

EBA ARMENIA

LOBBY & ADVOCACY REPORT



JULY 2017

Lobby and advocacy report

July 2017

During the reporting period the Advocacy activity has been implemented in the 2 directions:

Improvement of the business environment (including tax and customs) at policy level

TAXATION OF DIVIDENDS.

- a. According to the Article 444, part 7 the provisions on dividend taxation of foreigners by income tax will enter into force since January 1, 2017 and the law will be applied to the dividends declared after January 1, 2017, and for the RA citizens dividends declared after January 1, 2018 which means that the dividends may be generated in the previous years but taxed if declared after January 2017. EBA presented its position that the Law cannot be applied retrospectively and to remove the distinction is done based on the citizenship criteria. EBA suggested to apply the law on the dividends generated by the results of 2017 and the subsequent years. The suggestion has been agreed in the Council and the secretariat of the Council prepared draft amendment in the Tax Code. The initial draft has been circulated among members of the Council and shall be presented to GoA.
- b. The income tax rate for dividends of foreigners decrease to 5% as in the case of RA citizens. The suggestion has been justified by the declared policy of GoA to attract FDI and to provide the foreign investors at least the same favorable conditions as defined for the RA citizens. EBA also presented the tax rates in some comparable CEE countries and Eurasian Economic Union. The Council discussed the proposal and argued that the 45 double taxation treaties partially cover the issue and that the diversified and high rates are used in international practice, especially in the EEU.
- c. According to the Article 109, part 3 the profit from dividends is considered as received on the June 30th of the tax year following the reporting year unless by the decision of the meeting of shareholders on allocation of dividends at the earlier date. That means the law automatically applies the June 30 date for the purposes of profit tax calculation regardless the dividends actually are allocated or not. The Council members agreed to delete the provision. The corresponding amendment to the Tax Code has been prepared by MoF and circulated among the Council members. With regard to the draft EBA presented its written opinion and suggested the corresponding deletion of the Article shall have the retrospective force otherwise it's already June and the businesses will face the problem on June 30th. The suggestion is justified by Constitution, Article 42, according to which the legal act improving the legal status of the person, eliminating or mitigating the responsibility may be applied retrospectively if it is defined by that act.

FREE BORROWINGS

During the sessions of the Council SRC representative expressed its concern about the interest free borrowings provided by affiliated persons to the company and tax avoidance schemes related to dividends. EBA presented general international experience about the issue. MoF prepared amendment to the Tax Code according to which the provision of the interest free borrowings or the borrowings with the interest lower by 50% of the CBA defined interest rate are reconsidered as dividend. EBA presented its written opinion that the prescribed approach not well known in the international practice. Another argument is how the reconsideration will be formulated in the accounting. The EBA presented the common international practice related to use of the arm length principle as well as the ratio approach. As the transfer pricing rules entering into force in January 2018, they may be applied to these situation. In addition the ratio approach is more concrete and widely used. EBA also suggested to define ratio for the maximum debt regarding the affiliated persons instead of the current suggested approach.

PROCUREMENT

The European Business Association referred to the public procurement sector of the Republic of Armenia based on the findings constant dialogue with Business Community. One of the most urgent issues according to businesses is the new procedure in the legislation when the bid security submission is mandatory for the first phase and is the ground for the immediate refusal if not submitted. The EBA suggested to request the bid security when technical, financial and eligibility documents are compliant with the requirements. In addition to that, electronic system lacks the nature of helping the applicant. Typically in other similar systems when mandatory submission documents are not completely downloaded, it is not possible to send the application, but the current Armeps system does not work like that. We recommend to consider a bid security mandatory field in the electronic system and to allow submitting the application only after attaching all the required documents

MINIMUM PROFIT TAX

The businesses were obliged to pay 1% quarterly minimum profit tax according to the previous legislation. If the minimum profit tax was more than the annual tax liability, the offset has been done for the future years profit tax liability. Currently, according to the Tax Code there is time limit for the offset of the already paid minimum profit tax up to January 2017. EBA presented the issue to the MoF Tax Policy Council to amend the Article 451, part 7 of the Tax Code and to remove the time restriction and allow to offset of the paid minimum profit tax amounts also for the factual profit tax periods after January 2017.

IMPROVING THE INVESTMENT CLIMATE PROPOSED BY THE MINISTRY OF ECONOMY

DOING BUSINESS RANKING

By the request of the Ministry of Economy, EBA presented its proposals on activities to improve the Armenian ranking in Doing Business, particularly for paying taxes indicator

- a. To introduce and implement a deduction system for the unified income tax in order to smooth the negative influence of the increase of the unified income tax rates prescribed by the new Tax Code.
- b. To introduce and implement the efficient and effective system for collection of property tax taking into consideration the cases of property tax avoidance through splitting one property into different properties as well as the procedure of property valuation which decreases the taxes for luxury property in multiple times.
- c. To provide profit tax exemption for 5 years to the Fortune 500 companies in case of making investments in Armenia.

EBA presented also number of proposals related to the Trading Across Borders, starting a business and getting credit indicators.

LAW AMENDMENT ON ADVERTISING AND TAX CODE

By the request of the Ministry of Economy, EBA presented its proposals on Law amendment on advertisement related to placement of signs out of buildings as well as internet advertising.

EBA presented its opinion on legislative amendment on Tax Code related to refund deadline from the single account of the taxpayer.

LOCAL TAXES

At the Small & Medium Entrepreneurship Development Council of the Republic of Armenia, chaired by Prime Minister Karen Karapetyan, the EBA raised the issue related to the recent change in the Law on the local duties & fees according to which the calculation base of the local duty for the trade of alcohol & cigarettes as well as for the organization of public food is the total size of the general building. The initiative to differentiate the rates & decrease it for the SMEs is generally welcomed but during the law application “general building” causes problems. The Prime Minister instructed to discuss again the issue with Yerevan Municipality & present a proposal. EBA, EBRD BSO representatives discussed the issue with Yerevan municipality and agreed to come up with a solution by not changing the law but clarify the ambiguity in the law. EBA is in the process of preparing the proposal.

TAX OFFENCES

The Small & Medium Entrepreneurship Development Council of the Republic of Armenia, chaired by Prime Minister Karen Karapetyan discussed the findings of a survey, which recommends the

warning as a preliminary administrative measure for outstanding tax payments. The EBA raised the issue that if the taxpayer made an offence/technical mistake which does not result decrease/loss of taxes, also apply soft administrative measures. The Prime Minister instructed to discuss again the issue with State Revenue Committee & present a proposal. In the frame of the decriminalization of series of economic crimes subject to prosecution under the Criminal Code of the Republic of Armenia, in addition to presented 4 economic crimes, Prime Minister instructed to make a survey among businesses to know its opinion for decriminalization of additional ones if any. The survey is in the process of implementation.

ASSESSMENT OF GOA PROGRAM

The EU Neighbourhood & Enlargement mission by the Director for 'Neighbourhood East' Lawrence Meredith concluded two-days working visit to Armenia. During the mission the team met with government authorities, representatives of civil society organizations and international donor community, youth organisations, as well as the European Business Association in Armenia. EBA presented its considerations of GoA program & specific set of recommendations with regard to investments, business environment improvement & SME development.

- **Advocating the concrete issues raised by member organizations at state authorities**

During the reporting period EBA proceeded to solve the 6 issues raised by its member companies. The issues are related to the tax and customs regulation area. The issues has been raised with tax and customs authorities and Yerevan municipality (related to local taxes). One issue is in the court process so the intervention of EBA is restricted. One issue related to customs procedures has been solved and the others are in the process.