



LIST OF OFFSHORE “TAX HAVENS” AND PAYMENTS TO THEM UPDATED

On 11 June 2019, the President of the Republic issued Decree No 724 updating the list of jurisdictions and territories with preferential taxation (see [our legal update of July 2017](#)).

The following are the original and updated lists of such jurisdictions (green colour bold typeface indicates removal while red bold typeface indicates inclusion, jurisdictions in regular typeface indicate no updates):

	Original List of July 2017	Updated List of June 2019
1	Andorra	Andorra
2	Anguilla	Anguilla
3	Antigua and Barbuda	Antigua and Barbuda
4	Aruba	Aruba
5	Bahamas	Bahamas
6	Bahrain	
7	Barbados	Barbados
8	Belize	Belize
9	Bermuda	Bermuda
10	British Virgin Islands	British Virgin Islands
11		Cape Verde
12	Cayman Islands	Cayman Islands
13	Cook Islands	Cook Islands
14	Costa Rica	
15	Dominica	Dominica
16		Fiji
17	Gibraltar	Gibraltar
18	Grenada	Grenada
19	Guernsey	
20	Hong Kong (China)	Hong Kong (PRC)
21	Isle of Man	
22	Jersey	Jersey
23	Liberia	Liberia
24	Lichtenstein	Lichtenstein
25	Macao (China)	

26	Maldives	Maldives
27	Marshall Islands	Marshall Islands
28	Monaco	Monaco
29	Montserrat	Montserrat
30	Nauru	
31	Netherlands Antilles	
32	Niue	Niue
33	Palau	Palau
34	Panama	Panama
35	Saint Kitts and Nevis	Saint Kitts and Nevis
36	Saint Lucia	Saint Lucia
37	Saint Vincent and the Grenadines	Saint Vincent and the Grenadines
38	Samoa	Samoa
39	Seychelles	
40		Taiwan (PRC)
41		Thailand
42		Trinidad and Tobago
43	Turks and Caicos Islands	Turks and Caicos Islands
44	Vanuatu	Vanuatu
45	US Virgin Islands	US Virgin Islands

The updates may follow the EU list of tax havens:

https://ec.europa.eu/taxation_customs/sites/taxation/files/eu_list_update_18_02_2020_en.pdf.

Earlier, under Law No 1356-VQD of 30 November 2018 effective 2019, payments (i) of residents to branches and representative offices in any countries and (ii) to bank accounts in low-tax jurisdictions and territories (in addition to payments to persons of such jurisdictions) have been designated as income sourced from Azerbaijan.

COMBATING SHAM TRANSACTIONS AS TOOL FOR TAX EVASION

The concept of a “sham transaction” has been known in Azerbaijani law for quite some time. Under the Civil Code, a sham transaction is a transaction having the purpose of concealing another transaction. The sham transaction is void.

For the purposes of taxation, the concept of a “sham transaction” is relatively new. On 29 November 2019, new amendments were introduced to the Azerbaijani tax law, which became effective from 1 January 2020. Most amendments, essentially, served the purpose of strengthening the enforcement mechanisms against tax evasion. In this respect, two new definitions that were presented, namely, the sham transactions and a risky taxpayer caught special attention.

The Tax Code defines a sham transaction as a transaction revealed in the course of a tax inspection having the purpose of hiding another transaction and gaining profit without an actual supply of goods, provision of

services or performance of works. In other words, sham transactions are the ones where the alleged transactions never take place.

By way of example, company A concludes an agreement with company B for the sale of office equipment to company B and company B agrees to pay company A. Although company B pays company A the agreed upon amount, the sale of office equipment never occurs.

The introduction of the concept of “sham transactions” in the Tax Code also triggered some exceptions from the generally accepted rules. For instance, under the previous edition of Sub-Section 78.4 of the Tax Code, the discharge of tax obligations could not be transferred to another person. Now, however, such transfer is possible in sham transactions, *i.e.*, a discharge of a tax obligation in sham transactions can be transferred to the beneficiary (*i.e.*, individual shareholder of company A). Only individuals can be beneficiaries for the purposes of sham transactions. Beneficiary can be the actual recipient of income or the actual owner of a legal entity receiving the income or an individual supervising the taxpayer.

For tax-deductibility purposes, the documents obtained during a sham transaction are not taken into account by the tax authority, which relies upon the market value of goods (services, works) or alternative methods of calculating tax-deductible costs.

The value added tax paid during a sham transaction cannot be offset.

Another concept that was introduced to the Tax Code is a “risky taxpayer”. A risky taxpayer is a person conducting sham and/or risky transactions.

The Cabinet of Ministers will establish the criteria for determining risky taxpayers. The Ministry of Taxes, in turn, based on those criteria, will resolve on entering the taxpayer in, or excluding, from the list of risky taxpayers.

Information about risky taxpayers will be open to public and available on the website of the Ministry of Taxes.

The following rules apply to risky taxpayers, among others:

- a risky taxpayer is subject to an extraordinary tax inspection;
- while extensions can be implemented for other taxpayers for the payment of taxes in the event of force majeure or in case of existence of the risk to become insolvent, no extensions apply to a risky taxpayer for the discharge of tax obligations; and
- while other taxpayers recover overpaid taxes within 20 days and four months from the date of application, a risky taxpayer can recover the overpaid taxes only upon the completion of the offsite or onsite tax inspection.

PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER INFORMATION AT:

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