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Amendments to Tax Code: Azerbaijan

Law of the Republic of Azerbaijan “on Amendments to the Tax Code of the Republic of Azerbaijan” was approved by the President of the Republic of Azerbaijan on 29 November 2019. These amendments become effective from January 1st, 2020.

The amendments concerns the following matters:

- ▶ E-tax invoice cancellation and application of various types of electronic invoices depending on the nature of the transaction;
- ▶ Application of a single approach to VAT calculation and payment (cash method);
- ▶ Abolition of simplified tax on building;
- ▶ False Transactions and Potentially Dangerous Taxpayer;
- ▶ Changes on excise rates;
- ▶ New tax exemptions;
- ▶ Control of installation of POS-terminals and introduction of new generation cash registers;
- ▶ Improvements in the simplified tax payment;
- ▶ Centralized tax registration;
- ▶ Taxation by state-owned subsidies from residential and non-residential areas;
- ▶ Reporting on transnational group of companies;
- ▶ Carrying out of joint inspections with tax authorities of other state as regulated by international treaties;
- ▶ Editing and refining.

General provisions and new concepts

The following new concepts were added to the Tax Code:

Non-Commodity Transaction - is a transaction disclosed in the course of tax control, concluded for the purpose of concealing another transaction and generating profit without the provision of goods, works and services;

Risky Taxpayer - means a taxpayer regarding whom there is a decision of the relevant executive authority (body) and who meets the criteria approved by the decision of the relevant executive authority (body), as well as a taxpayer who carries out non-commodity and/or risky transactions; A taxpayer may be considered as a risky taxpayer upon respective decision of the competent body.

Transnational group of companies - a group of companies, which includes two or more companies that are residents in different countries, or a company that is resident in one country and operates through a permanent representation in another country.

New provisions (Article 16.1.4-2) to the taxpayer’s responsibilities regarding the Transnational Group of Companies will be added in the following content:

If the total income for the fiscal year of the Transnational Group of Companies exceeds the manat equivalent of 750 million euros, the enterprise, which is a member of a transnational group of companies for the purpose of automated information exchange with the competent authorities of other countries under international treaties supported by the Republic of

Azerbaijan and is a resident of the Republic of Azerbaijan, submits the report to the tax authority in the form and manner specified by the relevant executive authority (body).

A tax sanction of 500 manat is applied to the taxpayer in case of failure to submit the electronic report in prescribed manner and time to the taxpayer.

Registration of taxpayers

The article 33.7 (Registration of taxpayers) will be amended in the following content:

The following taxpayers can be registered in a centralized manner by the tax authority as determined by the relevant body (body) of the relevant executive authority:

1. Natural monopoly subjects;
2. Enterprises with special tax regime;
3. Taxpayers who meet one of the following requirements:

- Average number of employees 251 and above;

- The average annual residual value of fixed assets on the balance sheet exceeds AZN 5,000,000.

Persons who have been registered at the place of their taxation are then registered in the centralized order with the previous identification numbers when referring to taxpayers or enterprises with a special tax regime.

Tax registration of taxpayers and branches, representative offices or other economic entities (objects) of the special tax regime, registered in the centralized manner, shall be carried out in the aforementioned manner.

Legal entities, registered at the place of their taxation, are required to apply to the relevant tax authority for centralized registration within 15 days of commencement of activities under the special tax regime.

Centralized re-registration or de-centralization of enterprises operating under special tax regimes, commencement or termination of their activities under a special tax regime shall be made within 15 days from the date of their application to the relevant tax authority.

III. Responsibility for violation of tax legislation

Provisions about the expiration of the term for calling to account for violation of tax legislation and application of financial sanctions (Article 56) will be amended to the following content:

Except for the results of on site tax inspection conducted in accordance with the relevant decision on the conduct of tax inspection in accordance with the criminal procedure legislation, the person cannot be called to account for violation of tax legislation and no tax liabilities may arise if the period of 3 years (the period of 5 years after the relevant information from the competent authorities of foreign countries on income received abroad) had passed from the date of the tax violation.

The period specified in this article covers a period of 3 years preceding the date of the decision of the tax authority to conduct on site tax inspection, irrespective of the date of making a decision on liability in accordance with the article 49.1 of the Tax Code.

Electronic delivery notes and purchase act of goods

The provisions regarding **electronic delivery notes** (Article 71-1) will be amended to the following content:

In the cases established by this Code, a person providing goods, performing work and rendering services to individual entrepreneurs and legal entities shall issue an electronic invoice to them within the following terms:

- providing goods - time of delivery of goods;
- providing not pre-ordered goods - within 5 days from the date of issuance of the document confirming delivery of goods;
- performing works and rendering services - within 5 days from the date of performance of works and rendering of services.

New provisions to the **electronic delivery notes** (Article 71-1) will be added in the following content:

When goods (works, services) are delivered to buyer not registered as a taxpayer, he / she will be given a receipt or a check.

Tax invoices are subject to the following types of electronic invoices, depending on the nature of the operation:

on the provision of goods, works and services;

on return of goods;

according to the article 163 of the Tax Code, except for return of goods;

on transfer of goods to agent (commissioner);

provided by agent (commissioner) to buyer of goods;

on acceptance to eventual processing of goods;

according to the article 177.5 of the Tax Code.

Purchase act of goods (Article 71-2) will be added to the Tax Code:

Within 5 days from the date of purchase of goods, purchase act and electronic purchase act (the form of which is established by the relevant executive authority) shall be drawn up for goods purchased for the purpose of economic activity (excluding individual consumption) by legal entities and individuals.

In the event that an electronic purchase act issued by a taxpayer has been printed and signed by an individual not registered within the tax authority, this document shall be considered as a document confirming purchase of goods and a purchase act shall not be drawn up on paper.

Income taxes of individuals and profit taxes of legal entities

New **exemptions** from profit tax from legal entities will be added to the article 106 of the Tax Code:

Export promotion paid at the expense of the state budget in the manner determined by the authority (body) established by the relevant executive authority;

Royalty incomes paid to a non-resident legal entity on the basis of a contract with authority (body) established by the relevant

executive authority for the use or assignment of copyrights on intangible assets in connection with Formula 1 and Formula 2 competitions held in the Republic of Azerbaijan – for 6-years period from January 1, 2018.

New provisions to the expenses connected with the generation of income (Article 108) will be added in the following content:

In the case of taxable operations by the taxpayer, in addition to tax-exempt operations, registration of incomes and expenses of these operations is carried out separately.

The amount of expenses, deducted from the income, incurred, but which cannot be distributed by the taxpayer in taxable and tax-exempt operations is determined on the basis of the share of tax-exempt income in the taxpayer's gross income.

If property is provided to the State by persons engaged in building construction activities, deductions of expenses on assets are considered as income expenses.

The article 149.4 (Filing of Tax Returns) will be amended to the following content:

A legal entity or a non-resident representative should file a tax return with the tax authority within 30 days from the date of submitting the liquidation balance to the registration body.

The article 150.3.3.2 (procedure for withholding tax at the source of payment) will be defined as follows:

Legal entities, private entrepreneurs and private notaries, withholding tax at the source of payment shall be obliged to submit the declaration of taxes withheld at the source of payment in the prescribed by the relevant executive authority form to the tax authority by taxpayers not later than on 20th of next month after the end of the quarter.

Value added tax (VAT)

The words "electronic tax invoice" will be replaced with the words "**electronic invoices**" in the chapter XI (Value Added Tax) of the Tax Code.

New **exemptions from VAT** will be added to the article 164:

- turnover of sales of feed and feed supplements used in animal breeding and poultry farms – for 4-years period from January 1, 2020;
- provision of residential area of constructing building to the State by persons engaged in building construction activities;
- provision of works and services on the basis of agreement with authority (body), established by relevant executive authority at the expense of means allocated from the state budget in accordance with budget legislation for execution of duties provided by charter of public legal entities created on behalf of state, the list of which is approved by the authority (body) established by relevant executive authority – for 1-year period from January 1, 2020;
- selling of goods, performance of works and provision of services on the basis of the agreement with authority (body), established by relevant executive authority in connection with Formula 1 and Formula 2 competitions held in the Republic of Azerbaijan – for 6-years period from January 1, 2018.

The provisions regarding the **time of Taxable Operations** (Article 166) will be fully amended as following:

Unless otherwise provided for in this Article, the time of the taxable transaction is the time of the payment made for the goods

(works and services). The taxable operation shall be deemed as carried out as follows:

- at the time of receipt of cash, at non-cash payment – at the time the money is entered into the account of the bank or may be in charge of it, or the right to receive the specified funds;
- at the time of termination or payment of a liability in the event of termination or repayment of a financial liability (in case of mutual settlements and other similar cases);
- at the time of transfer of assets in the form of payment in kind as well as barter;
- at the time when the provisions is made in the event of provision on a gratuitous basis.

Where the provisions of the article 159.5 of the Tax Code are applied, the time of the taxable operation is the date of provision of goods (works, services) for non-commercial purposes, the date (day) of loss, missing, damage, writing-off without full depreciation or theft of goods.

Where the provisions of the article 159.6 of the Tax Code are applied, the time of the taxable operation is the time immediately preceding the time when the cancellation takes effect.

When a taxpayer lends money to the taxpayer who supplies goods (works, services) for goods (works, services) provided and not paid by the taxpayer, the time of VAT operation is considered as following:

- for loans issued after provision of goods (works, services) – at the time of debt repayment;
- for loans issued before goods (works, services) are provided – at the time of supply of goods (works, services).

When the payment is made before the provision of goods (works, services), the time of the taxable operation is considered to be the time of the payment. If two or more payments are made for a taxable operation, each payment shall be deemed to have been made separately for each transaction. No electronic invoices for advance payments are allowed.

Payment for the purposes of this article means VAT-free payment on provided goods (works, services).

Where the provisions of the article 169.1 of the Tax Code are applied, the time of the taxable operation is considered to be the time of the payment. When the payment is made before the operation is made, the taxable operation is considered to have been carried out at the time of payment. The amount of tax is determined by applying the tax rate provided for in the article 173.1 of the Tax Code to the amount payable to non-resident (excluding VAT).

Some provisions regarding the **operations by Agent** (Articles 172.4.2 and 172.4.3) will be amended as following:

The time for taxable operations for another person is the time specified in the article 166 of the Tax Code. Delivery of goods to an agent by another person shall be formalized by electronic invoice intended for this purpose.

If an agent is the VAT payer, he submits only an electronic invoice on services provided to another person. An electronic invoice entitles another person, who is the VAT payer to compensate the paid VAT to an agent.

In the event of registration for VAT purposes, an agent provides an electronic invoice for the goods (works, services) received by another person to the recipients of those goods (works, services) specified by the article 71-1.6.5 of the Tax Code.

This electronic invoice is the basis for compensation of VAT payment in accordance with the article 175 of the Tax Code. If an

agent is non-registered for VAT purposes, the value of the goods (works, services) purchased by the buyer, at the expense of the committent in cashless form, in the event of payment of amount of VAT to the deposit account of VAT, an electronic invoice issued by the agent to the buyer of those goods provides the basis for the compensation of paid VAT.

In this case the buyer of goods (works, services) compensates the paid VAT on the basis of an electronic invoice received from an agent (committent) by paying to another person the value of goods (works, services) in cash and the amount of VAT to the deposit account of VAT.

The article 175.1 regarding the VAT creditable in the **determination of payments to the budget** will be amended as following:

Unless otherwise provided for in this Article, the paid amount of VAT on the purchase of goods (works, services) is compensated with the following conditions, and the time of taxable operation is determined as following:

- to purchase goods (works, services) for the purposes of entrepreneurial activity and VAT operations;
- to transfer the value of the operation from the bank account to the bank account of the person providing the goods (works, services);
- to pay the amount of VAT to the deposit account of VAT.

Barter of goods (works, services) for the purpose of this article is equivalent to the value of the VAT-free operation to the bank account of the person providing goods (works, services).

New provisions to the VAT creditable in the **determination of payments to the budget** (Article 175) will be added in the following content:

Receipts, checks and documents authorizing operations, carried out in cash are not the basis for tax compensation for the purposes of this Article.

Import documents provided by customs authorities and confirming the payment of import tax independent of form of payment shall provide the basis for tax compensation for the purposes of this Article.

Documents authorizing operations, carried out in the framework of false transactions, as well as electronic invoices from potentially dangerous taxpayer are not the basis for tax compensation for the purposes of the article 175 of the Tax Code.

New provision to **relations with the budget when the amount of creditable tax exceeds the amount of calculated tax** (Article 179) will be added in the following content:

The terms specified in the article 179 of the Tax Code shall apply to potentially dangerous taxpayer after the completion of tax control measures on the taxpayer's activities.

VII. Tax rates and the list of excise goods

Tax rates of excie goods (Article 190.3) will be amended as following:

To potable alcohol, beer, alcoholic beverages, tobacco products, energy (alcohol and non-alcohol) beverages and e-cigarette liquids, produced in the Republic of Azerbaijan, following excise rates are applied:

potable alcohol (including ethyl alcohol non-denatured with alcohol content of not less than 80 percent; ethyl alcohol non-

denatured with alcohol content of less than 80 percent) – **3.2** manats for liter;

vodka, strong drinks and strong beverage materials, liqueurs and liqueur products – **3.2** manats per liter;

cognac and cognac products – **3.2** manats per liter;

sparkling wines – **2.6** manats per liter;

wine and vineyard materials – **0.2** manats per liter;

beer (with exception of non-alcoholic beer) and other beverages containing beer – **0.5** manats per liter;

cigarillos (slim cigars) – **31.0** manats for 1000 pcs.;

cigarettes made of tobacco and their substitutes – **31.0** manats for 1000 pcs;

alcohol energy drinks – 2.1 manats per liter;

non-alcohol energy drinks – 3.1 manats per liter.

New provision will be added to the *list of excise goods*:

Clear (non-darkened) alcohol beverages, not specified in the article 190 of the Tax Code – **0.4** manats per liter.

VIII. Property tax

The article 199.14 shall be supplemented in the following content:

Micro entrepreneurial businesses are exempt from property tax (except for persons with a residual value of over 1,000,000 manat at the beginning of the year).

Building construction

The following supplement will be made to the article 13.2.12:

If property is provided to the State by persons engaged in building construction activities, income from property is not considered as taxable.

The article 16.8 (taxpayer's responsibilities) will be added:

The following persons engaged in building construction activities shall submit to the tax authority each year until January 20 information on provision of residential and non-residential areas, the form of which is approved by the relevant executive body:

– started construction and installation works after January 1, 2020;

– persons who have not been subject to simplified tax payments and have started construction and installation works before January 1, 2020, but persons who have not completed construction as well as have non-submitted residential and non-residential areas.

The article 67.16 (procedure for determining the taxable base in certain cases) will be added:

In case of revealing the provision of residential and non-residential areas (conclusion of purchase and sale contracts) during on-site tax inspection of persons engaged in building construction activities, residential and non-residential areas are considered as submitted during the latest inspection period covered by the following circumstances for tax purposes:

- Failure to submit information indicated in the article 16.8 of the Code;
- If the information indicated in the article 16.8 is provided but the provided information does not include residential and non-residential areas.

New provision regarding building construction activities will be added to the expenses connected with the generation of income (Article 108) as following:

If property is provided to the State by persons engaged in building construction activities, deductions of expenses on assets are considered as income expenses.

The article 130.6 (procedure for income and expenditures accounting) will be added:

The income from the submission of residential and non-residential areas by persons engaged in building construction activities and costs deducted from the income are determined based on VAT-free amounts envisaged in sales contracts during the tax year, and the expenses incurred for the construction of these areas.

Simplified tax

The following content will be added to the article 218 (*payers of simplified tax*):

The right to apply a simplified tax method is reserved in the following cases:

When a taxpayer performing the sale of goods in the retail sale also sells the goods in wholesale, the volume of transactions to be executed by electronic invoices for a quarter does not exceed 30% of total trading operations (excluding non-sales revenue);

When an execution of services is rendered to legal entities and individuals who are registered with the tax authority as a taxpayer, along with the services provided to population by the people providing services, except for services provided to people (population) not being registered with the tax authority as a taxpayer, the volume of transactions to be executed by electronic invoices for a quarter does not exceed 30% of total operations on general services (excluding non-sales revenue).

New **exemptions from Simplified Tax** will be considered by the Tax Code. The article 218-1 (exemptions and privileges) will be amended to the following content:

Tax-exempt:

- 1.1. the volume of production from the sale of agricultural products (including industrial method) produced by agricultural producers – for 10-years period from January 1, 2014;
- 1.2. income from writing-off tax debts to the state budget in accordance with legislation of the Republic of Azerbaijan;
- 1.3. export promotion paid at the expense of the state budget in the manner determined by the authority (body) established by the relevant executive authority;

1.4. dividends paid to the founder or shareholders of a resident enterprise, which maintains income and expense records, which is not registered for VAT purposes and which operations amount up to AZN 200,000 in any month (month) of the consecutive 12-month period;

1.5. Cases on submissions of presenting residential and non-residential areas, as well as land areas are as follows:

- submission of residential areas registered upon place of stay by individuals for at least 3 calendar years;
- cases stipulated by the articles 102.1.3.2, 102.1.18, 106.1.16, 144.1.1 and 144.1.2 of the Tax Code;
- 30 square meters of living space in private property of individuals.

The amount of tax to be paid to the budget by the simplified tax payers engaged in trade and (or) public catering activities for retail sale of goods for 3-years period from January 1, 2019 is reduced by 25% of the total amount of tax payments in accordance with the specific weight of payments in non-cash form through the POS terminal as established by the Law "on the Protection of Consumer Rights".

When determining the right to receive this privilege, the amount of payments made through the POS-terminals by persons registered in tax authority is not taken into account.

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