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Recent Developments in International Taxation

Azerbaijan

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Recent highlights

This report covers the main tax amendments for the period from May 2019 to May 2020.

During 2019, several taxation and tax-related amendments were adopted by the legislation of Azerbaijan. The vast majority of amendments, however, pertain to changes to the Tax Code that are effective from 1 January 2020 (the 'Tax Amendments 2020').

Institutional changes

By the Presidential Decree dated 23 October 2019, the independent status of the Ministry of Taxes was abolished and it was merged with the Ministry of Economy, and officially named the State Tax Service under the Ministry of Economy.

Tax liability

The Tax Amendments 2020 brought about several changes regarding tax liability.

The Tax Code of Azerbaijan specifies three years as the statutory limitation period for tax liability. In practice, this has caused certain interpretational challenges regarding, inter alia, the institution of criminal liability that may extend beyond three years, that is, statutory limitation for tax evasion crime is seven years as per the Criminal Code. Under the Tax Amendments 2020, the limitation period for tax liability (except mandatory social insurance payments, unemployment insurance and mandatory medical insurance) is determined as three years, with the exception of tax audits conducted under criminal proceedings.

Moreover, the Tax Amendments 2020 have distinguished the liability period for the income obtained abroad from the ordinary three-year limitation period, extending it to five years, where such information is obtained from foreign tax authorities.

Another important change deals with the principle of the personal liability of the taxpayer. Under the Tax Amendments 2020, the actual beneficiaries of operations in non-commodity transactions¹ may be held liable. The beneficiary of operations in non-commodity transactions shall be understood as the ultimate owner of income stemming from operations without the actual involvement of goods: the ultimate (factual) owner of the legal entity or the supervisor (controller) of the taxpayer.

VAT

The traditional method of VAT in Azerbaijan has been the accrual method. Now, with the amendments, this is replaced with the cash method for the purposes of calculation and payment of VAT. Accordingly, the taxable period of VAT is the actual date of payment for the received goods, services and works.

¹ The definitions of non-commodity transaction and related provisions are specified below in the Tax avoidance section.

The previously required electronic tax invoicing (*vergi hesab fakturası*) for VAT purposes has been eliminated, and the currently available electronic billing system (*elektron qaimə-faktura*) is used for both billing (tax invoicing) and VAT purposes.

The Tax Amendments 2020 differentiate various dates under which payment shall be considered as paid for VAT purposes, at the same time providing clauses for preventing the avoidance of the VAT obligation, for example, documents of non-commodity transactions or high-risk transactions shall not be considered valid for the purposes of VAT credit utilisation

Tax avoidance

Every year, the tax avoidance clauses of the Tax Code are expanded and updated. Under the Tax Amendments 2020, two new notions were introduced to combat tax evasion: ‘non-commodity transaction’ and ‘high-risk taxpayer’.

A ‘non-commodity transaction’ is defined as a transaction serving to conceal another transaction and obtain profit without the actual delivery of goods, services and works. The documents obtained via non-commodity transactions are not acceptable for deductible expense or VAT credit utilisation purposes. The tax authorities may claim the evaded taxes from the beneficiaries of operations in non-commodity transactions.

The second introduced notion – ‘high-risk taxpayer’ – is defined as a taxpayer who meets the criteria prescribed by the relevant authority, including a taxpayer that is involved in non-commodity transactions. It must be noted that these additional criteria are not approved yet. The list of high-risk taxpayers shall be maintained and updated by the relevant tax authority, and such information shall not be considered as a tax secret.

If a taxpayer is considered as a high-risk taxpayer, the tax authority is entitled to conduct an extraordinary tax audit or operative tax-control measures. The tax authorities are also authorised to calculate the taxes of high-risk taxpayers before due dates by adopting a decision.

With the Presidential Decree dated 11 June 2019, the list of low-tax jurisdictions was re-approved.² The total number of such jurisdictions dedicated as tax havens reduced to 37 from 40, with certain jurisdictions and territories being removed from the list (eg, Bahrain, Seychelles Islands and Costa Rica) and other new ones being added to the list (eg, Trinidad and Tobago, Taiwan and Thailand).

International tax cooperation

It shall be noted that, as a full member of the Organisation for Economic Co-operation and Development (OECD) Global Forum on Transparency and Exchange of Information for Tax Purposes, Azerbaijan³ voluntarily committed to and exchanged its first information in 2018, and further increased the instances of information exchange in 2019.

² Under the Tax Code of Azerbaijan, the transfer of funds to such low-tax jurisdictions are subject to an additional ten per cent withholding tax (WHT) in addition to other standard taxes applicable in cases of ordinary jurisdictions.

³ As a developing country not hosting a financial centre, Azerbaijan was not required to commit to an exchange of information by a certain date, but committed and exchanged voluntarily. The 2019 Automatic Exchange of Information (AEOI) Implementation Report www.oecd.org/tax/transparency/AEOI-implementation-report-2019.pdf accessed 5 June 2020, p 3.

As a developing country, Azerbaijan has committed to implementing OECD Country-by-Country Reporting via the Tax Amendments 2020. For the purpose of exchanging automatic information in line with the international treaties ratified by Azerbaijan, the Tax Amendments 2020 impose an obligation on multinational enterprise (MNE) groups via a member of the MNE group that is tax resident in Azerbaijan to file a report in the form, manner and time to be prescribed by the Ministry of Economy.

An MNE group is defined as a group that includes two or more enterprises, the tax residences of which are in different jurisdictions, or includes an enterprise that is resident for tax purposes in one jurisdiction and subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction. An MNE group with consolidated group revenue equal to or less than €750m in a fiscal year is excluded from such an obligation to file a report.
