

Your Tax Dispute InfoGuide

A monthly newsletter by the PwC Georgia Tax & Legal

29 January 2019
Issue #2



Your Tax Dispute InfoGuide is prepared by PricewaterhouseCoopers (PwC) Georgia, based on decisions undertaken by Georgian Revenue Service (GRS) and the Council of Dispute Resolution (CDR) at the Ministry of Finance. We provide a brief review of the facts on selected cases, including arguments of the parties and the relevant decisions made by the dispute resolution authorities. This publication is prepared for general guidance on matters of interest only, and does not constitute a professional advice.

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Case #3: Issue of refunding overpaid tax amount to the individual caused by incorrectly withholding PIT at source.

*Contractor company - company to which produced Oil is distributed according to the PSA.

Case #1: Taxation of the payment of Corporate Income Tax (CIT) and fees for the usage of Natural Resources of the Company made by the Contractor Company (CC)

Facts

Under the Production Share Agreement (PSA) the company carries out its core business activity, which represents production of crude oil (The Company and the State Agency of Oil and Gas has concluded the PSA).

According to the Article 17 of the PSA, instead and on behalf of the company CC pays CIT and the fee for usage of natural resources. The company submits CIT returns but CC pays accrued tax amount. As for the fee for usage of natural resource, CC submits returns and pays relevant fee as well.

Position of Audit Department

Tax inspection considered that the amount of CIT and fee for usage of natural resources paid by CC actually constitutes received/receivable taxable income from provision of service that leads to additional tax liabilities in terms of CIT.

As a result of the inspection, the Company's gross income increased with added amount of CIT and fee for usage of natural resources paid by the CC.

Arguments of the Company

The Company considers that according to the PSA and the Law on Oil and Gas, execution of oil and gas operation in Georgia does not constitute provision of service to the state and respectively, the Company does not have any additional CIT liabilities.

In addition, the company notes that the approach of tax authorities on the abovementioned issue has not changed so far and tax inspections have not applied additional tax liabilities to other companies operating in the same field.

Decisions of dispute resolution authorities

At the initial stage, GRS discussed the case and considered that the audit department assessed tax liabilities in accordance with the tax law. Therefore GRS didn't satisfy the appeal.

At the second stage, CDR at the Ministry of Finance discussed the case and made decision based on the following arguments:

CC has taken responsibility to settle CIT and natural resource fee on behalf of the Company. Further, the Company's received benefit, as a result of abovementioned transaction, which doesn't fall in the part 4 of the Article 104 of Tax Code of Georgia (types of income that are not to be included in total revenue).

Consequently, the CDR at the Ministry of Finance decided that considering amount of paid CIT and fee for natural resource as received/receivable income from provision of service is in line with the legislation.

According to the decision, CDR at the Ministry of Finance didn't satisfy the appeal and imposed tax liabilities remained unchanged.

Source: *Decision of the Dispute Resolution Board of the Ministry of Finance #3694/2/2017*

Case #2: Classifying of the incurred capital expenditure on a premise as a self-constructed fixed asset

Facts

The company has been carrying out educational activities with owned building since 2008. The company constructed additional fifth floor and a mansard on it and in May of 2016 put into exploitation. At the same time, the company made capital improvement of the other floors of the same building.

Position of Audit Department

As a result, the tax inspection defined that the Company has obtained a permit on construction of the fifth floor and the mansard from Tbilisi Architecture Service.

According to the paragraph "d" Article 161 of the GTC, putting into exploitation a self-constructed building as a fixed asset constitutes the transaction that is subject to VAT and the Article 148 of GTC defines the value of mentioned fixed asset.

The reconstruction of the building based on the reconstruction permit constitutes self-constructed building, whereas its usage in educational activities – taxable transaction for VAT purposes.

Also, according to the company's accounting documentation, it was not manageable to distinguish expenses on construction of additional floors and on overhauls works incurred on the pre-existing building. Respectively, the cost of the assets included all costs related to the construction and overhaul works.

As a result, the audit department calculated principal amount of VAT and respective sanction on the bases of total incurred expenses.

Arguments of the Company

The Company does not agree with the decision of considering the reconstruction as a self-constructed building and imposing of VAT.

According to the Company's argumentation, incurred expenses partially were used for already existing building. Respectively, the Company requests to recalculate accrued amount.

Decision of GRS

The council agreed with the audit department's position that the reconstruction of the building according to the reconstruction permit constitutes self-constructed building and its usage in the educational activities-exploitation of fixed asset and is subject to VAT.

Since the audit department did not allocate incurred expenses on construction and overhauls works, it is unlawful to consider that all incurred expenses constituted to the base subject to VAT.

Accordingly, GRS proposed to the Company to submit documented proofs to the audit department with the purpose to determine correct amount of the base subject to VAT.

Source: *Decision of Dispute Resolution Board of Revenue Service #5625*

Case #3: Issue of refunding overpaid tax amount to the individual caused by incorrectly withholding PIT at source

Facts

The applicant is an individual who receives a grant. Under the tax legislation income received by an individual in the form of grant, is exempt from Personal Income Tax (PIT). However, the employer had been withholding PIT from the income originated from received grant.

The applicant appealed to the audit department with the request to refund the overpaid amount, but the audit department rejected taxpayer’s claim and sent the counterclaim to the applicant.

Position of Audit Department

The audit department based counterclaim on the assumption, that employer-tax agent incorrectly withheld tax at source. Accordingly, it was tax agent’s obligation to return incorrectly withheld tax.

Arguments of the applicant

According to taxpayer’s argument, employer had adjusted tax returns. More precisely, amounts of received grant by the applicant that employer had considered as salary income in historical tax returns, then had recognized as grant and had been reflected in category “other” of tax returns. Also, taxpayer has a certificate issued by the employer which proves that received income indeed originated from grant and employer had withheld tax at source incorrectly. Additionally to all above mentioned, individual had already submitted tax returns and incorrectly withheld tax amount had reflected on taxpayer’s personal tax card as overpaid amount.

The applicant indicates that counterclaim violates the right to refund overpaid tax amount defined by Georgian legislation.

Decisions of dispute resolution authorities

At the initial stage, GRS discussed the case and considered that the audit department’s position was in accordance with the tax law and didn’t satisfy the appeal.

The dispute continued at the CDR at the Ministry of Finance. The council explained that it is individual’s right to use tax benefit and refund overpaid tax amount. On the other hand, it is the tax authority’s obligation to return overpaid tax amount to the taxpayer.

The council referred to the Order №13446 issued by the head of Revenue Service. According to the order, taxpayer can return the overpaid amount in two ways: 1. Employer, who incorrectly withheld PIT at source, has obligation to recalculate PIT, return overpaid amount to individual and submit adjusted tax returns to the tax authority. 2. If by objective reasons employer cannot refund overpaid tax amounts, individual has right to submit tax returns according to paragraph 4 of the article 153 of GTC.

The Council referred to the facts that employer incorrectly withheld the amount of grant and does not fulfill its obligation to return the amount. At the same time, the applicant has fully fulfilled the requirements of the legislation to return of the overpaid tax amount.

As a result, CDR at the Ministry of Finance partially satisfied the appeal and obliged the audit department to refund overpaid tax amount to the applicant.

Source: *Decision of the Dispute Resolution Board of the Ministry of Finance #6813/2/2018*

PwC Georgia offers clients integrated **audit, tax, legal and consulting services**. The PwC network comprises 255,000 professionals worldwide, employing 756 offices in 158 countries.

We provide effective, innovative and practical tax advice tailored to your specific business needs, whether simple or more complex. Using our knowledge of Georgian tax legislation and in conjunction with international laws and treaties we are able to solve your problems and bring you certainty. We can also help you with the everyday tasks of complying with tax law, cost-effectively preparing your annual and monthly tax returns.

PwC Georgia **Tax Services** includes tax advisory services, tax reviews and tax compliance, transfer pricing compliance, representation during tax disputes, tax structuring, double tax treaty advice, tax due diligence support, customs matters and others.

PwC Georgia's **Tax Dispute Resolution** practice comprises leading international and Georgian tax specialists proficient in all areas of pre-trial and judicial tax dispute resolution and draws on the expert knowledge of the world's leading tax consultants. We are ready to assist companies at all stages of an inspection by state authorities, as well as during the appeal process, which includes:

- Diagnostics of tax risks and preparation for a potential inspection by state authorities;
- Supporting during a tax inspection;
- Appeal of an inspection results;
- Tax refunds

PwC Georgia Tax & Legal team would be delighted to provide you with any additional information regarding to what impact the above-mentioned dispute resolutions might have on your business.



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