

Measures to ensure tax compliance

In case of persistent non-compliance on part of a taxpayer, it is possible to apply against him/her the following measures to ensure tax compliance in succession determined by a tax body proceeding from each particular case:

- Tax hypothec/mortgage;
 - Imposition of the tax on property in the possession of a third person;
 - Seizure of property (**See Decree N14 of the Government of Georgia**);
 - Sale of the property under arrest (**See Decree N10 of the Government of Georgia**);
 - Setting off of the sums of taxes, fines and penalties from bank accounts
 - Removal of monetary funds from a taxpayer's cash account (**See order N300 of the Minister of Finance**);
 - Other measures.
- **Measures to ensure tax compliance are not applicable towards issuer of securities possessed by a broker acting in the name of an issuer, in accordance with the Law of Georgia on Securities Market, and monetary funds received to purchase securities.**

Tax mortgage/hypothec

One of the measures to ensure tax compliance is a tax mortgage/hypothec right, which originates with the initiation of a tax dispute with regard to a tax liability or/and on recognition of a tax liability. This right applies, within the amount of a tax liability, towards any property owned by or/and counted (excluding leasehold property) on the balance of a tax payer (including property procured after a tax liability incurs).

- **A notice of a tax mortgage/hypothec is delivered both to a tax payer and a registration body, which shall, no later than the day following delivery of such notice, register a tax mortgage/hypothec right.**

Should it be stated by a court decision or recognized by a third person that the property of a tax payer or his/her property rights are in any form in temporary possession of a third person, then with consent from a tax payer or without such consent, a third person shall, on request from a tax body, repay to a tax body the tax liabilities undertaken and not fulfilled by a tax payer (not exceeding a recognized tax liability), if the property of a tax payer is so small that no other measures on compliance with the referred tax conducted by the tax body would ensure repayment of the referred recognized tax liability.

- **Upon completion of a brokerage or restructuring procedure, a tax mortgage/hypothec right is applied in the same way as prior to commencement of a brokerage or restructuring procedure.**

A tax mortgage/hypothec right is not applicable towards an owner, whose right originates prior to registration of the tax mortgage/hypothec. Sale of a mortgaged/hypothecated property by the tax body leaves other rights of mortgage/hypothec registered prior to registration of this tax right unaffected.

- **If a property is sold without invalidation of a tax mortgage/hypothec right or otherwise transferred to another owner, this right shall be applied towards this property against a new owner.**

Any other hypothec/mortgage right of a new owner shall have the least force against the tax hypothec/mortgage right, which existed prior to such sale or transfer.

In order to facilitate transfer of property subject to tax mortgage/hypothec, the State is entitled to invalidate this mortgage/hypothec, if:

- A tax body receives a claimed sum instead of this property;
- It is considered that such action would be contrary to the strategic interests of the State.

➤ **In such case, a tax body issues a note on invalidation of a tax mortgage/hypothec imposed on property.**

A tax mortgage/hypothec right is considered to be invalidated in case of repayment of the tax liabilities or upon expiry of the time of limitation of a tax mortgage/hypothec.

Imposition of payment on property in the possession of a third person

If it is stated by the court decision or recognized by a third person that the property of a tax payer or property rights are, in any form, in temporary possession of a third person, then under consent of a tax payer and on request from a tax body, a third person shall fulfil the liabilities with regard to a tax body, which are undertaken but not complied by a tax payer (to the extent not exceeding recognized outstanding tax liabilities).

Upon full or partial fulfilment by a third person of a tax claim, a tax liability of a tax payer is respectively invalidated or reduced (for instance, a tax payer has to pay Gel 20 000 to a tax body, while through rental of a building this tax payer will be paid Gel 15 000 as leasing charge. The person, who has rented a building from this tax payer may be imposed a liability to pay Gel 15 000 due to a tax payer directly to a tax body instead. In such case, a tax payer's outstanding tax liability will be reduced to Gel 5 000 along with the reduction of a third person's liability towards this tax payer (by Gel 15 000).

If a tax payer declares to a tax body that his/her property or/and property rights are in temporary possession of a third person without providing any documentary evidence of this, a tax body shall request verification of this information from a third party. A third party shall, within 10 days from receipt of such request, notify a tax body of the property and property rights, which are in his/her possession or reject the referred information.

➤ **In case a third person fails to present the requested information, delays it or presents false information, sanctions provided for by the Code shall be applied with regard to this third person.**

Head/deputy head of a tax body are authorized to take decisions on imposition of payment on property in possession of a third person and present to him/her a tax claim, which means:

- Obligation of this person to repay, within a 15-day deadline, the referred sum directly to a tax body or transfer to it the property of a tax payer, which is in his/her possession;
- Within a 15-day deadline, in case of non-fulfilment of a tax claim, setting off by order of collection of the due sum from a bank account of this.

➤ **A „tax claim“ shall be accompanied with a tax payer's consent on imposition of payment on property in the possession of a third person, except when this property does not suffice to ensure payment of the recognized outstanding liability through other measures on tax compliance conducted by a tax body.**

A tax claim delivered to a third person shall contain:

- Title and address of a tax body;
- Date of delivery of a tax claim;
- Data of a third person and tax payer (full name/title, address);

- Basis for presenting a tax claim, a regulation of the tax legislation act under which this claim is to be presented.
- Content of the claim (including amount of the outstanding liability of a third person towards a tax payer; the sum claimed from a third person and the property in the possession of this third person, which is owned by a tax payer; deadline for fulfilment of this claim; mode of payment);
- Rights and obligations of a third person at the time of receipt of a claim (including appellation of a tax claim);
- Measures to ensure tax compliance applicable towards a third person in case of non-fulfilment of the claim.

A third person, who fulfils the referred claims of a tax body, shall from the moment of fulfilment be relieved of a tax obligation towards a tax payer at the rate of the property transferred or right on this property, as well as from the responsibility towards a tax payer for the losses and damage, which might result from fulfilment of these claims.

Seizure

A tax body is entitled, without court decision, to sequestration, at the rate of a recognized tax liability, of any property owned by or/and counted on the balance of a tax payer (except for a leasehold property), including movable, unmovable or intangible property, in order to ensure tax compliance.

Seizure of property covers drawing up of an inventory of the property of a tax payer, prohibition of disposal of this property, but not of its use for usual production purposes (except for goods intended for sale) and transfer for storage of the goods intended for sale.

- **In case of seizure of property, a tax payer shall have no right to dispose his/her property without a written permission from a tax body, and even then, under the condition that the proceeds thereof shall go to cover tax liabilities.**

Seizure is an administrative act, which is drawn up under order of the head/deputy of a tax body and is entered into effect as soon as a debtor gets familiar with it as prescribed by law.

- **A tax body shall notify a debtor in writing of a decision on seizure of his/her property at least 30 days in advance, except when payment of the tax is endangered.**

An act on seizure or release of a thing shall be sent immediately to a relevant registration office of the National Agency for Public Register.

A notice on seizure of the property shall contain:

- Data of a debtor (full name/title, address), identification No of a tax payer (if any);
- Date of sending;
- Types of unpaid recognized taxes, period and amount;
- Total amount of recognized liabilities by the end of a 30-day period (including sanctions charged) and recognized tax debt.

A representative of a tax body lists things seized in account of recognized tax liabilities in an act of seizure (inventory) of property.

An act of seizure (inventory) of property shall indicate:

- Time and place of drawing up of an act;
- Title of a tax body, which takes a decision on seizure, full name of a representative of this tax body and persons who attended drawing up of an act;
- Data of a debtor (full name/title, address), identification No of a tax payer, if any;

- Name, characteristics of each listed thing (weight, metrage, amortization and etc.), evaluation and cost of all of the property;
- A subject or/and lot which are sealed and quantity and description of seals thereon;
- Title and address of a person, who is transferred property to keep, unless a debtor himself is commissioned to do so;
- That both a debtor and keeper of property are explained their duties with regard to keeping of the property, and responsibilities for embezzlement, sale or hiding of the transferred property;
- That a debtor and other persons are explained how to lodge an appeal against the actions undertaken by a tax body;
- Comments of a representative of a tax body or/and debtor.

An act of seizure (inventory) of property is signed by representatives of a tax body, keeper of this property, a debtor and other persons attending the seizure. If these persons refuse to sign an act, a respective note is to be made in the act.

Securities or/and valuables are removed for safe keeping by a representative of the Tax Inspectorate under procedure set forth by the Georgian legislation, if there is a danger to the safety of things under seizure. If these things remain with a debtor, they are attached seals.

If any third persons declare their rights to this property in course of seizing the property of a debtor, the property shall still be incorporated in the inventory with a relevant note, though.

An act of seizure (inventory) of property shall quote a market price of each item under the seizure.

- **Seized items are evaluated by a representative of a tax body on the basis of its market value, if in course of evaluation of the seized property, a tax body representative fails to state the price of each item, an expert or an auditor is to be invited.**

If, in case of a recognized outstanding liability, a tax body has sufficient justification to suspect that a tax may not be paid, it is authorized to claim immediate payment of the tax, or else to seize the property of a debtor without sending him/her any notification 30 days in advance. In such case, a tax body shall, within 72 hours from seizure of the property, place to the court a motion on confirmation of seizure of the property of a debtor. The court shall, during the following 72 hours, take a decision whether to satisfy the motion, in full or in part, or to reject it.

If an outstanding tax liability is not recognized and a tax body does not have sufficient justification to suspect that it may be not paid, it is authorized to claim immediate payment of the tax liability or else seize the property of a debtor within the mortgage/hypothec right at the time of the tax liability. In such case, a tax body shall, within 72 hours from seizure of the property, place to the court a motion on imposition of a mortgage/hypothec on the property of a debtor (if a debtor possesses corresponding property), or/and on confirmation of seizure of the property of a debtor (if a debtor does not possess property on which mortgage/hypothec may be imposed or its cost is not enough to repay an outstanding tax liability).

- **If a tax body fails to place a motion to the court within 72 hours, or a court fails to take a decision on confirmation of the seizure of property within 72 hours, such seizure shall be raised.**

A tax body has grounds to suspect that a tax may not be paid only if:

- A tax payer hides his/her property, which may be used to cover an outstanding tax liability;
- A tax payer is preparing to leave the country with his/her tax liabilities not complied and without taking any actions to repay his/her debt;
- A tax payer does everything to be declared bankrupt;

- There is a real danger of sale of the property by a tax payer, either through a true or mock arrangement, which might render ensuring by it of the tax compliance problematic or even impossible;
 - A tax payer, who is charged outstanding recognized tax liabilities, possesses more than Gel 10 000 and does not pay tax liabilities.
- **Seizure of property by a tax body is considered to be raised as soon as a recognized tax liability is repaid in the full amount.**

Sale of the property under seizure

A seized property of a debtor is sold by a tax body at an open auction, on the basis of a court decision.

Time and place of holding an auction are decided by a respective tax body of which it makes announcement 30 days prior to holding of an auction.

Such an announcement should contain:

- Time and place of an auction;
 - Data of the property owner (full name/title, address);
 - Name of the property placed for sale (brief description of the property);
 - Initial price of the property, which is a market price of an item under seizure as indicated in the act on seizure (inventory) of the property;
 - That persons, who have rights to this property, are obliged to produce documentary evidence prior to commencement of an auction;
 - Terms of an auction.
- **An announcement shall be placed on the announcements board at a tax body and made public through mass media.**

After publication of the information on holding an auction, all interested physical and legal persons, on agreement with a tax body, are entitled to get familiar with the property place for sale.

- **A person, who is willing to participate in an auction, shall prior to commencement of the auction enter to an exchequer deposit sub-account an advance in the amount of 2 per cent of the initial price of an item placed for sale, which he/she intends to purchase, that in case of winning shall go in account of the sum paid.**

An auction is held by a representative of a respective tax body. He announces an auction to be open and offers an initial price. An auction lasts until no more offers are made. A representative of a respective tax body announces a person, who offers a final price, after which an auction shall be announced closed.

- **Those, who have lost, are returned a prepaid sum within 5 days from closing of an auction.**

A person, whose offered price is accepted at the auction and who purchases an expropriated property, shall immediately pay at least half of the offered price, or Gel 5000 by the minimum rate, with the rest of the sum covered within 14 calendar days from the sale.

- **Until the price of property is fully covered, a buyer has no property rights.**

Sums paid for the purchase of property at the auction are entered to the exchequer's deposit sub-account from which equivalent amounts are used to cover expenses related to the recovery, keeping and sale of property and the remainder is transferred to the respective budgets' accounts.

As soon as the sum is paid in full, a buyer is issued a certificate of sale and ownership (management) of the property. This certificate gives a property right to a buyer to which a non-tax mortgage right existing prior to sale of the property and exceeding the tax mortgage right, which resulted in seizure of the property, is extended. A buyer shall immediately remove the goods from warehouse or depository, where it was kept by a tax revenues service. A property right of a buyer enters into effect after repayment of the sum, in full, to the State.

- **If a buyer fails to repay in full the cost of property purchased at the auction within the stated deadline, he/she loses all rights to this property, as well as to the money paid in advance for purchase of this property (including to the deposited sum). In such case, the sum paid ahead will be used to cover those taxes to pay which the property was placed for sale in due time.**

If a buyer fails to repay the cost of property purchased at the auction as stated or if no appropriate price is offered at the auction, the State (a tax body) is entitled:

- After 14 days from publishing a new announcement of the auction, to place the property for sale again at a repeated auction, the number and expediency of which is decided by a state body;
- To raise seizure and return the property to a tax payer with the property and management right.

- **Seized perishable goods may be placed for sale immediately.**

Perishable goods are considered to be those goods only, which have less than 10 days left until the date of expiry. In case of sale of perishable goods, other creditors of a tax payer are entitled, within 60 days from holding an auction, to apply to the head of a tax body with an administrative claim insofar that they have had their mortgage right to the sold perishable goods registered prior to the date of registration of the tax mortgage. Upon receipt of such claim, head of a tax body shall, within 30 days, consider this administrative case. If the case is decided by the head of a tax body in favor of a claimant, a tax body shall have to pay to this claimant the total sum gained through the sale of perishable goods or the sum claimed, by the minimum rate.

The following shall be repaid in the first place through proceeds from sale of the property:

- Expenses related to recovery, keeping and sale of property;
- Sums of taxes;
- Sums of fines and penalties.

- **The remainder of the sums paid in the first place through proceeds from the sale of the property, shall be returned to a tax payer within 5 bank days.**

Registration bodies, in case of presentation of a certificate by a buyer of property placed for sale at the auction, shall register a new owner of property as prescribed by Georgian legislation, who will take the place of an old one and who at the time of transfer of the property, will become a participant of legal relationship with regard to this item.

- **If prior to holding of an auction, a tax payer ensures payment of the tax liabilities and covers expenses rendered by a tax body to arrange an auction, sale of the property under seizure shall be terminated.**

Setting off of taxes, fines and penalties from a bank account

In case of failure by a tax payer to comply with the tax liabilities, within 10 days from the expiry of the deadline laid down by the Tax Legislation, a tax body is authorized to set off, by order of collection, the sums of a tax, fine and penalty, within the limits of a tax liability, from his/her bank account and to transfer them to the relevant budgets.

A decision on setting off of taxes, fines and penalties from a bank account of a tax payer is drawn by the head/deputy head of a tax body in the form of an order, which is delivered as prescribed by the Code to a debtor and a bank institution with which a debtor has opened his/her bank account. An order of collection issued by a tax body shall indicate bank accounts of a tax payer from which the sums of taxes, fines and penalties are to be set off, as well as the amounts to be transferred.

- **A bank institution shall without fail fulfill an order of collection issued by a tax body on transfer of the sums of a tax, fine and penalty to relevant budgets.**

Removal of cash money from the cash account of a tax payer/tax agent or other liable person

If the sums set off from bank accounts and a measure conducted by a tax body does not suffice to cover a recognized outstanding tax liability, a tax body is authorized to remove the cash money (including foreign currency), without order from a judge, out of a money vault or other depository (except for a dwelling place of this physical person), in the amount suffice to cover a recognized tax liability.

A rule of removal of the cash money is set forth by the Minister of Finance of Georgia (**See Order N300 of the Minister of Finance**).

Cash money removed from a cash desk or any other depository of a debtor shall be taken that same day to the bank institution to enter to the accounts of respective budgets. If it is impossible to take the cash money to a bank institution on that same day, it shall be entered to the referred accounts on the next working day.

Fictitious ownership

Persons are considered dummy for one another, if it is decided by court that it is practically impossible to distinguish a tax payer from another person as this last is used to evade taxes. In such case, should a tax payer have an unfulfilled outstanding tax liability, a tax body is authorized to apply measures on ensuring tax compliance with regard to a dummy person.

An outstanding tax liability may be set off. Outstanding tax liabilities may be set off, if:

- it is recognized as a bad tax debt (**See Order N148 of the Minister of Finance**).
- Tax liabilities are suspended due to the death, loss or disability of a tax payer or under the other acts of the Tax Legislation.

To set off an outstanding tax liability, a Commission on expediency of restructuring of the outstanding tax and credit liabilities has been established within the Ministry of Finance of Georgia. The outstanding bad debts are set off by order of the Minister of Finance on the basis of decisions taken by it.

- **If a person, who has his/her bad tax liabilities set off, continues to carry out economic activities or/and if it is stated that he/she owns property, then previously offset tax liabilities, as well as fines charged and penalties imposed, will be restored towards such person.**

