

New Amendments to the Tax Code

December 30, 2016

On 16 December 2016 the President of the Republic of Azerbaijan signed a law amending the Tax Code (the “Amendment Law”). These are the long-awaited amendments whose adoption was expected after the President signed on 4 August 2016 an instruction on the directions of tax reforms in Azerbaijan for 2016.

Below is general summary of the changes introduced by the Amendment Law.

Definition of Income Introduced

Nearly 16 years after the current Tax Code became effective, a definition of the “income” now has been introduced. In accordance with the Amendment Law, income is defined as the total value of transactions in connection with the sale of goods (works, services), as well as non-sales income.

The time of the receipt of income for tax purposes shall be determined in accordance with Articles 132 and 135 of the Tax Code, i.e., reference is made to the time of the receipt of income based on the cash and accrual methods.

In general, sub-article 13.2 of the Tax Code, providing definitions used in the Code, has been thoroughly amended and new definitions were added such as “voluntary tax disclosure”, “trade mark-up”, “retail”, “wholesale”, “transfer price”, “financial institution”, “electronic audit”, “tax advantage”, “tax avoidance scheme”, and “actual economic index of a taxable operation”.

Transfer pricing provisions introduced

As was expected, Article 14 concerning the notion of market price has been supplemented by a new Article 14-1 with regard to transfer pricing provisions.

Taxes taking into account a transfer price may be calculated on transactions, *inter alia*, between (i) a resident of Azerbaijan and a non-resident person related to it or (ii) a permanent establishment of a non-resident and its head office or its representative offices, branches or departments located in other countries provided that the total value of the operations exceeds AZN 500,000 per each person.

Additional reporting also has been introduced with regard to transfer pricing provisions, e.g., where the value between above mentioned persons exceeds AZN 500,000 per each person. The failure to submit a report would result in a financial sanction of AZN 500.

Taxpayers will now be entitled to apply to the tax authorities for an advance assessment of tax liabilities (“Advance Tax Ruling”).

Procedures for the application and issuance of a tax ruling are regulated by the new amendments to the Tax Code. When issued, the ruling will be applied to each taxpayer and each taxable transaction separately and, unless a

relevant normative legal act regulating the relations is amended, will be enforceable for 3 years. Applications for a tax ruling in respect of transactions with a value lower than AZN 10,000,000 will not be subject to consideration.

Scope of permitted cash transactions drastically reduced

The list of permitted cash transactions, i.e., transactions which may be carried out without a cash register, has been reduced from 27 to 5. By way of example, excluded from the list of permitted cash transactions is passenger and goods transportation, the lease of residential and non-residential objects, hotel services, medical services, among other things.

Regulation of cash transactions tightened

Cash register receipts will no longer be considered as supporting documentation for expenses.

A simplified tax of 1% has been introduced on any withdrawal from a bank account of funds by legal entities and individual entrepreneurs.

A new financial sanction is introduced for cash transactions where such transactions are restricted. The financial sanction is 10% of the total amount of the transaction, with a subsequent increase when repeated to 20% and 40%. More financial sanctions relate to concealment or the failure to record cash or the failure during audits to provide documents supporting the purchase or the production of goods (invoices, import tax declarations, etc.).

In addition, new financial sanctions have been introduced on financial institutions.

Electronic invoices will be issued

Taxpayers selling goods (works, services) now will be obliged to issue electronic invoices in a prescribed form.

Exemption from income tax with regard to registered lotteries has been repealed.

Exemption from income tax of annual interest and dividends has been extended to 1 February 2023.

The depreciation rate for machines and equipment has been reduced from 25% to 20%. The depreciation rate for computing techniques which are the product of high technologies will be 25%.

New withholding taxes introduced

A 10% tax will be withheld by banks (or post offices) in Azerbaijan from payments made by residents of Azerbaijan to “electronic cash wallets” belonging to non-residents.

Earnings from lotteries and betting games will be subject to a 10% tax on the difference between earnings less the cash investment in connection with the participation in the same.

Payments made directly or indirectly by residents and permanent establishments of non-residents in Azerbaijan to subjects established (registered) in countries with beneficial taxation will be subject to 10% tax. The list of such countries or territories will be approved annually.

VAT status of electronic trade determined

With regard to the provision of works and services by electronic trade sellers (suppliers) as well as electronic lotteries or contests, the place for the provision of works and services will be the place where the purchaser of the works and

services is located or registered.

A new excise tax on the importation of fur-coats has been introduced and an excise tax on vehicles and precious metals and stones has at least doubled

Simplified taxpayers which are legal entities will no longer be exempt from the payment of assets tax

A simplified tax on the sale of land and certain types of activity (e.g., house servants, babysitters, gardeners) has been introduced

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