

2013 TAX CODE AMENDMENTS

The Tax Code of the Republic of Azerbaijan is amended with effect of 1 January 2013. While, overall, there are more than 100 amendments, for some matters, revisions are considerable.

The draft amendments had been circulated among consultants and industry specialists for some time prior to being approved into law. A matter of a particular interest to the general public was the proposed reduction of the personal income tax rates. As the package is approved, other important amendments are introduced into the Azerbaijani tax law.

Tax Risks and Partnership Agreements

The Tax Code now incorporates definitions of tax risks and their minimization. Importantly, taxpayers can now enter “voluntarily” into tax partnership agreements (“agreements of intent”) with a tax authority for the minimization of tax risks. We understand such agreements would provide for a basis for the taxpayer and the authority to agree in advance on the tax treatment of a transaction (activity by the taxpayer) to determine the taxpayer’s tax obligations.

The amendments do not refer to any approved form of the tax partnership agreement nor do they provide for a procedure to enter into the agreement or outline the substance of it. According to the implementing Presidential Decree, these are to be addressed by the Cabinet of Ministers before March 2013. A form of the taxpayer’s application to enter into the tax partnership agreement is to be approved by the Ministry of Taxes.

Tax Assessments

Tax authorities are now precluded from collecting tax debts, interest, and sanctions from a taxpayer without first allowing the taxpayer to appeal the assessment that the taxpayer does not agree with in a court. Such an appeal can be filed within 30 calendar days of receipt by the taxpayer of a tax assessment notice; failing an appeal, the assessment is implemented by banking and similar financial (credit) institutions. A taxpayer that appeals a tax (interest and sanction) assessment must now allocate (freeze) on its accounts funds in the amount of 105 per cent of an appealed assessment.

A time limit for third parties to provide documents and information in relation to an audited taxpayer is now set at ten business days.

An office (chamber) audit can now be conducted based on the information of the taxpayer’s activities from “known sources” (along with the tax returns, reports, and other documents filed by the taxpayer available to the tax office). Cases where a tax assessment (supposedly, contrary to the taxpayer’s determination of its own tax liability) can be done by the tax authority now include the taxpayer’s failure to submit documents (other than a tax return) where such are required by the tax office to verify the assessment.

A field (onsite) tax audit can be suspended for a period up to nine months in the cases where the taxpayer is absent from the address registered with the tax authority or locating the taxpayer is impossible, upon temporary disability of a head of the taxpayer or disability of a sole proprietor, upon involvement of a specialist and expert invited by the tax authority, before the documents in relation to the audit are received

from a foreign country, or before a court issues an order for the seizure of documents and items that the taxpayer refused to release during the audit.

Large and Special-Regime Taxpayers

The Tax Code now defines large and special-regime taxpayers (previously, such taxpayers were determined based on the criteria established by the Cabinet of Ministers).

Large taxpayers include those (i) with owned assets valued for each of the last three years at more than AZN2,500,000 and an annual turnover for the last three years in excess of AZN1,250,000, or (ii) with the aggregate of tax and non-tax payments for each of the last three years more than AZN500,000, or (iii) natural monopolies or taxpayers with dominant positions at a market as well as their subsidiaries, Azerbaijani tax residents.

Special-regime taxpayers are those operating pursuant to production sharing, main export pipeline, and similar agreements approved into law as well as oil and gas, export oil and gas operations, and special economic zone laws subject to special tax regimes and, also, diplomatic and similar missions, consular sections, and other official representations of foreign countries in Azerbaijan.

Exemptions and Rate Reductions

A long-awaited personal income tax reduction is approved. Although the highest tax rate bracket in Azerbaijan remains higher than in other CIS and neighbouring countries that introduced flat income tax rates, it is reduced from 30 to 25 per cent. The upper threshold for the lower tax rate bracket at 14 per cent is increased to AZN2,500 (monthly) from AZN2,000; threshold amounts applicable to annual income are likewise increased.

By a separate act, a long-standing exemption from the income tax of interest payable by banks and financial (credit) institutions on deposits with them of individuals was prolonged for another calendar year.

Industrial and technological parks are now subject to a preferential tax treatment.

Earnings retained for construction and maintenance of infrastructure in an industrial and technological park are not subject to the profits (corporate income) tax. Similarly, income from activities in industrial and technological parks of residents of such parks is exempt from taxation for a period of seven reporting years starting with the year of registration at the park; this exemption also applies in relation to the personal income tax to sole proprietors operating in industrial and technological parks. Imports for technological and industrial parks are not subject to the value added tax (VAT); the same exemption applies to imports by residents of the parks for a period of seven years.

VAT

The Tax Code now clarifies that services of an insurance agent and insurance broker are to be covered by the definition of financial services; this would not make such services subject to the VAT.

A new threshold amount is now introduced for businesses to become VAT-payers. Such amount is now same for sole proprietors and entities and is set at AZN120,000 of any taxable (VAT-able) transaction(s) during any month(s) of any consecutive twelve-month period.

VAT offsets are now limited in time to three years.

All tuition fees are now exempt from VAT (as opposed to only pre-school tuitions previously). This exemption continues to be an exemption without a credit, *i.e.*, input VAT by an educational institution typically would not be offset (unless other circumstances prescribed by the Tax Code apply).

Importantly, the Tax Code now explicitly exempts “supply of participation shares or shares of an entity” from the VAT; previously, such exemption applied as a matter of practice.

Another important amendment regarding the VAT is in relation to the time of supply for the VAT purposes. If the payment for the supply is made within 30 days of the actual supply, then the time of supply is the date of payment; otherwise, the time of supply is the date of submission of a VAT electronic invoice or, failing which, the date of actual supply (commencement of shipment if such is a part of the supply). Previously, taxpayers did not have the 30-day period before the VAT was due to the budget.

Other

Tax authorities can now obtain and share pursuant to “international agreements for tax matters” information of bank transactions of Azerbaijani taxpayers.

Payments for activities in Azerbaijan in relation to culture, arts, theatre, cinema, radio, music, sports, engineering, architecture, and science are now specifically included into the list of types of income in the Tax Code that are sourced from Azerbaijan. We understand the revision is intended to capture the Azerbaijani income of visiting performers, artists, sportsmen, and scholars, among other purposes.

Following a decision of the Constitutional Court earlier in 2012 confirming right of the authorities to apply “market price” rent for tax purposes, the Tax Code now explicitly recognizes the right of the tax authorities to apply market rates to rent for immovables (except for residential premises).

Importantly, under the Implementing Decree, the State Committee of the Republic of Azerbaijan for Property Matters is required to submit monthly to the Ministry of Taxes information of the state immovables register on immovables of registered taxpayers. Likewise, the Ministry of Justice must submit monthly to the Ministry of Taxes information on notarized transactions in relation to sale and purchase of immovables.

Fixed assets now include assets with the value in excess of AZN500 as opposed to AZN100 previously.

Property and land tax exemptions are provided for industrial and technological parks.

Considerable revisions are introduced to the highway taxes.

PLEASE CONTACT US FOR ANY QUESTIONS AND FURTHER INFORMATION AT:

BM Morrison Partners
Tel: (994 12) 497 19 14; 497 19 15
Fax: (994 12) 497 19 13
E-mail: info@bmlawaz.com

©2013 BM Morrison Partners. All rights reserved.

* Information in our updates does not constitute legal or other professional advice.