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2019 Tax Amendments in Azerbaijan

Effective from 1 January 2019, more than 200 articles of Azerbaijani Tax Code have been amended.

Amendments cover many substantive and procedural matters, including new tax exemptions and reliefs.

The significant amendments may be summarized and grouped as follows:

1. *Definitions*

Some of the current definitions, such as “Dividends” have been modified to cover lacuna and prevent illegal avoidance; new definitions have been introduced, such as “SME cluster company”, “Startup”, “Capital”, “E-cabinet”, “Compulsory marking”, “Center of economic interests”, “Excise Mark”, “Innovation Activity”.

2. *Compulsory Marking of Goods*

Compulsory marking system for certain goods has been introduced. For a defined list goods, taxpayers must conduct import, purchase, sell or maintain for selling purposes with compulsory marking and comply with the rules specific for compulsory marking.

3. *Tax Procedures*

Several procedural matters have been modified, corrected and clarified regarding tax audits, rights and duties of taxpayers and tax authorities, information exchange and communication.

- For VAT payment debts, delay interest rate and penalty, VAT deposit account of the taxpayer may be suspended in the amount of 105% of the total amount. Where the tax payer does not appeal to higher administrative body or the court within 30 days upon receiving notice for payment of taxes, delay interest rate and penalties from the tax authority, the amount of unpaid VAT, delay interest rate and penalties shall be deducted from the suspended VAT account (New Articles 65.2.3-1 – 65.2.3-3);

-While tax inspection, if tax authority detects that the goods are not possessed by the taxpayer in fact, taxes shall be calculated for the reporting period when this has been detected, and for the latest reporting period covered by the field tax audit where this is detected during such audit (New Article 67.15);

- Where investment promotion scheme of a taxpayer is terminated or where such taxpayer fails to contribute the required investment as per the scheme, taxes will be imposed on the taxpayer from the date of implementing the investment project for the terminated tax exemptions, without any delay interest rate (New Article 67-2.4);

- Exemption from submission of e-bills (e-qaimə) has been introduced for the following taxpayers:

- Entities providing banking operation services over client accounts;
- State entities, local municipalities, state funded entities;

- Notaries for providing notary services.

- Documents shall be considered as delivered as follows (New Article 70.2-1—70.2-3):

a) the date of actual delivery, when submitted personally;

b) after 5 working days from the date of submission to the postal service, when submitted via postal mail service providers;

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c) after 3 working days from the date of electronic delivery, when submitted to the e-portal of the taxpayer.

4. *Tax Penalties*

New tax penalties have been introduced and some of the current penalties are also amended.

-New penalty for failing to submit social contribution reports or letters by the users of agricultural lands has been set to be 3% of the minimum salary for the first time, and 6% for the subsequent breaches (New Article 57.1-1);

- Penalty for failing to provide book-keeping and financial documents to tax authorities has been increased to 1000 AZN from 100 AZN (Modified Article 57.3);

- Where tax avoidance has been detected basing on the information and filings submitted by the taxpayers, 25% of the avoided tax payment shall be imposed as penalty (New Article 58.1-1);

- penalty for failure to provide the client with relevant official receipts (including cash machine receipt) has been increased to 1000 AZN from 400 AZN for the first instance of breach and to 3000 AZN from 800 AZN for the second instance of breach, and 6000 AZN for the third and subsequent instance of breaches (Modified Articles 58.7.1-58.7.3). This will be applicable to the producers of agricultural goods starting from 1 January 2020;

- for off-record funds, and for failing to keep the registry of income and expenses, as well as where e-bills e-VAT invoices are lacking for the purchased goods, and where purchase certificates, import declarations and documents required by the Tax Code where the goods are manufactured by the taxpayer: 10% of unrecorded or hidden funds exceeding 1000 AZN for the first instance of breach and 20% of the amount exceeding 1000 AZN for the recurrent breaches shall be imposed as penalty (these were previously 5% and 10% respectively) (Modified Article 58.8.1);

-where income and cost of the taxpayer is not recorded, 10% of the undocumented expenses shall be imposed as new penalty (New Article 58.8.3);

-new penalty has been introduced regarding failure of tax filing by taxpayers exempted from tax obligation or enjoying some tax relief. According to this new penalty, 6% (without deducting expenses) of the non-declared income or reduced income will be subject to penalty by such taxpayers. This penalty will be applicable to the producers of the agricultural goods from 1 January 2020, for the rest of the taxpayers exempted from tax obligation or enjoying some tax this penalty is applicable from 1 January 2019;

5. Transfer of Shares

The new amendments have brought clarification for the taxation while the transfer of shares at legal entities:

Where the shares at a legal entity is transferred for the price above the proportionate net asset value of the share, the difference between the actual transfer price and net asset value shall be considered as income of the taxpayer. Where the shares at a legal entity is transferred for the price below the proportionate net asset value of the share, the difference between the par value and the net asset value of the share shall be considered as the income of the taxpayer (New Articles 96.5, New Article 104.6).

6. Personal Income Tax

Income taxation of physical individuals have been amended.

- From 1 January 2019, income tax for employees working in private non oil-gas industry would be 0% for the monthly income of up to 8 000 AZN, and 14% of the monthly income amount exceeding 8 000 AZN for 7 years. Previously effective general rate 14% (for income up to 2500 AZN monthly) and 25% (for income above 2500 AZN monthly) applies to oil-gas industry and state entities (New Article 101.1-1);

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7. Mandatory Social Insurance

By default this insurance is calculated 3% from the salary of the employee, and plus 22 % from the labor remuneration (salary) fund which is paid by Employer. Starting from 1 January 2019, mandatory state social insurance payments in private non oil-gas industry will be as follows for 7 years:

Monthly income (salary)	Social insurance payment rate		
	Total	paid from the salary of insured (employee)	paid by insurer (employer)
up to 200 manats	25 %	3 %	22 %
more than 200 manats	25 %	6 AZN + 10 % from the part exceeding 200 AZN	44 AZN + 15 % from the part exceeding 200 AZN

TABLE 1.

- Where monthly income of full time employee at primary workplace is less than 2500 AZN, 200 AZN would be tax exempted and where such income is less than 30 000 AZN annually, 2400 AZN would be tax exempted. It must be noted that this applies to oil-gas industry and public entities, since private non oil-gas industry is classified as tax exempt as per Article 101.1-1 (Modified Article 102.1.3).
- Income tax for non-entrepreneurship activity shall be 14% annually. Previously, it was 14% for income up to 30 000 AZN annually, and 25% for the income above 30 000 AZN annually (Modified Article 101.2);

8. Tax exemptions

Following tax exemptions and discounts for income tax and corporate tax have been introduced.

-Starting from 1 January 2019, income received by cashless means via POS Terminal at retail trade and public catering is reduced by 25% for 3 years, considering the proportion of cashless income in general income, i.e. considering expenses proportionately (New Article 102.1.24);

- Deemed income due to the abolition of taxes to government shall be exempt from taxation (New Article 102.1.25);
- 50% of the income received from transferring shares that has been owned for more than 3 years is released from taxation for private entrepreneurs and legal entities (New Article 102.1.27, New Article 106.1.19);
- 75% of the income of micro-businesses of private entrepreneurs and legal entities (New Article 102.1.30, New Article 106.1.20)[1];

-Income of micro-businesses and small-businesses (private entrepreneurs and legal entities) for 3 years from the date of obtaining “Startup” Certificate (New Article 102.1.31, New Article 106.1.23);

- Part of the income of SME cluster participants (both) private entrepreneurs and legal entities), received under the contract with SME cluster company, spent on capital expenses is exempt from taxation for 7 years (New Article 102.1.32, New Article 106.1.22);
- Profit of SME cluster company is exempt from corporate tax for 7 years commencing from the date of entry into the SME cluster company registry (New Article 106.1.21);
- Educational institutions, including special educational entities for children with disabilities, are exempt from corporate tax with the exception of the profit distributed as dividends (New Article 106.1.7);
- Income received from the production of agricultural goods is exempt from corporate tax until 1 January 2024 for legal entities (New Article 106.1.14);
- social transfers to scientific, educational, health and sports institutions, which comply with the criteria to be defined by the Cabinet of Ministers, by private legal entities in the amount

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not exceeding 10% of the annual net profit is exempt from taxation for 10 years commencing from 1 January 2019 (New Article 106.1.18);

- Dividends of shareholders (both private entrepreneurs and legal entities) received from their legal entities, which keep official records of income and expenses, not registered as VAT payer and whose income does not exceed 200 000 AZN within any given 12 consecutive months, is exempt from taxation (New Article 102.1.22-1, New Article 106.10);

- The following Value Added Tax exemptions are introduced:

 - Import of the autobuses running on the compressed natural gas for carrying 10 or more passengers including the driver, for the period of 5 years commencing from 1 January 2020 (New Article 164.1.39);

 - Import of heavy vehicles, technological equipment and devices for the purposes of manufacture or processing on the base of approval document issued by the Agency for the Development of Small and Middle Enterprises by SME cluster company, for the period of 7 years commencing from the date of entry into the SME cluster company registry (New Article 164.1.40);

 - Import of automobiles running solely on the electric energy (New Article 164.1.41);

 - Operations related to the provision of workforce for the organization of paid public works by the entity registered by the Agency for Sustainable and Operative Support as per the Law on Employment (New Article 164.1.42).

Criteria of Businesses are defined as follows:

Categories of businesses	**Average number of employees**	**Annual income (AI) (1000 AZN)**
Micro Businesses	1-10	AI ≤ 200
Small Businesses	11-50	200 < AI>
Medium Businesses	51-250	3 000 < AI>
Large Businesses	251 and more	30 000 < AI>

9. Tax Deductible Expenses

- Under previous regulation, officially printed cash machine receipts were not accepted as a document qualifying for expenses. The following exceptions are made to the law in order to allow printed receipts as documented expenses (Modified Article 109.8):

• Entities providing banking operation services over client accounts;
• State entities, local municipalities, state funded entities;

• Notaries for providing notary services.

- Transfer pricing rules will be applicable to loans between related parties (New Article 110.2);

-Where the loans received from abroad are more than the twofold of the net assets, interest rates calculated for the loan amount exceeding such twofold of the net assets may not be deducted from the income as an expense. This clause is not applicable to resident banks and credit institutions (New Article 110.3);

- Micro-businesses are entitled to calculate depreciation rates specified by the Tax Code (Article 114.3) for fixed (long-term) assets by multiplying with coefficient 2, and small businesses by multiplying with coefficient 1.5 (New Article 114.3-1, New Article 114.3-2);

- Losses occurred before the taxpayer was registered as corporate tax payer, and difference between the allowed rates of depreciation and repair expenses and actually applied lower rates by the taxpayer that are carried forward for the subsequent years, may not be off-set against the income of subsequent years (New Article 121.3);

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10. Dividends

-The Definition of dividend has been expanded to cover the distribution of assets of a company to the shareholders upon the liquidation of the company, where such asset is formed by the net profit of the company, as well as the case of redemption of capital by the shareholder where such (increased) capital is formed by the net profit of the company (Modified Article 13.2.15);

-Dividends of shareholders (both private entrepreneurs and legal entities) received from their legal entities, which keep official records of income and expenses, not registered as VAT payer and whose income does not exceed 200 000 AZN within any given 12 consecutive months, is exempt from taxation (New Article 102.1.22-1, New Article 106.10);

-The transfer of assets or funds of the company to the shareholder with the purposes not related to the business goals of the company, or the repayment of the shareholder's loans to third parties by the company shall be considered taxable dividend and 10% tax must be withhold by the company (New Article 122.4);

11. VAT Refund System

Under the newly introduced VAT Refund system, consumers would be eligible to receive refund for the VAT paid while the purchase of goods from retail or public catering businesses (New Article 165.5).

15%, while cashless payment, and 10 %, while cash payment, of the paid VAT is refunded to the customer. The Regulations prescribing the rules and conditions of the VAT Refund system will be adopted by the President.

12. Excise Tax

Excise Taxes are imposed on the following new goods (Updated Article 190):

- Energy drinks (alcoholic and non-alcoholic), 2 AZN per liter for alcoholic energy drinks and 3 AZN per liter for non-alcoholic energy drinks;
- Autobuses (with the exception of autobuses running on compressed natural gas), within the range from 2 AZN per cubic sm to 10 AZN per cubic sm varies depending on the engine volume) ;

The Excise Tax for some of the current goods have been increased (e.g. 12 AZN for 1000 cigarettes produced of tobacco has been increased to 20 AZN).

13. Property Tax

New exemptions for Property Tax have been introduced:

- Property tax for the privatized state property during the period between 1 January 2019 and 1 January 2022 is refunded if a) other taxes paid by the taxpayer during the same reporting period is not less than the amount of the paid property tax; and b) the taxpayer has no outstanding tax, delay interest rate or penalties to be paid to the state treasury at the date of application for refund. Such exemption is available only for one reporting year (New Article 199.12 and 199.13);
- Micro-businesses are exempt from Property Tax (New Article 199.14);
- SME cluster company is exempt from property and land tax for the goods used for the purposes of SME cluster operations, for 7 years commencing from the date of entry into the SME cluster company registry (New Articles 199.15 and 207.6);
- Property Agrarkredit Closed Joint Stock Company, obtained in exchange of the toxic assets (debts) during the resolution and sanation of insolvent banks, is exempt from property tax for 2 years and land tax (New Article 199.16 and 207.7)

14. Simplified Tax

Simplified tax is set to 2 % in the entire territory of Azerbaijan. The following taxpayers are not eligible to be simplified taxpayer from 1 January 2019:

- Producers of goods subject to the compulsory marking (Updated Article 218.5.1);

- Taxpayers engaged in the manufacturing industry employing more than 10 people (New Article 218.5.8);

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-Taxpayers engaged in the wholesale of goods industry (trade) (New Article 218.5.9);
- Service providers, with the exception of taxpayers providing services to the persons (people) not registered as taxpayer. Transportation service providers (Article 218.4.1) and service providers who are subject to flat tax (Article 220.10) are subject to simplified tax (New Article 218.5.10);
- sellers of gold and jewelry made of gold, as well as diamond (New Article 218.5.11);
-sellers of fur goods (New Article 218.5.12).

Previously, businesses engaged in the sales of goods (trade) had a right to opt out to be simplified tax payer (6% of turnover) even where their annual income exceeded 200 000 AZN, without becoming VAT payer. According to new updates, this clause has been removed and such businesses must pay 20% corporate tax and register as VAT payer where their annual income exceeds 200 000 AZN

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