

Tax and Legal Newsletter

Upcoming Changes in Tax legislation

On June 30th, 2017, the Parliament of Georgia adopted a number of amendments to the Tax Code of Georgia which had been discussed in the previous Newsletter. Part of the abovementioned amendments will come into effect as soon as they are published, and part on July 15th, 2017, August 30th 2017 and January 1st, 2018.

Other Legal Updates

Law of Georgia on Entrepreneurs

On June 30th, 2017, the Parliament of Georgia adopted amendments to the Law of Georgia on Entrepreneurs.

Article 5¹ will be added to the Law which brings concept of one-person enterprise to the Law. The new article regulates details of ownership of limited liability company or joint stock company by one person, particularly:

- If after registration of limited liability company or joint stock company all the shares are transferred to one person, such enterprise will become One-Person Enterprise. Information regarding transferring 100% shares of LLC to one person shall be reflected in the Register of Entrepreneurs and Non-Entrepreneurial (non-commercial) Legal Persons and in case of JSC – in the share register, which should be publicly available.

- If enterprise has only one partner(shareholder), the latter exercises powers of General Meeting of Partners. Such decisions shall always be in writing.
- Agreements between an One-Person Enterprise and its owner shall always be in writing, except when the agreement is made within the ordinary activity of the enterprise.

Important Court Cases

Tbilisi Court of Appeals made an interesting decision regarding unjust enrichment, debt acknowledgement and period of limitation on case # 2b/2325-15.

Subject of the dispute was to impose of a certain amount. Appellant requested to impose of GEL 10000 for the construction of garage.

The appellant submitted written note of the defendant which cannot be considered as an independent basis for determining the obligation of the defendant for the following reasons:

1. A contract which acknowledges the existence of a debt shall be in writing. If another form is stipulated for the creation of those relations of obligation the existence of which has been acknowledged, then the acknowledgement shall also be in this form;
2. Acknowledgement of existence of debt creates a new requirement which is independent from the basic obligation. Despite the existence of a basic liability may be disputed, acknowledgement of the existence of debt still rises obligation of fulfillment and grants the creditor the right to demand. Furthermore, main difference between the acknowledgement of the existence of debt stipulated in article 341 of Civil Code



and other recognitions of requirements is that the first is a new agreement and it is not declaration of intent in the framework of any other agreement.

3. Acknowledgement of the existence of debt is a new agreement and it is necessary to meet all the conditions set for the validity of the agreement, and first of all, the requirements of Article 327 of the Civil Code, i.e. parties shall agree on all the essential terms.

4. Any document or correspondence between the parties, where the debt is fixed, cannot be considered as an Agreement on Acknowledgement of the Existence of Debt, unless it becomes clear that the parties agree on all the essential provisions (the terms of the maturity of the debt, term, etc.).

5. Considering an agreement as an acknowledgement of the existence of debt with relevant legal consequences, shall be based on the content of the agreement, in particular, with an Agreement on Acknowledgement of the Existence of Debt, person must recognize the existence of a legal relationship and undertake to fulfill its obligations.

6. The court believes that the abovementioned written note cannot be considered as an Agreement on Acknowledgement of the Existence of Debt and an as an independent basis for the obligation of the defendant to reimburse the expenses incurred on the construction of the garage. In particular, the indicated note does not contain a statement on the recognition/acknowledgement of any specific obligation by the defendant.

Regarding unjust enrichment the Court explained that regulations of unjust enrichment must be applied in the end, i.e. contractual and statutory satisfactions are excluded. Besides, to satisfy the claim on the grounds

of unjust enrichment, there must be the following cumulative prerequisites:

Enhancement of the defendant; The plaintiff's property loss shall match the defendant's enrichment; Such kind of material transfer must be groundlessness.

The Court believes that evidence submitted by the appellant could not prove that the disputed garage was built by the appellant's testator, which would cause unjust enrichment of the defendant. Consequently, the Court noted that there could not have been applied articles of unjust enrichment. Furthermore, the court found that limitation period of the claim was expired.



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