



## Amendments to the Tax Code of Georgia -

### VAT reform

The Georgian Tax Code of 2010 has been recently amended to adopt a new VAT system. The amendments are part of a major recent reform aimed at eliminating shortcomings in the Tax Code in respect of taxation and tax administration.

The amendment echoes obligations taken on by Georgia within the scope of the Association Agreement between EU and Georgia, which, among others, aims to harmonize the Georgian Tax legislation with the EU Directive 2006/112/EC on the Common System of Value Added Tax (the VAT Directive). While positively affecting the taxpayers, the new VAT system introduced new regulatory provisions and altered the core principles of the VAT application, as further detailed below. The amendments came into force from 1 January 2021.

#### A Taxable Person for the Purposes of VAT

The new term "taxable person" has been introduced, which implies to any person who carries out any economic activity at any place independently, notwithstanding the purpose or results of such activities.

Characteristics relevant for the definition are as follows:

- Unified definition of a taxable person: pursuant to EU regulations, a taxable person is a global concept. In other words, the notion of taxable person shall be understood and determined in the same way across all EU member states (i.e. have a uniform definition within the EU). The lack of uniformity in definition caused various challenges, including double taxation or non-taxation of the same transaction in different countries. For example, where a VAT payer in one country rendered the services to another VAT payer in another country, place of service delivery was considered by one country to be in the service provider country and another - to the service recipient country
- Independence - the person should have independent decision making powers with regard to the relevant business matters (e.g. the branch office cannot be understood as in-dependent from its head office. Due to such reasoning, in the EU, transactions between the head office and branch office are not subject to VAT application, etc.)
- Regular nature of activities, as further defined below
- The purpose and result of the activity, as further defined below.

States, regional and local government authorities and other entities of public law are not regarded as taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with those activities or transactions. However, they are regarded as taxable

persons in respect of those activities or transactions where their treatment as non-taxable persons would lead to significant distortions of competition of a certain magnitude (i.e. they become taxable persons when entering into competition with private sector).

#### New definition of Economic Activity

For the purposes of VAT, economic activity shall only include:

- Entrepreneurial activity (as defined under the Law of Georgia on Entrepreneurs)
- Activities of persons supplying goods and services on a regular basis
- Utilizing property to generate income on a regular basis
- Disposal of a non-residential building/structure regardless of the one-off/non-recurring nature of the activity.

As a consequence, from 2021 non-entrepreneurial activities conducted on non-regular basis, other than the disposal of a non-residential building/structure, will not fall under economic activity definition, thus will not be subject to VAT.

#### GEL 100,000 threshold

When determining the aggregate amount (GEL 100 000) of VAT taxable operations, transactions generally exempted from VAT shall not be included in calculation, with the exception of:

- Financial transactions or operations related to immovable property, provided that such transactions/operations represent the principal activity of a person
- Export of goods
- Transactions exempted with the right to credit, which mainly include:
  - the supply of goods for the fueling and provisioning of vessels and aircrafts used for designated purposes
  - the supply, modification, repair, maintenance, chartering and hiring of the stated vessels and aircrafts and the supply, hiring, repair and maintenance of equipment, incorporated or used therein and other services to meet the direct needs of the vessels and aircrafts or of their cargoes
  - transportation of goods, passengers and cargo and services directly related to such transportation
  - supply of services by intermediaries, acting in the name and on behalf of another person, where they take part in the transactions referred above or of transactions carried out outside Georgia.

#### New Definition of Fixed Establishment

The Georgian Tax Code introduces the new term "fixed establishment", which represents a place, other than the registered place of a taxable person characterized with a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs. It is supposed to substitute the notion of "permanent establishment".

In short, where a non-resident has a place in Georgia capable of providing services independently, such place shall be deemed a fixed establishment of the non-resident (e.g. a storage facility of a non-resident located in Georgia, which is operated by personnel and used for service provision/receipt purposes). Prior to introduction of the notion of fixed establishment, the obligation to register as a VAT payer was linked to the existence of a non-resident's permanent establishment (e.g. if the aggregate amount of VAT taxable transactions of branch office exceeded GEL 100,000, it would then have the obligation to register as a VAT payer). A fixed establishment differs from a permanent establishment, with different tax implications. In particular, a permanent establishment is relevant for Corporate Income Tax (CIT) purposes, while a fixed establishment relates to VAT. For example, a representative office carrying out auxiliary activities (e.g. marketing, research, etc.), does not constitute a permanent establishment (for CIT purposes), however, it is likely to be regarded as fixed establishment (for VAT purposes).

For the VAT registration purposes, the law no longer establishes a GEL 100,000 threshold. Particularly, a taxable person with a fixed establishment in Georgia is obliged to pay VAT from the moment of provision of services/delivery of goods (including such transactions) and to apply to the tax authority for registration as a VAT payer no later than the last day of the reporting period for the transaction.

#### Taxable Operations

Supply of goods/services in exchange for consideration on the territory of Georgia within the scope of economic activity and import represent VAT taxable operations.

Temporary admission of the goods is no longer a VAT taxable operation. The taxable amount in case of delivery of goods free of charge is the purchase price of the goods or, in the absence of a purchase price, the total production cost and in case of delivery of services free of charge - the total costs incurred by the taxable person for providing the services.

Supply of goods is defined as the transfer of the right to dispose of tangible property as an owner. In addition, the Tax Code also sets out the activities that shall be regarded as supply of goods, which, inter alia, include actual handing over of goods pursuant to a lease, financial lease or similar agreement, with the redemption rights, transfer of goods pursuant to a contract under which commission is payable on purchase or sale, delivery of goods free of charge, other than small samples or gifts of small amount, if the supplier has fully or partially credited VAT on these goods or on the expenses incurred for production, packaging, etc.,

Place of supply of goods shall be determined as follows:

- Where goods are not dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when the supply takes place
- Where goods are dispatched or transported, the place of supply shall be deemed to be the place where the goods are located at the time when dispatch or transport of the goods begins.

The supply of goods shall not include (thus no VAT shall apply to):

- delivery by a taxable person of all of its assets or its independently operating subunit to another taxable person;
- contributing assets to the capital of an enterprise or a partnership;
- transferring assets between the parties in the event of reorganization of an enterprise.

Supply of services means any transaction, which does not constitute a supply of goods. A supply shall also be an assignment of intangible property, the obligation to refrain from an act, or to tolerate an act or situation.

The following transactions may be treated as a supply of services for consideration:

- the supply of services carried out free of charge by a taxable person to his employees or for the purposes other than those of his business
- If certain criteria are met, renovation of his fixed asset (building/structure)
- the provision of services by an enterprise or partnership in exchange for a share for a partner or partnership member, respectively.

According to the general rule, the place of supply of services shall be:

1. Place of supplying services in B2B transactions is the place of

incorporation of the person receiving services (where the services are rendered to the non-resident service recipient's fixed establishment located in Georgia, service shall be deemed to be supplied in Georgia

2. In B2C transaction place of supplying services is the place of incorporation of the supplier

However, particular provisions establish special rules to determine the place of supply. For example, place of supply of services associated with immovable property shall be the place where the property is located. Also, place of restaurant and food services is the place where the service factually takes place, etc.

Additionally, a new concept - "Criteria of Effective Use and Enjoyment" is introduced as well, enabling the Minister of Finance of Georgia to deviate from the established general and special supply-of-service rules and determine whether certain services are rendered in or outside of Georgia based on where effective use and enjoyment of the rendered services takes place. As a result, certain services shall be deemed supplied outside Georgia, if they are carried out in Georgia, though effectively used and/or enjoyed outside Georgia. While, if services they are carried out outside Georgia, but effectively used and/or enjoyed in Georgia, they shall be deemed supplied in Georgia.

#### Taxation of the Advance Payment

Since 2017 Georgian VAT system has been approximated to the European Union VAT system by means of charging VAT on advances received upon supply of goods / rendering services, except for:

- supply of goods on a regular and continuous basis which among others include electricity, water, gas, etc.
- Supply of services on a regular and continuous basis.

From January 1, 2021, the scope of VAT application on the advance payment is expanding. In particular, the advances received within the framework of regular or continuous operations will also be subject to VAT payment.

Exceptions from the general principles of applying VAT to advance payment are as follows:

- Providing telecommunication/ communication services on regular or continuous basis
- Supplying goods (electricity, gas, water, heat, cooling system or other similar goods) on regular or continuous basis
- The advance received within the framework of rental, consulting, legal and other similar services will be subject to VAT if these services are provided on regular or continuous basis

#### Treatment of Vouchers

The amendments to the Georgian Tax Code introduce the definition of vouchers and determine its treatment. Particularly, a "voucher" means an instrument where there is an obligation of a taxable person to accept it as consideration or part of consideration for a supply of goods or services and where the goods or services to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument.

The Georgian Tax Code differentiates between two types of vouchers - a "single-purpose voucher" represents a voucher where the place of supply of the goods or services to which the voucher relates, and the VAT due on those goods or services, are known at the time of issue of the voucher, while a "multi-purpose voucher" means a voucher, other than a single-purpose voucher.

VAT treatment of vouchers depends on the type of the voucher itself and a person (taxable, non-taxable) transferring (including, as a consideration) such an instrument. Additionally, the Minister of the Finance may establish derogations from the established treatment.

**Keti Mamasakhlisi** Associate, Corporate & Tax

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