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# **GBCR Assistance in Double Taxation Instruction**

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**TO:** Nino Kumsishvili, USAID COTR

**FROM:** Nato Beruashvili, USAID GBCR Fiscal Reform Team Leader

**DATE:** April 24, 2009

**CC:** Olin McGill, USAID GBCR COP

**RE:** Double Taxation Instruction

### **Background**

In response to complaints from taxpayers the Ministry of Finance asked GBCR to help simplify the procedures for verifying entitlement to exemption from, or reduced rates on, withholding tax on income entitled to the benefits of a GOG DTA. GBCR worked with double taxation expert who examined the suitability of current procedures and considered possible alternatives. With GBCR assistance the MoF has drafted proposed instruction on double taxation relief procedures. The proposed instruction was sent to businesses for comments.

In the proposed instruction most of the GBCR recommendations were taken into account. However, there are still some issues to be resolved, discussed in the memo below.

### **I. Review of proposed draft instruction**

- **Maximize granting benefits upon payment of income.** According to the proposed instruction DTA benefits can be granted upon payment of income. Double taxation relief information forms should be submitted once a year together with annual income tax return.

#### **Comment:**

I would like to stress the importance of establishing an effective procedure which will enable Georgia to provide the anticipated DTA benefits by relief at source rather than requiring foreigners to rely on obtaining refund of tax. The proposed instruction offers this option. However, this practice could create a negative effect by holding the withholding agent liable and open to penalty for incorrect information submitted to the Revenue Service (Art.2.6 and 2.7) despite the fact that s/he was not the one in error. Therefore, fear of being penalized might cause the payer of the income to withhold tax and then apply for the refund, which could lead back to the same problems that currently exist.



- **Residence certificate to be abolished and self-certification introduced** The self-certification of residency and beneficial ownership was introduced for double taxation relief on any income up to 50.000GEL and any amount of income received in the form of dividend and interest.

**Comment:**

Ideally, self-certification will be introduced for all cases without any threshold. The self-certification replaces the mandatory requirement of a residency certificate from foreign authorities. The process of obtaining a residency certificate is time consuming and expensive. In self-certification foreign income recipients file a request with the withholding agent self-certifying as to their entitlement to DTA benefits. The non-resident is also required to certify that if any of the situations certified change the withholding agent will be notified.

- **Bilingual forms in place.** Bilingual forms are introduced.

**Comment:**

Despite the fact that bilingual forms are introduced, the proposed instruction requires that if the form is completed in English, it should be translated and notarized.

- **Legalization\apostile is no longer required**

**Comment**

Legalization or even simplified legalization through apostile is an expensive and time consuming process. Elimination of this requirement will facilitate a faster and more effective procedure for granting DTA benefits.

- **The double taxation relief forms can be submitted by a non-resident as well as by a paying agent.**

**Comment**

According to the current legislation only a non-resident could submit double taxation relief forms. According to new procedures the right to claim double taxation benefits can be enjoyed both by an income recipient and a paying agent. If a request is submitted by a paying agent, the refunded amount is transferred to his account, and the paying agent in his turn transfers the amount to the appropriate non-resident. If the request is presented by a nonresident income recipient, the refunded amount is transferred directly to him. This change introduces a more efficient double taxation relief mechanism.

- **A foreign country residence certificate can be submitted in any form and is valid until end of the calendar year.**



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### **Comment:**

The requirement for a foreign government residence certificate is retained for double taxation relief on income above 50 000 GEL. Prior to introduction of the new procedures, the Georgian tax inspectorate required such certificate to be sent by foreign authorities on official letterhead, signed and stamped with official seal. These mandatory requirements caused substantial burden and were an obstacle to obtaining the required benefits, as criteria of filling the documents differ from country to country and there are no standardized rules for completion. The new procedures eliminate mandatory requirements and the Georgian tax inspectorates will receive foreign country residency certificates submitted in any form. In addition, the validity of the certificate was prolonged to the end of the calendar year.

## **II. Capacity Building**

- **Information Exchange with DTA countries**

If an effective exchange of information is in effect, this can serve as a belated check on residency status. It is important to have automatic exchange of information in relation to affirming entitlement to reduction or exemption from withholding tax. Such exchanges on an automatic basis are probably the most important, but spontaneous and specific exchanges can be most valuable to Georgia and their implementation should be pursued.

- **Centralized international tax functions of the SRS**

Consideration should be given to centralizing the international tax function of the Revenue Service into one office in Tbilisi. This office would be staffed by senior, specially trained tax inspectors who have foreign language skills. Foreign language skills are necessary not only to deal with foreign taxpayers but to deal with foreign tax authorities.

- **Training of tax inspectors regarding new rules**

Tax officials shall be trained on double taxation issues in order to avoid any unnecessary delays in the processing of double taxation relief or refund requests.