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Georgian Legal News

Refer to the Law

Order No. 221 of 16 July 2019 of the Minister of Finance of Georgia

By virtue of the Order No. 221 of 16 July 2019 of the Minister of Finance, amendments have been made to Article 22^1 of the Order No. 996 of 31st December 2010 "On Tax Administration" issued by the Minister of Finance of Georgia (the "Order").

These amendments introduced the term "Estimated Accrual". In particular, tax authorities are entitled to, based on the available information, perform estimated accrual of taxes without carrying out a tax inspection, subject to the substantiated suspicion, that: a) an unfounded reduction of tax fee has been identified on a taxpayer's personal accounting card; b) a person became obliged to submit a tax declaration/calculation, but failed submission of declaration/calculation within the terms determined by law (automatic declaration).

Additionally, Paragraphs 4–6 have been added to Article 51 which entitle the tax authorities to suspend the right of a person registered as a VAT-payer to electronic issuance/confirmation of tax invoices and/or to refuse to issue hard copies thereof in the name of the person if signs of a non-commodity or a fictious transaction are identified or if the relevant investigatory body requests so.

Public Decision No. 201 of 28 June 2019 of the Ministry of Finance of Georgia

On 28 June 2019, in its public decision No. 201, the Ministry of Finance of Georgia made an interpretation concerning taxation of crypto-assets and operations related to computing speed (power) of its mining. In the decision, the Ministry examined issues related to: a) VAT taxation of the provision of crypto-assets (exchange operations to national or foreign currency); b) income taxation of any income from the delivery of crypto-assets; and c) the recovery of input VAT in operations related to the provision of computing speed (power) as well as in relation to goods/services acquired for the provision of such operations.

According to the decision, the Minister referred to the European Central Bank's Report of February 2015 and considered a crypto-assets as money and, accordingly, assigned the same tax privileges to it, attached to transfer of ownership on money, including acknowledging it as a non-VAT-tax operation.

In addition, following the analysis of the Article 104 of the Tax Code, the Ministry held that provision of crypto-assets does not reflect any category of income from a source in Georgia, and thus does not represent subject to income tax.

The Ministry explained that the provision of computing speed (power) of crypto-assets is equal to the provision of electronic services. According to Article 166.4 of the Tax Code, electronic services additionally entail services rendered by electronic means, provided that all of the following conditions are met: a) the service is provided via internet or an electronic network; b) the service is mainly provided automatically and requires minimum human intervention; c) the service cannot be provided without information technologies.

According to the decision, if the recipient of services provided electronically is a legal entity registered outside Georgia which does not have a place of management or a permanent establishment in Georgia, and which is directly connected to the received service, then – for VAT purposes – the operation related to the provision of computing speed (power) to mine crypto-assets (an electronically provided service) will be considered as a service provided outside Georgia and will therefore not be subject to VAT tax. Furthermore, VAT fees paid for acquiring goods/services related to the provision of such services or VAT payments that are due in accordance with input VAT documents will be subject to the recovery of input VAT.

If the recipient of an electronically provided service is a legal entity registered in Georgia, has the place of management or a permanent establishment in Georgia, and is directly related to the received service, then – for VAT purposes – the operation related to the provision of computing speed (power) to mine crypto-assets (an electronically provided service) will be considered as a service provided within the territory of Georgia and will be subject to VAT tax. Furthermore, VAT fees paid for acquiring goods/services related to the provision of such services or VAT payments that are due in accordance with input VAT documents will be subject to the recovery of input VAT.

Case Law

The Civil Cases Chamber of the Supreme Court of Georgia made an important interpretation related to the rules of payment of lawyer fees (the case No. as-1161-1116-2016).

The main question to be decided by the Court was to identify the rules for the remuneration of lawyer's fees that the parties agreed on based on three contracts that they executed. In particular, the court was asked to establish whether the fees agreed, by their nature, amounted to simple remuneration or a success fee (for the successful completion of a case). One contract provided the fee payable would be in the amount of 4% of sums awarded by a court, whilst the remaining two stated that the fees were to amount to 4% of the claim value.

The Supreme Court noted that neither the Law of Georgia "On Lawyers" nor the Code of Professional Ethics of Lawyers regulated lawyer's fees. The Court considered advisable to examine this issue as, for instance, the Code of Conduct for Lawyers in the European Union of the Council of Bars and Law Societies of Europe (CCBE) which serves as a guide for lawyers practicing within the European Union and the European Economic Zone, regulates matters related to lawyer's fees. Namely, Article 3.4 states: "3.4.1. A fee charged by a lawyer shall be fully disclosed to his client and shall be fair and reasonable"; and "3.4.2. Subject to any proper agreement to the contrary between a lawyer and his client fees charged by a lawyer shall be subject to regulation in accordance with the rules applied to members of the Bar or Law Society to which he belongs. If he belongs to more than one Bar or Law Society the rules applied shall be those with the closest connection to the contract between the lawyer and his client". The Supreme Court referred to Article 3.3 of the CCBE Code which prohibits so-called pactum quota de litis (Art. 3.3.1) practices which means: "an agreement between a lawyer and his client entered into prior to final conclusion of a matter to which the client is a party, by virtue of which the client undertakes to pay the lawyer a share of the result regardless of whether this is represented by a sum of money or by any other benefit achieved by the client upon the conclusion of the matter".

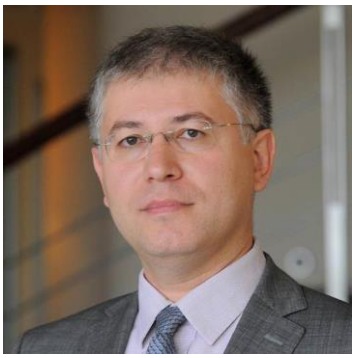
According to the Court, pactum de quota litis does not include an agreement that fees be charged in proportion to the value of a matter handled by the lawyer if this is in accordance with an officially approved fee scale or under the control of competent authority having jurisdiction over the lawyer. In light of this, the Court held that the parties had agreed upon a simple remuneration (a service fee), rather than a conditional fee.

While examining the reasonableness of the provisions related to lawyer's fee amounting 4% of the claim value, the Court found it unreasonable for such a clause to exist in an agreement since it could lead to unjust results for either party. In particular, it may result in a situation where the court has awarded a client less than the sum he has agreed to pay his lawyer (in this case, 4% of the total claim value); however, by virtue of this clause, he is now obliged to pay his lawyer more than he actually managed to recover (because the fee was linked to the total claim value).

Finally, in the Court's view, the parties lacked full understanding of the fee payment rules, since it would have been impossible for it to be in a lawyer's interests for the remuneration to be conditional on the recovery of sums from the opposite side.

Contacts

If you have any questions regarding the information provided in this newsletter, please contact one of the Tax & Legal professionals at our Deloitte office in Georgia:



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