

NEW CUSTOMS TARIFF LAW COMES INTO EFFECT

Law of the Republic of Azerbaijan, *On Customs Tariff*, was promulgated on 5 July 2013 and, according to the website of the State Register of Legal Acts of the Republic of Azerbaijan, comes into effect from 3 October 2013. The Law replaces its long-standing predecessor, which was adopted back in 1995. Enactment of the Law was somewhat long-awaited since the enactment as of 2012 of the new Customs Code of Azerbaijan.

As with the predecessor act, the Law confirms that it deals principally with imports into Azerbaijan and with the customs duties (as opposed to additional payments collectible upon importation into Azerbaijan) applicable based on the nomenclature of goods in foreign trade (a commodity description and coding system). The Law introduces concepts unknown under the predecessor act such as those of related parties, tariff quotas, direct and indirect control of a person, identical and same-category (similar) goods, and seasonal tariffs.

As previously, the customs import duties are approved by the Cabinet of Ministers. The Cabinet can also approve the list of goods subject to and duties applicable upon exports from Azerbaijan. Under the Law, the Cabinet is also required to approve the rules for determination of customs value of information carriers.

The customs duty rates can normally be assessed based on the customs value of commodities (*ad valorem*), can be specific as to each unit of a commodity, and can be combining both methods of assessment. Additionally, the customs duties can be special, antidumping, and compensatory – formation and manner of implementation of these duties are subject to a separate law.

Secret and confidential information submitted upon declaration of goods can be used by the customs for customs valuation purposes. Use of this information by other persons is restricted except where such use is authorized by a court order or by the person who submitted such information. It remains to be seen what information will be regarded secret and confidential and whether any restrictions on the use of such information can affect the manner, in which customs valuation of identical or similar goods is determined.

Any disagreement on customs valuation can be submitted to consideration by a higher customs authority or court, which must consider the disagreement in ten days.

Customs value can be determined based on the transaction value, transaction value of identical and same-category goods, deducted value, computed value, and residual methods of customs valuation.

Under the Law, cases and manner of granting customs tariff preferences are governed pursuant to the Customs Code, the Law, itself, and acts adopted by the Cabinet of Ministers. It remains to be seen whether exemptions as a practical matter would be covered by “tariff preferences” and, if yes, whether the exemptions granted in other acts (such as the Law on Protection of Foreign Investment) would continue to apply.

The Law refers to residents of the Republic of Azerbaijan without defining such for customs tariff purposes. We believe that the appropriate definition in the Customs Code is to apply. Similarly, while the Law recognizes the prevailing force of international agreements of Azerbaijan, it does not exempt from customs duty imports under oil and gas production sharing agreements approved into Azerbaijani law; it would not be unreasonable to expect that the relevant exemptions in the Customs Code would apply.

If meeting production demands based on local raw materials is impossible, the Cabinet of Ministers can grant for a limited period of time tariff preferences in relation to imports of raw materials for production purposes and of modern technology machinery.

NEW DOUBLE TAX TREATY EXEMPTION RULES PROMULGATED

Currently, the Republic of Azerbaijan has international treaties on avoidance of double taxation with 43 states (the “**DTA Treaties**”), of which 41 are effective.¹ In order to ensure and facilitate the implementation of the DTA Treaties, on 29 March 2007, the Ministry of Taxes of the Republic of Azerbaijan promulgated the Rules on *Administration of International Treaties between the Republic of Azerbaijan and Other States on Double Tax Avoidance*, which have been superseded by the new edition of the identically-named rules approved by Decision No. 131705000002400, dated 30 April 2013, of the Collegium of the Ministry of Taxes and registered with the Ministry of Justice on 15 May 2013 (the “**Rules**”).

There have been no significant changes to the Rules except that the Rules do not incorporate a liability section which was present in the predecessor act.

The Rules essentially consist of two main parts: (i) the part dealing with the implementation of international treaties with respect to Azerbaijani residents, and (ii) the part dealing with the implementation of international treaties with respect to non-residents.

(i) Implementation of International Treaties with respect to Azerbaijani Residents

The part dealing with the implementation of international treaties with regard to Azerbaijani residents provides for tax exemption on two grounds: exemption based on (i) source of income, and (ii) residence.

If a treaty allows taxation only in the state of source, an Azerbaijani resident deriving income from a foreign source is exempt from taxes in Azerbaijan (Sub-section 2.1 of the Rules). By way of example, under the section on “Income from Immovable Property” of most DTA Treaties, income derived by an Azerbaijani resident from immovable property situated in a foreign (contracting) state may be taxed in the latter state and as such is exempt from tax in Azerbaijan.

If a treaty stipulates taxation of income only in the state of residence, income of an Azerbaijani resident derived from sources abroad is exempt from taxation in the state of source (Sub-section 2.2 of the Rules). For instance, pursuant to “Business Profits” section of most DTA Treaties, the profits of an Azerbaijani enterprise are taxable only in Azerbaijan unless the enterprise carries on business in the foreign (contracting) state through a permanent establishment situated therein.

Section 4 of the Rules provides for tax credit if a resident’s income is taxable both in the state of source and residence.

(ii) Implementation of International Treaties with respect to Non-residents

This part of the Rules covers, *inter alia*, the discussions on the taxation of non-residents conducting their activities through a permanent establishment or a fixed base, taxation of non-residents acting without a permanent establishment or a fixed base, and taxation of international shipments.

Unless otherwise provided in the international treaty (such as any DTA Treaty), profits attributed to an Azerbaijani permanent establishment of a non-resident are taxable in Azerbaijan.

¹ The list of the DTA Treaties – <http://www.taxes.gov.az/?name=beynelxalq&cat=54>

Income of a non-resident not operating through a permanent establishment or a fixed base derived from an Azerbaijani source (except income derived from dividends, interest, and royalties) is subject to the withholding tax at the rates established by Section 125 of the Tax Code. To avoid double taxation of the non-resident who already pays profits tax out of the income in the state of residence, such taxes can be refunded to the non-resident if international treaties have provisions on limited taxation or exemption with respect to this income.

If international treaties exempt income derived from dividends, interest and/or royalties from taxation or provide for limited taxation of such income, the exemption or limitation applies in advance.

The Rules also incorporate forms (DTA-01 and DTA-02 for residents and DTA-03, DTA-04, DTA-05 and DTA-06 for non-residents) to be filled out by residents and non-residents to qualify for an exemption in advance or refund.

INTERPOL ENFORCEMENT FOR TAX VIOLATIONS

Tax evasion is a criminal offence under the Criminal Code of the Republic of Azerbaijan effective 30 December 1999, which may result in a fine from AZN 1,000 to AZN 2,000 or correction works up to two years or imprisonment up to three years with or without depriving of the right to hold a certain position or engage in a certain activity when the amount of evaded tax is between AZN 1,000 and AZN 50,000. The same, while committed by an organized group or on a massive scale², is punishable by imprisonment from three to seven years with or without depriving from the right to hold a certain position or engage in a certain activity. A person committing tax evasion for the first time can be exempted from liability if he/she pays the damages resulted from such a crime. Subjecting a person to a criminal liability does not exempt him/her from fulfilling his/her tax obligations.

The number of criminal prosecutions in Azerbaijan, especially, those conducted through the International Criminal Police Organization (“**Interpol**”) for tax evasion is increasing year by year.

Azerbaijan officially became a member of Interpol by Decision No. 72 of the Cabinet of Ministers of the Republic of Azerbaijan, dated 9 February 1993, *on Accession of Republic of Azerbaijan to International Criminal Police Organization*. The National Central Bureau of Interpol established within the Ministry of Internal Affairs of the Republic of Azerbaijan (“**NCB**”) is an independent agency exchanging information between the law enforcement bodies of Azerbaijan and those of member states of Interpol in connection with combating crimes. The Azerbaijani Ministry of Taxes (the Primary Investigation Department) works in cooperation with the NCB for locating tax criminals.

For an international prosecution of a criminal, first, the relevant body³ sends a search request to Interpol, which, in turn, puts the criminal’s name on Interpol’s wanted list. When a person whose name appears on a wanted list comes to the attention of police abroad, Interpol notifies the relevant body and the latter can file a formal request for extradition or can request the person’s provisional arrest. The formal request for extradition can be filed based on an extradition treaty existing between the Republic of Azerbaijan and a foreign state or based on the mutual legal assistance principle.⁴

According to Interpol’s website, currently, there are 14 persons on Interpol’s wanted list who are being prosecuted for tax evasion crime committed in Azerbaijan, among which are both Azerbaijani and foreign nationals.

² Massive scale means amount exceeding AZN 50,000.

³ In case of tax crimes, the relevant body would be the Ministry of Taxes.

⁴ Sub-section 1.2 of Law No. 132-IIQ of the Republic of Azerbaijan, *On Extradition*, dated 15 May 2001.

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