



## LEGAL NEWSLETTER

December – February  
2011/2012

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

*In the last issue, we have outlined recent development in the field of banking and finance, privatization, tax, enforcement, etc. There are other important legislative enactments waiting in the wings, therefore, please keep watching this space for updates on legislation.*

*In the foregoing issue of the BLC Quarterly Legal Newsletter we bring you a write-up on the recent developments regarding protection of the personal data, establishing of the Court Mediation as the means of the dispute resolution, tax issues, etc. 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 December – February 2011/2012:*

- *Number of important international treaties has been ratified by the parliament of Georgia.*
- *Important amendments have affected the law of Georgia on Facilitating the Prevention of Illicit Income.*
- *Court mediation has been incorporated in the judicial system of the dispute resolution.*
- *Number of amendments has been introduced to the Tax Code of Georgia.*
- *Status of Special Trade Zone has been established by the Government of Georgia.*
- *Entirely new law on protection of the personal data has been adopted.*

### *Protection of the Personal Data*

Entirely new piece of legislation was adopted on 28, 2011 (effective from May 1, 2012) on “Protection of the Personal Data”, establishing highest standards for protection of the personal information. Most importantly the new law defines the notion of processing the personal information in a very broad way, which among others includes: obtaining, any kind of alteration, gathering, using, combining, storage of the information.

It is very important to note that the law applies both to public and private sector, whereas previously personal information was protected only by the General Administrative Code of Georgia, applicable only to the public institutions; moreover, the old regulation was very scarce and did not guarantee complete protection of the personal information. Furthermore, the law states, that gathering information is permissible only for the explicitly stated legal reason and gathering is permitting to the extent, necessary for reaching the stated legal aim. The law regulates in detail the rights and obligations of the party processing the information and the rights and obligations of the authorized person (whose data is being processed).

It shall be also stated, that Georgian legislator, while adopting the law took into consideration European practice and standards, ensuring harmonization of Georgian legislation with European standards. There is also one novelty that is worth mentioning – the law establishes the notion of the Inspector, who will be in charge of supervision and observation of the implementation of the said law, as well as the administrative responsibility for breaching the obligations guaranteed by the legislation.

### *Court Mediation*

Entirely new Chapter was added to the Civil Procedures Code of Georgia incorporating the Court Mediation as the means of the dispute resolution within the court system. According to the amendments, parties are free to refer to mediation after submitting the claim to the Court. Civil Code of Procedures enlists the type of the disputes that can be subjected to mediation, such as Family (except of adoption, cancellation of the adoption, deprivation of the parent's rights or imposing restriction thereof), inheritance, neighborhood matters. The law also stipulates that apart from above, any other dispute can

also be submitted to the Court Mediation and that parties can refer to it on any stage of the dispute.

The law authorizes the judge to offer the parties to opt for mediation as the alternative method of settlement of their dispute. The fee for the Mediation amounts to 1% of the subject matter of the dispute, however it shall not be less than GEL 50.

The law provides for the grounds for challenging the authority of the Mediator, which are the same as those applicable to the Judges, provided in Article 31 of the Civil Procedures Code of Georgia (such as impartiality, if the mediator has been otherwise previously involved in the case, etc). The time-limit designated for the mediation is defined as 45 days and shall cover at least 2 sessions. The law also provides for the sanctions for not appearing on the Mediation session, also the results for completion of the Mediation with the settlement of the parties and in contrary-without settlement thereof. Law imposes confidentiality obligation on the parties (their representatives) and on the mediator itself, which is very important guarantee for the parties in dispute, to keep all information confidential.

### *Legalization of the Illicit Income*

Very important amendments were carried out to the law of Georgia on Facilitating the Prevention of Illicit Income Legalization on December 28, 2011, where new monitoring entities (ME) have been added to the law, broadening already defined list, as well as specifying monitoring obligations of all monitoring entities. Audit/accounting firms and Leasing Companies are the new organizations introduced as the monitoring entities, with their supervising authorities - member organization of the International Federation of Accountants and Ministry of Finance respectively.

Monitoring entities are obliged to carry out following actions with regard to the transactions that are subject to monitoring:

1. Record the information and documentation about the transactions and persons involved in such transactions;
2. Keep the information and documentation about the transactions;

3. Establish internal control mechanisms and regulations;
4. Submit the report about the transactions subjected to monitoring to the Financial Monitoring Agency (FMA).

The law imposes additional obligations on the monitoring entities with regard to politically active persons (PPP), in order to inspect the information regarding the PPP and carry out respective measures if the person would be considered as a PPP applicable in both cases when the PPP is detected at the first stage of the cooperation with the ME or at any stage of cooperation afterwards.

And lastly, the law introduces the exception for the audit/accounting companies exempting them from their reporting obligation towards the FMA, in case if such reporting will infringe the principle of protection of the professional secret (held by such ME).

### *Tax*

Significant amendments have affected the Tax Code of Georgia through the months December – February. Namely, notion of fixed tax payer and respective tax regime pertaining to this status has been introduced as of December 20, 2011. Pursuant to the amendments, in order to obtain the fixed tax payer status, the person – shall not be registered as a VAT payer and shall carry out one or more activities taxable under the fixed regime – both of these prerequisites are cumulative. Herewith, the list of the activities taxable under the fixed regime shall be defined by the Government of Georgia, as well as applicable rates thereof. Generally the rates can vary from 1GEL until 2000 GEL for one taxable object and 3% of the income from the taxable activity. Furthermore, the tax code defines the terms applicable to the fixed tax payer status, such as: in addition to the activities taxable under the fixed regime, the person is authorized to carry out activities permitted by the Government of Georgia and income received from such activities shall be taxable in accordance to the general tax regime; the income received from the activities taxable under fixed regime shall not be calculated into the gross income of the tax payer, thus shall not be subject to further taxation.

Granting and cancellation of the status – Revenue Service (RS) is the authorized body granting the status of the fixed tax payer. The interested party shall apply to the said authority with the application requesting to

grant the fixed tax payer status. The status is granted by issuing certificate and the person shall enjoy all benefits pertaining to this status from the following month the status is granted. As for the cancelation, the person is obliged to apply to the RS for termination of the status within 10 business days from the moment when any of the below circumstances occur (except of item 1):

1. Person applies to the RS requesting termination of the status;
2. Person terminates activities taxable under the fixed regime;
3. Person gets involved in the activities, other than those permitted by the Government of Georgia;
4. Person registers as a VAT payer or the obligation to register as such arises thereof.

Amendments have also affected the Article 274.4 of the tax Code of Georgia and Article 218 of the Criminal Code of Georgia, increasing the limit from 25,000 GEL to 50,000 GEL, in order for the reduction of the taxes to be considered as tax evasion and fall under the criminal offense.

And lastly, amendments introduced to the Tax Code of Georgia on December 6, 2011, relieved the person (employed by the physical person or the private law entity) from the payment of the income tax if the following prerequisites are cumulatively present:

1. the employee is from 45 to 60 years old;
2. the person got employed within the period from January 1, 2012 till July 1, 2012;
3. before starting the job, the person was unemployed for 3 months;
4. the employment of the person was not the result of firing the other person working on the same position;

The above indicated tax relieve is of a temporary character and shall be applicable only during a year, calculated from the date of employment of the person.

### *Special Trade Zone*

Important novelty introduced by the Decree #493 of the Government of Georgia, dated December 27, 2011, concerns establishing the status of the

special trade zone (STZ). STZ status is granted to the legal entity, organizing the trade activities in Georgia.

As of January 1, 2012, organizing of the market (except of organizing agricultural product trading) is permitted only for the legal entities having STZ status. Furthermore, the person who has been organizing the market before January 1, 2012, is obliged to obtain STZ status and continue trading activities from January 1, 2014 (except of trading with agricultural products) pursuant to the rules stated in the above mentioned Decree.

The STZ status is granted by the Government of Georgia, by submitting the application and supplementary documentation to the RS, as defined by the Decree. If the Government of Georgia, through assessment of the application considers that all circumstances are satisfied, it issues the Ordinance, based on which the RS issues the respective certificate granting the STZ status. Registry of the STZ is also maintained by the RS.

Decree regulates in detail, how the STZ territory shall be organized, the movement of the goods on the territory, accounting procedures in the warehouse, it also defines the obligations of the person, holding the STZ status; Law as well defines specific tax regime applicable to the STZ. The law states, that person conducting activities on the STZ, shall withhold income tax and submit the declarations itself. If the person conducts activities only on the STZ territory and the turnover of the operations exceeds 100 000 GEL, it does not impose the obligation to register as a VAT payer, whereas in the normal course of business this requirement applies.

### *Public Registry fees and business registration*

As of January 1, 2012, the Order #509 of the Government of Georgia (dated December 29, 2011) came into effect determining new fees for the online services, rendered by the National Agency of Public Registry. Namely, for preparing the excerpt from the Corporate Registry online, the interested party has to pay 10 GEL instead of 15. As for the expedited service, fee constitutes GEL 40 instead of 50. The foregoing also applies to the request on preparing the excerpts on immovable property. The interested party has to submit electronic application online and pay the relevant fee using the credit card.

Furthermore, as of January 1, 2012 in order to register entrepreneurial or non-entrepreneurial legal entity, the interested party shall present to the National Agency of Public Registry founders resolution indicating e-mail address of the Company among other required data, which is mandatory for the registration purposes. Most importantly, the notification send by the state authority on such email address shall be considered as duly served.

### *New Standards for Fuel*

Through resolution #449 of the Government of Georgia (amending the resolution #238 of December 28, 2005 “On the Quality Standards for Motor Fuel”), determined new qualitative and environmental characteristics of motor fuel, significantly limiting sulphur, aromatic hydrocarbon and benzol content in motor fuel consumed in Georgia. For instance, as of January 1, 2012 until January 1, 2014 the limitations has been set as follows: sulphur - not more than 300mg/kg, cetane number-not less than 47, density at 15°C-not more than 845 kg/m<sup>3</sup>, polycyclic aromatic hydrocarbons weight fraction - not more than 11%. As for the period from January 1, 2014 the amendments have affected only the following contents: sulphur has decreased to 200mg/kg, cetane increased to 48, sulphur decreased to 200mg/kg.

### *Electronization of the Services*

By virtue of the amendments carried out to the law of Georgia on Licenses and permits on December 27, 2011, new authority has been granted to the license/permit issuing bodies which enables them not only to issue the respective license/permit through the means of the automatic control, but also their copies and excerpts from the license/permit registry and any other document kept in the registry. This kind of electronic documents have the equal legal force as the paper documents.

Furthermore, electronization of the services (through the Decree #05.03.112 of February 13, 2012) affected the LEPL Tbilisi Architecture Service as well, enabling the latter to conduct administrative proceedings necessary for issuing the construction permit electronically.

In order to apply for the construction permit, the interested party has to register via website [www.tas.ge](http://www.tas.ge), submit the application and upload all required supplemented documentation through this site. Moreover, the decision is rendered and the building permit is issued electronically as well. The interested person is considered to be officially served with the decision of the Tbilisi Architecture Service once he/she visits his/her personal page on the above stated web-site enabling him/her to check the decision of the permit issuing authority online.

In addition, the Parliament of Georgia ratified very important international treaties, such as: treaty on Avoidance of Double Taxation of Income and Prevention of Tax Evasion with Norway (ratified on December 6, 2011) and treaty on Avoidance of Double Taxation of Income, Capital Gains and Prevention of Tax Evasion with Slovakia (ratified on December 9, 2011).

### *International treaties*

Number of international agreements was approved throughout the months of December and January by the President of Georgia, namely the agreement between Georgia and Armenia, signed on November of 2011 concerning Cooperation in the Spheres of Standardization, Metrology and Conformity Evaluation (through Ordinance #29). Another agreement approved on December 30, 2011 (through the ordinance #879) concerns Mutual Cooperation in the Sphere of Civil Defense between Georgia and Hashemite Kingdom of Jordan.

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4, Gudiashvili Square, Tbilisi 0105, Georgia  
Tel.: (995 32) 2 92 00 86, 2 93 25 03  
Fax.: (995 32) 2 93 45 26  
E-mail: [bic@bic.ge](mailto:bic@bic.ge)

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