

მკითხველთა საყურადღებოდ!

„ბუღალტრული აღრიცხვის და ფინანსური ანგარიშგების აუდიტის შესახებ“ საქართველოს კანონი კვლავ ყურადღების ცენტრშია. მის მიმართ საქართველოს პროფესიული ორგანიზაციები და დარგის სპეციალისტები მკვეთრად ნეგატიური დამოკიდებულებას გამოხატავენ. ამ მხრივ, ქართველი კოლეგების შეხედულებებს იზიარებს საქვეყნოდ ცნობილი არაერთი უცხოელი ექსპერტი. მათ შორის, **ფაიეტვეილის სახელმწიფო უნივერსიტეტის (აშშ) პროფესორი რობერტ ვ. მაკგი**. მას ქართველი მკითხველი უკვე იცნობს. უაღრესად საინტერესო და საყურადღებოა მისი შეფასებები. კანონთან დაკავშირებით, გთავაზობთ მის სტატიას, რომელიც შესრულდა ჩვენი თხოვნით.

A COMMENT ON THE ACCOUNTING AND AUDITING LAW OF GEORGIA

ABSTRACT

This article comments on the Accounting and Auditing Law of the Republic of Georgia.

INTRODUCTION

The Georgian law „On Accounting and Auditing Financial Statements“ was signed into law in 2012.¹ Some of its provisions became effective immediately, while others became effective in January 1, 2013. The law includes 17 Articles on a wide range of accounting and auditing topics.

The purpose of the present paper is not to dissect each Article, but rather to provide an overview and general comments from a Western perspective.

WHO MAKES THE RULES

There are two general approaches to the regulation of the accounting and auditing professions. One approach is to let the market regulate. The other approach is to have the government make the rules. In Georgia, like in many former Soviet republics, the government makes the rules,² in the sense that it has a law on accounting and auditing, although it recognizes International Financial Reporting Standards, which are promulgated by a private organization.³

There are perceived advantages and disadvantages of both approaches. Those who like a large degree of government control prefer government regulation of the accounting



Robert W. McGee
Fayetteville State University, USA

and auditing professions. Those who distrust government or who think the quality of government regulation is lower than that which the market could provide prefer the private sector to make the rules. One problem that is inherent in any government controlled system is that the rules and decisions are made based on political considerations rather than good economics. Sometimes this structure causes problems and sometimes it does not.

In the United States, the main accounting rule-making body is the Financial Accounting Standards Board, a private sector organization. However, the Securities and Exchange Commission, a federal government entity, provides oversight. Government involvement in the U.S. accounting and auditing

1 The legislation was signed by Mikheil Saakashvili, the President of Georgia, on June 29, 2012. №6598-RS.

2 Article 1.

3 Article 3.

professions has increased since 2002, and some studies and commentators have concluded that this shift toward increased government control has reduced the quality and increased the cost of accounting disclosure. One reason for this decline in quality has been attributed to the fact that the people who make the rules (politicians and government bureaucrats) do not have an adequate background in accounting and auditing. In the U.S. case, the people in the government sector tend to be lawyers rather than accountants, and they have an agenda that is political rather than economic.

SOVEREIGNTY PROBLEMS

One provision of the law that I found more than a little disturbing was the provision that defines „Accredited Professional Organization“¹ as an organization that is a full member of the International Federation of Accountants (IFAC) or an organization that has been recognized by IFAC.² The IFAC is a private sector organization headquartered in New York. As of this writing it has 179 members and associates in 130 countries and claims to represent 2.5 million accountants.

Although the IFAC is generally regarded as a reputable organization, ceding power to some international organization means that the government of Georgia has partially abdicated its responsibility to regulate the accounting and auditing profession in Georgia because it has ceded power to an international organization located in New York. In effect, the IFAC chooses who shall be an Accredited Professional Organization in Georgia and who shall not.

This delegation of authority to a non-Georgian organization has additional effects on the Georgian accounting profession. For example, the law defines „auditor“ as a „certified person, who is a member of Accredited Professional Organization.“³ On the surface, this definition does not present any problems. However, the law gives the Georgian Federation of Professional Accountants and Auditors (GFPA), being the Professional Organization which is full member of IFAC, a non-Georgian organization, exclusivity rights of rendering audit services via its members, as „auditor,, shall be „a member of Accredited Professional Organization“ and the authority to determine which organizations are Accredited Professional Organizations is left to IFAC.

Other aspects of the Georgian accounting and auditing professions are also affected by this delegation of authority. In order to qualify as an audit firm,⁴ the firm must be a member of an Accredited Professional Organization, and it is up to IFAC to determine which Georgian organizations are Accredited Professional Organizations. A „certified person“⁵ must be „a natural person who is recognized as a Certified Professional Accountant by the Accredited Professional Organization and who can prove its qualification in accordance with the con-

tinuous education standard set by the Accredited Professional Organization.“ Again, the IFAC indirectly controls who can be a certified person in Georgia. Professional certification standards are also determined indirectly by the IFAC,⁶ as are the continuing education requirements.⁷

The accounting standards for non-entrepreneurial entities are set by an Accredited Professional Organization,⁸ and IFAC determines which organization(s) shall be accredited.

Another interesting anomaly I came across while reading the law is the monopoly on the Georgian translation of the IFRS and IFRS for SMEs the law gives to the Accredited Professional Organization.⁹ In many European and North American countries, publishing companies are free to publish their own translations of laws and regulations without government prohibitions or restrictions.

The law also requires that only the Accredited Professional Organization’s translation be used by Georgian practitioners.¹⁰ While such a requirement might seem reasonable on the surface, problems can result. For example, when the first Russian translation of the International Accounting Standards was published in 1999, the Russian translation left out the word “not” in one paragraph.¹¹ Practitioners who applied that paragraph necessarily applied it incorrectly, and, unless they were able to read the official English language version of the rules, they were probably unaware that the official Russian translation was incorrect.

If the official Georgian translation is incorrect in spots, then Georgian practitioners are likely to face the same prob-

6 Article 2p.

7 Article 2q.

8 Article 3.9.

9 Article 3.10. The law also gives this organization a monopoly on the translation of the International Standards on Auditing into the Georgian language. Article 5.5 & 5.7.

10 Article 3.12.

11 I learned this bit of information while serving as a consultant to the United States Agency for International Development in Armenia. The translation team I hired to translate the International Accounting Standards into Armenian pointed out to me that the Russian translation was different than the English language original in several places, including the place where the word “not” was left out. If the Georgian law requires practitioners to use only the „official“ Georgian translation, problems could result if that translation contains errors. This problem could be eliminated if the law recognized the IASB English language version to be the definitive version. For more on the Armenian case, see Robert W. McGee, *The Problem of Implementing International Accounting Standards: A Case Study of Armenia*, *Journal of Accounting, Ethics & Public Policy* 2(1): 38-41 (1999), reprinted at <http://ssrn.com/abstract=251476>. Also see Robert W. McGee, *Accounting Reform in Armenia* (September 2005). Available at SSRN: <http://ssrn.com/abstract=813385> or <http://dx.doi.org/10.2139/ssrn.813385>. For a case study of accounting reform in Russia, see Robert W. McGee and Galina Preobragenskaya, *Problems of Implementing International Accounting Standards in a Transition Economy: A Case Study of Russia*. Available at SSRN: <http://ssrn.com/abstract=459363>.

1 Article 2r.
2 The IFAC website is www.ifac.org.
3 Article 2g.
4 Article 2h.
5 Article 2j.

lem. If other entities are free to publish their own translations, competition would be introduced into the system, and quality tends to improve whenever competition is present.

Another point I might make is that the International Accounting Standards Board (IASB) has a rule that states that the English version of the IFRS standards is the definitive text. The Georgian law states that practitioners may only use the official Georgian translation,¹ which would seemingly violate the IASB's directive.

Article 6 precludes individuals or entities who are not members of the Accredited Professional Organization from conducting statutory audits. If a similar rule were adopted in the United States, the result would be outrage and lawsuits. The American Institute of Certified Public Accountants (AICPA) is the largest accounting association in the United States, yet many certified public accountants choose not to be members, often because of the perception that the AICPA does not serve their interests. The Georgian law forces otherwise unwilling auditors to become members of an organization as a condition of earning a living. They are not able to exercise their right to protest by withholding their membership and approval of an organization with which they may disapprove.

CODE OF ETHICS

Adopting codes of ethics seems to be a popular pastime for various professional organizations. Doing so projects an image to the general public that the organization is concerned with ethical behavior. However, a review of some professional ethical codes has revealed that sometimes codes of ethics can be used to protect the professional organization at the expense of the general public. Several prior versions of the American Institute of Certified Public Accountants (AICPA) Code of Professional Conduct, for example, have advocated so-called ethical practices that actually were not in the public interest. Some provisions prohibited competition, advertising and solicitation, which served to protect the large and well-established firms from competition from the newer and smaller firms. Such practices serve to protect the public from lower costs and higher quality services, as has been pointed out elsewhere.²

A prior version of the IFAC Code of Ethics also placed restrictions on truthful advertising, which not only served to protect the established firms, but also violated the rights of free speech and free press of anyone who wanted to advertise.³ The IFAC has made several revisions to its Code of Ethics in

recent years. The present version is 179 pages long.⁴ I have not checked to see whether any provisions of its current version would prohibit ethical conduct or require unethical conduct, but anyone who is interested can download the Code for free.

The reason I mention codes of ethics is because the Georgian law⁵ requires auditors and audit firms to comply with the IFAC Code of Ethics. I have several problems with this provision of the law. For one, it would force otherwise ethical auditors and audit firms to engage in unethical conduct if some provisions of the IFAC Code of Ethics are unethical, which has been the case in the past. Another problem I find with this provision is that some provisions of the IFAC Code of Ethics may not be appropriate for Georgia. Each country has its own culture, moral attitudes and set of legal rules. Giving up sovereignty to some group of accountants and auditors based in New York may not be a good idea, even if the intent is pure. Ethics and morality is inherently an individual decision. Forcing auditors to comply with someone else's set of ethical principles just doesn't seem right. Prohibiting someone from practicing his profession for noncompliance with a set of ethical rules that may seem inappropriate constitutes an abuse of power. No government should have the authority to dictate morality or ethics – at least not until government officials can show good example by being ethical and moral themselves.

If the accountants and auditors of Georgia want to have an official code of ethics, they should adopt their own code, and not be the puppets of some far-off organization that may have different views and a different agenda. Perhaps the code they adopt would be identical or nearly identical to the present IFAC Code, but even if that would be the case, the law should not dictate that Georgian accountants and auditors must adopt some foreign ethics code.

CONCLUDING COMMENTS

It may seem like I have been overly critical of the Georgian law. That was not my intent. As I read through it, a few of its provisions bothered me because of the reasons stated above. The intent of the law is good. Practitioners need some structure and guidance. This structure and guidance can be obtained through the private sector (the market) or the public sector (government). There is no need to reinvent the wheel, especially when it comes to accounting and auditing. However, one must be hesitant to blindly adopt rules that were made by others, even when those rules are pretty good overall. Care must be taken not to create monopolies or to adopt rules that prohibit individuals from earning a living, or that force individuals to act unethically as a condition of continued employment.

1 Article 3.12.

2 Robert W. McGee, Codes of Ethics Can Be Unethical, *Journal of Accounting, Ethics & Public Policy*, Vol. 1, No. 2 (Spring 1998), 269-275. Reprinted at <http://ssrn.com/abstract=2423038>.

3 Robert W. McGee, Advertising and Solicitation: Some Ethical Problems with the IFAC Code of Ethics, *Journal of Accounting, Ethics & Public Policy*, Vol. 1, No. 2 (Spring 1998), 286-294. Reprinted at <http://ssrn.com/abstract=2423036>.

4 IFAC, *Handbook of the Code of Ethics for Professional Accountants*, 2013 edition, New York: International Federation of Accountants. <http://www.ifac.org/sites/default/files/publications/files/2013-IESBA-Handbook.pdf>

5 Article 9.

**შენიშვნები საქართველოს კანონზე „ბუღალტრული აღრიცხვის
და ფინანსური ანგარიშგების აუდიტის შესახებ“**

რობერტ ვ. მაკვი

პროფესორი, ფაიეტევილის სახელმწიფო უნივერსიტეტი, აშშ

რ ე ზ ი უ მ ე

სტატია ეძღვნება საქართველოს კანონს „ბუღალტრული აღრიცხვის და ფინანსური ანგარიშგების აუდიტის შესახებ“ (№6598-რს, ხელმოწერილ იქნა საქართველოს პრეზიდენტის მიერ 2012 წლის 29 ივნისს, კანონის ზოგიერთი მუხლი ძალაში შევიდა გამოქვეყნებისთანავე, ნაწილი კი - 2013 წლის 1 იანვრიდან. მოიცავს სულ 17 მუხლს და ეხება ბუღალტრული აღრიცხვის და აუდიტის სფეროს ფართო საკითხებს).

სტატიის მიზანია არა კანონის მუხლობრივი განხილვა, არამედ მისი მიმოხილვა და დასავლური გამოცდილებიდან გამომდინარე, ზოგადი ხასიათის შენიშვნების შეთავაზება. მიმოხილვაში ყველაზე კრიტიკულად აღქმულია კანონის ის მუხლი, რომლის თანახმად, მხოლოდ IFAC-ის სრული წევრი პროფესიული ორგანიზაცია: საქართველოს პროფესიონალ ბუღალტერთა და აუდიტორთა ფედერაცია (ბაფ-ი), ფლობს აუდიტის ჩატარების ექსკლუზიურ უფლებას საკუთარი წევრების მეშვეობით, რადგან კანონის მიხედვით „აუდიტორი“ არის „აკრედიტებული პროფესიული ორგანიზაციის“ წევრი, აკრედიტებულად კი ავტომატურად ითვლება „ორგანიზაცია, რომელიც არის ან IFAC -ის სრული წევრი ან აღიარებულია IFAC-ის მიერ“. თუ ვინ უნდა იყოს აკრედიტებული და ვინ არა, დამოკიდებულია IFAC-ზე, რომელიც არ წარმოადგენს საქართველოს ორგანიზაციას.

„შესაძლებელია ჩვენი დამოკიდებულება მკვეთრად კრიტიკული იყოს აღნიშნული კანონის მიმართ, თუმცა ეს არ იყო ჩვენი განზრახვა. კანონის შესწავლამ და განსაკუთრებით მისმა ზოგიერთმა მუხლმა ჩვენ რეალურად ძლიერი არასერიოზულობის შთაბეჭდილება დაგვიტოვა სხვადასხვა გარემოებიდან გამომდინარე“ - აღნიშნავს ავტორი.

ეჭვგარეშეა, რომ კანონის მიზანი კეთილშობილურია: პრაქტიკის განმახორციელებელ საზოგადოებას საქართველოში ესაჭიროება გარკვეული სტრუქტურის და გაიდლაინები. აღნიშნული სტრუქტურა და სახელმძღვანელო მასალები შეიძლება შემუშავებულ იქნეს ან კერძო სექტორის (ბაზარი) მონაწილეობით ან საზოგადოებრივი სექტორის (მთავრობა) ჩარევით. თუმცა არაა საჭირო ახალი „ბორბალის“ გამოგონება იმ სფეროებში, სადაც არსებობს ხანგრძლივი პერიოდის განმავლობაში დამკვიდრებული პრაქტიკა, განსაკუთრებით როდესაც საკითხი ეხება აუდიტს და ბუღალტერიას. ასევე არაა სწორი სხვების მიერ შემუშავებული წესების ბრმად კოპირება, იმ შემთხვევაშიც კი თუ ეს კანონები სრულყოფილად მუშაობენ სხვა გარემოებაში.

მთავარია კანონის „ძალით“ და კანონის „ენით“ ხელოვნურად არ შეიქმნას მონოპოლიები, რადგან ბაზარი ზოგადად არ ქმნის მონოპოლიას, არამედ კანონები ქმნიან მას. განსაკუთრებით ეს საშიში ხდება, როდესაც იქმნება მონოპოლიური სიტუაცია, ან იქმნება ისეთი კანონები, რომელთა შედეგია ფიზიკური და იურიდიული პირების ბიზნესიდან განდევნა და მათთვის საქმიანობის განხორციელებაში ხელოვნურად ხელის შეშლა შემოსავლის მიღების შეზღუდვით და გრძელვადიანი უმუშევრობის პირობების შექმნის საფუძველზე არაეთიკური გარემოს დამკვიდრების პროვოცირება.