

TAX NEWSLETTER

CHANGES TO THE TAX CODE

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By the Law of President of Georgia (N1182-III, 30.06.2017) following are the amendments made to the particular articles of the Georgian tax code:

PERIOD OF LIMITATION

According to the amendment when the losses are carried forward for 3 years or more, the period of limitation of tax audit, tax accruals and imposing sanctions shall be extended in respect of the tax liability of the calendar year of incurring the loss and should be greater than loss carry-forward period by one year. In this case period of limitation shall commence from the end of the calendar year in which the respective loss arose.

The amendment also determined that period of limitation of tax accruals and imposing sanctions will not be considered as passed if tax authorities issue a notice of tax liability on tax payers' portal before the end of the period of limitation.

The amendment came into the force on 14 July 2017.

DEFINITION OF TERMS

By the amendment, tax liability will be considered as recognized tax arrears if a tax payer refuses by written statement to appeal the decision made by tax body regulating the dispute.

The list of documents necessary for recognition of bad debts was also amended. One of such document could have been a valid decision on denial of the appeal, only the decision should have been issued solely by court. By this amendment such document can now also be issued by arbitration.

According to the previous edition, the main activity of a pawnbroker should have been the issuance of collateral loans. The amendment however defines that the main activity of a pawnbroker should be issuing secured loans (credits).

Amendment shall apply to the legal relations commenced after 1 January 2017 and is effective of 14 July 2017.

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ADJUSTMENTS AND/OR ADDITIONS TO TAX RETURNS

The amendment to the article about adjustments to tax returns defines that notification about tax audit shall also be deemed as delivered to the tax payer as soon as it is reflected on the authorised portal of that tax payer.

The amendment came into force on 14 July 2017.

WITHHOLDING TAX

Few operations are additionally exempt from Income tax:

- ▶ Benefits received from the recognition of the property rights in accordance with the Law of Georgia on “recognition of property rights on land plots in the ownership of natural and private law persons”. Amendment shall apply to the legal relations commenced from 1 January 2017
- ▶ Income received by end-use consumer, also an owner of micro-power plant, from supply of electricity produced in excess to the licensee.

Amendment shall apply to the legal relations commenced from 1 January 2016.

Amendment to the article on taxation of interest at source, which defined that an interest shall be taxed at source only if it is paid to a natural person, organization or non-residents without permanent establishment in Georgia by a non-resident conducting business through a permanent establishment in Georgia or a resident person. Accordingly, when the interest is paid to the company it is not subject of withholding tax at source. The amendment shall apply to the legal relations commenced from 1 January 2017 and is effective of 14 July 2017.

According to previous edition of the article on procedure for withholding tax at source, the obligation to withhold tax at source was assumed on an enterprise/organisation or an entrepreneur natural person who paid compensation for rendered services to natural persons without a taxpayer certificate.

The amendment however stipulates that the tax should be withheld at the source by an enterprise/organisation or an entrepreneur natural person, compensating rendered services to natural persons who are not registered as an individual entrepreneur.

The amendment comes into force on 1 January 2018.

The amendment also defines that the responsibility to withhold tax at source shall be with a withholding agent, who compensates for supplied goods to natural person if no consignment note is issued for transportation of goods. Such income received by natural person is subject to income tax at the rate of 15 per cent. Herewith, list of such goods will be determined by Minister of Finance of Georgia. The amendment comes into force on 1 January 2018.

CORPORATE INCOME TAX

Amendment was made to the articles 98¹-98² of the Tax Code of Georgia:

- ▶ Previous edition stated that payments/disbursements made in cash or in kind at the time of liquidation of a legal entity or at the time of buying out shares/interest, which does not exceed the amount of the contribution made by a shareholder to the capital (authorised and additional paid-in capital) shall not be considered as distribution of income.

According to the amendment for the purposes of this paragraph, further increase of company capital which is caused by payment, by transferring the shares/rights of the same enterprise to the shareholder shall not be considered as contribution to the capital (authorised and additional paid-in capital) by the shareholder

- ▶ Expenses incurred by special trading company for purchasing foreign goods from another special trading company for the amount exceeding the custom value of goods, except those expenses that are not connected to payments to the above-mentioned special trading company, shall not be considered as expenses, not related to economic activity

- ▶ By the amendment purchase of debt securities or shares/interests listed in recognized foreign country stock exchange is no longer subject to taxation by Corporate Income tax

- ▶ List of objects, taxable by corporate income tax, now also includes securing of borrowed loan by partner natural person or by partner non-resident from third person by money deposits made to the bank account.

In that case object of taxation for corporate income tax purposes is equal to the money placed on a bank account in order to secure the loan.

Amendment shall apply to the legal relations commencing from 1 January 2017 and is effective of 14 July 2017.

GROSS INCOME

By the amendment, gross income shall no longer reflect the income received from reduction of duties as well as related fines and penalties, when such reduction is allowed by tax agreement. Same applies to income received by end-use consumer, also an owner of micro-power plant, from supply of electricity produced in excess to the licensee.

Amendment shall apply to the legal relations commencing from 1 January 2014.

EXPENSES RELATED TO EARNING INCOME

Tax payer is entitled to deducting expenses from gross income which are connected to:

- ▶ Receiving profit from supply of debt securities of State, National Bank of Georgia, Legal Entity of Public Law - Deposit Insurance Agency, also international financial institution
- ▶ Receiving Interest profit from these debt securities or distributing this profit
- ▶ Receiving profit from interest on money deposits placed on the National Bank account or distributing this profit

Amendment shall apply to the legal relations commencing from 1 January 2014 and comes into force on 14 July 2017.

INVENTORY WRITE-OFF

According to the amendment the taxpayer is entitled to writing off inventories, which are destroyed/lost due to invincible power (earthquake, flood, landslide, avalanche, fire, accident or other emergency or special circumstance which caused elimination / loss of inventories owned by taxpayer).

The rule of such write-off is determined by the Minister of Finance of Georgia.

Amendment shall come in force on 14 July 2017.

WAREHOUSE TRANSACTIONS AND CUSTOMS WAREHOUSE

Before the amendment the term of storage of goods was unlimited. The amendment now defines this term as limited up to 2 years. The declarer is entitled to prolonging this term by the unlimited period of time insuring that each prolonged term will be up to 2 years.

It was also determined by the amendment that the transfer of licence received from Revenue Service on the warehousing activity to another person shall be prohibited.

The amendment came into force from 14 July 2017.

SECURING TAX COLLECTION COMPLIANCE BY THE TAX AUTHORITY

According to the amendment, if a taxpayer has not concluded the security agreement, submitted bank guarantee or insurance policy or/and has loaded property by tax lien/mortgage in favor of acknowledged tax liability collection, tax liability collection may be postponed by no more than 1 year, in case tax liability is up to GEL50,000.

Prior to the amendment the above amount was estimated at GEL5,000.

The amendment came into force from 14 July 2017.

TAX OFFENCE AND RESPONSIBILITY

Amendments to the regulations of financial sanctions imposed on tax offence constitute the following:

► Understating payable taxes shall be deemed as tax evasion in large amounts and entail responsibility in accordance with the criminal legislation of Georgia only in case understated amount exceeds GEL100,000. Prior to the amendment this amount was estimated at GEL50,000

► From 1 January 2018 penalty shall be imposed on the failure to submit in due course the preliminary information by the persons conducting international air transportation about the means of transport, goods or/and passengers to be transported. The financial sanction for the one-time offence shall be GEL2,000 and GEL4,000 for repeated instance.

► Transporting round timber (logs), tree-plants or products of their primary processing for entrepreneurial activity without waybill, the failure to issue a waybill upon buyer's request or refusing to accept a waybill when purchasing goods, if the market value of the round timber (logs), treeplants or products of their primary processing transported or delivered/ro be delivered without a waybill exceeds GEL10,000, shall entail penalty imposition on the person in amount of GEL10,000. In such a case these goods shall be confiscated

► Financial sanction stated for the violation of following rule by Special Trading Company - the income from Georgian source exceeds 1 million GEL and the customs value of foreign goods exceeds 5%, has been reduced from 50 to 10 percent

► Disposal of goods, being under the customs supervision, without the agreement with Revenue Service, when the primary document is issued on selling of those goods, shall lead to penalty in the amount of 10% of customs duties applicable for the same or identical goods

► The penalty estimated for the person who violated the term of storing the document indicated in the customs declaration was reduced from GEL1,500 to GEL1,000 provided that this person had no obligation to submit this document to Revenue Service

► The penalty estimated for violation of permit terms has been reduced from GEL4,000 to GEL2,000.

The amendment came into force from 14 July 2017.

TAX AGREEMENT

By the amendment it is already possible to conclude tax agreement not only in order to reduce the part of tax liability but also in order to reduce fees, penalty or penalty interest.

In addition, if merger of two entities takes place after the Tax Agreement, controlling body is entitled to inspecting the tax period or the issue connected to that person or impose penalty/sanction despite the fact that according to this period Tax Agreement is concluded.

The amendment came into force from 14 July 2017.

TRANSITIONAL PROVISIONS

Amendment to the transitional provisions constitute the following:

► According to the previous edition, supply of the real estate was exempt from VAT with the right of deduction in case the following terms were met: supply should be made within the period from 1 January 2015 to 1 January 2018, that particular real estate should have been located within the premises approved by the permit valid as of 8 August 2008 and project documentation should have been agreed with authorized also as of 8 August 2008. By the amendment the term of supply of the real estate and administrative-legal act has been prolonged up to 1 January 2020.

Now along with supply of real estate, construction and installation works connected to the supplied assets shall also be exempt from VAT with the right of deduction.

The amendment shall apply to the legal relations arising from 1 January 2015.

► If a person assumes the advantage described above for the supply the following term of time limitation shall apply for the exempted transactions within the period from 1 January 2015 to 1 January 2017:

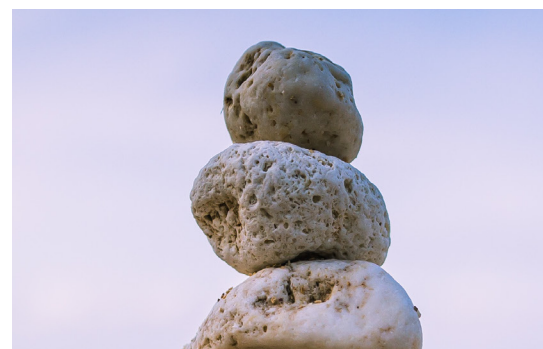
► For the exempt operations occurring within the period from 1 January 2015 to 1 January 2016 - 5 years

► For the exempt operations occurring within the period from 1 January 2016 to 1 January 2017 - 4 years.

The amendment shall apply to the legal relations arising from 1 January 2015.

► It was clarified that when part of the compensation is paid until 1 January 2017 and the goods are supplied after 1 January 2017, and before the supply of goods the compensation is partially paid, for VAT purposes this part shall be taxed according to the rule of advances.

The amendment shall apply to the legal relations arising from 1 January 2017.



► In case the profit received from agricultural activity and medical institution in the period 2014-2016 is reinvested, the time of limitation defined by the Georgian Tax Code for the corresponding period shall be prolonged by 1 year and will assume 4 years.

The amendment shall apply to the legal relations arising from 1 January 2017

► Distribution of the dividend from net income received in the period from 1 January 2008 to 1 January 2017 shall be considered as profit distribution but its re-distribution shall not be considered as profit distribution except of the case when re-distribution is made by the sole proprietor and the persons exempt from Corporate Income Tax as defined by Georgian Tax Code.

The amendment shall apply to the legal relations arising from 1 January 2017

► In case the enterprise obtains or loses the status of Commercial Bank, Credit union, insurance organisation, microfinance organisation and pawnbroker during the calendar year, the taxable object for Corporate Income Tax purposes is the difference between the annual gross income and the deductions provided by the Tax Code.

In the first case the current tax payments shall not be accrued. The accruals made on the basis of Corporate Income Tax returns submitted by the new rules shall be canceled.

The amendment shall apply to the legal relations arising from 1 January 2017

► If an entity was founded from 1 January to 31 December 2016 and transferred to the new regime of Corporate Income Tax from 1 April 2017, the first reporting period and due date for submitting tax return shall be from 1 April 2018.

The amendment shall apply to the legal relations arising from 1 January 2017.

EXEMPTION FROM VAT

► Exemption from VAT without the input VAT right shall apply to the import and/or supply of goods intended for medical treatment and listed jointly by the Ministry of Labor, Health and Social Care and Ministry of Finance of Georgia, given that these goods are purchased within the government programs in compliance with the Law of Georgia on State Procurement.

Amendment shall come into the force from 14 July 2017

► Before amendments, exempt from VAT without input rights was supply of an apartment (house) with land to an individual if the supplier had received that property as part of the measures for ensuring the performance of contractual obligations or if the supplier procured the property via auction or other means for the purpose to secure performance of contractual obligations by that individual.

By amendment the same exemption applies also to the case, when the individual receives an apartment/ house, that was previously provided by that individual as collateral for his/her own, as well as other party's liability to perform contractual obligations or if that particular property had been acquired via auction or other means to ensure performance against contractual liability by that individual or/and other party as well.

► Exempt from VAT with input right is the service of employing a carriage/container provided by its owner non-resident if such service is rendered during railway transportation engaging that carriage/container in the process, except for the use of carriage/container under lease agreement and carrying out railway transportation with resident's carriage/container out of Georgian borders, except supplying of carriage/container under lease agreement.

The amendment concerns the legal relations arising from January 1, 2014

► The import and/or supply of fuels, lubricants and other supporting means for the purpose of carrying out civil aviation flights and aviation works within the Georgian state borders shall be exempt from VAT with the input VAT right.

Amendment shall come into force from 14 July 2017.

► The air transportation and aviation works and supply of ferrous and/or non-ferrous metal scrap and supply of ferrous/non-ferrous waste metals within the Georgian state borders if it is possible to identify the recipient shall be exempt from VAT with input right.

Amendment shall come into force from 14 July 2017

NOTE: Goods referred to in this paragraph shall not include ferrous metal moulds, bars, rolled stocks, other primary processing raw materials and semi-finished products classified in the Foreign Economic Activity Commodity Nomenclature in the headings 7201, 7102, 7203, 7205, 7206, 7207 and subheading 7204 50 000 00.



EXCISE

► The amendment defines that an entity who supplies oil & gas products listed by the Foreign Economic Activity Commodity Nomenclature 2711 12 (propane purity of not less than 99% by weight), 2711 13 (Butanes), 2711 14 000 00 (Ethylene, propylene, butylene and butadiene), 2711 000 19 00 (others) to transport vehicles shall also qualify as excise tax payer. Amendment shall come into force from 1 August 2017

► The rates of excise tax on certain goods have changed, namely: for barley malt beer excise rate is 0.4 GEL instead of 0.12 GEL; For the vinified drinks (for example, cider, peer cider, honey drink) excise tax will be calculated differently - the alcohol content will be determined and accordingly the excise tax will be charged. By amendment, the items under 2711 12 (Propane), 2711 13 (Butanes), 2711 14 000 00 (ethylene, propylene, butylene and butane), 2711 19 000 00 (rest) shall be taxed with excise rate as GEL 180 per ton. Amendment shall come into force from 15 July 2017

► For specific items the limit of exemption from marking with excise stamps has also changed; for example, if before amendment 400 pieces of cigarettes were exempt from marking with excise stamps, now the exemption applies to 200 pieces instead. Amendment shall come into force from 1 August 2017

► For specific items the limit of exemption from excise tax has also changed in case of air imports of those items carried out by an individual. for example, if before amendment 400 pieces of cigarettes were exempt, now the exemption applies to 200 pieces instead. Amendment shall come into force from 1 August 2017

► The import and/or supply of fuels, lubricants and other supporting means for the purpose of carrying out civil aviation flights and aviation works within the Georgian state border shall be exempt from excise without input right. Before the amendment import and/or supply of aviation fuels, lubricants and other supporting means for the purpose of carrying out international aviation and international marine ships only were exempt from excise without input right. The amendment shall come into force from 1 August 2017

► Production of alcohol by distillation of grape wine sublisted under 2208 20 commodity code of Foreign Economic Activity National Commodity

Nomenclature Nomenclature, using the client's raw material and supply to that client by manufacturer, if the client uses these commodities to produce the same category commodities shall be exempt from excise with input right.

The amendment shall come into force from 1 August 2017.

IMPORT DUTY

► The amendment determines that the goods weighing 30kg and worth GEL500 listed under the Code 3824 90 980 01 - fluids containing or not containing nicotine for electronic cigarettes will no longer be subject of the import tax exemption.

The amendment shall come into the force from 1 August 2017

► The Limit of exemption from import tax has been decreased in case if import is carried out by air transporter, in particular from 400 cigarette tubes down to 200 cigarette tubes. The amendment shall come into the force from 1 August 2017.

► Import of fuel, lubricants and other supporting means for the supply of civil aviation flights and aviation works within the state border of Georgia will be exempt from import duties.

The amendment shall come into force from 14 July 2017.

PRELIMINARY INFORMATION

New article is added to the Tax Code by this amendment - Preliminary information (Article 214¹), according to which an entity carrying out international air transportation is obliged to submit to the tax authority the information about the means of international air transport and goods and/or passengers transported by it in compliance with rule by the Minister of Finance.

The amendment shall come into force from 1 January 2018.

AUTHOR'S COLUMN

This publication covers critically important legislative and tax changes that business should take into consideration for their daily operations and governance.

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