



USAID
FROM THE AMERICAN PEOPLE

**BUSINESS CLIMATE
REFORM**

International Financial Center Provisions

CONTRACT NO. AFP-1-00-04-0002-00 TO:03

8 July 2008

This publication was produced for review by the United States Agency for International Development and the Government of Georgia. It was prepared by USAID Business Climate Reform, managed by Chemonics International Inc. The author is Steve Vasak, Senior Tax Policy Attorney.

The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

INTERNATIONAL FINANCIAL CENTER PROVISIONS

By: Stephen Vasak, Senior Tax Policy Attorney

July 8, 2008

I. CURRENT SITUATION

On March 14, 2008 the Georgian Parliament passed amendments to the Tax Code. Some of those many amendments regard the establishment of an International Financial Center.

Article 26 was extended to include International Financial Companies (IFC) providing financial services as defined in Article 19 of the Tax Code. Article 172 of the Tax Code was extended to include various IFC tax exempt income: profits from financial services, gain from sale of an IFC's issued securities, income generated by non-resident from domestic source of risk and re-insurance insurance products, rental income earned by non-permanent establishment foreigner. Article 195 was amended to add additional tax exemptions: dividends from issued shares of IFC, interest from financial institutions.

Article 26 was further extended to recognize International Enterprises, which are Entrepreneurial Law entities operating in free industrial zones and, therefore, its activities, like International Financial Companies, are exempt from taxation.

Article 168 was amended on March 14, 2008 by adding part 1(v), which exempts from taxation foreign source income received by resident natural persons, which in effect terminates global taxation and limits tax to territorial income. Territorial taxation, however, does not apply to legal entities. It is unclear if the natural person territorial source of income applies to sole-proprietor activities, although, by implication business source income is subject to global taxation.

The current legislation, however, does not support the implementation of an International Financial Center.

SUMMARY OF RECOMMENDATIONS

Amend Article 19 to provide standard International Financial Center Activities for Banks, Insurance Companies, Investment Funds and Trusts and International Business Companies.

Amend Article 206 to provide pass-through taxation for activities involving investments such as trading of stocks and securities.

Amend Article 29 by deleting Article 29.4 to allow non-permanent establishment treatment in all cases when an independent agent represents a foreign principal.

Amend Article 34 to include expedited residency status for foreign natural persons establishing a business in Georgia conditioned upon amount to be invested and number of employees.

Amend the Entrepreneurial Law to include Investment Funds, Trusts, International Financial Companies, International Enterprises, Private Equity Funds, Venture capital Funds and International Business Companies.

Amend the Civil Law, Article 724, to include title in the name of a trustee for the benefit of a foreign natural person Beneficiary or Settlor.

Amend the Banking and Insurance Laws where needed to include authorization of common International Financial Center activities.

III. CURRENT LEGISLATION

The justification of the concept of an International Financial Center and the passage of the March 14, 2008 amendments are not the subject matter of this report. Rather, this report concentrates exclusively upon the implementation of the previous Parliamentary approved International Financial Center legislation. It is noted that the Tax Code and supporting legislation (Civil Law, Entrepreneurial Law, Securities Law, Insurance Law and Banking Law) do not support the implementation of a International Financial Center.

Article 19 of the Tax Code defines Financial Services. However, the definition does not include all those forms of activities that are synonymous with the activities common to a International Financial Center. While common activities regarding banking, loans, credit, issuance of stock and investment management are included in the definition, excluded are insurance company risk management, banking involving global custody, fund accounting, fund administration, transfer agent services, foreign exchange operations, transactions regarding the creation and trading of stocks and securities, and financial international transactions as well as activities of special purpose entity vehicles.

The amendment to Article 26 recognizes tax-exempt International Enterprises conducting business in a free industrial zone. International Enterprises are defined in Article 26.3 as entities whose activities regard the importing and exporting of goods, goods being defined in Tax Code Article 17 as not including money. As a result, it is questionable whether an entity, such as an Investment Fund or International Business Company, unrelated to the supply of goods qualifies as an International Enterprise despite conducting its business in a free industrial zone.

The Civil Code does not directly recognize investment trusts, but by implication Article 724 recognizes trusts to manage property for a settlor. However, there is no definition of property. Therefore, since forms of property are not excluded by definition, by implication it would appear that currency would qualify as property and permit management of investment funds and trusts.

The Civil Code does not permit title to immovable property in the name of a trust, which is common in Civil Law countries. Therefore, a domestic or foreign real estate investment trust is not a recognized investment entity. Although, real estate may be held in the title of a legal

entity, this would not permit an established foreign common law real estate investment trust to own property pursuant to its created format.

The Tax Code does not directly recognize investment funds or investment trusts. However, such form is non-specifically inferred to in Article 13.4, which recognizes security trading as an economic activity. Article 25 defines trading in securities as an Enterprise and is, therefore, taxed at the entity level, which is contrary to internationally accepted cross-border investment fund taxation requiring pass-through single taxation.

The Tax Code has no provision for pass-through investment fund taxation. Article 206 permits pass-through tax calculation of joint ownerships, but an investment fund is not a joint ownership.

The Securities Law, Article 2.54, recognizes an investment fund as a financial institution providing financial services. However, Article 19 of the Tax Code makes no reference to investment funds. Therefore, transactions of an investment fund should be included as an entity providing financial services. However, Article 2.55 of the Security Law refers to an investment fund as a legal entity, therefore, the Tax Code, would apply entity taxation as opposed to investor pass through taxation.

IV. DISCUSSION OF RECOMMENDATIONS

1. IFC Banking and Insurance Activities

The amendment to Article 26 defines an International Financial Company as a company providing financial services. Financial services are defined in Article 19 of the Tax Code.

Article 19, however, does not include the common International Financial Center activities of an offshore branch or subsidiary of a foreign Bank such as fund administration, global custody services, fund accounting, fund administration, transfer agency services, foreign exchange operations, financing international transaction. Article 19 also does not include the common International Financial Center offshore activities of a foreign Insurance Company such as risk management, investments and administration of foreign issued policies. As a result in the appendix to this Report is the language for the amendment to Article 19 regarding Banking and Insurance activities.

Part (i) of the amendment to Article 172 of the Tax Code provides tax exemption on profits gained by an IFC from financial services. Therefore, in order to exempt gains from common International Financial Center banking activities, the recommended amendment to Article 19 is necessary.

The amendment to Article 26 also includes Insurance Companies. Amended Article 172 (1) excludes from taxation foreign source income from risk insurance and re-insurance. However, Article 19 does not include service activities common to International Financial Center insurance services, such as services rendered to manage risk, investments and administration of policies issued to foreigners. Therefore, these services are included to the proposed amendment to Article 19 in the Appendix to this report.

2. Investment Funds

a. IFC Investment Funds

In order to encourage private investment that will work across borders, it is standard practice that countries adopt two sets of rules:

1. First, countries should distinguish between three types of foreign funds: those organized as pass through partnerships, those organized as entities that are required to distribute their income currently to investors, and those funds that are not required to distribute income currently. Once these distinctions are made, countries should adopt tax rules to treat them appropriately such that only one level of tax is imposed on investment returns.
2. The second condition for private investment to flourish is the elimination of local source taxes on capital gains from trading stocks and securities, in favor of taxation by the state of residence.

The Tax Code of Georgia creates double taxation on investment income earned by an Investment Fund or any other investment vehicle, instead of only one tier of taxation by the State of residency. This results from entity taxation, no exemption of capital gains and no pass-through provisions of investment income.

a. Entity Level Taxation.

The Georgia Securities Law, Article 2.54 recognizes investment funds as financial institutions, both regulated and non-regulated. Investment funds must be managed by financial institutions, which includes banks, insurance companies, broker dealers and experienced investment managers. The Securities Law, however, does not refer to other forms of investment vehicles such as Private Equity Funds, Venture Capital Funds, Investment Trusts. However, for the purpose of this part of the report, even if we define the other vehicles as being a part of the broad definition of an Investment Fund, there still remains double taxation of investment income.

The Securities Law, Article 43, states regulated investment funds can be any form of entity, therefore, a foreign investment fund can continue its form so long as it is regulated. (Note: even if regulated, there is no pass through legislation, therefore, entity taxation upon trading activities would still apply pursuant to Articles 13.4 and 25 of the Tax Code). Article 43.2 as amended specifically states a non-regulated fund must take the form of one of the entities allowed by the Entrepreneurial law.

The Entrepreneurial Law does not recognize an Investment Fund as a legal entity. As a result, a foreign Investment Fund wishing to establish a non-regulated investment fund in Georgia is compelled to take the form of a Limited Liability Company. The Limited Liability Company, however, is treated as an entity for tax purposes as is the trading of stocks and securities under Articles 13.4 and 25 of the Tax Code. Therefore, the criteria of single investment taxation will be violated and double taxation is created on both the entity level and Country of residency. But even if the Entrepreneurial Law did recognize an Investment Fund, there would still be double taxation, since the trading in stocks and securities is not considered a financial service, therefore, the exempt taxation on financial activity gains provided by Article 172 part (i) would not apply. An amendment to Article 19 is required to include transactions in trading stocks and securities as a financial service.

b. Capital Gains

The inclusion to Article 19 for trading in stocks and securities is also required to exempt capital gain taxation from the sale of stocks and securities. Article 172 part (j) of the amendment to Article 172 of the Tax Code exempts IFC capital gains from the sale of securities. However, this exemption from capital gains is limited to the sale of securities “issued” by the IFC. This provision cannot apply to an Investment Fund, since the Fund does not issue securities to its investors, rather it issues participating interests and sells/trades other securities and not its own securities. Therefore, the capital gain exemption

does not apply to an Investment Fund trading other securities in foreign markets in behalf of third parties. Article 19 without amendment supports this conclusion. Article 19 by way of limitation only lists the “service related to investment management” as a financial service. Therefore, only the fees gained from management services of trading securities on behalf of third parties are exempt, not the capital gains. It is, therefore, recommended that Article 19 include a provision for transactions in trading stock and securities to qualify for the exempt status on financial activities of Article 172(i).

c. Pass Through Provisions

While amending Article 19 to include transactions in trading stocks and securities eliminates entity level and capital gain taxation, it is still necessary to eliminate entity level taxation upon other forms of investment activities such as leasing and venture capital transactions and determine the issue of taxing both distributed and undistributed investment income. This is accomplished by passing an amendment to Article 206 specifically extending pass-through taxation upon even an entity form as long as the entity form is transacting. This extension to Article 206 assures single taxation of investment income at the resident country level

b. Domestic Investment Funds

Georgia's business community is blessed with pro-active, ingenious and successful local banks, insurance companies and broker-dealers. These institutions, while not qualifying as International Financial Companies, do and will manage investment funds in behalf of resident investors.

Whether the investments are conducted in the form of an investment fund or other form of domestic legal entity permitted under the Entrepreneurial Law, there remains the issue of entity taxation and taxation upon distribution.

The recommended amendment to Article 19, amended Article 26, Article 172(i) and Article 172(j) do not apply to domestic investment vehicles, whether in the form of Investment Funds or Limited Liability Companies. Securities Law Article 43 and the Tax Code Articles 13.4 and 25, state the investment entity would be taxed at the entity level. Moreover, capital gains from foreign source income would not be excluded at the entity level, since territorial taxation applies only to natural persons, not to legal entities. It should also be noted, if the distribution to an investor is considered a dividend, which eliminates the tax upon the distribution to a resident natural person, then by definition of a dividend, the distribution of a dividend must come from a legal entity. This will also mean that investment income would need to be taxed at the entity level.

This taxation of domestic investment transactions at the entity level would (a) preclude a foreign International Business Company from opening a Georgian securities brokerage account or becoming a participating investor in a domestic Georgian Investment Fund, and (b) discourage domestic entities from creating domestic investment vehicles.

In order to eliminate entity level taxation upon domestic investment income from an Investment Fund or Limited Liability Company designed for investments, it is necessary that the Tax Code, Article 206, be amended to extend pass-through taxation on investment income earned by domestic Investment Funds and Limited Liability Companies similar to partnership taxation according to International Accounting Standards, similar to the current Article 206 rule on joint ownership, which does not apply to legal persons and similar to the treatment of International Finance Companies as discussed above. There should not be two sets of rules, residents and non-residents should be equally treated under International Best Practice.

Regarding taxation of undistributed and distributed investment income to the resident natural person investor taxation should be based upon whether the investment income is foreign source or domestic source.

One significant rule of investment taxation is that the form of investment activity should not impose a tax upon an activity that would otherwise be exempt from tax if the natural person had personally performed the activity. Pursuant to the amended Tax Code Article 168, foreign source income of a natural person is exempt from tax, since the Tax Code now only taxes territorial income. Therefore, the taxation of foreign investment distributions is contrary to the rule of investment taxation, since the natural person could have made the same foreign investments free of taxation pursuant to Article 168.

I, therefore, recommend that entity taxation of domestic investment vehicles and distributions to resident natural persons of foreign capital gains are exempt of tax. This position is taken in the recommended amendment to Article 206 of the Tax Code establishing pass-through taxation.

3. Foreign Real Estate Investment Trusts and Leasing Transactions

Common Law countries recognize real estate investment trusts to own and manage real estate. Georgia, like most European Civil Law countries does not recognize a trust's ownership of real estate. However, most European Civil Law countries are signatories to The Hague Convention on Trusts permitting title ownership in the form of a foreign trust.

As a result of being signatories to this convention, these civil law countries have opened their respective borders to foreign real estate investment trusts from common law countries.

The Civil Law, Article 724, while recognizing trusts, does not extend the trust provisions to holding title to real estate purchased in the name of the trust for the benefit of individual investors. As a result, neither a domestic nor foreign real estate trust may own real estate purchased and managed for third party investors.

The Civil Law, however, does permit the ownership of real estate in the name of a legal entity. Therefore, if a foreign real estate investment trust wanted to own and manage real estate for the benefit of investors, it would have to establish a legal entity recognized by the Entrepreneurial Law. The establishment of a legal entity, however, would create residency status and subject the foreign trust to the Georgian Tax Code entity taxation.

The amendment to Article 172(l) exempts taxation of leasing income gained by non-residents that do not result from a permanent establishment. Therefore, if Georgia became signatory to the Hague Convention of Trusts, a foreign Real Estate Investment Trust could own title to Georgian real estate without first becoming a Georgia legal person, and pursuant to Article 172(l) be exempt from tax on leasing income. It is not clear whether Article 172(l) applies to leasing immovable property or is limited to leasing movable property. In most jurisdictions the term "leasing" would apply to both immovable and movable property. The term leasing income is referred to in Article 21 in relation to financial leases. But financial leases are not applicable to the leasing of immovable property. However, regardless whether the term leasing is limited only to the financial lease of movable property, the current definition of a permanent establishment, Article 29.4, would preclude all tax exempt leasing income, despite Article 172(l). In fact Article 29.4 precludes all exempt taxation upon movable and immovable leasing income by a non-resident that is not a permanent establishment.

A permanent establishment regarding property defined by the model US, OECD and UN treaties is not established by the mere ownership of property, which is supported in the Tax Code Article 29.6. Instead, the finding of a permanent establishment in regard to a non-resident natural person or a non-registered business of foreign person is based upon the agency relationship between a domestic agent and a foreign principal. If the agent is dependent, the foreign principal is considered a permanent establishment, if independent, the principal is not considered a permanent establishment. The test is the degree of participation of the agent regarding contractual obligation authority. Article 29.5 of the tax code recognizes this distinction by stating an agent having no authority to negotiate for or sign agreements for the foreign principal does not result in the foreign principal becoming a permanent establishment in Georgia. However, while this part 5 of Article 29, correctly recognizes the agency rule, Article 29.4 negates the terms of Article 29.5. Article 29.4 states even if the agent is considered an independent the use of the agent for a period more than 3 months establishes a permanent establishment.

Article 29.4 adds nothing to the Tax Code and only confuses the treaty rules regarding independent agents as correctly stated in Article 29.5. I, therefore, recommend that Article 29.4 be deleted from the Tax Code. Part 4 not only violates treaty regulations, it precludes the application of exempt leasing income under amended Article 172(1).

The taxation of the sales proceeds is permitted under treaty regulations regardless of whether the Real Estate Investment Trust or other leasing entity is or is not a permanent establishment. However, the taxation of leasing income and the rules of permanent establishment are crucial, since a permanent establishment is treated as a resident taxpayer subject to the profit tax law, while a non-permanent establishment is subject to only a 10% withholding tax. The investor should have the option to select the form of taxation.

4. Residency of High Worth Foreign Natural Persons

The Government suggested that a new provision be established to create an incentive for high worth foreign natural persons to become residents of Georgia. It was suggested that natural persons whose worth is 1 million GED or higher be afforded expedited residency. I am not in a position to address such an amendment, since it has the potential to encourage illegal activities and is contrary to International Best Practice..

In lieu of the expedited residency for high worth foreign natural persons, it is suggested that the Government consider another incentive to establish residency on an expedited basis as is used in the United States. A foreign natural person who first starts a business in the US by investing a minimum of \$1 million USD and employs a minimum of 10 natural persons is granted expedited residency status. This incentive directly encourages economic development. I have drafted an amendment to the Tax Code, Article 39.8, in the event this option is considered.

5. International Business Company (IBC)

As stated previously in this report it is questionable that an IBC would qualify as an International Enterprise pursuant to Article 26, since an IBC seldom if ever deals in goods. Moreover, since the registered office of an IBC is usually the office of its local nominee representative, it is doubtful such representative would maintain offices in a free industrial zone.

The standard list of IBC activities include:

- Manage an offshore portfolio or open a local brokerage account
- Offshore banking or the raising of capital
- Own property and ships
- Operate other businesses

- Trade stocks and securities and other commodities or issue stocks and bonds
- Lease equipment and property
- International Trade
- Consulting services
- Hold Intellectual Property
- Financial Planning
- Retirement Planning
- Confidentially hold assets
- Venture capital
- Private equity funds

Another activity of an IBC is that of a Special Purpose Vehicle, its activities include:

- Issuance of asset-backed securities
- Security offerings to investors
- Holding of portfolio assets to collateralize security issuance
- Raising capital

Since these activities are not related to transaction in “goods” activities of a free industrial zone enterprise and require proximity to the Country’s financial center, in my recommended amendment to Article 19, I have included a provision for those activities of an IBC related to financial matters, namely the creation of securities and the trading of stocks and securities.

6. The Entrepreneurial Law

The Entrepreneurial Law does not include the recognition of an Investment Fund and International Business Company. As a result it is recommended that the Entrepreneurial Law be amended to include the registration of both entities.

In regard to an IBC, whether the IBC is investment related or not, or having activity that qualifies as an International Enterprise conducting business in a tax free industrial zone, an IBC would create its entity as a limited liability company under the Entrepreneurial Law. However, the Entrepreneurial Law must permit the creation of such a limited liability company by only a Memorandum and Articles for public records and the director’s and shareholder’s names must not appear on these documents, instead registration is permitted under the name of a nominee local representative.

The requirements for registration of any IBC should further specify:

1. No minimum capital requirement
2. No audit of accounts are required
3. No filing of annual tax declarations
4. Only one shareholder and one director is necessary
5. A local nominee director is permitted
6. The share of stock may be in bearer form or non-named
7. No Company secretary position is required
8. No annual general meetings are required
9. Annual meetings may be held outside of Georgia and may be by telephone or other electronic means
10. Shares of stock may be issued with or with par value in any currency.

7. Trusts

The Civil Law Article 724 permits the establishment of a revocable trust, which means title to property remains in the name of the settlor, but a trustee manages the trust assets. Article 724, however, does not specify that an irrevocable trust may be established, which means the settlor's assets are held in the name of the trustee for the benefit of the trust beneficiaries. This is especially true of a settlor transferring ownership of real estate to the trust.

The Tax Code also makes no provision for trust taxation, which should be included in the Tax Code. Under International Accounting Standards, a trust is a taxable natural person, meaning income earned by a trust is taxed to the trust similar to the taxation of any resident natural person. However, the trust is permitted to deduct from income received all distributions made to the trust beneficiaries. Therefore, if all trust income is distributed, the trust would have no tax base and accordingly no tax liability.

However, under standard International Financial Center provisions, the requirement for a distribution of income to reduce the trust's tax base for a trust established by a foreign natural person is waived. As a result, in the recommended Article 206.2 related to pass-through of investment funds, I have included investments by way of trust to avoid the taxation of undistributed income.

Since the Trust is taxed as a resident natural person, the tax exemptions granted to resident natural persons pursuant to Article 168 and the source rules of Article 24 are equally applied to a Trust distribution of income earned by a foreign settlor's trust. Therefore, I have recommended in the Double Taxation Appendix an amendment to Article 24 to extend the source rules to the trusts of a foreign, non-resident natural person.

The trust rules for foreign natural persons must permit a domestic trust managed by a resident trustee to hold title to property located in the residence country of the foreign Settlor. The uses and tax advantages of an Offshore Trust for a non-resident foreign natural person are many,

which is the reason trust taxation provisions must be included in the current Tax Code and the domestic trustee must be able to hold title to foreign located trust assets. If title in the trust is not permitted, Georgia would have no ability to attract foreign natural person trust holdings.

The uses and advantages of a Trust for a non-resident natural person include:

- Tax savings, avoidance and deferral: the settlor can save, avoid and defer many taxes in many ways. The Settlor does not owe tax until he "repatriates" his income.
- The trust may include cash or other property to include the non-resident's home in the resident country. Any asset can be designated Trust Property. And if the Trust is in an International Financial Center jurisdiction, those assets can earn interest, or accrue whatever pertinent value without being subject to domestic taxes such as capital gains taxation.
- Safety: Keeping assets offshore provides a financial reserve in the event financial disaster strike in the settlor's country of residence.
- Protection Against Resident Country Judgments against the foreign settlor
- Confidentiality: A private contract, a legal agreement. The offshore Trustee is required to say nothing to external inquisitors.
- Ease of Transfer of Interest to Heirs or Others in the resident country: Wills, living trusts, and domestic trusts invariably pay taxes - especially when assets are transferred.
- Earnings and a Faster Accumulation of Wealth: Trusts can own companies, have bank accounts, own portfolios, hold trading accounts and not pay taxes.

V. CONCLUSION

The adoption of the 14 March 2008 amendments to the Tax Code is a good first step toward transforming Georgia into a International Financial Center. However, there is little supporting Law to implement this transition. As a result, it is necessary to establish a joint working group consisting of all the pertinent Ministries to transform exiting legislation for the implementation of Financial Center provisions. The Ministry of Finance should chair the joint work force, since the legislative changes must support the Tax Code amendments. It is also suggested that the USAID Business Climate reform Project technically assist the work force.

APPENDIX I
INTERNATIONAL FINANCIAL CENTER
AMENDMENTS TO TAX CODE ARTICLES

A. Tax Code

Amendment 1

Article 19. Financial Services

The following shall be deemed financial services:

- a) Giving credits (loans), provision of security on credits (loans), credit guarantees (loan guarantees) as well as monetary-credit related (cash-credit) transactions, among them management of credits (loans) and credit (loan) guarantees issued by a person;
- b) Transactions related to providing services related to deposits and accounts of clients, settlements/payments, money transfers, loan obligations and payment tools;
- c) Transactions related to the circulation of legal tenders - currency, money and bank notes (except for those used for numismatic purposes), other than cash collection services;
- d) Transactions and relevant services related to issuance and circulation of share of authorized capital, stocks, bonds, certificates, bills, checks, and other securities;
- e) Transactions and services related to financial derivatives and synthesis instruments, forwarding agreements, options, and similar instruments;
- f) Services related to management of investment funds;
- g) Insurance and re-insurance services, managing risk, and investments;
- h) Banking Transactions involving fully integrated global custody, fund accounting, fund administration, transfer agent services, foreign exchange operations, and financing international transactions;
- i) Transactions and services related to trading stocks and securities on domestic and foreign markets;
- i) Services related to managing offshore portfolios;
- j) Transactions and services related to the purchase, sale or leasing of property;
- k) Transactions related to International Trade;
- l) Transactions and services related to consulting, financial planning and retirement planning;
- m) Services related to the holding assets;

- n) Transactions relating to holding Intellectual property;
- o) Transactions related to issuance of asset-backed securities, security offerings, and raising capital;
- p) Transactions and services related to raising and investing private equity funds and venture capital.

Amendment 2

Article 29. Permanent Establishment

DELETE Article 29.4

Amendment 3

Article 206 Joint Ownership

Add: 206.2

206.2

Investment Entity

1. An Investment Entity such as an Investment Fund, Partnership, Trust, Limited Liability Company, International Financial Company, or International Business Company, hereinafter called the Investment Entity, is an investment vehicle owned by legal or physical persons and whose primary activity is investment.
2. The Investment Entity may have the following categories of income:
 - a. Dividend income from domestic and foreign sources;
 - b. Interest income from domestic and foreign sources;
 - c. Pro rata share of income from domestic and foreign sources;
 - d. Gains and losses from the issuance or sale of stocks and securities;
 - e. Income from immovable property;
 - f. Income from movable property.
3. Taxable Income of the Investment Entity shall be attributed to the participants pro rata based upon a participant's percentage ownership in the Investment Entity.
4. In the event the Investment Entity qualifies as an International Financial Company, the taxation and exemption provisions applicable thereto shall apply to all transactions and distributions.

5. Gains or losses to the participants shall be calculated at the time the participant redeems or sells the participating interest in the fund or is paid a distribution from the Investment Entity. The Investment Entity shall be responsible to calculate the participant's gain or loss and unless the gain is otherwise exempt from taxation shall withhold from the payment to the participant the applicable Republic of Georgia profit or personal income tax or withholding in the case of a foreign non-resident person. The withheld tax shall be paid to the Republic of Georgia as an advance tax pursuant to this Law and shall be the final tax such participant shall owe regarding gains paid from the Investment Entity.

Amendment 4

Article 34. Resident and Non-Resident Natural Persons

Add the following Part to Article 34:

Article 34.8. A foreign natural person shall be eligible for Republic of Georgia expedited residency status in the event the foreign natural person first registers a legal entity pursuant to the Entrepreneurial Law and invests a minimum amount of _____ GEL into the legal entity and employs a minimum number of _____ full time employees.

B. Entrepreneurial Law

Amend Law to include registration of an Investment Fund, Investment Trust, Private Equity Fund, Venture Capital Fund, International Financial Company, International Enterprise Company and International Business Company.

The registration of an International Business Company should permit the creation of such a limited liability company by only a Memorandum and Articles for public records and the director's and shareholder's names must not appear on these documents, instead registration is permitted under the name of a nominee local representative.

The requirements for registration of any IBC should further allow:

1. No minimum capital requirement
2. No audit of accounts are required
3. No filing of annual tax declarations
4. Only one shareholder and one director is necessary
5. A local nominee director is permitted
6. The share of stock may be in bearer form or non-named
7. No Company secretary position is required

8. No annual general meetings are required
9. Annual meetings may be held outside of Georgia and may be by telephone or other electronic means
10. Shares of stock may be issued with or with par value in any currency.

C. Civil Law

Article 274 Trusts

This Article should be amended to permit title to trust assets in the name of a trustee or in the name of another person on behalf of the trustee. This is recommended for both the domestic trust of a resident and the domestic trust of a foreign natural person to permit both revocable and irrevocable trusts pursuant to International Best Practice.

In the event the Civil Law cannot be amended to permit title in the name of a domestic trustee for a resident settlor, the Law should at the very least permit the trustee of a domestic trust for a foreign natural person to hold title to the trust assets, since the trust assets are situated in a foreign jurisdiction, which permits irrevocable trusts. If title in the name of a trustee is not permitted, then all the reasons a foreign person would establish an offshore trust in an International Financial Center Country would not be available in Georgia.

D. Banking and Insurance Laws

Both the Banking and the Insurance laws should be amended to include the activities of an International Financial Company as specified in the proposed amendment to Article 19.