

## Georgian Tax and Legal News Refer to the Law



### **New law "On Accounting, Reporting and Audit"**

The Parliament of Georgia adopted a new law, "On Accounting, Reporting and Audit," which came into force on 8 June 2016 and repealed the old law, "On Accounting and Financial Reporting." The purpose of the new law is to comply with the requirements of the European legislation covering accounting and audit services, and to promote economic growth as well as the development of the investment climate in the country.

The newly enforced law stipulates that the Ministry of Finance will have the authority to establish new standards. The standards will relate to the supervision of accounting, financial and managerial reporting, audit activities as well as to informational transparency control. The Ministry of Finance will also establish the rules for identifying tax offences and imposing penalties.

The following laws and codes shall be affected by the new law and will subsequently require respective amendments:

- "On Entrepreneurs"
- Georgian Tax Code
- "On Preventing Illicit Income Legalisation"

### **Changes to the law "On Entrepreneurs"**

The Parliament of Georgia enacted some amendments to the law "On Entrepreneurs" that will come into force on 1 January 2017. The amendments are designed to comply with the new law "On Accounting, Reporting and Audit." They set forth the basic rules of accounting, reporting and audit services. Groups of people that are subject to mandatory audit services are affected under the changes. Furthermore, the law defines the responsibilities of supervisory board members with respect to preparing and presenting financial reports.

## Amendments to the Georgian Tax Code

The Parliament of Georgia introduced certain technical amendments to Article 202 of the Georgian Tax Code effected by the abovementioned new law.

Other changes have also been introduced to the Tax Code, aimed at gradually lowering excise tax on rendering mobile communication services.

Pursuant to the amendments, the existing excise tax rate of 8 percent will stay in place until 1 January 2017; however, from 1 January 2017 to 1 January 2018, the excise tax rate shall be 3 percent. As of 1 January 2018, mobile communication services will no longer be subject to taxation.

## Amendments to the Civil Procedure Code of Georgia

The Georgian Parliament approved amendments to the Civil Procedure Code of Georgia. These amendments refer to provisional measures.

According to these amendments, in cases directly stipulated by the law, based on the claimant's request, the court is authorised to grant temporary and those provisional measures that are in force until the end of the proceedings.

Provisional measures can be granted only if the claimant proves that:

- a) The main lawsuit, for which the provisional measure is granted, is well-founded and there is a high probability of success;
- b) In the event of the court's refusal to grant the provisional measure, the final decision may not be enforced, or the claimant will not be compensated for the damages even if the court rules in favour of satisfying the claim.

If the request for the provisional measure meets the abovementioned requirements, but the anticipated damages that the claimant may suffer do not exceed the damages that are applicable to the respondent as a result of procedural action in question, the court may request provision of security.

## Case Law

The Supreme Court of Georgia made an important decision on 18 December 2015 related to the differing content of lease agreements and rental agreements (სს-738-700-2015).

The court ruled that in case of rent the landlord transfers the individually specified items to the lessee, while under the lease contract, the lessor transfers not only tangible but intangible assets to the lessee as well, i.e, the claims and rights that allow the lessee to obtain the profit (material profit). The profit is the income generated through the proper management of the leased property under the lease contract.

The Supreme Court ordered that the parties' relationship shall be classified by their actual relations and not by the contract type. In this case, the parties were in a rental relationship, despite the contract's classification as a "Lease Agreement." Respectively, provisions regulating the rent agreement should govern the relationship of the parties.

The Court noted that it is not legally bound by the parties' argumentation and explanations. Determination of the legal nature of the contractual relationship is the privilege of the court despite the distinguished argumentation of the parties. This is the reason why neither party is required to refer to specific provisions of the law in his/her/its lawsuit and provide legal assessment. Accordingly, the court is not obliged to base its decision on the articles presented by the parties.

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## Representing Tomorrow



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