



## QUARTERLY LEGAL

*The objective of BLC Quarterly Legal Newsletter is to keep you fully informed of major legislative developments in Georgia.*

## NEWSLETTER

*In the last issue, we had outlined major features of the amendments to the Tax Code of Georgia introducing a Thin Capitalization Rule as well as the alterations to the Civil Code of Georgia regarding the waiver of the right to damages. There are other important legislative enactments waiting in the wings, therefore, please keep watching this space for updates on legislation.*

## Issue 1

March – April – May 2010

*In the foregoing issue of the BLC Quarterly Legal Newsletter we bring you a write-up on the recent developments in the fields of tax, entrepreneurial, competition, anti money laundering and other regulations. We welcome your suggestions and comments.*

*Hoping to have added some value to your reading on legal framework in Georgia.*

*Sincerely,*

*BLC Team*

### *Legal amendments effected throughout March – April – May 2010:*

- *Amendments were made to the Tax Code of Georgia introducing new customs tax rates and several Ordinances were issued regulating various financial matters. Most importantly, upcoming new Tax Code was presented by the Government of Georgia. The Tax Code is expected to come into force from January 1, 2011.*
- *New Agency of Free Trade and Competition was created under the Presidential Decree in order to supervise compliance with the free trade and fair competition regulations on Georgian market.*
- *Several International Agreements concluded by the Government of Georgia were ratified by the Parliament, which include a number of bilateral treaties on avoidance of double taxation.*
- *A package of amendments was observed in the field of anti money laundering regulations which mainly concern insurance companies, commercial banks and other banking and monetary institutions.*
- *New rule of payment of the purchase price for acquisition of immovable property through wire transfer was introduced by the Parliament of Georgia.*
- *Entirely new piece of legislation was adopted by the Parliament of Georgia ensuring legal guarantees for elimination of all forms of sexual discrimination.*
- *By virtue of amendments to the Law of Georgia on Entrepreneurs the list of precise information on personal data of the partners and directors/administrators to be envisaged in Articles of Association (Charter) of the company was explicitly defined under the law.*

## *Tax & Finance*

From March 3, 2010 throughout April and May 2010 the Parliament of Georgia adopted several laws introducing amendments and addendums to the Tax Code of Georgia. These amendments mostly clarify the wording of a number of articles and introduce additions to the chapters of the Tax Code.

The important modifications include the change in the customs tax rates and the possibility to discuss a tax dispute between a taxpayer and the tax authorities distantly by using technical tools. In addition, according to the recent amendments, interests received from the securities issued by Georgian company which are disposed on a foreign exchange market is exempted from taxation and consequently is not included in gross income of the company. Most of the changes are effective from April and May 2010.

Effective from April 2010, Law of Georgia #2808 adopted by the Parliament amends the Law of Georgia on Fees for the Use of Natural Resources. The amendment sets new fee payment deadlines for different categories users of natural resources.

With effect from April 2010, the Minister of Finance of Georgia issued Order #206 approving new instructions on confirmation of online tax payment. According to the instructions, a document confirming an online tax payment through the web site of the Ministry of Finance is considered as an online report on payment transaction produced and sent to the Ministry of Finance by commercial banks or by their settlement processing centers.

Throughout April 2010, the Government of Georgia promulgated several Ordinances. By virtue of Ordinance #101, the Government approved the list of goods/services that are allowed to be supplied to the enterprises having an international company status in Georgia. Such supply does not result in revocation of the status of international company and related tax concessions in Georgia. In addition, the Government issued Ordinance #96 and approved new instructions on the Fees for Providing Services by the Revenue Service, Legal Entity of Public Law. According to the Ordinance, the government established fees for the services to be rendered by the Revenue Service to the taxpayers. This instruction will come into effect on 1 June 2010.

And lastly, on April 20, 2010 amendments were introduced to the Law of Georgia on Grants according to which the legal person of public law may freely be the donor (i.e. issuer of the grant), provided that the grant is issued for scientific purposes and such an authority is explicitly envisaged in the Charter of such legal person.

The fundamental changes will be implemented by the upcoming new Tax Code of Georgia. One of the major novelties introduced by the new Tax Code is that it will incorporate principal provisions of the currently effective Customs Code of Georgia, which will be abolished after the adoption of new Tax Code. Furthermore, as the tax card of a

taxpayer will reflect all his tax and customs liabilities, the taxpayer will thereafter be able to allocate tax balances between tax and customs charges, as it deems appropriate.

Most importantly, the taxpayer whose VAT taxable turnover for any continuous 12 months period does not exceed 30.000GEL will be exempt from any tax provided it is registered as a taxpayer, whereas taxpayer whose aforementioned turnover is between 30.000GEL-100.000GEL and does not employ more than 10 people will be liable to pay a single tax at a fixed percentage of the total turnover.

According to another upcoming change, the ruling issued by the tax inspection on a question referred to it by a taxpayer shall be binding on the tax inspection and thus can be relied upon by the taxpayer in order to determine the tax treatment of any matter. Tax reporting period will change into quarter instead of month and thus respective returns shall be filed and payments made quarterly. New rules shall address to related party transactions to define the transaction price for taxation purposes. These rules and regulations will be in line with respective EU tax directives and OECD tax conventions. The concept of "service export", subject to VAT taxation, will be introduced by new Tax Code.

Once adopted by the Parliament of Georgia, the new Tax Code is estimated to come into force from January 1, 2011.

## *Competition*

Under the amendments introduced to the Law of Georgia on Free Trade and Competition in March, the supervisory power over the market players was vested to a completely new and independent legal person of public law- Agency of Free Trade and Competition, whereas previously the special division of the Ministry of Economic and Sustainable Development of Georgia was assigned to supervise the compliance with the rules of fair competition and free trade set forth in the aforementioned law. The rationale behind the amendment is to insure independence of the Agency from any governmental authority. The Agency was formed in accordance with the respective Presidential Decree. The aforementioned amendment came into force on March 12, 2010.

## *International Agreements*

On May 12, 2010 the Parliament of Georgia ratified Agreement on Assistance between The United States of America and the Republic of Georgia (on development of energetic infrastructure) dated February 25, 2010 which aims at encouragement of investment for development of energy sector, gas and hydro resources of Georgia.

On May 23, 2010 the Parliament of Georgia ratified the Treaty of New-York on Avoidance of Double Taxation, entered into between the Government of Georgia and Government of Singapore dated November 17, 2009. In addition, the Parliament of Georgia adopted the memorandum on amendments to the agreement between Georgia and Great Britain and Northern Ireland on the avoidance of double taxation of income and capital gains and the prevention of tax evasion, signed on 13 July 2004 in London.

The effective dates of the ratified treaties will be known once the Ministries of Foreign Affairs of the countries exchange the notes.

Furthermore, the President of Georgia signed Decrees #239, 57 and 77 ordaining the Government of Georgia to sign the treaty on the avoidance of double taxation of income and capital gains and the prevention of tax evasion between Georgia and Estonia, Spain and Israel and to harmonize the final wording of the double tax treaty with Norway.

### *Anti Money Laundering Regulation*

The package of amendments was introduced to the Law of Georgia on Insurance as well as to the Law of Georgia on Commercial Banks and the Law of Georgia on Securities Market on March 23, 2010. By virtue of the aforementioned amendments, the insurance companies, commercial banks and registry of securities or broker operating in Georgia shall notify the National Bank of Georgia on incorporation of subsidiaries or branch offices outside the Georgian sovereign territory within 14 days from the day of incorporation thereof. The notification shall imply that the subsidiary/branch office of the company is ready to ensure compliance with the recommendations of FATF in order to avoid money laundering operations and financing of terrorism.

Furthermore, the insurance company will henceforth notify the National Bank of Georgia on any change of the administrator(s) within the company.

In addition, by virtue of the amendments, new notion of Politically Active Person (PAP) was introduced to the Law of Georgia on Prevention of Money Laundering. According to the new provision, the PAP stands for any citizen of foreign country which takes up a state public and political post, or is a political figure abroad. It must be noted, that even the family members and persons having tight business relations with the PAP shall be considered as PAP themselves, for the purposes of the aforementioned law. Any commercial bank or other financial institutions, as well as brokers and security registrars, insurance companies, companies engaged in lottery business, customs officers, notaries and the Public Registry are compelled to verify whether a client is the PAP or not and once assessed, shall carry out monitoring over any operation carried out by such PAP. This monitoring necessarily includes: investigating the sources of income and property of such person, beneficiary owner of the accounts of the PAP, obtaining permission from the supervisors to engage in business relations with such person and etc.

The aforementioned amendments became effective from May 1, 2010.

### *Acquisition of Ownership*

Another important amendment that was observed in May 2010 was introduction of mandatory wire-transfer payment of the purchase price for immovable property. In light of the new rule, respective amendments were introduced to the Civil Code of Georgia as well as to the Law of Georgia on Public Registry. Precisely, in case of acquisition of ownership over immovable property through a sale-purchase agreement, the purchase price envisaged in the agreement shall be paid through the wire transfer by means of a banking institution. Consequently, in case of registration of ownership over immovable property at the public registry based on purchase agreement, the interested party shall, among others, provide receipt from the bank certifying payment of the purchase price.

The rule shall not apply to the cases when the purchase price is to be paid in consignments or where the payment is to be carried out in any form other than monetary payment.

The amendments shall come into affect from January 1, 2012.

### *The Law of Georgia on Gender Balance*

On March 26, 2010 the Parliament of Georgia adopted entirely new piece of legislation – the Law of Georgia on Gender Balance. The law aims at reinforcement of the principle of equality as envisaged in the Constitution of Georgia and provides for the guarantees for such equality as well as particular mechanisms and conditions for enforcement of conventional right to be free from any forms of sexual discrimination. Special guarantees are provided in various fields, such as labour, education, health protection, family relations, elections etc, in order to guarantee the equality of male and female before the law.

The law came into force May 2010.

### *Insolvency*

On April 27, 2010 amendments were introduced to the Law of Georgia on Insolvency Proceedings. According to the aforementioned amendments, the trustee in insolvency, bankruptcy or rehabilitation shall register the commencement of respectively insolvency, bankruptcy or rehabilitation proceedings in the Registry of Commercial and Non-commercial Legal Entities at the Public Registry within three days from the day of his appointment by the court on this position.

The law came into force on May 12, 2010.

## *Law on Entrepreneurs*

On April 27, 2010 extensive amendments were introduced to the Law of Georgia on Entrepreneurs. By virtue of the amendments, the precise list of recitals to be envisaged in the Articles of Association (Charter) of the company was set out in the law. The information mainly concern personal data of partners as well as persons responsible to represent and manage the company. Among others, the Articles of Association (Charter) of the company the activity of which is production, reproduction, distribution and/or selling of food or providing catering services, must explicitly outline the subject of activity of the company. Most importantly, additional requirements for registration of the aforementioned companies shall further be indicated in special instruction which is expected to be issued in June, 2010.

In addition, according to the amendments, the limited partnership or its independent registry must henceforth notify the Registry of Commercial and Non-commercial Legal Entities at the Public Registry of the change in shareholdings of the company within 15 days from their occurrence. Such alteration shall not be considered as amendment to the registered data and consequently no fee shall be paid thereon.

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4, Gudiashvili Square, Tbilisi 0105, Georgia  
Tel.: (995 32) 92 00 86, 93 25 03  
Fax.: (995 32) 93 45 26  
E-mail: [blc@blc.ge](mailto:blc@blc.ge)

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