



Amendment to the order

Contents

- Exemption from import duty while importing assets/goods into Georgia
- International controlled operations
- Treatment of several persons based in the territory of Georgia as single taxable person for VAT purposes

Exemption from import duty while importing assets/goods into Georgia

Order №329 of the Minister of Finance of Georgia was published on October 2, 2024, which amended Order №996 of December 31, 2010, "On Tax Administration" by the Minister of Finance of Georgia.

As a result of the amendment, a new Article 111¹⁵ was added to this Order, addressing the rules and conditions for tax exemptions provided under Article 309, Part 146 of the Tax Code of Georgia. Specifically, the amendment defines the rules and conditions for exemption from tax(es) when importing assets/goods into Georgia from an enterprise registered in a country with preferential taxation.

According to the amendment, all of the following conditions must be met for the import of an asset into Georgia to be exempt from import tax when ownership of all assets (including shares/stocks) of a foreign enterprise registered in a country with preferential taxation is transferred to a Georgian enterprise:

- The import of the asset must be completed by January 1, 2028
- In both Georgia and the country with preferential taxation, 100% of the shares/stocks must be owned by the same natural person or group of natural persons
- The natural person/group of natural persons must have owned 100% of the foreign enterprise's shares as of June 5, 2024
- The natural person/group of natural persons must hold 100% of the Georgian enterprise's shares at the time of asset transfer and/or goods import.

When importing an asset/goods into Georgia, Georgian enterprise must apply to the tax authority for exemption from import tax (using Annex №VII⁷-01), attaching the following documents:

- Documents confirming the foreign enterprise's ownership of shares
- Documents confirming all assets/goods, shares/stocks ownership prior to June 5, 2024
- Documents for the transfer of assets to the Georgian enterprise free of charge and/or as a capital contribution.

If the submitted application meets the above requirements, the tax authority will issue an order "On Exemption from Import Tax on Asset/Goods Import under Article 309, Part 146 of GTC." Additionally, if the application requires further information/documents or has other deficiencies, the tax authority will grant the applicant a 15-working-day period to rectify them. Otherwise, the tax authority will issue an order denying the exemption from import tax on the asset/goods.

The amendment came into force from 3 October 2024.

International controlled operations

Order №331 of the Minister of Finance of Georgia was published on October 3, 2024, introducing an amendment to the “Instruction on the Assessment of International Controlled Transactions,” established by Order №423 of December 18, 2013, by the Minister of Finance of Georgia.

As a result of the amendment, a new Article 14¹ has been added to this Order, which defines the qualification of a loan as a capital contribution in relation to international controlled transactions. According to this article, when qualifying a transaction initially regarded as a loan as a capital contribution, 12 criteria outlined in Article 14¹ will be considered. It should be noted that the transaction will be qualified fully or partially as a capital contribution if it meets at least three of these criteria, based on the agreement between the parties to the controlled transaction and/or the factual circumstances. The following criteria, for instance, will be considered when a transaction initially regarded as a loan is fully or partially qualified as a capital contribution:

- Fixed repayment schedule
- Obligation to pay interest
- Enforcement of principal/interest gain through compulsory measures
- Lender's status (subordination) in relation to other creditors
- Contractual restrictions and security mechanisms
- Ability to fulfill debt obligations
- Borrower's capital structure
- Necessity for the loan and purpose of spending
- Deferral of debt obligations
- Participation in the borrower's management
- Loan issuance proportional to share ownership and/or on the condition of ownership
- Possibility of converting the loan into capital.

It should also be noted that this order does not apply to loans issued before January 1, 2025, to the exchange rate difference that occurred before that date, as well as to the interest accrued before January 1, 2025, for which payment was made during that period or subsequently.

The amendment came into force from 4 October 2024.

To treat several persons based in the territory of Georgia as single taxable person for VAT purposes

On October 15, 2024 Order №342 was issued by the Minister of Finance of Georgia which amended the order №996 of the Minister of Finance of Georgia dated December 31, 2010 "On Tax Administration".

AUTHOR'S COLUMN

This publication covers important new tax changes that business should take into consideration for their daily operations and governance.

This issue provides information on Exemption from import duty while importing assets/goods in Georgia, international controlled operations and treatment of several persons based in the territory of Georgia as single taxable person for VAT purposes.

Please contact BDO to discuss these matters in the context of your particular circumstances.

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As a result of this amendment, a new Article 46¹ titled “To treat several persons based in the territory of Georgia as a single taxable person for VAT purposes” was added after Article 46 of the aforementioned order.

This amendment is directly related to paragraph 9 of Article 73 of the GTC and outlines the necessary conditions and procedures for the tax authority's treatment of multiple persons established in Georgia, as a single taxable entity, aimed for preventing VAT evasion.

This approach applies only when all the following conditions regarding multiple taxable entities are met:

- The main decisions related to their activities/management are made by the same person
- Their place of business is the same
- The type and content of their activities are identical
- Any member of the group is not registered as a VAT payer.

According to the order, the decision-maker is considered the same if he/she makes decisions on at least two of the issues defined in this article, such as dividend distribution, business reorganization, investments, etc.

Regarding the definition of the identity of the type and content of the activities, at least one of the following conditions must be met:

- The persons provide the same, analogous, or similar goods or services
- The persons engage in analogous or similar main activities related to the same economic sector
- The activities of persons are focused on the same target customer
- The persons share or use the same essential resources
- Any other circumstance indicating the identity of the type and content of the activities.

Additionally, it is specified that persons defined in subparagraph "a" of Article 157 of GTC (person/natural person/enterprise or organization/ association of independent persons without the status of a legal entity) will be considered as a single taxable person under this instruction if they are established in Georgia or in the absence of such, their permanent address or place of residence is in Georgia.

The essence of the amendment is discussed in details through an illustrative example provided in the order, according to which three persons (including two legal entities and one natural person registered as an individual entrepreneur) were treated as a single taxable person based on the fulfillment of all sufficient conditions, which led to the exceeding of the total amount of taxable transactions to 100,000 GEL and on this basis the obligation to register these persons as VAT payers.

This amendment came into force from October 17, 2024.