular the auditor shall be restricted from the right to perform the functions of mediator if he/she provides/provided audit services to the mediation party on the same case or another case substantially related to the same case. The amendment will be effective, after the law on Mediation will enact – from January 1, 2020.

Interesting Court Practice

On July 15, 2019, the administrative chamber of the Supreme Court of Georgia, delivered an interesting judgement, regarding the time limits of an appeal in a tax related legal disputes (case #bs-866-862 (k-17)).

The case was connected with an issue, where the taxpayer received a tax notice before delivering him tax audit report and the decision on assessing the taxes. Accordingly, it was disputed as to which act should commence the statutory time-limit for the taxpayer to appeal.

The Kutaisi Court of Appeal agreed with the opinion of the Revenue Service, according to which rather than tax audit report, the tax notice constitute an individual administrative act, which is based on the tax audit

report. The basis of issuance of tax notice is known to tax payer when the draft or final tax audit report is submitted to him/her. In the Court of Appeal's view, a tax notice is a substantive act, the basis for a payment, with which a tax audit report and the decision on assessing the taxes can be appealed. Accordingly, the court noted that the time limit for appealing, should commence as soon as the tax notice is submitted to the taxpayer, or when it is deemed to have been delivered under the law.

The Court of Cassation did not agree with the opinion of Kutaisi Court of Appeal, referred to the earlier court rulings and noted that the right to appeal involves the presumption that a person is aware of the grounds and the motives of the impugned decision; The time limit for appealing may be commenced only after the person has been afforded an objective opportunity to obtain information on the substance of the administrative decision. An effective and non-illusory mechanism for appealing the decision must be provided to the person (Decision of the Supreme Court of Georgia, 06.10.2016 Nbs770-762 (k-15)). The right to know the content of the decision of a tax authority is a guarantee to the right to fair trial. A qualified appeal of a tax authority's decision can only be made after a detailed examination of the violations revealed during the inspection process.

The Court noted that the tax audit report provides an opportunity to verify the formal validity of the decision, reflecting the circumstances revealed during the inspection process, while the tax notice only contains an indication of the amount to be paid and does not describe the circumstances of the decision on assessing the taxes. Thus, the tax audit report and the decision on assessing the taxes provide an opportunity

to ascertain the correctness of the amounts reflected in the tax notice.

The Court of Cassation further referred to the articles 61 and 268 of the tax code, stating that carefully analysing that articles shows that it is upon tax authority's responsibility to deliver the taxpayer the decision on assessing the taxes and tax notice simultaneously, as the tax audit report and the decision (order) are appealed along with the tax notice issued on the basis of these documents. Otherwise, the time limits shall commence only after delivering these documents (Decision of the Supreme Court of Georgia, 06.10.2016 Nbs 770-762 (k-15)).

The fact that the decision shall be appealed together with the tax notice, confirms the tax authority's obligation to submit the above-mentioned acts simultaneously to the taxpayer, only in such circumstances can the appeal period be calculated from the reviewing the documents by the taxpayer. The tax notice and the decision (order) shall be appealed together if they are delivered to the taxpayer together, in accordance with the procedure established by law.

The court further stated that commencing the time limits from reviewing the tax notice by the taxpayer, without knowing the tax audit report and the decision on assessing the taxes, would oblige the taxpayer to file a formal tax complaint, without proper reasoning and to submit the grounds for appellation after receiving decision.

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