

### **LEGAL IMPLICATIONS OF FATCA IMPLEMENTATION IN AZERBAIJAN**

As many other jurisdictions, the United States (US) impose tax on its residents' worldwide income. Alongside this, the US is one of the very few jurisdictions that tax its non-resident citizens on their worldwide income in the same way as its residents. While it is comparatively easier to chase the residents' worldwide income and the non-resident citizens US sourced income, revealing the non-resident citizens' worldwide income becomes a burden.

In this attempt, the US Congress adopted a new taxation scheme known as the Foreign Account Tax Compliance Act (FATCA) on 18 March 2010 targeting the US taxpayers with foreign accounts and introducing a reporting regime affecting foreign financial institutions such as banks and investment funds. Under the reporting regime, a foreign financial institution (FFI) is expected to report to the US Internal Revenue Service (IRS) certain *information about their US accounts, including accounts of certain foreign entities with substantial US owners*. Institutions not participating in the said initiative are imposed a 30 per cent US withholding tax from their US incomes, which is, effectively, a tool "encouraging" non-US persons to obey the US law within their home (sovereign) jurisdictions.

One of the paths for a foreign jurisdiction to implement FATCA is to enter into an intergovernmental agreement (IGA) with the US. Two models of IGAs exist to implement FATCA in foreign states, namely, Model 1 IGA and Model 2 IGA. While Model 1 IGA purports the transmission of information to the IRS by the authorised governmental body of a foreign state in a centralized manner, Model 2 IGA provides for direct transmission of information by FFIs to the IRS.

Currently, 36 states have signed IGAs with the US on compliance. 42 states have already reached an "agreement in substance":

<http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>

Azerbaijani government has already taken steps towards implementation of the FATCA in the Republic of Azerbaijan. Although Azerbaijan has not yet signed an IGA with the US, it is among jurisdictions treated as having reached IGA "in substance" as of 16 May 2014.

According to the information on the websites of the IRS and the Ministry of Taxes of Azerbaijan, the IGA with Azerbaijan will follow the Model 1 IGA and will be reciprocal. Under such IGA, the financial institutions in Azerbaijan will report concerned information to a designated authority (seemingly, the Ministry of Taxes) which will exchange the relevant information about US taxpayers with the IRS. The registration (which is not automatically entailed by operation of an IGA) with the IRS's FATCA Registration Portal will be open to the domestic financial institutions until the end of 2014, which is yet a transitional period for FATCA coming into effect on 1 July 2014. Several Azerbaijani banks have already registered with the IRS. FFIs located in Model 1 IGA jurisdiction will not need to enter into a separate agreement with the IRS for reporting purposes.

Information about holders of bank accounts in Azerbaijan is protected by Azerbaijani bank secrecy rules. In light of this, Azerbaijan is to fulfil a task of legitimising the disclosure of the information about the bank accounts in local banks. Such would probably be achieved through making an international agreement (such as IGA), which would be a prevailing part of Azerbaijani law, and making changes to any existing laws. In particular, amendments to Law No 590-IIQ of the Republic of Azerbaijan on *Banks*, dated 16 January 2004, the Tax Code of the Republic of Azerbaijan (the Tax Code), Law No 519-IIIQ of the Republic of Azerbaijan on

*Insurance Activity*, dated 25 December 2007, and Law No 998-IIIQ of the Republic of Azerbaijan on *Personal Data*, dated 11 May 2010, are expected.

In accordance with the implementation of FATCA, several additions have been proposed to the Tax Code. By way of example, it has been proposed to add a section allowing transmission of information about financial transactions of foreign legal entities and natural persons in the Republic of Azerbaijan in the manner and limits determined by the relevant executive body directly or through the relevant executive body in accordance with the provisions of international treaties of Azerbaijan. Another proposed addition is related to financial sanctions applicable in case of a failure to fulfil the abovementioned obligations:

<http://news.milli.az/politics/275803.html>

While implementing FATCA might be beneficial to the US government, it also contemplates certain disadvantages to foreign governments, such as interfering with sovereign immunity of states (affecting privacy laws), discouraging investment by US persons in foreign countries.

It is yet unclear what the scope of information transmitted through the Ministry of Taxes would be, whether the customers would be notified of any reports to the IRS, and what actions, if any, the Ministry of Taxes would be required to take in enforcing US taxpayers' tax obligations visible to it. Lots of sensitive issues will obviously be triggered at both, domestic and international level for Azerbaijan.

Based on the reciprocity principle, Azerbaijan can expect to receive information available to the IRS about its own taxpayers. In the light of such developments, a double taxation avoidance treaty is said to be on the way which should mitigate the tax consequences for affected taxpayers.

#### **AMENDMENTS MADE TO STATE DUTY LAW**

In May 2014, a range of amendments were introduced to Law No 223-IIQ of the Republic of Azerbaijan on *State Duty* dated 4 December 2001, expanding the list of state duties in connection with obtaining and extending temporary and permanent residence permit in the Republic of Azerbaijan.

According to the amendments, issuance and extension of the term of a permanent residence permit will be AZN150 for minor foreigners and stateless persons.

State fees for extending the term of a temporary residence permit for foreigners and stateless persons will be as follows:

<b>TERM</b>	<b>ADULTS</b>	<b>MINORS</b>
<b>Three Months</b>	AZN30	AZN15
<b>Six Months</b>	AZN60	AZN30
<b>One Year</b>	AZN120	AZN60
<b>One Year and a Half</b>	AZN180	AZN90
<b>Two Years</b>	AZN240	AZN120
<b>Up to Two and a Half Years</b>	AZN300	AZN150
<b>Up to Three Years</b>	AZN360	AZN180

An extension of the term of the temporary residence permit for foreigners and stateless persons, who reached the maturity age, for 30 and 60 days will be AZN30 and AZN60, respectively. The same for minor foreigners and stateless persons will be AZN15 and AZN30, accordingly.

Issuance of a work permit or extension of the term thereof will be AZN350 for three months period, AZN600 for six months period and AZN1,000 for one year period.

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