

Deposit Interest Exemption

In order to strengthen the financial standing of the Azerbaijani bank system, as well as encourage depositing in Azerbaijani banks, the Milli Maclis (a legislative body of the Republic of Azerbaijan) since 1996, is enacting laws on a continued basis, on *Exemption of Deposit Interest of Populace Paid by Banks and Other Credit Institutions from Income Tax* (the “**Exemption Laws**”). The Exemption Laws exempt the interest paid by banks and credit institutions on individuals’ deposits from the income tax. The most recent Exemption Law was enacted on 1 January 2014, which extended the deposit interest exemption period for another year. This, in turn, is expected to help banks to increase their charter capitals in accordance with the requirements of the Central Bank up to AZN50,000,000 as of 1 January 2015.

From 1996 up to 1 January 2010, in addition to deposit interest, dividends from investment securities (such as shares in joint-stock companies) were exempted from the income tax.

The term “populace” used in the Exemption Laws was interpreted by the tax authorities of the Republic of Azerbaijan as the application of the laws only to the citizens of Azerbaijan. Due to its confusing nature, the Exemption Law, dated 27 October 2009, replaced the term “populace” with the term “individuals” (natural persons), thereby, providing applicability of the Exemption Laws to foreigners and stateless persons on an equal basis with citizens of Azerbaijan.

It is not clear from the Exemption Laws whether interest from individual deposits held in foreign banks would be exempt from the Azerbaijani income tax. As the perceived idea behind the exemption is to stimulate domestic banks and similar institutions, one can argue that the exemption would not be applicable to interest from deposits in foreign banks.

Import Duties

The Cabinet of Ministers of the Republic of Azerbaijan by Resolution No 16, dated 21 January 2014, amended its Resolution No 80 on *Customs Duty Rates for Export-Import Operations, Charges for Customs Clearance in Republic of Azerbaijan*, dated 12 April 2001. According to amendments, up to 1 June 2014, engine fuel is exempted from the import duty (which, before the exemption applied at the rate of 15 per cent). The amendments intend to stimulate the import of engine fuel into the Republic of Azerbaijan to afford local demand on the product (while local refining capacities are being upgraded).

This Resolution will be in force until 1 June 2014.

Taxation of Oil and Related Products

Oil products are subject to the excise tax and the rates are determined by the Cabinet of Ministers.

With respect to *oil products* produced in Azerbaijan, the amount of the taxable consideration is determined, excluding the VAT and excise amounts, on the basis of the compensation (including barter) received, or to be received, by the taxpayer from a customer or any other person, the amount of such compensation being not less than the wholesale market price of the relevant goods.

On 6 February 2014, the Cabinet of Ministers by Resolution No 35 made changes to its Resolution on *Amending Excise Rates of Oil Products*, dated 2 December 2013, whereby, the excise rates applicable to certain oil products have been significantly reduced and the excise rates applicable to some remained same.

Below is a comparative table of applicable excise taxes before and after the amendments:

No	Oil Products	Excise Tax Rate in percentage (after 1 January 2014)	Excise Tax Rate in percentage (up to 1 January 2014)
1	Gasoline AI-95	64.00	159.00
2	Gasoline AI-92	65.00	134.00
3	Gasoline AI-80	66.00	134.00
4	Diesel	18.00	57.00
5	Rocket fuel	9.00	68.00
6	Naphtha	13.00	70.00
7	Liquid gas	22.00	69.00
8	Engine fuel (DT-36)	24.00	170.00
9	Engine fuel (DT-20)	31.00	160.00
10	Furnace oil	3.00	147.00
11	Bitumen (BN-60/90, BNB-60/70)	11.00	180.00
12	Bitumen (MQO)	34.00	34.00
13	Bitumen (BNV, BNB-70/30, BNB-85/25)	31.00	31.00
14	White oil (KO-20)	32.00	32.00
15	Natural gasoline	37.00	37.00
16	Engine fuel (M-12VB, M-14V2)	52.00	52.00
17	Industrial fuel (I-12A, I-20V, I-40A, I-8B1, I-30V)	72.00	72.00
18	Turbine fuel	39.00	39.00
19	Insulating oil (T-1500)	54.00	54.00
20	Other fuels (AK-15, S-11, XM-6, K-12, K-19, VM-4)	56.00	56.00
21	Gas carbon (KT-A)	19.00	19.00
22	Gas carbon (KT-T)	19.00	19.00
23	Gas carbon (KT-Q)	18.00	18.00

Issues of Liability for Tax Violations

Because tax violations remain in the spotlight, the issues of liability under Azerbaijani law and, particularly, the Tax and Criminal Codes, for tax crimes and violations (offenses) continue attracting attention of practicing lawyers and academia.

A tax crime is a culpably committed publicly dangerous act restricted under the Criminal Code that encroaches upon financial interests of the state and leads to a criminal liability for committing it.

A crime is an offense being attributed to the latter as is the specific is attributed to the general. Based on this, a crime must have all the primary indicia of an offense.

On the other hand, from the Tax Code, one can conclude that a tax violation (offense) is a culpably committed illegal (contrary to the law of taxes and dues) act (action or inaction) of a taxpayer, tax agent, and other persons leading to liability based on relevant laws.

Based on the above definitions, it can be assumed that primary indicia (culpability, illegality, and liability) of a tax crime and tax offense are same. However, the principal distinction of a tax crime is its public danger.

There is also a difference in how the liability is imposed. For tax crimes, there is a criminal liability, for tax violations, there are financial sanctions and interest.

An important distinction between a tax crime and a tax offense is the present limitation of liability for tax crimes to individuals whereas, for tax offenses, the liability can be imposed on individuals and entities alike. Under the Tax Code, imposing liability for a tax offense on an organization does not restrict imposing the liability on the executives (if there are bases for such liability). Here, culpability of organizations is determined based on culpability of their executives and representatives whose actions (inaction) have led to committing the tax offense.

Criminal liability for tax crimes is provided for in Section 213 of the Criminal Code. Under this Section, tax evasion in considerable and substantial amounts leads to a penal action.

A subject of tax crimes is taxes and dues. Both must be paid by individuals and entities alike. A tax is a mandatory, individual, and gratuitous payment into the state and local budgets through a disposition of monetary funds owned by taxpayers for the purpose of ensuring financially operations of the state and municipalities.

An object of a crime under the provisions of the Criminal Code is the public economic relations that are based on the principle of good faith of operating subjects as well as an obligation of everyone to pay taxes and dues required by the state.

An objective aspect of this crime is a fact of evasion of taxes and/or dues in considerable and substantial amounts.

An evasion is an act or inaction of a person aimed at avoiding the payment of mandatory tax assessments. An evasion includes:

- (1) a failure to submit a tax return and other documents required under Azerbaijani law in a manner required under the Azerbaijani law of taxes and dues; and
- (2) inclusion into a tax return of false information.

A subjective aspect of the crimes established under Section 213 of the Criminal Code is a direct intent. Actions or inaction by a defendant are taken in order to evade taxes in considerable or substantial amounts.

In its turn, the Tax Code has provisions that can exempt a person from the sanctions. Such provisions include, for instance, an error upon calculating a tax rate or tax base provided that the taxpayer has corrected the error independently before a tax audit.

Also, the Tax Code excludes imposition of a tax liability on an individual if, by the time of a tax offense, the individual did not reach the age, upon which the liability can be imposed. In the absence of the provisions in the Tax Code on such age, it appears that the question must be decided based on an extent of legal capacity of a person at the time of committing the offense.

A subject of a tax crime is an individual (a citizen of the Republic of Azerbaijan, a foreigner, or a stateless person) above the age of sixteen who, under the law of taxes and dues, is under the obligation to calculate and pay the taxes and/or dues as well as to submit to tax authorities a tax return and other documents necessary to implement a tax control.

Special circumstances of the crimes prosecuted under Section 213 of the Criminal Code are the committing of evasion in a considerable amount.

As well as aggravating circumstances of this crime is the committing of an evasion in considerable and substantial amounts. A considerable amount is a sum of money from 2,000 to 50,000 Manats while a substantial amount is the sum exceeding 50,000 Manats.

We would also note that, under the Criminal Code, a person committing acts prosecuted under Section 213 of the Criminal Code for the first time is exempt from the criminal liability if it fully reimburses damages from the crime.

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

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