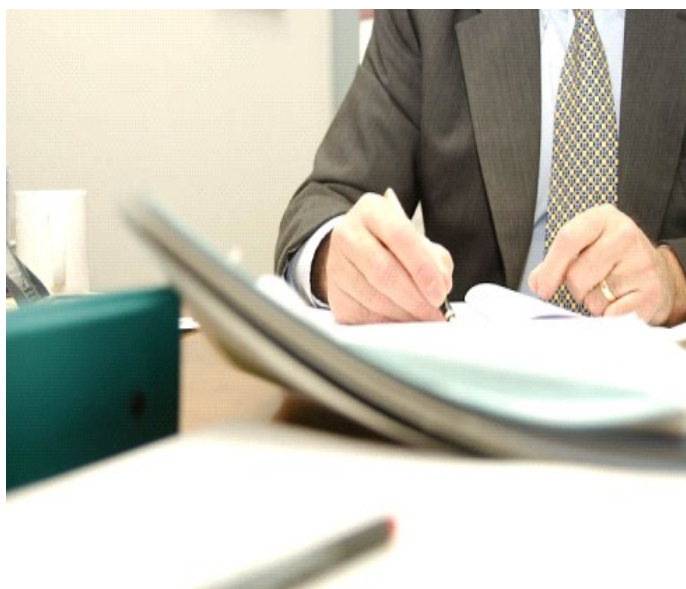


**LEGAL AND TAX ASPECTS OF  
DOING BUSINESS  
IN AZERBAIJAN**



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## **Section I. ESTABLISHING A LEGAL PRESENCE IN THE AZERBAIJAN REPUBLIC**

### **1. Introduction**

Establishing a legal presence in the Republic of Azerbaijan is regulated mainly by the *Civil Code*<sup>1</sup> effective September 1, 2000, the Law “*On State Registration and state registry of Legal Entities*” dated December 12, 2003 and other Laws of the Republic of Azerbaijan.

One may establish either a limited presence, in the form of a representative office or a branch of foreign legal entity, or a full presence in a number of other forms of Azerbaijan legal entities.

According to the Decree of the President of the Republic of Azerbaijan dated October 25, 2007 regarding the implementation of “*one window system*”, from January 1, 2008, state registration of representative office or a branch of foreign legal entity and Azerbaijan legal entities shall be carried out by the relevant departments of the State Taxes Service under the Ministry of Economy of the Republic of Azerbaijan. In accordance with the legislation, the appropriate registering body is required to execute registration within 3 business days after the submission of the necessary documents.

### **2. Representative Office and Branch of Foreign Legal Entity**

According to Azerbaijan legislation representative and branch offices are subdivisions of a foreign legal entity. Although they are not considered to be legal entities in the Republic of Azerbaijan, they are subject to taxation, including profits tax whenever they engage in commercial activity.

Both carry out all or some of the functions of its parent “home country” foreign legal entity and can be engaged in revenue generating activities. Both a representative office and branch operate on the basis of regulations (a document resembling charter or by-laws) approved by their parent legal entity.

Additionally, branch and representative office of foreign legal entity have the right to trade in Azerbaijan. Unless a foreign law implication is involved, the only restriction is applied to representative office where it would not be engaged in banking activity and would only represent and protect interests of the head organization.

#### **2.1 Registration**

Registration Requirements for setting up a representative office of foreign legal entity are identical with the registration requirements for a Branch. State fee for the registration of a representative office and branch office of foreign legal entity is AZN 220, which is approximately USD 127.00.

To register a representative/branch office in the Azerbaijan Republic the following documents should be submitted to the appropriate registering body:

1. Application form for registration of a branch/representative office
2. Charter or Memorandum and Articles of Association of a foreign legal entity
3. Power of Attorney for the chief representative/director
4. Board Resolution on opening a branch/representative office
5. Certificate of Incorporation or Extracts from the Trade Register in the home country of foreign legal entity;
6. Regulation of a branch/representative office
7. Passport photocopies of the chief representative/director of a branch/representative office
8. Document confirming legal address of a branch/representative office
9. Bank receipt on payment of state duty

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<sup>1</sup> Approved by the Law of the Azerbaijan Republic No.779-IQ, dated December 28, 1999.

All documents to be provided by a foreign legal entity must be notarized and legalized (apostilled) in the country of origin of a foreign legal entity. Any document supplied in a language other than Azerbaijan should be accompanied by a notarized translation.

### **3. Establishing a local legal entity**

The Civil Code as well as other legislative acts of the Azerbaijan Republic regulates activities of Azerbaijan legal entities.

Activity of Enterprises with foreign investments are regulated by a number of the legislative acts, such as the Law on Protection of Foreign Investments dated January 15, 1992, international and bilateral agreements of the Azerbaijan Republic and contracting states.

Enterprises may carry out any business activity, as described by the charter of legal entity if not prohibited by the legislative acts of the Azerbaijan Republic.

In accordance with the legislation of the Azerbaijan Republic, enterprises may perform certain types of activities only upon obtaining special permits (License) from the appropriate government authorities.

The Civil Code of the Azerbaijan Republic provides for the following types of legal entities:

- Joint Stock Company (JSC);
- General Partnerships (GP);
- Limited Partnerships (LP);
- Limited Liability Companies (LLC);
- Additional Liability Companies.

#### **3.1 Joint Stock Companies (“JSC”)**

JSC is a legal entity comprised of at least one individual and/or legal entities. JSC is a legal entity that provides its shareholders with limited liability to the extent of their shares. Shareholders are also liable for the obligations of the JSC to the extent that their shares remain unfunded. One individual or legal entity may establish a JSC provided that such individual or legal entity has purchased all outstanding shares of the JSC. JSC may be either of open or closed type.

The charter capital of a JSC is divided into a fixed number of shares of a stated par value. For a closed JSC, the minimum amount of the charter capital is approximately AZN 2000.00 and AZN 4000.00 for an open JSC. The charter capital of a JSC must be fully paid on or before the date of its state registration.

The General Meeting of Shareholders is the highest management body of JSC. The GMS must be held annually.

##### **3.1.1 Registration**

In order to register a JSC, the following documents must be submitted to the appropriate registering body:

1. Application form for registration of JSC;
  2. The Resolution of founder (founders) on establishment of JSC;
  3. The Charter of JSC;
  4. A document evidencing payment of the JSC’s charter capital;
  5. A document confirming the legal address of the JSC;
  6. A document evidencing payment of the state registration fee.
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Foreign legal entities acting as a founder of the JSC must also submit documentation verifying that they are duly registered in their home jurisdiction. Documents must be notarized and legalized (apostilled) in the home country. Any documents supplied in a language other than Azeri must be accompanied by a notarized translation of the same into Azeri.

### **3.2 General Partnership (“GP”)**

A GP is a legal entity comprised of at least two individuals and/or legal entities. An individual may participate in creation of the GP only if such individual is registered as entrepreneur. Individuals and/or legal entities may participate in only one GP. General partners are jointly and severally liable for the partnership’s liabilities. To the extent that the partnership does not have sufficient assets to cover its obligations, the partners are then personally liable for its obligations.

The supreme body of a GP is the General Meeting of Partners.

#### **3.2.1 Registration**

The following documents must be submitted for the state registration:

1. Application form for registration of GP;
2. The Resolution of founder (founders) on establishment of LP;
3. The Charter of the GP;
4. A document confirming the legal address of the GP;
5. A document confirming the legal address of the founders (if the founders are legal entities) and/or documents confirming the founder’s place of employment and identification documents (if the founders are individuals);
6. A document evidencing payment of the state registration fee.

Foreign general partners as legal entities must submit documentation verifying that they are duly registered in their home jurisdiction. All documents to be provided by a foreign legal entity must be notarized and legalized (apostilled) in the home country. Any documents supplied in a language other than Azeri must be accompanied by a notarized translation of the same into Azeri.

### **3.3 Limited Partnership (“LP”)**

A limited partnership (“LP”) has one or more general partners and one or more limited partners. The general partners are personally liable for the partnership’s obligations. The limited partners’ liability is limited to the amount of their contributions. An individual may participate as a general partner only in one LP. Similarly, a partner of the GP may not participate as a general partner in the LP.

A withdrawing general partner and remaining general partner are equally liable for the GP’s liabilities that arose prior to the withdrawal. A newly admitted general partner becomes liable for all the liabilities of the LP that arose prior to the admission of the new partner.

Limited partners have the same rights as general partners, but cannot vote in elections for members of the Board or vote on any matter that concerns only the rights of general partners, cannot participate in management and in entrepreneurial activity of LP.

The management over an LP’s activities is conducted by the general partners. The law provides for the same management structure for an LP as it does for a GP.

#### **3.3.1 Registration**

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The following documents are submitted for the state registration:

1. Application form for registration of the LP;
2. The Resolution of founder (founders) on establishment of LP;
3. The charter of the LP;
4. A document confirming the legal address of LP;
5. Documents confirming the legal address of the founders (if the founders are legal entities) and/or documents confirming the place of employment of the founders and their identification documents (if the founders are individuals); and
6. A document confirming payment of the state registration fee.

Documents from the foreign legal entity must be notarized and legalized (apostilled) in the home country. Any documents supplied in a language other than Azeri must be accompanied by a notarized translation of the same into Azeri.

### **3.4 Limited Liability Company (“LLC”)**

A limited liability company (“LLC”) is an entity established by one or more individuals and or legal entities contributing their shares to the charter capital. An LLC established by a physical person may not participate in another LLC in which the same physical person is the only founder of both companies. The participants in an LLC are liable only to the extent of their contributions.

A participant in an LLC has the same basic rights as those provided for a shareholder of a JSC. A participant of an LLC is not liable for the LLC’s obligations and bears the risk of loss for the LLC’s activities only to the extent of its contributions to the LLC’s charter capital.

The supreme body of an LLC is the General Meeting of Participants.

Charter capital consists of contributions of the participants. The charter capital of an LLC is divided into a fixed number of shares set forth by the LLC’s charter. All of the founding participants must make their contributions to the charter capital by the date of the LLC’s state registration.

#### **3.4.1 Registration**

In order to establish an LLC, the following documents must be submitted to the registering authority:

1. Application form for registration of LLC;
2. The foundation protocol of the meeting of the founders of the LLC;
3. The charter of the LLC;
5. Document confirming the legal address of the LLC;
6. Documents confirming the residence address, place of employment of the founders and their identification documents (if the founders are individuals);
7. Document evidencing payment of the LLC’s charter capital;
8. Document confirming payment of the state registration fee.

Additional documents must be submitted by foreign participants. Documents issued abroad must be notarized and legalized (apostilled) in the home country. Any documents supplied in a language other than Azeri must be accompanied by a notarized translation of the same into Azeri.

### **3.5 Additional Liability Company (“ALC”)**

An additional liability company (“ALC”) is an entity established by one or more individuals and/or legal entities contributing their shares to the charter capital. Legal structure of an ALC is similar to an LLC.

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The major difference is that the participants in an ALC may assume liability for the company in excess of their contributions as regulated by the charter.

Registration requirements are very similar to the ones we presented in the above Article 3.4 herein, i.e. ALC.

### **3.6 Subsidiaries**

An enterprise established in Azerbaijan may also form subsidiaries in any of the above mentioned legal forms. A subsidiary is a separate and distinct legal entity; the parent enterprise may contribute property to its subsidiary but, typically, is not liable for the obligations of the subsidiary.

A parent company, however, may be held liable for obligations of its subsidiary in bankruptcy if such bankruptcy was caused through the fault of the parent company in connection with execution of its instructions.

Additionally, a parent company and its subsidiary are jointly and severally liable for obligations incurred by the latter as a direct result of implementation of instructions of the former even if the former is not in bankruptcy.

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## **Section II. LEGAL/LABOR/MIGRATION CODE REQUIREMENTS**

### **1. Introduction**

Labor relations of all workers and employees in the Azerbaijan Republic are regulated by the Labor Code<sup>1</sup>, effective July 1, 1999, as well as other Laws of the Azerbaijan Republic issued pursuant to the Labor Code. As per the latest changes to the Labor Legislation, it is not permissible to conclude a civil law contract/service agreement with individuals which maybe subject to employment agreement under the following conditions:

- if the content of contract assumes content, conditions and information which must rather be specified in the employment contract and/or the format is drawn up or resembling standard form of employment contract
- if a labor book has been provided in order to formalize relationship between parties
- if the relationship between the parties arising in connection with performance of work (services) is related to the main field of activity of the employer
- if the remuneration paid for the work or services performed appears to be made of monthly base salary, allowance, bonus and etc.

### **2. Term of employment contract**

Employment contract can be signed for an indefinite period of time or a fixed-term. The exact period of fixed-term employment contract shall be agreed by the parties (employer and employee).

If a fixed-term employment contract continues for the period of more than five consecutive years, it shall be considered to be concluded for an unlimited term

### **3. Labor Books (Book of Employment Records)**

An employer must fill in appropriate information in labor books of local employees who are employed for the period of more than five days. An employee entering into an employment contract (except in cases where a contract is concluded for the first time) must present to employer his/her labor book, identification documents and certificate of state social insurance.

This requirement does not apply to individuals with IDP and refugee status, foreign citizens and stateless persons.

In accordance with the local legislation Labor Book should be safely kept by the HR Manager or someone who performs such function.

All the previous, current and future employment related entries should be recorded accordingly to enable future calculations of pensions by the appropriate bodies (applicable for the local citizens only).

### **4. Probationary Period**

As per the Labor Code requirements, a provision on probationary period must be stipulated in an employment contract, which shall not exceed three months. Employees, who don't pass such probationary period, could be terminated with an immediate effect notice.

The following categories of individuals to whom a probationary period shall not apply:

- pregnant women, women with child under the age of three, men raising their children under the age of three as single parents;

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<sup>1</sup> Approved by the Law of the Azerbaijan Republic No.618-IQ, dated February 1,1999

- individuals who are commencing their labor activity for the first time in the year of graduation as per his/her speciality;
- individuals who are elected to a public service (state authority, municipality);
- individuals who are employed for two months period.

## **5. Working time**

Normal duration of business day should not exceed 8 hours. The regular business week is 40 hours, less for certain groups of people as invalids, pregnant women, etc.

When concluded the Employment Contract as well as being in the process of labor relationship and upon obtaining mutual consent, employer and employee may agree on a part time work.

Compensation of employees who work on days off, voting days, holidays that are being considered as non-working days, as well as on the day of national mourning shall be paid as follows.

Should an employee, who works on days off, voting days, holidays that are being considered as non-working days, as well as on the day of national mourning, so desire he/she may have an extra day off in lieu of pay.

## **6. Overtime**

Only for the purposes of prevention of natural calamities, force major circumstances, production accidents and other extraordinary events and/or liquidation of their consequences, and also for the purpose of prevention of losses of perishable goods overtime work could be allowed.

However, in any case duration of overtime work should not exceed 4 hours during two consecutive days.

Overtime for the employees engaged in extra hard and harmful works is regulated as well. For employees engaged in such work duration of overtime should not exceed 2 hours during two consecutive days.

Payments for each hour of overtime must not be less than double hourly rate of employee's base pay. Compensation of overtime with extra holidays is not allowed.

## **7. Rest time**

During the business day (shift), employees must be allowed a break for rest and lunch. Duration of rest time shall be determined by the Internal Regulations of the Company, shift schedule, employment contract and collective agreement.

## **8. Holidays and days off**

The official public holidays in the Republic of Azerbaijan:

- 1,2 January - New year;
  - 20 January - Day of National Mourning;
  - 8 March - Women's Day;
  - 9 May - Victory day over fascism;
  - 28 May - Republic Day;
  - 15 June - Day of National Salvation of the Azerbaijan People;
  - 26 June - National Army Day;
  - 18 October - National Independence Day;
  - 9 November – Day of the National Flag of the Azerbaijan Republic;
  - 12 November - Constitution Day;
  - 17 November - National Revival Day;
  - 31 December - Day of Solidarity of Azerbaijanians
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Novruz Holiday – 5 days  
Gurban Holiday – 2 days  
Ramazan Holiday– 2 days

Please note that New Year, Day of National Mourning, Women's Day, Victory Day, Republic Day, Day of National Salvation of the Azerbaijan Republic, Armed Forces of the Azerbaijan Republic, Day of the National Flag of the Azerbaijan Republic, Azerbaijan World Solidarity Day, Novruz, Gurban and Ramadan holidays shall not be considered as business days.

The exact dates of Novruz, Gurban and Ramadan holidays for the following year shall be determined and announced to the public by the end of December by the relevant executive authority.

In accordance with the Amendments to the Labour Code dated 30 December 2005, when weekend days overlap with holidays, which are not considered as working days, such a day shall be transferred to the other business day following holidays.

During elections of deputies of the Milli Mejlis of the Republic of Azerbaijan, the President of the Republic of Azerbaijan, members of municipalities in the Republic of Azerbaijan, and during referendum the voting day shall not be considered as working days in the territory where elections (referendum) are holding. The voting day shall be determined in accordance with legislation

**Note:** In accordance with the Election Code of the Republic of Azerbaijan [No.461-IIQ, dated May 27, 2003] and Labour Code of the Republic of Azerbaijan [No.618-IQ, dated February 1,1999] Voting Day [election/referendum] shall not be considered a business day.

## **9. Vacation entitlement**

The minimum paid annual vacation is twenty-one calendar days and must be provided to all employees.

For the following categories of employees duration of annual vacation must not be less than 30 calendar days:

- employees engaged in agricultural production;
- senior officials, managers and specialists of enterprises;
- physicians, nurses and pharmaceuticals, etc.

For disabled people duration of paid annual vacation should not be less than 42 days.

It must be noted that certain categories of employees, especially the ones working in hazardous conditions, offshore workers, etc., shall be entitled to additional vacation days, which should be not less than 6 days.

### **9.1 Paid leave in connection with education**

Employees who are studying and working at the same time should be entitled to the following paid leaves in connection with education:

- for attending semester exams;
- for attending finals (course exams);
- for preparing for and attending graduation exams

### **9.2 Social Vacations (Maternity Leave)**

Women should be entitled to a paid maternity leave of seventy (70) calendar days prior to and fifty-six (56) days after childbirth. In the event of abnormal or multiple births, woman shall be granted seventy (70) days leave after childbirth.

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### 9.3 Non-paid Leave

An employee, if a personal situation so requires, should be entitled to a non-paid leave.

Employee may be granted an unpaid leave for the period not exceeding 6 months, at the discretion of the parties, and by mutual agreement of the employer and employee and in the cases provided by the collective contract, as well as under the terms of employment agreement.

## 10. Statutory sickness payments requirements

Employees should be entitled to certain salary-based compensations for the period of their illness. Such compensations would depend on the length of service of employee, for instance:

- Up to 5 years length of service                      - 60% of the salary to be paid;
- From 5-8 years length of service                      - 80% of the salary to be paid;
- From 8 years length of service                      - 100% of the salary to be paid;
- Disabled people    - 150% of the salary to be paid.

Normally, such sickness benefits are provided on presentation of a Sickness Certificate.

Social allowances to employees for the first 14 days of illness should be made at the expense of employer. Same allowances for all the periods exceeding 14<sup>th</sup> day of illness should be compensated to employee by the Social Protection Fund.

## 11. Employment Termination

Employer may terminate Employment Contract for the following reasons:

- liquidation of an enterprise;
- reduction in the number of employees or staff;
- decision of the Authorized Body<sup>1</sup> on non-compliance of the employee with his or her position due to insufficient competency, qualification (professionalism);
- failure to execute labor function or obligations as determined in the Employment Contract by the employee or gross violations of labor obligations in the cases as specified in the Labor Code.;
- if an employee does not satisfy requirements of his/her position during the probationary period;
- when an employee of the state-funded organization reaches the retirement age.

### 11.1 Employment Termination/Special Considerations

11.1.1. As per the Article 77 of the current Labor Code, if Employment Agreement is terminated pursuant to the paragraph (b) of the Article 70 ("reduction in the number of employees"), Employer must officially inform Employee about termination of contract within terms established by the Labour Legislation in advance depends on seniority in the company;

11.1.2. To enable Employee to look for a job, Employer must give an Employee not less than one (1) day off during every business week of such notification period, provided that his/her base salary is fully paid;

11.1.3. The following allowances must be paid to Employees upon termination of their employment:

- Termination allowance in an amount established by the Labor Legislation depends on seniority in the company;
- Compensation for unused vacation (if any)

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<sup>1</sup> **Note:** "Authorized Body" mentioned above is meant to be an authorized attestation commission that is to be called for the purpose of determination whether or not the employee meets requirements of his/her qualification, professional skills.

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11.1.4. Instead of giving notice, Employer may, should Employee agree, pay him/her one time compensation in the amount established by the Labor Legislation depends on seniority in the company.

## **11.2 Special Considerations before termination of Employment Contracts (staff reduction):**

11.2.1. Before terminating employment contracts Employer should take into account professionalism and qualifications of Employee and should try to provide him/her with some other work (position) within the Company;

11.2.2. In certain cases, especially for the Employees with higher level of qualification or skills, advantages and privileges should be granted upon termination of contracts.

## **11.3 Employees whose employment contracts may not be terminated**

The employer shall be prohibited from terminating the employment contracts for the reasons stipulated by the Article 70 of the Labor Code of the Republic of Azerbaijan:

- Pregnant women and women with children under the age three, and men raising their children under the age of three as single parents;
- Employee (single mother or father with a pre-school child), if the only source of income is the Company;
- Temporary disability of the Employee;
- If the Employee has pancreatic diabetes;
- Participation in a trade union or political party;
- During a period of vacation or business trip;
- Employee with a disabled child under the age of 18 and Category 1 Disabled family member

**Note:** Provisions of this article should not be applicable in case of termination pursuant to Article 70(a) [liquidation of the enterprise] and Article 73 [expiration of the fixed term employment contract] of the Labour Code of the Azerbaijan Republic.

## **11.4 Vacation entitlement upon termination**

Regardless of the reason and basis of termination of employment contract, an employee is entitled to be paid monetary compensation for any unused main vacations for all working years, with no term or limitation.

## **11.5 Employee resignation**

11.5.1. In accordance with Article 69 of the current Labor Code Employee may terminate Employment Contract upon serving one (1) calendar month prior written notice to the Employer;

11.5.2. Upon expiration of one calendar month from the date of notice, Employee is entitled to his severance pay and shall leave work accordingly;

11.5.3. If Employee retires for the reason of old age or disability, enters an educational institution to continue education, moves to a new place of residence and in other cases provided by legislation, Employment Contract may be terminated from the date specified in the termination notice.

11.5.4. Before expiration of notification period, Employee may revoke termination notice or upon serving of other notice may announce the latter invalid. In that case Employment Contract may not be terminated, especially if Employer did not inform Employee by written formal notice about hiring of other employee for such vacancy. Upon termination of Employment Contract in accordance with the provisions of Article 69, Employee is not entitled to revoke or announce notice of termination invalid;

11.5.5. Employee shall be entitled to his/her annual unused holidays for the appropriate working year (years) and termination of employment contract shall be considered at the end of such leave. Before expiration of such leave, Employee may revoke termination notice or upon serving other written notice to announce the latter invalid;

11.5.6. It is not permitted to terminate Employment Contract by force, intimidation or otherwise, against Employee's will.

## **12. Insurances**

The Employer shall provide the Employee with compulsory insurance against disability as a result of industrial accidents and occupational illness at workplaces. In the event of employee's death or disability in connection with an injury to life or health as a result of industrial accidents and occupational disease, the Employer will ensure the payments to the employee at a level provided for under the legislation.

The Employer shall provide the Employee with unemployment insurance and compulsory medical insurance.

## **13. E-registration of employment contracts**

In accordance with the latest changes to Labor Code of Azerbaijan Republic as of July 01, 2014 all employment contracts being currently in legal force must be registered on-line.

E-registration of employment contracts shall be done in the following cases:

- (i) Conclusion of employment contract;
- (ii) Amendment to employment contract;
- (iii) Termination of employment contract.

Access to the electronic information system for electronic registration of employment contracts can be carried out by the use of ASAN signature or e-signature.

Local employment contracts are effective from the date of e-registration of the employment contracts.

## **14. Work Permit for foreign nationals**

As a rule, a work permit is required for foreign nationals to work in Azerbaijan [*Migration Code of the Republic of Azerbaijan No. 713-IVQ, dated July 02, 2013, Law of the Republic of Azerbaijan "On Labor Migration" No.724-IQ dated October 28, 1999, Decree of the Cabinet of Ministers of the Republic of Azerbaijan "On approval of Regulations on issuance of individual work permit for carrying out paid labor activity on the territory of the Republic of Azerbaijan by the foreign nationals No. 214 dated 6 December, 2000.*]

This general rule though does not apply to certain categories of labor migrants.

Also, lately, according to the *Decree of the Cabinet of Ministers of the Republic of Azerbaijan "On approval of list of fields not requiring obtaining of individual work permit for foreign nationals and stateless persons being on business trip in the Republic of Azerbaijan not more than 90 days period within a year" [No. 387, dated December 04, 2014]* certain changes have been made to the business trip requirements.

Furthermore, according to the Migration Code of the Republic of Azerbaijan, all foreigners having work permit can conclude local employment contract from the date of work permit.

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## 15. "One window system" for control of migration processes

According to the Degree of President of the Republic of Azerbaijan dated March 04, 2009 regarding the implementation of "one window system" for control of migration processes, effective July 1, 2009 all migration procedures are carried out by State Migration Service of the Republic of Azerbaijan.

In accordance with the said Decree, the authorized body shall control and be responsible for all migration procedures, including the followings:

- (i) issuance/extension of temporary residence permits in AR;
- (ii) issuance/extension of work permits in AR;

**Work Permit.** As a rule, a work permit is required for foreign nationals to carry out labor activity in Azerbaijan. The Government processing time for issuance of work permit is subject to the amount of government fee paid and varies from 10 business days, 15 business days and 20 business days. The work permits are issued for the period of three months, six months and one year..

It costs an estimated AZN 350 to AZN 1,400 to obtain Work Status, depending on the permit validity and processing speed (in business days):

- 10-day Work Permit processing: AZN 700-1,400 (AZN 700 for a three-month permit, AZN 1,400 for a one-year permit)
- 15-day Work Permit processing: AZN 500-1,200 (AZN 500 for a three-month permit, AZN 1,200 for a one-year permit)
- 20-day (standard) Work Permit processing: AZN 350-1,000 (AZN 350 for a three-month permit, AZN 1,000 for a one-year permit)

**Temporary Residence Permit.** Temporary Residence Permit is the document necessary for legal stay in the Azerbaijan Republic. It is regarded as visa substitute allowing foreign national enter and leave Azerbaijan during its validity. The Government processing time for issuance of temporary residence permit is subject to the amount of government fee paid and varies from 15 business days and 20 business days.

It costs an estimated AZN 30 to AZN 300 to obtain Temporary Residence Status, depending on the permit validity and processing speed (in business days):

- 15-day Temporary Residence Permit processing: AZN 40-480 (AZN 40 for a three-month permit, AZN 480 for a three-year permit) or AZN 25-300 for applicants under 18
- 20-day (standard) Temporary Residence Permit processing: AZN 30-120 (AZN 30 for a three-month permit, AZN 120 for a one-year permit)

## 16. Procedure and term of Work Permit obtaining procedure

The foreign nationals shall apply for obtaining of work permit through his/her employer that is duly established in the Republic of Azerbaijan.

The set of documents required by the above stated regulations shall be submitted to the State Migration Service. If upon consideration of provided documents the said authority does not find any basis for refusal provided by the relevant legislation, then within 10-20 business days period after submission hereof the State Migration Service shall issue a work permit.

**Note:** In accordance with Code of Administrative Violations of the Republic of Azerbaijan, the employment of foreign nationals without obtaining work permits shall impose a penalty at the rate of thirty thousand up to thirty five thousand manats (AZN 30,000-35,000) and three thousand up to five thousand manats (AZN 3,000-5,000) for managerial staff.

## 17. Labor Quota

In accordance with the Article 11 of the Law of the Republic of Azerbaijan "On labor migration" and "Rules on establishing of labor migration quota" approved by the Decree of the Cabinet of Ministers of AR [dated 4 June 2009, No.86], it shall be established a labor migration quota and approved by the Cabinet of Ministers three months prior to beginning of each year. Such Quota establishes maximum number of foreign workforce to be brought into the country by employers for each year and must be strictly adhered to by both, legal entity/branches/representations and the State Migration Service of Azerbaijan.

According to the Rules, an employing entity that intends to use foreign workforce in Azerbaijan should provide its estimates to the State Migration Service of Azerbaijan in the form approved by the appropriate authority by 1st of May of each year, otherwise work permit applications would be rejected by the State Migration Service of Azerbaijan. Based on these estimates, the Commission reviews the employers' needs in foreign workforce, prepares suggestions and present the latter to the Cabinet of Ministers of Azerbaijan by the 1st of September of each year.

## 18. Visas to Azerbaijan

In accordance with Migration Code of the Republic of Azerbaijan before travelling to Azerbaijan foreigners shall obtain visas, unless visa except nationals.

There are two types of visas for foreign nationals and stateless persons: (i) entry and (ii) transit visa.

Entry visas shall be single and multiple, transit visas shall be single and double entry visas.

Entry visas have the following categories:

1. Diplomatic
2. Service
3. Ordinary

Diplomatic and service visas shall be issued to foreign nationals and stateless persons for their official visits to the Republic of Azerbaijan.

Ordinary visas shall be issued to foreign nationals and stateless persons for the visits to the Republic of Azerbaijan related to business, science, education, labor, tourism, culture and sport, humanitarian, medical and personal purposes.

Duration of entry visas is 90 days in case of single entry and up to 90-180 days in case of a multiple entry. Foreign nationals and stateless persons may stay in country during the term and for the purposes stated in visa.

Types of visas shall be as follows:

- Entry visa for official visits – it is also issued to foreign nationals and stateless persons planning to attend at the official events and meetings in the Republic of Azerbaijan. Staying period shall be limited to 180 days;
  - Business visa (staying period shall be up to 180 days);
  - Entry visa for science or education purposes (staying period shall be up to 90 days);
  - Entry visa for labor/business trip purposes (staying period shall be up to 90 days);
  - Entry visa for medical purposes (staying period shall up to 90 days);
  - Entry visa for personal issues (staying period shall be up to 90 days);
  - Entry visa for humanitarian purposes (staying period shall be up to 90 days);
  - Entry visa for culture and sport purposes (staying period shall be up to 60 days);
  - Tourist visa (staying period shall be up to 30 days);
  - Transit visa (this kind of visa shall be valid for up to 30 days, while staying period shall be up to 5 days).
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## **19. Registration with the State Migration Service**

As per the latest changes related to the registration procedure of foreign nationals, all foreigners or stateless persons temporarily staying in country more than 15 days shall be registered with the State Migration Service of the Republic of Azerbaijan within 15 days upon their arrival to Azerbaijan.

### **Section III. LICENSING OF COMMERCIAL ACTIVITIES**

In accordance with the President's Decree "On improvement of rules on issuance of special permits (licenses) on special types of activities" dated September 2, 2002, a number of types of activities that require obtaining of special permits (licenses) was reduced from 240 to 32 (the last amendments were inserted by the Presidential Decree dated 23 October, 2003). A license is granted without discrimination to any entity that meets the requirements for that specific license.

The Ministry of Economy of the Republic of Azerbaijan is given special authorities on licensing issues, i.e. to maintain centralized register of licenses in the country, to prepare draft normative legal acts on licensing issues, to control compliance with the licensing law by state bodies and economic subjects, etc.

Although the Ministry of Economy of the Republic of Azerbaijan is authorized to regulate the above stated issues, however, under Appendix 1 to the above Decree, appropriate state agencies are authorized to consider documents submitted by applicants and to grant licenses.

The above Decree determines regulations and procedures for licensing of specific types of activities.

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## **Section IV. LEGAL STATUS AND USE OF THE STATE LANGUAGE**

The President's Decree on the enforcement of the Law of the Azerbaijan Republic "On the state language in the Republic of Azerbaijan" of September 30, 2002 was issued in January 2, 2003. We hereby enclose some extracts from the above stated Law and Decree due to the importance of the issues outlined therein.

### **1. Legal status of the state language**

In accordance with Section 1 of Article 21 of the Constitution of the Azerbaijan Republic, the state language of the Azerbaijan Republic is the Azerbaijani language.

The activity connected with the enforcement of the state language in state authorities and municipalities, state bodies, political parties, non-governmental organizations (society units and funds), trade union organizations, other legal entities, their representative and branch offices, institutions in the Azerbaijan Republic shall be carried on in accordance with this Law. Record keeping and official correspondence in the above-mentioned organizations shall be in the state language.

### **2. Use, protection and development of the state language**

#### **2.1 Use of the state language in services industries, advertisements and announcements.**

In all services industries, advertisements and announcements on the territory of the Azerbaijan Republic the state language shall be used. In the appropriate services industries connected with providing of services for foreigners, along with the state language other languages may be used. In necessary cases in advertisements and announcements (on display rags, boards, placards, etc.) equally with the state language other languages may be used. However, inscriptions in foreign languages shall not take more space than the ones in Azerbaijani language and must be placed after inscriptions in Azerbaijani language.

The state language in all services industries, advertisements and announcements on the territory of the Azerbaijan Republic shall be used in accordance with the norms of the state language.

The norms of orthography and orthoepy of Azerbaijani language are approved by the appropriate executive body. Legal entities, physical persons and officials must comply with the said norms.

Labels and other inscriptions on the goods produced on the territory of the Azerbaijan Republic as well as on the exported goods equally with the appropriate foreign languages shall be written in the state language.

Labels and names on the goods and products being imported into the Azerbaijan Republic and their instruction manuals equally with other languages shall be accompanied by translation into Azerbaijani language.

#### **2.2 Use of the state language in titles of state authorities and municipalities, legal entities, their representative and branch offices, organizations.**

The titles of state authorities and municipalities of the Azerbaijan Republic, legal entities, their representative and branch offices, organizations shall be written in accordance with the norms of the Azerbaijani language. The names of the above-mentioned organizations on signboards, forms, stamps and all other record keeping documentation and property of official character shall be specified in the state language.

In accordance with the Code of Administrative Violations of the Republic of Azerbaijan, any propagation against official language, rejection of a use and development of Azerbaijan language, attempt to limit the area of its usage, as well as prevention of application of Azerbaijani Roman alphabet in the Republic of Azerbaijan shall impose a penalty at rate of twenty to forty manats for individuals, and fifty to ninety manats for officials and one hundred fifty to three hundred mantas for legal entities.

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## Section V. COURT SYSTEM IN THE REPUBLIC OF AZERBAIJAN

### 1. Court System

The basic provisions regulating the structure and activities of the judiciary are stated briefly in the Constitution and more extensively in the *Law on Courts and Judges* [No. 310-IQ, dated June 10, 1997].

The Azerbaijani system of courts of general jurisdiction incorporates four levels:

- (i) the Supreme Court of Azerbaijan;
- (ii) the Court of Appeal;
- (iii) the Supreme Court of the Nakhchivan Autonomous Republic;
- (iv) the local district (city) courts as well as an administrative-economic courts and a specialized court which hears cases involving serious crimes.

In addition, the *Law "On Courts and Judges"* provides courts of specialized jurisdiction including the Local Economic Courts and military tribunals.

District (city) courts, administrative-economic courts and the serious crimes court are courts of original jurisdiction. Judgments may be subject to review/appeal by higher courts. The serious crimes court is a single court that, as its name suggests, has jurisdiction to trial serious crimes. However, it has no jurisdiction over serious crimes which are subject to the Nakhchivan court system.

The Nakhchivan Supreme Court exercises control over the Nakhchivan district courts and functions as a court of appeal for their decisions. It is also a court of original jurisdiction for serious crimes.

The Court of Appeal is a court for all original jurisdiction courts including the Nakhchivan Supreme Court (but not Nakhchivan district Courts).

The Supreme Court is the highest court in Azerbaijan. It acts as a court of appeals with regard to cases heard by the lower courts and is the court of last resort. Supreme Court cases are heard by the relevant (civil, criminal, military, economic and administrative) appellate collegium. The Supreme Court is headed by the Chairman and the Plenum of the Supreme Court, the highest administrative body in the Supreme Court.

#### 1.1. International Arbitration

Foreign investors may rely on provisions of the Foreign Investment Law to govern dispute resolution pursuant to which investment disputes may be resolved either by Azerbaijan courts or in accordance with the dispute resolution procedures agreed to by the parties. This may include international arbitration at a forum selected by agreement.

International Arbitration in Azerbaijan is conducted in accordance with the *Law of the Azerbaijan Republic "On International Arbitration"* [No. 757-IQ, dated November, 1999]. Under these rules, parties may select independent arbitrators of any nationality, the proceeding may be conducted in any language chosen by the parties, the applicable material (except for the matters that must exclusively be resolved by the under Azerbaijani Laws) and procedural law may be chosen by parties, and, in general, parties may stipulate other terms of the arbitration. If no such terms were stipulated by the parties, disputes may be heard by the Local Economic Courts of the Azerbaijan Republic.

#### 1.2. Enforcement of foreign judgments and court assignments

Procedures for enforcement of foreign judgments in Azerbaijan are established by the Civil Procedure Code of the Republic of Azerbaijan.

## **2. Constitutional court**

The Constitutional Court established in late 1998 and is not a part of the court system regulated by the Law on Courts and Judges.

The Law on Constitutional Court was adopted on the 23<sup>rd</sup> of December 2003.

The Constitutional Court of the Azerbaijan Republic centers its judicial activity on constitutional issues. The most crucial role of the Court is the power of scrutinizing the constitutionality of legal norms and, if required, to annul any such norms found to be in disagreement with the Constitution. Normally, this type of the constitutional justice places the emphasis on the protection of the Constitution as the highest supreme standard. According to Article 130 of the Azerbaijan Constitution, the Constitutional Court mainly plays both defensive and interpretative role. The defensive function of the Court is performed by the means of confirming legality of laws, normative-legal acts, decrees orders and decisions of the executive, legislative, and judicial branches to the Constitution of the Azerbaijan Republic. It should be underlined that the Court has no general jurisdiction to consider whether the first instance courts have committed errors of law or fact. Thus, it is not for the Court to consider the merits of the facts at the first level, it is for the Court to consider the compatibility of a given norm to the Constitution of the country.

Proceedings in the Constitutional Courts are carried out in the following forms:

- Constitutional proceedings on cases initiated by the inquiries of the President of the Azerbaijan Republic, Milli Majlis, Cabinet of Ministers, Supreme Court, Prosecution office and the Parliament of the Nakhichevan Republic, Ombudsman.

Special constitutional proceeding on cases associated with the monitoring and confirmation of the results of elections to Milli Majlis, confirmation of the results of elections of the President of the Azerbaijan Republic, cases associated with the issue of presidential resignation etc.

Besides of the purpose of restoration of violated rights and freedoms, any person may appeal the normative acts of legislative and executive power bodies, municipalities and judicial acts, violating his rights and freedoms at the Constitutional Court of the Azerbaijan Republic in an order established by the legislation.

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## Section VI. RECENT IMPORTANT CHANGES IN LEGISLATION

### 1. Amendments to the Labour Code of the Republic Of Azerbaijan

In accordance with the *Decree of the President of the Republic of Azerbaijan on making amendments to the Labor Code of the Republic of Azerbaijan No. 675-VQD, dated May 31, 2017* the new amendments will have come into force as of January 01, 2018. These changes have considerably affected provisions of the Labor Code, especially in relation to the term of employment contract, termination of employment contract, etc. Below we have highlighted the major changes.

**(i) Article 45** [*Term of an employment contract*]

The first paragraph of the Article shall be amended as follows:

“An employment contract shall be made indefinite and fixed-term. A fixed-term employment contract is made for a period agreed between the parties.”

**(ii) Article 12** [*Basic Employer Obligations and Responsibilities*]

The following amendment has been made to this Article relating Employer’s basic obligations with respect to labor relations:

“*Ensure payment of all that is owes to an employee under this Code, in accordance with the Law of the Republic of Azerbaijan*” *On Non-cash Payments* “

**(iii) Article 77** [*Employee guarantees upon termination of an employment contract*]

Certain changes have been made to this Article 77, particularly:

(i) Section 1 of this Article has been changed as follows:

“*Upon downsizing or staff reduction, before the employer terminates the employment contract under clause "b" of Article 70 of this Code, the employee must be officially notified by the employer within the following periods, depending on the years of service, established in accordance with the employment contract(s) with this employer:*

- *should the employee’s years of service be less than one year – at least two calendar weeks in advance;*
- *should the employee’s years of service be one to five years – at least four calendar weeks in advance;*
- *should the employee’s years of service be five to ten years – at least six calendar weeks in advance;*

- *should the employee’s years of service be more than ten years – at least nine calendar weeks in advance.”*

(ii) Section 3 of this Article has been changed as follows:

“*Upon termination of the employment contract under clauses "a" and "b" of Article 70, the employer pays the employee a severance pay in the following amount, depending on the years of service, established in accordance with the employment contract(s) with this employer:*

- *should the employee’s years of service be less than one year – in the amount of average monthly salary;*
  - *should the employee’s years of service be one to five years – at least 1.4 times the average monthly salary;*
  - *should the employee’s years of service be five to ten years – at least 1.7 times the average monthly salary;*
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- *should the employee's years of service be more than ten years – at least twice the average monthly salary”.*

(iii) *Section 4 of this Article has been changed as follows:*

*“The employer, with the consent of the employee, can terminate the employment contract with the appropriate grounds, paying a lump-sum salary at a rate equal to at least 0.5 times the average monthly salary instead of a notice period of not less than two calendar weeks, a 0.9 times average monthly salary instead of a notice period less than four calendar weeks, a 1.4 times average monthly salary instead of a notice period of not less than six calendar weeks, a 2 times average monthly salary instead of notice period of at least nine calendar weeks and at least the average monthly salary instead of the notice period, set by the second paragraph of Article 56 of this Code. In this case, the payment effected to employees with the employment contract terminated during the notice period instead of the notice period specified in the first sentence of this part shall be reduced in proportion to the expired part of the notice period”*

(iv) *Section 5 of this Article has been deleted.*

(v) *Section 6 of this Article has been amended as follows:*

*“Collective agreements and employment contracts may stipulate payment of more amounts compared to the ones stipulated in Section 3, 4 and 7 of this Article.”*

## **2. Amendments to the Migration Code of the Republic of Azerbaijan**

According to changes to the Migration Code of the Republic of Azerbaijan, the State Agency on Public Services and Social Innovations (ASAN Centers) under the President of the Republic of Azerbaijan has begun to process electronic visas through “ASAN Visa” system. Standard Electronic visas are issued within 3 (three) business days and urgent electronic visas are issued within 3 hours notwithstanding holidays or/and weekends for the period of 90 days with duration of stay 30 days single entry and for the period 90 days multiple entries. The consular fee for standard e-visa is USD 20.00 and for urgent visa USD 20 plus USD 30.00 service fee. Notifications on acceptance of e-visa applications and payments, including information about issuance or cancellation of the electronic visa will be sent to the applicant's e-mail address. The e-visa should not be attached in the passport. The e-visa should be printed by the applicant and presented together with the passport at the border checkpoint of the Republic of Azerbaijan. The expiry date of the applicant's passport or other travel document should be at least 3 (three) months later than the expiry date of e-Visa. Foreigners and stateless persons can apply for a new electronic visa only from outside the territory of the Republic of Azerbaijan. Electronic visas are issued only to the citizens of the countries, the list of which has been approved by the Ministry of Foreign Affairs of the Republic of Azerbaijan, and to stateless persons permanently residing in those countries.

Further considerable changes have been made to the Migration Code of the Republic of Azerbaijan, such as:

- Work permits to those involved in labor activities in the liberated territories of the Republic of Azerbaijan are issued for 2 years. Amounts of duties vary between AZN 1200 to AZN 1800 depending on the duration of work permit, as well as government processing time determined as 5, 10, and 15 business days (the Law come into force from January 1, 2023 to January 1, 2028)
- Residents of the technology park (in case of a legal entity, its head and deputy(ies)) and specialists with experience in the field of information and communication technologies employed by such a resident to work in the territory of Azerbaijan shall be exempt from obtaining work permit in the Republic of Azerbaijan (effective January 1, 2023)
- Shareholders of legal entity/resident of the Alyat Free Economic Zone and their foreign employees working in the Alyat Free Economic Zone are exempt from obtaining a work permit (effective January 12, 2023)

### **3. Amendments to the Civil Procedural Code of the Republic of Azerbaijan**

- (i) In accordance with the Decree of the President of the Republic of Azerbaijan dated 31 October 2017 on application of Law of AR “On making amendments and additions to the Civil Procedural Code” the following considerable amendments has been made to the Civil Procedural Code:
1. A physical person can be represented in courts through an immediate relative or an advocate. The authority of representative shall be duly certified by a Power of Attorney.
  2. Legal entities shall be represented in courts through their authorized persons specified by legislation (such as advocates) or through their direct employees specifically authorized to act so. .
  3. Property related complaints (appeals) now may not be filed with the Court of Appeal if the amount of claim on civil cases is less than 2,000.00 manats, on economic cases is less than 10,000.00 manats.

### **4. Amendments to the Administrative Procedural Code of the Republic of Azerbaijan**

In accordance with the Decree of the President of the dated 31 October 2017 on application of Law of AR “On making amendments and additions to the Administrative Procedural Code” the following considerable amendment has been made to the Administrative Procedure Code:

“Court representation on behalf of the state, municipalities and legal entities shall be executed by an individual duly authorized by the legislation (for example an advocate), by Articles of Association/Charter (Regulation) of state (municipal) or legal entities or specially authorized employees of the state (municipalities) or legal entities who are being employed as full time employees thereof. Administrative body represented by its director or employee authorized by the director, may also execute procedural actions on behalf of the state”.

### **5. New Administrative Code of the Republic of Azerbaijan**

New Administrative Code of Azerbaijan has been effective as of March 01, 2016.

The new Administrative Code of Azerbaijan (“Code”) has been adopted and stipulates new as well as updated penalties for violation of, inter alia, migration, labor, currency and other legislative requirements. Thus, among other items of interest, certain aspects of incorporation have been affected.

- (i) economic activities, in case if any unreliable information during registration process are provided by legal entities, Branches or Representations of foreign legal entities in the Republic of Azerbaijan and, any amendments are made to the incorporation documents and further unreliable amendments to such documents of legal entities, Branches or Representations of foreign legal entities in the Republic of Azerbaijan, such authority may impose a penalty in the amount of AZN 4,000.00 for legal entities.
  - (ii) In case defamation during dissolution process are provided by legal entities, Branches or Representations of foreign legal entities in the Republic of Azerbaijan related to notification of capacity to pay debts, such authority may impose a penalty in the amount of AZN 1,000.00 for managerial staff of legal entities.
  - (iii) In case if any amendments to the incorporation documents of legal entities, Branches or Representations of foreign legal entities in the Republic of Azerbaijan have not been duly registered with the relevant authority within the period and in order established by the relevant legislation, such authority may impose a penalty in the amount of AZN 1,000.00 - AZN 2,000.00 for managerial staff and, AZN 2,500.00 – AZN 3,000.00 for legal entities.
  - (iv) In case of violation of the rules on arrival, staying or passing by transit the territory of the Republic of Azerbaijan foreigners or the stateless persons may be deported along or without deportation may imposed the penalty in amount of AZN 300.00 – AZN 400.00.
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- (v) deported persons and the persons with limited entrance may imposed the penalty in amount of AZN 500.00, along with administrative deportation in case of re-entrance into the country with amended documents once deported during the restriction period.
- (vi) updated accepting, ensuring employment or provision of services in regards to foreigners or stateless persons, along with fulfilling duties in allowing them to stay, reside in Azerbaijan or transit, as well as violation of the established rules on registration, de-registration, or authorizing documents on their stay or residence in Azerbaijan, such authority may impose a penalty in the amount of AZN 2,000.00 – AZN 3,000.00 for legal entities.
- (vii) to engage foreign national in employment without obtaining work permit shall impose penalty in the amount of AZN 3,000 – AZN 4,000 for managerial staff, AZN 15,000.00-20,000.00 for legal entities. Also, according to the changes, engagement of 3 or more foreign nationals into labour activity before obtaining work permit, relevant authorities may impose further penalty in the amount of AZN 5,000.00 - AZN 7,000.00 for managerial staff, AZN 30,000.00-35,000.00 for legal entities.
- (viii) In case of employer is not notified the relevant authority [State Migration Service of Azerbaijan] within 5 days regarding of early termination of labor contract concluded between the foreign national and employer, relevant authorities may impose further penalty in the amount of AZN 300.00 for managerial staff.
- (ix) If any information related to name of legal entities, Branches or Representative offices or any data related to foreign employees are changed/amended, the employer shall notify the relevant authority [*State Migration Service of Azerbaijan*] within 5 business days, otherwise, it shall be considered as non-compliance with the requirements shall impose penalty in the amount of AZN 100.00.
- (x) Employment of a foreign employee in the place other than his place of work, relevant authorities may impose further penalty in the amount of AZN 500.00 for managerial staff.
- (xi) There is some amendment to violation of the rules regarding usage of official language (particularly propagation against, counteraction in usage and development of official language, along with attempt in limitation of the sphere of its usage and prevention of application of the Latin alphabet) in Azerbaijan, relevant authorities may impose further penalty in the amount of AZN 2,500.00 - AZN 4,000.00 for managerial staff, AZN 12,000.00-16,000.00 for legal entities.

In accordance with the Decree of the President of the dated 24 April 2018 on application of Law of AR “On making amendments to the Administrative Code” the following considerable amendments have been made to the Administrative Code

in case of the violation of unemployment insurance legislation by insurer, if:

- (i) not registering as insurer (insurer registered with the State Social Protection Fund (hereinafter referred to as the “Fund”) for compulsory state social insurance purposes are considered registered for unemployment insurance purposes);
  - (ii) not insuring its employees from unemployment;
  - (iii) non-payment of the insurance premium to the Fund in the manner, amount and timeframe as specified in the Law on Unemployment Insurance;
  - (iv) not informing the insurer about the profession, specialty and salary of the employee within 5 days from the date of notification of the employee when the number of employees or the staff unit is reduced in accordance to the Labor Code of the Republic of Azerbaijan;
  - (v) failure to submit to the Fund the information that served as a basis on calculation and payment of insurance premium and determining insurance payment (in electronic or paper carrier),
  - (vi) not to inform the Fund on its reorganization or liquidation in cases specified by the Civil Code of the Republic of Azerbaijan;
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(vii) for not correctly registering the calculation and transfer of insurance premium and not submitting the relevant report to the Fund and not ensuring the maintenance of the documents and information serving as a basis for insurance payment

Individuals shall be penalized in the amount of AZN 100.00 (approximately USD 60), officials – AZN 200 (approximately USD 120) and legal entities – AZN 400 (approximately USD 240).

Additionally, in case of not submission within 10 days the information on the cases causing to change or suspend the amount of insurance payment the insured shall be penalized in the amount of the damages incurred by the Fund.

## **6. Amendments to the Criminal Code of the Republic of Azerbaijan**

In accordance with the Decree of the President of the dated 20 October 2017 on application of Law of AR “On making amendments and additions to the Criminal Code” the following amendments relating labour issues have been made to the Administrative Code:

- (i) In case of engagement of 10 or more employees in labour activity/provision of services prior to concluding an employment agreement then relevant authorities may impose further penalty in the amount of AZN 7,000.00 - AZN 10,000.00 or assign corrective works for a period of up to 2 years or restraint of liberty for the same period of time or even imprisonment for a period of up to 2 years. .

In case of repeated violations of the said legislation even harsher measures have been approved such as restraint of liberty for a period of up to 3 years or even longer imprisonment terms between 3 to 7 years. In accordance with the changes made to the Criminal Code on October 2018 an individual being engaged in employment of a large number (10 and more) of employees to perform any work (services) without having labor contracts entered into force as prescribed in the Labor Code of the Republic of Azerbaijan, shall be released from criminal liability if this person (1) has further entered into employment contracts with those employees, and (2) has fully paid taxes and contributions on unemployment insurance and compulsory state social insurance that became due as a result of employment of those employees. However, such individual may be released from criminal liability only once.

In accordance with the Law of the Republic of Azerbaijan on making amendments to the Criminal Code of the Republic of Azerbaijan dated April 24 , 2018 evasion from payment of unemployment insurance in significant amount shall be fined in the amount from twice to four times of damage caused as a result of the crime, or correctional works for up to two years, or imprisonment for up to three years with or without deprivation of right to hold certain positions or engage in certain activities for up to three years.

## **7. Law “On unemployment insurance” of the Republic of Azerbaijan**

A new Law “On unemployment insurance” of the Republic of Azerbaijan has been adopted and came into force in January 01, 2018.

This Law has been adopted and stipulates relations and new financing mechanisms based on a risk transfer in the labor market; compensate lost wages of insured persons and ensure the social protection of the population through preventive measures to prevent the occurrence of unemployment. The Law extends to persons whose employment contract/relationships have been terminated as a result of liquidation of state authority or the legal entity, or the redundancy. This Law will not apply to persons holding political position. As per the Law, the insurance will enable the unemployed to get payments over a defined period of time. In order to be eligible for an insurance payment, the unemployed shall be registered within the State Employment Fund as per the relevant legislation. The amount of payments will be determined depending on the length of insurance record and the amount of past average monthly salary.

## **8. Amendments to the Civil Code of the Republic of Azerbaijan**

In accordance with the Decree of the President of the dated 28 December 2018 on application of Law of AR “On making amendments to the Civil Code” the following amendments in respect of management and administration of limited liability companies have been made to the Code:

- (i) Transaction in amount of more than fifty percent of the net asset value of a limited liability company is now considered to be a special transaction/significant transaction. It worth noting that it could be any transaction, for example, contract for purchase of any equipment, land, company shares, etc.
- (ii) The decision to conclude a special transaction shall be made at a general meeting of shareholders. Also, General Meeting of shareholders shall be considered eligible if attended by holders of more than fifty percent (50%) of the Company's shares. So, under the Amendments, the General Meeting shall be competent if participants holding cumulatively more than 50% of participation interests are present at the General Meeting. If a General Meeting of Shareholders does not have a quorum, then such General Meeting shall be re-called by executive body of a Company in the manner prescribed by the Charter of the Company without changing the agenda of a General Meeting.

Also according to changes to the Civil Code of the Republic of Azerbaijan plot of land and a permanently constructed object of this land shall now be considered as an integral part of a real estate (single real estate and a single property).

## **9. Amendments to the Law “On social insurance” of the Republic of Azerbaijan**

According to the changes, the Law “On social insurance” of the Republic of Azerbaijan (“Law”) now defines the subsidization of compulsory/mandatory state social insurance fees. Part of such fees, as stated in the Law, will be compensated to the insured by the government at the expense of the state budget in the manner prescribed by the legislation. Also, compensation will be paid to non-state contractors/companies operating in the liberated territories of the Republic of Azerbaijan except for the companies operating in finance, cargo transportation, oil and gas sector, as well as state-sponsored organizations providing goods (works and services) (except for resident contractors carrying out works and services within the newly liberated territories). The following part of the compulsory/mandatory state social insurance premium will be subject to subsidization:

- From January 1, 2023 to January 1, 2026 - in the amount of 100% percent;
- From January 1, 2026 to January 1, 2029 - in the amount of 80% percent;
- From January 1, 2029 to January 1, 2031 - in the amount of 60% percent;
- From January 1, 2031 to January 1, 2033 - in the amount of 40% percent

Amendments to the Law are in force from January 1, 2023 to January 1, 2033.

## **10. Amendments to the Law “On state registration and state registry of legal entities” of the Republic of Azerbaijan**

According to changes to the Law “On state registration and state registry of legal entities” of the Republic of Azerbaijan:

- (i) An application for registration of a legal entity is now required to be signed not only by the founder(s), as it was previously, but also by a legal representative (i.e. director) of a legal entity seeking registration. However, signing applications by a person duly authorized by founders or legal representative is still possible;
- (ii) Commercial and public legal entities are no longer required to present evidence of their legal address to the Ministry of Taxes. However, legal address itself is required to be indicated on the application for registration of a legal entity;

(iii) The local company can be registered electronically through electronic cabinet.

According to the amendments to the Law “On state registration and state registry of legal entities” of the Republic of Azerbaijan, as of August 18, 2022 any company/branch/representation undergoing a formal process of dissolution, must hand over any registration/incorporation documents originally created/issued by the State Registrar as well as some other documents listed by the law, to the Regional State Archive.

As per another change to the procedure of liquidation of legal entities, certain additional measures must be taken by the liquidation commission (liquidator) to identify and repay creditors. Liquidation commission (liquidator) will have to verify with the Ministry of Economy, among other things, to determine whether there are any unpaid contributions to the compulsory health/social insurance fund by a company applying for liquidation.

## **11. Decree of the Cabinet of Ministers of the Republic of Azerbaijan “On approval of criteria for micro, small, medium and large enterprises”**

In accordance with the Decree of the Cabinet of Ministers of the Republic of Azerbaijan “On approval of criteria for micro, small, medium and large enterprises”, category of enterprises shall be determined based on the “number of employees” and “annual income” criteria. If an enterprise is newly established, its category shall be determined by considering the number of its employees for one (1) year from the date of state registration or registration for tax purposes.

As per the Decree, necessary information about enterprises shall be submitted by the Ministry of Taxes and Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan to the State Statistical Committee of the Republic of Azerbaijan. On the basis of submitted information, the latter shall provide categorization of enterprises and transfer the result to “united information registry of inspections of entrepreneurial activities”. With that said, entrepreneurs are classified as follows:

Categories of enterprises	Number of employees (person)	Annual income (AI) (thousand manats)
Micro enterprises	1 - 10	Up to AZN 200,000 or equal
Small enterprises	11 – 50	Above AZN 200,000 to 3,000,000 or equal
Medium enterprises	51 - 250	Above AZN 3,000,000 to 30,000,000 or equal
Large enterprises	251 and over	Above AZN 30,000,000

For classification purposes the higher criteria among the above must be considered. For example, an enterprise employing 25 employees but having annual income less than AZN 200,000 will be regarded as a small enterprise.

## **12. TRAVEL ALLOWANCE RATES**

Due to the latest amendments regarding compensation for Business Trips, accepted by the Cabinet of Ministers of The Azerbaijan Republic in the Order #14, for the purpose of increasing the subsistence money, the business trip rates will be increased within the Azerbaijan Republic as well as in the foreign countries. According to the changes, the daily travel allowance standard (which includes the hotel expenses, connection, transport within the city, etc.) will now be 90 manats in Baku City, 70 manats in other major cities like Ganja, Sumgait and Nakhchivan, 65 manats in other smaller towns and in urban settlements and villages. In the territory of the Republic of Azerbaijan 80 percent from per diem are hotel expenses. The transport expenses (reaching the, and departing from the appointed destination within the country) are paid on the base of the introduced receipts. For workers, performing in the dangerous conditions, workers, who have difficulties with

going back home after work, workers working on a rotational schedule, and other workers, performing in specific conditions, 10 additional manats per day are appended. Should be noted that business trip expenses for employees who work for governmental organizations are provided by the State budget, when travel allowance for workers who perform in a non-governmental organizations, is paid from that organization's budget.

It should be noted that these travel allowance rates are intended for local employees, and this law will come into force since 1st March 2008.

All the rates for foreign business trip expenses are provided in the following table.

#### Daily Travel Allowance Rates for Foreign Countries

Row	Country	Currency	Daily travel allowance rates
1.	2.	3.	4.
1.	Russian Federation	USD	150
	Moscow and Saint-Petersburg Cities		240
2.	Tadjikistan	USD	140
	Dushanbe City		160
3.	Uzbekistan	USD	100
	Dashkand City		160
4.	Belorussia	USD	140
	Minsk City		180
5.	Ukraine	USD	160
	Kiev City		210
6.	Moldova	USD	110
	Kishinev City		150
7.	Kazakhstan	USD	130
	Almati and Astana cities		200
8.	Kirgizstan	USD	130
	Bishkek City		160
9.	Georgia	USD	140
	Tbilisi City		155
10.	Turkmenistan	USD	95
	Ashgabat City		130
11.	Latvia	Euro	105
	Riga City		140
12.	Lithuania	Euro	120
	Vilnius City		145
13.	Estonia	Euro	95
	Tallin City		140
14.	United Kingdom	GBP	170
	London Town		190
15.	Liechtenstein	Euro	200
16.	Austria	Euro	185
17.	Germany	Euro	225
18.	Belgium	Euro	215
19.	Ireland	Euro	215
20.	Monaco	Euro	195
21.	Norway	Euro	225
22.	Netherlands	Euro	225
23.	San-Marino	Euro	215
24.	France	Euro	205

	Paris City		250
25.	Turkey	Euro	150
	Ankara and Istanbul cities		165
26.	Italy	Euro	185
27.	Croatia	Euro	185
28.	Bosnia and Herzegovina	Euro	160
29.	Denmark	Euro	180
30.	Switzerland	Euro	210
31.	Luxemburg	Euro	190
32.	Macedonia	Euro	190
33.	Cyprus	Euro	160
34.	Hungary	Euro	160
35.	Malta	Euro	160
36.	Portugal	Euro	170
37.	Slovakia	Euro	160
38.	Finland	Euro	210
39.	Czech Republic	Euro	190
40.	Serbia	Euro	155
41.	Montenegro	Euro	155
42.	Andorra	Euro	200
43.	Albania	Euro	160
44.	Greece	Euro	180
45.	Iceland	Euro	190
46.	Spain	Euro	200
47.	Poland	Euro	175
48.	Sweden	Euro	225
49.	Bulgaria	Euro	135
50.	Romania	Euro	175
51.	Slovenia	Euro	145
52.	USA	USD	330
	New-York City		350
53.	Argentina	USD	195
54.	Brasil	USD	225
55.	Canada	USD	190
56.	Mexica	USD	165
57.	Other countries on American Continent	USD	165
58.	Bahrein	USD	165
59.	Saudi Arabia	USD	165
60.	UAE	USD	235
61.	Jordan	USD	140
62.	Iran	USD	160
63.	Qatar	USD	180
64.	Kuwait	USD	180
65.	Oman	USD	170
66.	Syria	USD	160
67.	Iraq	USD	160
68.	Israel	USD	170
68-1	Palestine	USD	170
69.	Lebanon	USD	170
70.	Libya	USD	170
71.	Brunei	USD	155
72.	Yemen	USD	185
73.	Algeria	USD	165

74.	Morocco	USD	180
75.	Egypt	USD	180
76.	Tunis	USD	180
77.	Senegal	USD	185
78.	Sudan	USD	165
79.	Jibuti	USD	155
80.	Chad	USD	225
81.	South Africa	USD	240
82.	Other African Countries	USD	155
83.	China	USD	185
84.	Singapore	USD	235
85.	Thailand	USD	205
86.	Malaysia	USD	205
87.	Sri Lanka	USD	155
88.	India	USD	155
89.	Nepal	USD	155
90.	Bangladesh	USD	155
91.	Pakistan	USD	165
92.	Samoa	USD	145
92-1	Myanmar	USD	155
93.	Mongolia	USD	145
94.	Laos	USD	155
95.	Vietnam	USD	155
96.	Indonesia	USD	205
97.	Afghanistan	USD	175
98.	Cambodia	USD	175
99.	Mauritania	USD	175
100.	Mali	USD	195
101.	Maldives	USD	165
102.	Gibraltar	Euro	150
103.	Democratic People's Republic of Korea	USD	225
104.	Korea	USD	245
105.	Japan	Yen	34720
106.	Phillipines	USD	210
107.	New Zealand	USD	195
108.	Australia and Oceanic	USD	195

## **Section VII. AZERBAIJAN TAXES RELATING TO PRODUCTION SHARING AGREEMENTS (PSA)**

There is total of around twenty PSAs concluded or committed between Azerbaijan Republic and consortiums of major oil companies. Conceptually, all Production Sharing type of Agreements have very similar skeletons, however sometimes provide for a different interpretation of such important aspects as cost recovery, tax deductibility, residency, applicability, etc.

We would like to offer our brief analysis of four different and, currently, the most active PSAs beginning with the overview of rules of determination of residency of foreign employees (based on the Tax Protocols of relevant PSAs):

### **1. Income Tax of foreign employees**

#### **1.1 Residency of Foreign Employees**

##### **1.1.1. 30 Consecutive Days Rule**

- Under certain PSA's presence in Azerbaijan for more than 30 (thirty) consecutive days during a calendar year in connection with Hydrocarbon Activities leads to tax obligations. Tax liability arises on taxable payments received in the Azerbaijan Republic in connection with Hydrocarbon Activities only after the first thirtieth (30<sup>th</sup>) consecutive days of employee's stay in the Azerbaijan Republic.
- Some other PSA's and related Protocols concerning taxation of employees' personal income provide that individual income tax liability arises after **each** 30 consecutive days of stay of foreign employee in Azerbaijan until he or she has been present in the Azerbaijan Republic for a period more than 90 cumulative days.

##### **1.1.2. 90 Cumulative Days Rule**

Certain PSA's consider the presence in Azerbaijan for more than 90 (ninety) cumulative days during a calendar year in connection with Hydrocarbon Activity. Personal income tax liability arises on taxable payments received in connection with Hydrocarbon Activities only after the ninetieth (90<sup>th</sup>) cumulative day in the Azerbaijan Republic during a Calendar Year.

##### **1.1.3. 90 Cumulative Days Rule – Presence in Azerbaijan on a permanent or rotating basis**

Presence in the Azerbaijan Republic on a permanent or rotating basis for a period of more than ninety (90) cumulative days during a Calendar Year. Income Tax liability arises on all taxable payments received in connection with Hydrocarbon Activities.

### **1.2 Clarifications on Protocols concerning Taxation of Employees and Physical Persons**

#### ACG/Shah Deniz/Alov/Inam/SCP/BTC

The Clarification on Protocols concerning Taxation of Employees and Physical Persons is signed on 19 April 2006 by and among the Commission, comprised of representatives of the Ministry of Tax, Ministry of Finance, State Customs Committee and the State Oil Company of The Azerbaijan Republic, and Contractor Parties of ACG/Shah Deniz/Alov/Inam PSAs.

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According to this Clarification on Protocols, Rotators or Rotating Employees shall mean any employee or contracted individual of an Employer who requested to perform duties in Azerbaijan for a scheduled period of time and subsequently leave the territory of Azerbaijan for a scheduled number of days on a periodical basis.

For the purpose of this Clarification on Protocols, Rotators or Rotating Employees should meet the following criteria:

1. work to a scheduled based on a Rotational Cycle (i.e. a cycle of days on duty and days off) developed and approved prior to commencement of assignment and maintained on a periodical basis (as required) during the Rotational Cycle;
2. employer/customer approves Rotational cycle and the class of transportation for rotational travel;
3. return only to home country (i.e. country of residence) upon completion of days on duty.

Important to know that according to the Clarification on Protocols the following clarifications have been provided regarding tax treatment of Rotator's or Rotating Employee's transportation expenses:

Transportation expenses incurred in relation to Rotators' travel to the assigned work place and from the assigned work place to their home country (i.e. country of residency) shall be excluded from the taxable income of such Rotator, irrespective of whether incurred directly by the Rotator or not.

Amounts paid only in respect of a Rotator travel to and from the work place to the home country (including but not limited to airfare expenses) and other business expenses (such as utility expenses, taxi, telephone call expenses, meals etc.) shall not be included into the taxable income of such Rotator.

For the avoidance of doubt, the value of tickets of the following trips should be included into the taxable income of Rotators:

1. trips of family members of Rotator, airfare of which was provided by the employer/customer;
2. trips of a rotator to any destination other than their home country provided by employer/customer.

Should be noted that the same rules are applicable under the Clarifications related to BTC/SCP Host Government Agreements. The Ministry of Taxes, the SCP/BTC Participants and the Interest Holders have agreed to enter into Protocols to establish these procedures, including this Protocol dated 19 April 2006 concerning the Clarification on Protocol Concerning Taxation of Employees and Physical Persons.

### **1.3 Personal income Tax Rates of Foreign Employees**

The Azerbaijan Personal Income tax liability shall be calculated at the rates stipulated in the Azerbaijan legislation being applicable at the date of payment of the taxable income (from 0% to 25%).

We should note however, that the above rates are based on the Gross Income of foreign employees. Normally, companies are responsible for the employees' income tax liabilities, accordingly, local taxing authorities consider this as being an additional income for foreign individuals, and effectively such an additional income shall be taxed too.

### **1.4 Application of Double Tax Treaties**

Foreign Employee during a Calendar Year shall be entitled to the benefits provided by an applicable Double tax Treaty or if there is no such treaty the benefits that would have been available if a treaty equivalent to the OECD Model tax Convention on Income and Capital, updated as of 1 November 1997, were in force.

Where a Double Tax Treaty is applicable during a calendar year, such Double Tax Treaty shall have effect to give relief from taxes.

### **1.5 Filing of PIT Return**

Tax Reporting deadline shall be by the 20<sup>th</sup> of each **quarter** following the end of the previous one.

## **2. Local Employees Payroll Taxes**

Local employees are taxed in accordance with the Azerbaijan Tax legislation.

The income tax rates applicable to monthly income vary between 0% and 25% depending on the level of income. Income tax should be transferred to the State Treasury every month not later than the day when the salaries are actually paid.

10% Employees' Social Protection Fund contributions from their monthly Gross Income as well as 15% Employer's contribution to the same Fund must be paid not later than the date when the salaries are actually paid.

Quarterly reports must be filed within 20 days after the end of each quarter.

## **3. Withholding Tax**

### **3.1. Requirements to Withhold Tax**

Under certain PSAs the related Protocol Concerning Taxation of Foreign Sub-contractors is applicable to Foreign Sub-contractors that contracted directly or indirectly by or on behalf of a Contractor Party or an Operating Company to supply work or services in the Azerbaijan Republic in connection with Hydrocarbon Activities.

Each party making such payments to a Legal Entity Foreign Sub-contractor shall withhold tax from such taxable payments.

Some PSAs and Protocols provide that payments received by legal entities foreign sub-contractors are subject for withholding tax only to contracts duration of which does not exceed 6 months. All payments received in connection with contracts exceeding 6 months period will be taxed in accordance with regular Azerbaijani tax legislation.

#### **3.1.1 Withholding Tax Applicable to Mark-up on Goods provided in the Territory of Azerbaijan**

Certain PSAs stipulate that if a foreign sub-contractor provides goods in the Azerbaijan Republic then withholding tax at normal rate shall be applicable to the mark-up on such goods.

If a foreign sub-contractor fails to provide information on the mark-up or documentation on the cost of the goods sold within the Azerbaijan Republic prior to or at the time it receives payment for such goods the full invoice amount for such goods will be subject to tax

Under some PSAs withholding tax applies on the full amount of such mark up at the rate of 10%. If a foreign sub-contractor fails to provide information on the mark-up or documentation on the cost of the goods sold

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within the Azerbaijan Republic prior to or at the time it receives payment for such goods such legal Entity foreign Sub-contractor shall be subject to Profit Tax on payments received for sales of those goods.

### 3.2. Rates of withholding tax

Please note that WHT rates may differ depending on PSA and related Oil Field

ACG	- 5%
Shah-Deniz	- 6.25%
Nakhchivan	- 8%
Zafar and Mashal	- 7,5%

Kursangi & Karabagli - according to the Article 15 of the K&K PSA foreign sub-contractors shall be subject for profit tax calculated in accordance with the regular tax legislation applicable in Azerbaijan.

However, if the contract for provision of works or services by foreign sub-contractor does not exceed 6 months, then withholding tax at the rate of 8% will be applicable to the payments made for such works or services.

### 3.3. Reporting on Tax Withheld

Each person making payment to Foreign Sub-contractor that requires withholding of tax shall notify the Tax Ministry about such payments and tax withheld within 20 days after the calendar quarter during which the payment was made.

#### 3.3.1 Reporting on Tax Withheld from payments made by customers

Under certain PSAs each legal entity foreign sub-contractor receiving a payment that requires withholding is required to provide Tax Ministry with quarterly report on payments received from customers and tax actually withheld. The report should be filed not later than 20<sup>th</sup> day of the month following the reporting quarter.

Each legal entity foreign sub-contractor receiving a payment that require withholding is required to file an Annual Profit Tax Return not later than 15 March of the year following the reporting one.

Some PSAs stipulate that each legal entity foreign sub-contractor receiving a payment that require withholding is required to file an Annual Profit Tax Return not later than 1 April of the year following the reporting one.

At the same time some PSAs do not stipulate any requirements for reporting on payments received from customers.

### 3.4. Payment of Tax Withheld

Under certain PSAs the tax withheld from payments to Foreign Sub-contractors shall be transferred to the Ministry of Tax thirty (30) days following the end of calendar month during which the payment was made to the Foreign Subcontractor. If the thirtieth day is a day other than a business day, payment of Tax withheld shall be made on the 1<sup>st</sup> business day thereafter.

Some PSAs provide the tax withheld from payments to Foreign Sub-contractors shall be transferred to the Ministry of Tax thirty (30) days following the date when the payment was made to the Foreign Subcontractor.

Some other PSAs envisage the tax withheld from payments to Foreign Sub-contractors shall be transferred to the Ministry of Tax fifteen (15) days following the end of calendar month during which the payment was made to the Foreign Subcontractor

#### **4. Value Added Tax (VAT)**

According to the Protocols Concerning Value Added Tax "Any supplies of goods, works or services directly to a Contractor Party, Operating Company or Sub-contractor in connection with Hydrocarbon Activities shall charge VAT at a zero (0)\percent on those supplies."

All imports and exports by a Contractor Party, its Affiliates, its agents, Operating Company or Foreign Sub-contractors or any of their respective employees or employee's family members, shall have VAT charged at a zero (0) percent.

VAT exemption certificate should be obtained from the Tax Ministry.

VAT declarations should be filed quarterly within 20 days after the end of each calendar quarter.

#### **5. Import/Export Taxes**

Protocols Concerning Import and Export taxes (Duties and Fees) state that "Each Contractor Party, its Affiliates, its agents, operating Company and Sub-Contractors shall have the right to import into and export from the Azerbaijan Republic free of all taxes ... and restrictions in their own name all equipment, materials, machinery and tools, vehicles, spare parts, goods and supplies (excluding foodstuffs, alcohol

and tobacco products), works and services necessary in Contractor's reasonable opinion for the proper conduct and achievement of Hydrocarbon Activities".

"Each Contractor Party, its Affiliates, its agents, operating Company and Subcontractor and any of their respective employees and employee's family members, shall have the right to import into and export from the Azerbaijan Republic, free of all taxes ... and restrictions and at any time, all furniture, clothing household appliances, vehicles, spare parts and personal effects for personal use by Foreign Employees and their families assigned to work in, or travel to, the Azerbaijan Republic." Import/Export Tax Exemption Certificate should be obtained from the Customs Committee to enable exemption.

However, all the goods imported free of taxes under PSA regime automatically fall under the category of "conditionally released goods" for the customs purposes. That means that all the transfers of them to third parties or projects other than reported at the Customs Declarations for exemption purposes should be reported to the Customs Department. As soon as the subject goods are used for non-PSA purposes (sold to a third party, used for non-PSA project etc.) all the customs taxes and duties applicable to non-PSA importations should be paid.

Customs Department shall conduct a compulsory audit of the goods imported free of taxes under PSA umbrella upon dissolution of the importing entity. Additionally, audit may be carried by the Customs Department at any other time at their option.

**Section VIII. AZERBAIJAN TAXES RELATING TO PIPELINE PROJECTS AGREEMENTS**

There are two Host Government Agreements between the Government of Azerbaijan Republic and a number of international oil companies for development, construction and operation etc. of product pipeline which provide for tax regime different from ordinary PSA and non-PSA ones:

1. Baku-Tbilisi-Ceyhan (BTC) Pipeline Agreement
2. South Caucasus Pipeline (SCP) Agreement

Both agreements provide for full exemption from taxes all the legal entities providing works, services or goods in respect of relevant projects.

Foreign employees working for these projects are liable for personal income tax only on the income received in connection with their work on projects and only if they present on territory of project 183 or more days during the calendar year.

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## Section IX. AZERBAIJAN TAXES RELATING TO NON-PSA ACTIVITIES<sup>1</sup>

In the event a Foreign Sub-contractor performs work or services, or conducts other business activities, in the Azerbaijan Republic other than in connection with Hydrocarbon Activities, such Foreign Sub-contractor shall be required to submit tax returns, reports and financial statements to the Tax Ministry and other Governmental Authorities, and shall be taxed in respect of such work or services, or other business activities, in accordance with the Azerbaijan Legislation.

### 1. Personal Income Tax<sup>2</sup>

Effective 01 January 2019 monthly earnings of employees engaged in non-oil and gas and non-governmental sectors of economy and making of up to 8000 AZN shall be taxed at the rate 0%, while the part of monthly salary exceeding 8000 AZN shall be taxed at a rate of 14%. (These rates are going to be effective during 7 consecutive years).

Note: Current PIT rates for individuals engaged in oil & gas sector will remain unchanged.

Also, according to the Law “On Social Insurance” for those individuals employed by private business other than the oil and gas sector, Social Contributions shall be calculated according to the rates indicated as per below table:

-Social Tax:

Monthly income	Employee’s liability (to be deducted from Employee’s income by the Employer)	Employer’s liability
Up to 200 AZN	3%	22%
More than 200 AZN	6 AZN + 10% from the income exceeding 200 AZN	44 AZN + 15% from income exceeding 200 AZN

-Unemployment Insurance:

Rate- monthly gross is taxed at the rate of 0.5%

-Medical Insurance:

Monthly income	Employee’s liability (to be deducted from Employee’s income by the Employer)	Employer’s liability
More than 8000 AZN	160+0.5% from the income exceeding 8000AZN	160+0.5% from the income exceeding 8000AZN
Up to 8000 AZN	2%	2%

Current rates of social insurance for individuals engaged in the oil & gas sector will remain unchanged (to be calculated from employee’s gross income – 3% Employee’s liability and 22% Employer’s liability)

A taxpayer shall keep separate accounting records of its employees engaged with the oil-gas activity from any other activity.

Any delay in cash return or untimely reporting (at present set as 3 days) on any cash business advances provided by employer to employee on the terms and conditions envisaged by the relevant executive

<sup>1</sup> Tax Code dated 1<sup>st</sup> of January 2001 updated as of the 1<sup>st</sup> of January, 2005

<sup>2</sup> Tax Code, Parts VIII and X

government authority shall be considered as income of employee and subject to income tax at the rate indicated above.

Employment income of tax residents and employment income received from the sources in Azerbaijan Republic of non-residents engaged in oil and gas and governmental sector of economy should be taxed at the source of payment according to the monthly rates prescribed in the Table #1 of the Tax Code (see Attachment 1).

3-10% Employees' Social Protection Fund contributions from their monthly Gross Income as well as 15-22% Employer's contribution to the same Fund must be paid not later than the date when the salaries are actually paid.

Please note, that since 1 January, 2005 income of foreign employees is also a subject for social contributions at the rates provided for local employees. However, currently this change does not affect foreigners working for PSA contracts.

Also, Law on Individual Registration with the Social Protection Fund comes into force since the January 2006. According to this law social contributions should be accounted and reported individually for each employee of the company.

Social allowances to employees for sick days for the first 14 days of illness should be made at expense of employer. Sick allowances for all the periods exceeding 14<sup>th</sup> day of illness should be compensated to employee by Social Protection Fund.

Quarterly reports must be filed within 20 days after the end of each quarter.

Please, also be advised, that "any physical person staying in the territory of the Azerbaijan Republic for more than 182 cumulative days within a calendar year or those having place of permanent residence in the Azerbaijan Republic or center of vital interests or habitual adobe" shall be considered as Residents for Tax purposes.

Non-employment income of tax residents and income from Azerbaijan sources of non-residents which has not been taxed at the source of payment should be declared annually not later than 31<sup>st</sup> of March of the year following the year when taxable payment was made and taxed according to the annual rates prescribed in the Table #2 of the Tax Code (see Attachment 1)

Income received by physical persons from rent of movable or immovable property shall be subject for 14% withholding tax. In case if the tax is **withheld and paid properly**, no further taxes will be applicable to such income.

## 2. Corporate Profits Tax<sup>1</sup>

The companies, volume of taxable operations of which in any given month (months) of consecutive 12-months period exceeds 200,000 manats and, also those who meet the below criteria, regardless of their turnover, are liable for annual Profits Tax:

- Producers of the goods which are subject for excise tax
- Credit and Insurance organizations, investment foundations, professional participants of security market, pawn-shops;
- Non-state pension funds;
- Those who receive income from letting of property and royalties;
- Owners of fixed assets with a net book value of more than AZN 1,000,000.

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<sup>1</sup> Tax Code, Parts IX and X

Effective 2019, new tax privileges and exemptions have been introduced in the Tax Code:

1. Profit of legal entity (classified as a micro-business) shall be reduced by 75% for taxation purposes.
2. Profit of legal entity (registered within the SME cluster) shall be exempted from profit tax for 7 years from the day of registration of such legal entity in SME cluster register.
3. Profit of legal entity (registered as a Startup) shall be exempted from profit tax for 3 years starting from the day of obtaining of startup certificate.

Benefits in Depreciation of Fixed Assets:

- Depreciation of Fixed Assets (FA) for a legal entity that is not being registered as VAT payer, and, with a turnover not exceeding 200,000 AZN for the past cumulative 12-months period, shall be deducted from income at the rates classified by art 114.3 multiplied by 2;
- Depreciation of FA for small enterprises shall be deducted from income at the rates classified by art 114.3 multiplied by 1.5.

Note: According to a Decree issued by the Cabinet of Ministers of AR depending on number of employees and annual turnover the entrepreneurship have been divided by the below categories:

The category of the entrepreneurship	The average number of employees	The annual turnover (AZN)
Micro entrepreneurship	1-10	Less than 200 000
Small entrepreneurship	11-50	200 000 - 3 000 000
Medium entrepreneurship	51-250	3 000 000 – 30 000 000
Large entrepreneurship	251 and more	More than 30 000 000

Current Profits Tax Rate is 20% of the annual profit.

Profit tax declaration is filed annually not later than 31<sup>st</sup> March of the year following the reporting year. Profit tax is paid quarterly in advance based on past year profit tax within 15 days after the end of current quarter or based on the current results. Notification on the method of calculation of advance payments of Profits Tax should be send to the Tax Ministry every year by 15<sup>th</sup> April. In case if the notification is not sent, the Tax Ministry will base its calculations of advance payments on the past year results.

The gross revenue of a non-resident enterprise that is not related to the activity of its permanent establishment shall be taxed at source without deduction of expenses in the following cases:

- **Dividends**  
Paid by a company-resident at the rate of 10%
- **Interest**  
Paid by a company-resident at the rate of 10%
- **Payments for international communication**  
As well as transportation services, made by the enterprise-resident at the rate of 6%
- **Other Works and Services**  
At the Rate of 10%
- **Rent**  
Relating to lease of movable and immovable property, at the Rate of 14%
- **Taxation of Profit of Non-resident Legal Entity**



Profit of permanent establishment of non-resident legal entity transferred to such a non-resident legal entity, apart from Profits Tax will be taxed at the rate of 10%.

All taxes withheld at source, including personal income tax should be transferred to the Tax Ministry not later than 20<sup>th</sup> day of the month following the month when the tax was withheld.

**- Taxation of dividends and payments made to non-residents registered (established) in countries with preferential taxation (offshore).**

Effective 2019, dividends distributed to shareholders/founders by a legal entity that is not registered as a payer of VAT, with the turnover not exceeding 200,000 for the past consecutive 12 month and keeping its accounting of income and expenses in accordance with effective legislation, shall be exempt from the Dividend tax.

Distribution of net profit (for the payers of simplified tax, gross income after profit tax and expenses) for the benefit of founders and shareholders, including distribution of property (assets) obtained from net profit at the time of legal entity liquidation, as well as any excess value of nominal amount of shares, distributed in favor of shareholders in the form of cash or other payments from net profit, shall be considered as dividend and subject to a Dividend tax at the rate of 10%.

Distribution to a shareholder/founder of assets acquired in connection with the activity of the enterprise, as well as monetary funds (except for the repayment of debt to the founder or compensation of debt in any other form) for purposes other than the actual activity of the enterprise as well as payment of the founder's obligations to any third parties shall equal to a payment of dividends and taxed at the rate of 10%.

Effective 01 January 2019, any payments made to bank accounts of financial institutions registered (established) in countries with preferential taxation (offshore), shall also be considered as taxable at the rate of 10%.

However, the above rules are not applicable to the national/resident banks with correspondent accounts opened in the countries with preferential taxation (offshore).

### **3. Value Added Tax (VAT) <sup>1</sup>**

Current Tax Rate is 18%. Entities engaged in business activity, whose volume of taxable operations in any month (months) of consecutive 12-month period exceeds 200,000 manats within 10 days after the date referred to the following points must submit an application for registration for VAT purposes.

- if the amount of taxable operation during any month (months) of consecutive 12-month period exceeds 200.000 manat - on the first day of the following month;
- if the total value of operation subject to VAT per one operation or contract exceeds 200,000 manat - up to the date of operation.

Normally, VAT must be applicable to any goods or services provided or supplied in the Azerbaijan Republic except for certain cases specified by the Tax Code.

Effective from the 1<sup>st</sup> January 2008 each VAT-payer will be required to maintain a VAT deposit account for collection and transferring of VAT amounts or that VAT will be creditable only if it is paid through the designated accounts.

Effective from the 1<sup>st</sup> of January 2010 all VAT invoices must be issued in electronic form.

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<sup>1</sup> Tax Code, Part XI

A financial sanction of 50% would be imposed for a failure to pay VAT on the supplier/service provider invoices following the new rules on payment of VAT using designated bank accounts.

VAT paid from petty cash to suppliers may not be recorded for the offset purposes.<sup>2</sup>

Any person making payment to a non-resident legal entity providing services in the territory of Azerbaijan Republic without registration of the office in Azerbaijan, should account for 18% VAT on the amount of payment and then transfer the subject VAT to the Tax Department.

VAT declarations are filed and tax payments made monthly before 20<sup>th</sup> day of the month following the reporting month.

Rules of registration have been softened. The registration process may now take 5 (five) days.

#### **4. Excise Tax<sup>3</sup>**

The following goods are subject for excise tax with the following rates:

- edible alcohol (including ethyl non-denaturized alcohol with the concentration of alcohol of not less than 80%; ethyl non-denaturized alcohol with concentration of alcohol of less than 80%) – 2,00 AZN per liter;
- vodka, fortified drinks and fortified drinkable materials, liqueurs and liqueur materials -2,00 AZN per liter;
- cognac and cognac products – 6,00 AZN per liter;
- sparkling wines – 2,5 AZN per liter;
- wines and wine materials – 0,1 AZN per liter;
- cigarillos – 20,00 AZN for 1 000 pcs;
- cigars, cut-end cigars – 1 AZN per 1 pcs;
- cigarettes made of tobacco and their substitutes – 20,00 AZN for 1 000 pcs
- alcohol energy drinks – 2,0 AZN per liter;
- energy drinks free from alcohol – 3,0 AZN per liter;
- cars, yachts and other floating facilities for recreation and sports imported into the Azerbaijan Republic – at the rates indicated in Tax Code depending from engine volume
- petroleum derivatives, light vehicles, cars, yachts and other floating facilities for recreation and sports produced in the Azerbaijan Republic – rates are fixed by the relevant government body.

Reporting period is a calendar month.

Upon production of excise goods, excise on taxable operations for each reporting period shall be paid and Tax Declaration shall be filed not later than 20<sup>th</sup> day of the month following the reporting one.

#### **5. Property Tax<sup>4</sup>**

Most of the Legal Entities shall pay an annual property tax at the rate of 1% of the average annual net book value of fixed assets (except for transportation fixed assets). Payers of property tax shall make advance payments of tax at 20% of the amount of property tax of previous year prior to the 15<sup>th</sup> of the second month of every quarter as current tax payments.

Legal entities shall submit annual property tax declarations along with the profit tax declaration to the State Tax Departments.

#### **6. Land Tax<sup>5</sup>**

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<sup>2</sup> Tax Code, Part XI

<sup>3</sup> Tax Code, Part XII

<sup>4</sup> Tax Code, Part XIII

Land Tax shall be calculated as a fixed payment irrespective of the results of the economic activity of owners and users of land. Rate of tax on land plots used for the agricultural purposes shall be defined at AZN 0.06 for 1 conventional point.

Conventional points are defined by the respective body of Executive Authority subject to the designation, geographical location, quality, etc. of land.

Enterprises shall annually calculate tax on land on the basis of the sizes of land spot and the tax rates, and submit such calculation to tax bodies not later than 15 May of each year. Tax should be paid, in equal portions, before August 15 and November 15.

## **7. Road Tax<sup>6</sup>**

Non-resident persons being owners of motor transport facilities imported into the territory of the Republic of Azerbaijan and being used for transportation of passengers and goods from the same territory, as well as persons engaged in production or import of motor petrol, diesel fuel and liquid gas in the Republic of Azerbaijan shall be payers of the road tax.

Tax on transport facilities owned by physical and legal person's, excluding agricultural transport and transport belonging to government organizations is calculated depending on engine capacity and length of stay of vehicles in the territory of the Azerbaijan Republic, number of seats, number of axles and the total weight of the vehicle with its cargo, distance on the territory of the Azerbaijan Republic, transportation of hazardous materials, as well as for motor petrol, diesel fuel and liquid gas produced on the territory of the Republic of Azerbaijan and directed to domestic consumption (whole-sold) and imported into the territory of the Republic of Azerbaijan

Legal Entities submit annually Road Tax declaration not later than 31st of March of the year following the reporting year. The payment of the calculated Road Tax shall be made to the State Budget by this deadline.

Physical Persons pay Annual Road Tax to the State Budget at the time of annual check-up.

## **8. Mining Tax<sup>7</sup>**

Generally, applicable to those, who are engaged in extraction of commercial minerals in the territory of the Azerbaijan Republic, including in the Sector of the Caspian Sea belonging to the Azerbaijan Republic.

Mining Tax shall be calculated based on wholesale prices or total volume of commercial minerals extracted (in m<sup>3</sup>) depending on their type.

Mining tax for accounting month shall be paid by the 20<sup>th</sup> day following the month when such minerals have been extracted.

Payers of mining tax shall submit tax declarations on a monthly basis not later than the 20<sup>th</sup> day of the month following the reporting month.

## **9. Simplified Tax<sup>8</sup>**

### **9.1. Payers of Simplified Tax**

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<sup>5</sup> Tax Code, Part XIV

<sup>6</sup> Tax Code, Part XV

<sup>7</sup> Tax Code Part XVI

<sup>8</sup> Tax Code, Part XVII

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Enterprises that were not registered for the purpose of VAT (except for the enterprises producing excisable goods, credit and insurance organizations and investment funds, professional participants of securities market, non-governmental pension funds, lessors of property, receivers of royalties, owners of fixed assets with a net book value more than AZN 1 million) and whose volume of taxable transactions of which during any month (months) of consecutive 12-month period is 200,000 manat or less, shall be considered as payers of Simplified Tax.

Effective 2019, tax payers falling under the below listed conditions or nature of business shall not be classified as payers of simplified tax:

- person(s) engaged in production activities with more than 10 employees;
- person(s) providing goods under wholesale trade;
- person(s) selling gold, jewelry and other household goods;
- seller(s) of fur products;
- business activities requiring obtaining of License

Physical and Legal persons engaged in transportation activities (excluding international carriage of passengers and cargos) in the territory of Azerbaijan Republic are payers of Simplified Tax regardless the level of their turnover.

Persons engaged in house-building activities for personal needs or commercial purposes are payers of Simplified Tax.

The persons who are not payers of simplified tax, but have got a right to register as a simplified tax payers during the calendar year should apply to the Ministry of Tax not later than 20 April of the year following the year when the right to become a simplified tax payer arises.

Payers of Tax on Simplified System are not obligated to pay profits and VAT.

## 9.2. Rates of Simplified Tax

The following income of physical person shall be taxed at the rate of 2 % (from gross income, without deduction of expenses):

1. Sale of agricultural products by individuals, purchased from agricultural producers
2. Sale of non-ferrous metal waste
3. Sale of recycled paper, glass and plastic
4. Sale of used tires for recycling

Physical and legal persons engaged in transportation activities in the territory of Azerbaijan Republic shall calculate simplified tax depending on the technical characteristics and type of vehicles as per the rates provided in the Attachment 3 herewith.

The following coefficients should be applied to the tax calculated at the rates provided in Attachment 3 depending on the place where transportation services are provided (in times to the rate of tax):

- Baku city and transportations between Baku and other settlements – 2,0;
- Absheron area, Sumgait, Ganja and transportations between the said area and cities and other settlements – 1,5;
- Other cities and areas and transportations between them and other settlements – 1,0;

Persons engaged in house-building activities for personal needs or commercial purposes should pay simplified tax at the rate of 10 AZN per 1 m<sup>2</sup> of building facilities.

### 9.3. Tax Payment and Reporting Requirements

Payers of tax on simplified system (excluding persons engaged in transportations activities) shall submit Simplified Tax Declaration to the Tax Ministry not later than 20<sup>th</sup> day of the month following the reporting period and shall remit this tax to the State Treasury within the said period.

Persons engaged in transportation activities should pay simplified tax for each vehicle in possession or in use of those persons on a monthly basis. No tax returns should be filed by the subject persons in respect of their income received from transportation activities.

Persons engaged in house-building activities should file declaration to the Tax Ministry not later than 20<sup>th</sup> day of the month following the quarter when started the works on laying the foundation. The tax should be paid in quarterly installments in amount of 12,5% of the total amount of tax calculated up to the full settlement of the tax liability.

## 10. Financial sanctions.

Effective 2019, new financial sanctions are envisaged by Tax code for violation of tax legislation:

- For non-timely submission of the documents (including in electronic format) envisaged by article 23.1.2 and 23.1.2-1 or knowingly submission in a distorted way, including non-submission of requested by Taxes Authorities documents or information on time, as well as withholding from submission requested documents in terms envisaged by Article 71.4, opposite to the 100 AZN, according to the new changes the financial sanction shall be applied in the amount of 1000 AZN
- For non-submission of the requested information in time envisaged by the article 16.1.4 or for submission of the same in a distorted way, the financial sanction shall be applied in the amount of 500 AZN.
- For understatement of tax (including withholding tax) declared in the return in comparison with the amount which should actually have been declared in electronic format (excluding the additional tax amount calculated as a result of cameral examination), opposite to the 50% applied to the understated amount of tax, the financial sanction has been reduced down to 25%;
- For non-recording of cash funds in accounting books, as well as for non-recording of transactions related to income and expenses and, also for the absence of as little as one electronic invoice or VAT invoice, customs declaration for goods and materials or purchase order, or any document envisaged by article 130.1-1 in respect to self-manufactured products, the following financial sanctions shall apply to a taxpayer:
  1. At the rate of 10% (according to the old version 5%) on any non-recorded amount of cash funds exceeding 1000 AZN and at the rate of 20% (10%) for any reoccurrence of the same violation.
  2. At the rate of 10% on any non-recorded amount of missing purchase document envisaged by article 58.8.  
At the rate of 20% for 2nd reoccurrence of the same violation within the same year and at the rate of 40% for any other occurrences.
  3. At the rate of 10% of the amount of any undocumented expenses and, at the rate of 20% for 2nd reoccurrence of the same violation and, at the rate of 40% for any other occurrences.
  4. For creating conditions for personal income tax evasion for employees engaged to perform works (services) by their employer, without entering into employment contract, in accordance with labor Code of AR, opposite to the 1000 AZN, the financial sanction

is increased up to 2000 AZN for each individual during the calendar year, for 2<sup>nd</sup> reoccurrence 4000 AZN, and 6000 AZN for any other reoccurrences.

5. In case of failure to provide electronic invoice or electronic VAT invoice by the seller in the manner envisaged by tax legislation, financial sanction shall be applied to seller at a rate of 10% on the amount of undocumented value, at the rate of 20 % for 2<sup>nd</sup> reoccurrence of the same violation and the rate of any other reoccurrences.
6. In case of non-declaration of the income exempted from taxation in accordance with tax legislation the financial sanction at a rate of 6% shall be applied to the entire under-declared value.

## 11. Tax Administration and Economic Terms.

Effective 2019, the following new legal and economic terms have been introduced to the art 13 (Concept of terms):

- Electronic Cabinet (the electronic page in the format established by the relevant state government authority for the purpose of information exchange between taxpayer and Ministry of Taxes);
- Center of economic interests (the location of place of economic interests (including the location of production area), which is predominantly involved with the formation of taxpayer's income, regardless of another possible location of taxpayer).
- Capital (the value of the taxpayer's assets less company liabilities);
- Innovation activity (the production of improved goods (work, services) with the purpose of achieving economic and social productivity on the basis of scientific-research and experimental-design work and application of their results to achieve economic and social benefits, the creation and implementation of technological process);
- The participant of SME, micro-economical clusters and startups for the purpose of stimulation of small and medium types of business;
- Market price (fluctuation of price for more (less) than 30 % of price for similar goods (work, services) on the market within the 30 days (in compliance with the requirements of the article 14.6.1)).

Starting from 01 January 2019, the taxpayer is obliged to keep the accounting records of income (expenses) in accordance with the relevant tax legislation, including income (expenses) which are exempted from taxation. Also, taxpayer is obliged to keep the accounting records in electronic format in accordance with the "Law on Accounting".

## 12. Requirements for Obtaining of Distinctive Badges and Special Distinctive Badges.

All physical and legal persons engaged in transportation activities are obliged to obtain a **Distinctive Badge** for each vehicle which is owned or used based on power of attorney or rent agreement for transportation services for the **Ministry of Transport of Azerbaijan Republic**.

All physical and legal persons who are not engaged in transportation activities, but own vehicles intended for internal operation purposes are obliged to obtain a **Special Distinctive Badge** for each vehicle registered on the name of such a person.

Application for issue of Distinctive and Special Distinctive Badges should be filed in 5 days upon acquisition of a new vehicle to the Ministry of Transport.

### 13. Deductibility & Depreciation Rules<sup>9</sup>

Generally, the following expenses cannot be deducted from income for tax purposes:

1. Expenses related to purchase and building of fixed assets and other capital expenditures
2. Expenses unrelated to the core commercial activities
3. Meals, entertainment, living and other social expenses. Where the taxpayer's business is in the sphere of entertainment or social activity, then entertainment and social expenses incurred in the course of business activity may be deducted from income
4. Personal expenses related to individual consumption or earning salary
5. Business trips expenses above rates fixed by the relevant executive authority
6. Repair and maintenance expenses deductible from income are limited to the threshold amount of the previous year end net book value of the fixed assets category to which they relate at the rates of 0 to 5% depending on the category of fixed assets

The annual depreciation rates for major fixed assets categories are presented as follows:

1. Buildings, Installations and Structures - up to 7%
2. Machinery, equipment and computer hardware - up to 25%
3. Vehicles – up to 25%
4. Working Cattle – up to 20%
5. Cost incurred for geological exploration and preparatory works for extraction of natural resources - up to 25%
7. Intangible assets – up to 10% if the useful life of the asset is not definable, or rate based on the useful life of the assets
8. Other fixed assets - up to 20%

The following types of fixed assets are not subject for depreciation:

- equipment, exhibits, specimens, models and other visual aids used in lecture halls, laboratories for the scientific, educational and experimental purposes;
- productive cattle
- exhibit animals at zoos and other similar institutions;
- perennial plants not attained productive age;
- library stocks, cine stocks (video, audio, photo), stage props, museum exhibits;
- fully depreciated useable fixed assets;
- dormant fixed assets;
- roads in general use;
- park equipment in general use;
- fixed assets in stocks;

### 14. International Grants or Loans<sup>1</sup>

Tax Code provides for 0% rated VAT for all the goods, services, works purchased or imported on the credits and loans extended by international financial organizations, foreign governments, or foreign legal entities and individuals under interstate and intergovernmental treaties.

Purchase of goods, works and services at the expense of grants received from abroad is subject for VAT at 0% rate.

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<sup>9</sup> Tax Code, Part X

## **15. Field Tax Audits**

A field audit may be conducted upon tax authority's decision. When conducting a regular tax audit, a tax authority shall give notice in writing to the taxpayer at least 15 days prior to the audit. A regular field tax audit may not be conducted more often than once a year and may not last for more than 30 business days. In exceptional cases, a field tax audit may be extended up to 90 business days.

## **16. Violations of the Tax Code Requirements**

The following financial sanctions are applicable for failing to comply with requirements of the Tax Code:

- non-filing of tax reports and declarations by the deadlines provided in the Tax Code – AZN 40;
- understatement of taxes due by the taxpayer in tax declarations and returns – 50% of the understated amount of tax;
- failing to register with the appropriate tax or other government bodies within the terms provided by the Tax Code - AZN 44;
- late payment of taxes – 0,1% of the amount of tax due for each day of delay of payment.

## **17. System of tax reporting**

All the enterprises are owed to conclude a contract with the Tax Authorities, for obtaining of secure individual password and company's code for online access to software, wherein they will be able to submit tax returns to the Tax Authorities in the electronic format.

## **18. New reporting system in SSPF**

Effective 2019, all SSPF reporting is to be submitted to Tax Authorities via online system with using of ASAN signature.

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## Section X. IMPORT/EXPORT TAXES<sup>10</sup>

According to the Customs Code of Azerbaijan Republic the following fees are paid on importation of goods:

- Import Tax<sup>11</sup>

Any items imported into Azerbaijan Republic are subject to customs dues (Import Taxes). Import Tax rate varies between 0% to 15% and depends on the type of the goods being imported.

- VAT at Customs<sup>12</sup>

The goods imported into and exported out of Azerbaijan Republic are subject to VAT in accordance with the Tax Code (current rate is 18%).

- Excises<sup>13</sup>

Excise Tax is applicable to the goods transferred through the custom of Azerbaijan Republic in accordance with the Tax Code.

- Customs Procedure & Registration Fee<sup>14</sup>

All commercially and non-commercially imported goods through the customs of the Azerbaijan Republic are subject for the customs procedure and registration fees.

- Storage Fee<sup>15</sup>

Storage fee is collected for the goods and transport stored at the warehouses or special sites belonging to the Customs Authorities of the Azerbaijan Republic. The Customs Department of Executive Authority based on an average cost of the services rendered normally determines storage fee.

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<sup>10</sup> Customs Code, Part III

<sup>11</sup> Customs Code, Article 109

<sup>12</sup> Customs Code, Article 110

<sup>13</sup> Customs Code, Article 111

<sup>14</sup> Customs Code, Article 112

<sup>15</sup> Customs Code, Article 113

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**Section XI. TAX PLANNING AND STRATEGY**

When developing a tax and accounting policy of the company the key point would be to distinguish between the activities falling under the different tax regimes, such as PSA and non-PSA activities.

Our view is that the most effective way to optimize tax liabilities is to implement different types of projects under separate legal entities.

Our experience is that it may be a worthwhile exercise to prepare a strategy and international tax planning in respect of the Individual Income Tax Liabilities for your foreign personnel.

It is also our view that a detailed review of the type of business activities and further structuring of your company's operations might be necessary to ensure both sufficient statutory compliance and profitability.

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**Attachment 1**

Monthly income is taxed at the following rates:

**Table 1**

<b>Taxable monthly income</b>	<b>Tax</b>
Up to 2 500 manats	$(2\,500 \text{ manats} - 200 \text{ manat}) * 14\%$
More than 2 500 manats	350 manats + 25% of the amount exceeding 2 500 manats

Annual income is taxed at the following rates:

**Table 2**

<b>Taxable annual income</b>	<b>Tax</b>
Up to 30 000 manats	$(30\,000 \text{ manats} - 2400 \text{ manats}) * 14\%$
More than 30 000 manats	4 200 manats + 25% of the amount in excess of 30 000 manats

**Attachment 3****Rates of Simplified Tax Applicable to Revenues Received from Transportation Activities**

Transportation Type	Monthly Amount of Tax, AZN
Carriage of passengers (except for taxis), per number of seats:	1,8 per 1 seat
Taxis	9 per 1 vehicle
Freight Services	1 per 1 ton of carrying capacity