

GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE  
OF INFORMATION FOR TAX PURPOSES

**Peer Review Report**  
**Phase 2**  
**Implementation of the Standard**  
**in Practice**

**AZERBAIJAN**





# **Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Azerbaijan 2016**

PHASE 2:  
IMPLEMENTATION OF THE STANDARD IN PRACTICE

November 2016  
(reflecting the legal and regulatory framework  
as at August 2016)

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## About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions, which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, and in Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary as updated in 2004. The standards have also been incorporated into the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction's legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 and Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).





## Abbreviations

<b>AML</b>	Anti-Money Laundering
<b>ASAN</b>	Azerbaijan State Service Centre
<b>AVIS</b>	Automated Tax Information System
<b>AZN</b>	Azerbaijan Manat
<b>BSE</b>	Baku Stock Exchange
<b>CA</b>	Chartered Accountant licensed by the Chamber of Auditors of Azerbaijan
<b>CAV</b>	The Code of Administrative Violations of the Republic of Azerbaijan
<b>CC</b>	The Civil Code of the Republic of Azerbaijan
<b>CDD</b>	Customer Due Diligence
<b>CFT</b>	Counter Financing of Terrorism
<b>DTC</b>	Double Tax Convention
<b>EOI</b>	Exchange of Information
<b>FMS</b>	Financial Monitoring Service
<b>FMSA</b>	Financial Monitoring Supervisory Authority
<b>GDP</b>	Gross Domestic Product
<b>GIS</b>	Geographic Information Service
<b>IFRS</b>	International Financial Reporting Standards
<b>ISO</b>	International Standards Organisation
<b>LoB</b>	Law of the Republic of Azerbaijan on Banks
<b>LLC</b>	Limited Liability Companies
<b>JSC</b>	Joint Stock Company

<b>MoU</b>	Memorandum of Understanding
<b>NAS</b>	National Accounting Standards
<b>NGO</b>	Non-Governmental Organisation
<b>PIE</b>	Public Interest Entities
<b>PEP</b>	Politically Exposed Persons
<b>SCS</b>	State Committee on Securities
<b>STR</b>	Suspicious Transaction Report
<b>ROI</b>	Law on Right to Obtain Information
<b>TIEA</b>	Tax Information Exchange Agreement
<b>TIN</b>	Tax Identification Number
<b>VAT</b>	Value Added Tax

## Executive summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Azerbaijan, as well as the practical implementation of that framework. The international standard which is set out in the Global Forum’s *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information*, is concerned with the availability of relevant information within a jurisdiction, the competent authority’s ability to gain access to that information, and in turn, whether that information can be effectively exchanged on a timely basis with its exchange of information (EOI) partners.

2. Azerbaijan is an independent republic, with a territory of approximately 86 600 square kilometres and a population of around 9.593 million, strategically located on the legendary silk route in the Caucasus region, at the crossroads of Europe and Asia. Azerbaijan shares its borders with Armenia, Georgia, Russian Federation (Russia), Iran and Turkey, and faces the Caspian Sea in the east. Baku is the capital and the largest city of Azerbaijan and the Caucasus region. Formerly part of the Soviet Union, the Republic of Azerbaijan became a separate State on 18 October, 1991.

3. Relevant entities that can be formed in Azerbaijan include: open and closed joint stock companies, limited liability companies, general partnerships, limited partnerships, co-operatives, funds and public associations. The Azerbaijani authorities have detailed and updated ownership information for all types of entities through registration, reporting and record keeping requirements. Enforcement measures to ensure availability of identity and ownership information are generally in place for all types of entities.

4. The availability of identity and ownership information in practice is ensured mainly through (i) filing requirements with the State registration office of the Ministry of Taxes, (ii) annual tax return filing requirements with the Ministry of Taxes, (iii) the newly introduced legal obligations on all Joint Stock Companies (JSCs) to dematerialise their shares, (iv) the creation of a central depository system to which all JSCs in Azerbaijan are required to submit their share registers before September 2015, and (v) application of sanctions. Ownership information on companies and other legal entities is

also available with financial institutions and service providers under AML obligations, to the extent engaged by these companies or other legal entities. Legal entities also maintain ownership information for regulatory compliance purposes. However, the central depository system was only established in July 2015. The effectiveness of the oversight mechanism of the Central Depository to ensure that all JSCs dematerialise their shares and hand over their share registers to the Central Depository has not been sufficiently tested in practice. It is therefore recommended that Azerbaijan monitors the implementation of the new securities market law to ensure that updated ownership information on all JSCs is available in Azerbaijan.

5. Nominee shareholdings exist in Azerbaijan. Nominees are allowed to hold shares in JSCs on behalf of actual owners. The new securities market law came into force in 2015 introduced the legal requirement to maintain actual ownership information on nominee holdings in Azerbaijan. This law has entrusted the Central Depository to ensure that ownership information held by nominees is available in Azerbaijan. However, the monitoring and oversight mechanism of the Central Depository to ensure that nominees provide actual ownership information has not been tested in practice. It is therefore recommended that Azerbaijan monitors the implementation of the new legal obligations to ensure that ownership information held by nominees is available in practice.

6. Prior to 15 July 2015, JSCs were permitted to issue bearer shares. Further, there are not sufficient mechanisms or regulations to ensure that actual ownership information on bearer shares that could have been issued by JSCs prior to 15 July 2015, is available in Azerbaijan. Azerbaijan should take necessary measures to ensure that ownership information on bearer shares that could have been issued prior to 15 July 2015 is available.

7. While Azerbaijani laws do not recognise the concept of trusts, there are no restrictions on an Azerbaijani resident acting as a trustee or administering a foreign trust. The legal risks involved in administering a foreign trust in Azerbaijan, or owning assets in the name of a trustee in Azerbaijan, render the possibility of the existence of foreign trusts in Azerbaijan unlikely. Even if they exist, the combination of obligations imposed by tax and AML legislation and general fiduciary obligations of Azerbaijani residents in performing their duties as trustees indirectly ensure the availability of identity information on settlors, trustees and beneficiaries in respect of foreign trusts in Azerbaijan. In practice, no foreign trust was identified by Azerbaijani authorities to have a presence in Azerbaijan during the review period.

8. All relevant entities are required under the Azerbaijan's accounting law to keep detailed accounting records in line with the standard. Requirements under the accounting law are further supplemented by obligations imposed by the Tax Code. But there are no explicit obligations either in

the Tax Code or in the accounting law that require the entities and individuals to maintain underlying documentation. A general legal requirement to keep accounting records for five years is in place for all relevant entities pursuant to tax obligations and accounting law. However, there are inconsistent provisions in the Tax Code that may enable entities and individual entrepreneurs not to maintain accounting information for more than 3 years. Azerbaijan should introduce express obligations in its relevant laws to ensure all relevant entities in Azerbaijan maintain underlying documentation. Similarly, it should also ensure clarity and consistency in the provisions of the Tax Code to maintain accounting records for a period of at least 5 years.

9. Availability of accounting information in practice is ensured by (i) tax return filing requirements of taxpayers, (ii) monitoring, enforcement and other operational control measures adopted by tax authorities, (iii) annual auditing and report filing requirements of JSCs with the State Committee on Securities, and (iv) imposing sanctions on defaulters. Azerbaijan provided all the accounting information sought by its treaty partners during the review period. The information covers underlying documentation and documents relating to periods more than 3 years old.

10. The availability of banking information to the international standard is ensured in Azerbaijan through a combination of banking, tax and AML legislation. Anonymous accounts are explicitly prohibited. The obligations under the legislation were adequately monitored and supervised in practice by the Central Bank of Azerbaijan and the AML authority during the review period. These two authorities were subsumed into the newly created Financial Market Supervisory Authority (FMSA) in March 2016.

11. The competent authority responsible to collect information and reply to an EOI request is the Ministry of Taxes, which is in possession of most of the identity and ownership information relevant to EOI purposes, which information is readily accessible to the competent authority. In practice, the competent authority of Azerbaijan has not faced any issues in accessing all kinds of information during the review period.

12. Azerbaijan's competent authority has access powers to obtain and provide information held by persons within its territorial jurisdiction. However, there are certain obstacles and deficiencies in Azerbaijan's legal framework which could impede access to full information, as required by the international standard. The tax authorities have powers to take tax control measures to obtain information but they cannot take any enforcement measures against taxpayers to seek information that relates to periods of more than 3 calendar years. Azerbaijan should ensure that the competent authority has adequate access powers for EOI purposes including compulsory powers unhindered by the 3 year limitation and is able to access client information from banks in all situations. Nevertheless, these legal deficiencies have never

affected the ability of the competent authority to obtain information from all types of persons, in all situations and for periods beyond 3 years. Banks have not expressed concerns in providing client information to the tax authorities.

13. The Tax Code deems that all information received from taxpayers is a “commercial (tax) secret”. The exception for EOI purposes enables the tax authorities to share this information with authorities of other jurisdictions in accordance with the terms of international agreements. Azerbaijan is legally not obliged under the international agreements to share information that is considered as a commercial secret. At the same time, Azerbaijan has a specific “Law on Commercial Secret” which defines the term “commercial secret” and deals with commercially secret information. The scope of this definition is in line with the international standard. However, this definition is in conflict with the Tax Code and the Law on Accounting. Therefore, there is ambiguity in the scope of different laws that define the term “commercial secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI. Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI. Nevertheless, the tax authorities applied the concept of “commercial (tax) secret” as propounded by the international standard and provided taxpayer and accounting information in all cases.

14. The scope of legal professional secrecy attached to advocates and notaries is in line with the international standard of exchange of information. However, the scope of professional secrecy that applies to auditors is broader than that intended in the international standard. Although, in practice, the issue of professional secrecy has not been tested so far where auditors are concerned, the presence of legal provisions might affect the exchange of information. It is therefore recommended that Azerbaijan ensures that the scope of professional secrecy that applies to auditors is consistent with the international standard. Azerbaijan’s Tax Code provides notification rights to the persons concerned with information provided by the banks. There are no exceptions to this prior notification by the banks even in cases where the information request is of very urgent nature or the notification may undermine the chance of success of the investigation. As a result, the rights and safeguards that apply to persons in Azerbaijan are not fully compatible with effective exchange of information. Notification rules in Azerbaijan should permit exceptions from prior notification. Nevertheless, the notification rights have not resulted in denial of information nor was there any delay in providing information in practice.

15. Azerbaijan’s network of EOI mechanisms covers 111 jurisdictions through 51 bilateral DTCs, 1 TIEA and the amended Convention on Mutual Administrative Assistance in Tax Matters. Azerbaijan ratified the Protocol

amending the Convention on 30 January 2015, which entered into force on 1 September, 2015. Four of the DTCs are yet to enter into force. Eleven of Azerbaijan's EOI relationships do not contain sufficient provisions to enable Azerbaijan to exchange all relevant information. Azerbaijan's network of exchange agreements covers all but one of its main trading partners and no jurisdiction advised that Azerbaijan refused to enter into negotiations or refused to conclude an EOI agreement. In practice, no issues in respect of the application of Azerbaijan's treaties arose during the period under review. Nor was there a case where Azerbaijan refused to provide the requested information in practice on account of restrictive treaty provisions. Each of Azerbaijan's EOI agreements contains confidentiality provisions that meet the international standard and its domestic legislation also contains appropriate confidentiality provisions and enforcement measures. Azerbaijan's EOI agreements protect rights and safeguards in accordance with the standard and this is confirmed in practice.

16. Azerbaijan's domestic legislation has ambiguity in the scope of different laws in defining the term "commercial secret" that may limit the possibility of effective exchange of all kinds of information. Although Azerbaijan has long-standing practice of exchanging information with its treaty partners, the access powers of Azerbaijan's authorities could be limited in certain situations, which could possibly limit the effective exchange of information. It is therefore recommended that Azerbaijan addresses these issues in its domestic laws to give full effect to all its EOI arrangements and to bring all its EOI relationships in line with the standard. In practice, the competent authority has exercised its powers to access information in a timely and efficient manner.

17. There are no legal restrictions on the ability of Azerbaijan's competent authority to respond to requests within 90 days of receipt either by providing the requested information or by providing an update on the status of the request. Azerbaijan received 185 requests over the period under review. The requested information was provided in 98% of the cases within 90 days and 2% of the cases within 180 days. In no case did Azerbaijan delay in providing a response beyond 120 days. Similarly, in no case did Azerbaijan fail or refuse to provide the requested information during the review period. Azerbaijan has robust organisational processes and adequate resources in place to ensure the effective exchange of information in a timely manner.

18. Azerbaijan has been assigned a rating for each of the 10 essential elements as well as an overall rating. The ratings for the essential elements are based on the analysis in the text of the report, taking into account the Phase 1 determinations and any recommendations made in respect of Azerbaijan's legal and regulatory framework and the effectiveness of its exchange of information in practice. These ratings have been compared with the ratings

assigned to other jurisdictions for each of the essential elements to ensure a consistent and comprehensive approach. On this basis, Azerbaijan has been assigned a rating of Compliant for elements A.3, C.2, C.3, C.4 and C.5, and Largely Compliant for elements A.1, A.2, B.1, B.2 and C.1. In view of the ratings for each of the essential elements taken in their entirety, the overall rating for Azerbaijan is Largely Compliant.

19. Recommendations have been made where elements of Azerbaijan's EOI regime have been found to be in need of improvement. A follow-up report on the measures taken by Azerbaijan to respond to the recommendations made in the present report will be provided to the Peer Review Group in September 2017 in accordance with the 2016 Methodology for the second round of peer reviews.



## Introduction

### Information and methodology used for the peer review of Azerbaijan

20. The assessment of the legal and regulatory framework of Azerbaijan was based on the international standards for transparency and exchange of information as described in the Global Forum’s Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes, and was prepared using the Global Forum’s Methodology for Peer Reviews and Non-Member Reviews. The Phase 1 assessment was based on the laws, regulations, and EOI mechanisms in force or effect as at 14 August 2015, Azerbaijan’s responses to the Phase 1 questionnaire and supplementary questions, other materials supplied by Azerbaijan, and information supplied by partner jurisdictions.

21. The Phase 2 review of Azerbaijan analyses the practical implementation and effectiveness of the legal framework in the three year review period of 1 July 2012 to 30 June 2015, as well as any amendments made to the legal and regulatory framework since the Phase 1 review. This assessment is therefore based on the laws, regulations, and exchange of information mechanisms in force or effect as at 19 August 2016, Azerbaijan’s responses to the Phase 2 questionnaire and the supplementary questions, information provided by exchange of information partners, and explanations provided by Azerbaijan during the on-site visit that took place during 9-11 March 2016 in Baku, Azerbaijan. During the on-site visit, the assessment team met with officials and representatives of the Ministry of Taxes, Ministry of Finance, Ministry of Foreign Affairs, the Central Bank of Azerbaijan, State Committee on Securities, Central Depository, Ministry of Justice, Prosecutor General’s office, Azerbaijan Financial Monitoring Service (FMS), Chamber of Auditors and officials from the Department for the Primary investigation of Tax Crimes (see Annex 4).

22. The Terms of Reference break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information, (B) access to information, and (C) exchange of information. This review

assesses Azerbaijan's legal and regulatory framework as well as the practical implementation of framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place, (ii) the element is in place but certain aspects of the legal implementation of the element need improvement, or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. To reflect the Phase 2 component, recommendations are made concerning the practical application by Azerbaijan of each of the essential elements and a rating of either: (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant is assigned to each element. An overall rating is also assigned to reflect Azerbaijan's overall level of compliance with the standards. A summary of findings against those elements is set out at the end of this report.

23. The Phase 1 assessment was conducted by an assessment team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Melisande Kaaij from the Ministry of Finance, the Netherlands; Mr Tom Queree from the Treasury and Resources Department, Jersey; and Mr P S Sivasankaran from the Global Forum Secretariat.

24. The Phase 2 assessment was conducted by an assessment team which consisted of two expert assessors and two representatives of the Global Forum Secretariat: Ms. Melisande Kaaij from the Ministry of Finance, the Netherlands; Mr Tom Queree from the Treasury and Resources Department, Jersey; and Mr P S Sivasankaran and Ms. Kaelen Onusko from the Global Forum Secretariat. The assessment team assessed the practical implementation and effectiveness of the legal and regulatory framework for transparency and exchange of information and relevant EOI arrangements in Azerbaijan.

## Overview of Azerbaijan

25. Azerbaijan is an independent republic, with a territory of approximately 86 600 square kilometres<sup>1</sup> and a population of around 9.593<sup>2</sup> million, strategically located on the legendary silk route in the Caucasus region, at the crossroads of Europe and Asia. Azerbaijan shares its borders with Armenia, Georgia, Russia, Iran and Turkey, and faces the Caspian Sea in the east. Baku is the capital and the largest city of Azerbaijan as well as the Caucasus region. Formerly part of the Soviet Union, the Republic of Azerbaijan became a separate State on 18 October, 1991<sup>3</sup>.

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1. [www.stat.gov.az/map/indexen.php](http://www.stat.gov.az/map/indexen.php).

2. Population size at the end of the year 2014. Source: State statistical committee of Republic of Azerbaijan: Population of Azerbaijan – Statistical bulletin 2015.

3. Source: 2014 Statistical yearbook of Azerbaijan.

26. Azerbaijan is a secular country populated by multi-ethnic and multi-religious societies. Azerbaijani is the official language. Administratively Azerbaijan is divided into 66 regions, 14 urban districts and 1 autonomous republic (Nakhchivan).

27. Post 2000, Azerbaijan has seen one of the fastest economic growth rates in the world, mainly driven by rapid export growth, due to a high international demand for oil, despite being briefly affected by the 2008–09 global crisis. Over the last 10 years, the economy has tripled. The currency in use is the Azerbaijan Manat (AZN).<sup>4</sup>

28. In recent years, Azerbaijan has implemented significant economic reforms to boost growth and to encourage entrepreneurship. In 2015, Azerbaijan's gross domestic product was USD 53.0 billion. The industrial sector is the largest sector, contributing to 33.93% of GDP, followed by the service sector (12.14%). A major contributor to the industrial production is oil and natural gas extraction, which accounts for more than 90% of Azerbaijan's export earnings. In 2015, the economy showed signs of slowing down, owing to declining oil production and rapidly falling oil prices. With an income per capita at USD 4 268.7 and GDP per capita at USD 5 558.7 in 2015, Azerbaijan ranks as an upper middle-income country.

29. Exports in 2015 were USD 11.42 billion and imports for the same period were USD 9.22 billion. The top five products exported by Azerbaijan are crude oil (77.61%), refined petroleum (6.58%), fruits (2.73%), raw sugar (1.86%), and petroleum gas (1.76%). It mainly imports cars, machineries, electric appliances and equipment, their parts, etc. The top 5 export destinations of Azerbaijan are Italy (19.73%), Germany (10.71%), France (7.56%), Israel (7.02%) and Czech (4.81%). The top 5 import origins of Azerbaijan are Russia (15.59%), Turkey (12.7%), the United States (9.19%), Germany (7.48%), and People's Republic of China (hereinafter "China") (5.55%).

30. The number of small enterprises in 2013 was 14 461 and the number of foreign and joint ventures was 1 140. The State budget revenue in 2013 was USD 24.85 billion. Foreign investments in 2013 were USD 10.54 billion. Of this, USD 2.65 billion went to financial credits and USD 4.94 billion to the oil industry. The private sector share in GDP is almost 85%, and accounts for over 74% of total employment in the country.

31. Azerbaijan joined the Global Forum on Transparency and Exchange of Information for Tax Purposes as the 119th member in 2013. Azerbaijan has also been a member of the Council of Europe since 2001. Among other international organisations of which Azerbaijan is a member are the United

4. As at 10 August 2015: USD 1 = AZN 1.0494 (source: The Central bank of Azerbaijan website <http://en.cbar.az/other/azn-rates>).

Nations, the World Bank, the Organisation for Security and Cooperation in Europe, the Asian Development Bank, the International Monetary Fund, the Organisation of Islamic Conference and the Organisation of the Black Sea Economic Cooperation.

### ***Governance and legal system***

32. The legal system of Azerbaijan is broadly based on civil law (continental legal system) principles. The Constitution of Azerbaijan, adopted on 12 November 1995, provides for a unitary, democratic, presidential republic and a separation of powers between the legislative, the executive and the judicial authorities. The Head of State is the President, elected directly by the people by a majority of more than the half of the votes for a term of 5 years. The President of Azerbaijan exercises executive power and heads the Government. The Prime Minister is appointed by the President with the approval of the legislature. Other Cabinet Ministers are appointed by the President directly.

33. The legislative authority of Azerbaijan is exercised by the National Assembly (Milli Mejlis), an unicameral body, based on a multi-party system and comprising 125 deputies. The judicial power of the State is exercised by the Constitutional Court and a three-tier system of courts. The Constitutional Court has jurisdiction over matters related to the constitutionality of laws, government and National Assembly resolutions, presidential decrees, and international treaties. The Supreme Court is the highest appellate court that hears all final appeals on lower court decisions. Besides the Supreme Court are the Courts of Appeal; the Courts of First Instance (District/city courts, the Administrative-economic courts, the Courts on grave crimes); and Military courts.

34. Being a unitary republic, Azerbaijan's legal system is based on national legislation enacted by the National Assembly. The Constitution possesses the highest legal power and is the foundation of the legislative system of Azerbaijan (Constitution, Art. 147). The hierarchy of normative-legal acts is: Constitution of Azerbaijan; acts adopted by referendum; laws; decrees; resolutions of the Cabinet of Ministers; and normative acts of Central Executive bodies. International agreements, of which Azerbaijan is a party, are an integral part of the legislative system of Azerbaijan (Constitution, Art. 148). International agreements take precedence over domestic legislative acts unless they contradict the Constitution and Acts adopted by referendum (Constitution, Art. 151). Acts that involve issues related to the adoption of and changes to the Constitution and change of State borders of Azerbaijan are decided through referendum.

## *Tax system*

35. Article 73 of the Constitution states that every person is responsible for paying taxes and other state dues imposed by law. The Tax Code of the Republic of Azerbaijan (Tax Code) was enacted on 11 July 2000. It establishes and regulates the tax system of Azerbaijan. If any international treaty to which Azerbaijan is a party provides for regulations that differ from those contained in the Tax Code and related legislative acts on taxes, the provisions of international agreements will prevail (Tax Code, Art. 2.5).

36. Tax is defined as a compulsory, individual and non-refundable payment made to the State or a local budget in the form of collection of monetary means from taxpayers with the purpose of providing the financial basis to the state and municipal activities (Tax Code, Art. 11). A taxpayer is any physical or legal person, permanent establishment, branch or other section of a non-resident who or which is liable to pay tax under the Tax Code (Art. 13.2.1, 13.2.4). The taxes levied in Azerbaijan are classified into State taxes, taxes of the Autonomous Republic and local (municipal) taxes (Tax Code, Article 4). There are separate tax regimes for the existing 20 Production Sharing Agreements (PSAs) between the Government of Azerbaijan and a consortium of major international oil companies, for the two Host Government Agreements (HGAs) namely the Main Export Pipeline (Baku-Tbilisi-Ceyhan) HGA and the South Caucasus Pipeline (Shah Deniz Gas) and for special economic areas. The Tax Code supersedes all other legislation except legislation on oil and gas, production sharing and main pipeline agreements as well as similar agreements and laws approved by the legislation before or after the Tax Code entered into force, if there is any contradiction (Tax Code, Article 2). The legislation on oil and gas and production agreements grants special tax concessions to parties associated with the commercial activities covered by this legislation and these agreements. However, all other rules including compliance with the Tax Code for administrative and control purposes are equally applicable to the entities and individual entrepreneurs covered by the special arrangements. These rules similarly apply to entities set up in the special economic areas.

37. The State taxes are those taxes that are stipulated by the Tax Code of Azerbaijan and imposed at a national level. They are: profit tax on legal entities, income tax on natural persons, excise tax, property tax (levied on legal persons), road tax, land tax on legal entities and land tax on physical persons, mineral royalty tax, value added tax and simplified tax. The taxes of Autonomous Republic are those taxes that are stipulated by the laws of Nakhichevan Autonomous Republic in accordance with the Tax Code of Azerbaijan and imposed in the region. Local (municipal) taxes are those taxes stipulated by the Tax Code of Azerbaijan and relevant legislation of the municipalities and imposed within municipal limits. The local taxes are

land tax of physical persons, property tax levied on natural persons, mineral royalty tax on construction materials of local importance and profit tax of enterprises and organisations that are the property of municipalities.

38. The tax year in Azerbaijan is the calendar year (i.e. from 1 January to 31 December). The tax return is to be filed no later than 31 March following the calendar year. Natural persons are defined as citizens of Azerbaijan, foreigners and persons without citizenship (Tax Code, Art. 13.2.3). Natural persons who are present in the territory of Azerbaijan for more than 182 days during the calendar year are residents for the purpose of the Tax Code (Art. 13.2.5.1). Even if the stay of individuals in Azerbaijan does not exceed 182 days, they are deemed as residents based on criteria set in following order: permanent place of residence; place of vital interests; place of normal residence; and citizenship of the Republic of Azerbaijan.

39. Resident individuals and legal entities are taxable on their worldwide income. Non-resident individuals are subject to a personal income tax on income received from Azerbaijani sources. The tax rate for both resident and non-resident individuals (not engaged in entrepreneurial activity) is progressive, beginning at 14% for monthly taxable incomes up to AZN 2 500<sup>5</sup> (EUR 2 115) and AZN 350 (EUR 296) plus 25% of AZN 2 500 (for amounts exceeding AZN 2 500 (EUR 2 115)) for higher monthly taxable incomes. All individuals engaged in entrepreneurial activity are taxed at a rate of 20% of their taxable income. A non-resident individual engaged in any activity in Azerbaijan through a permanent establishment should pay personal income tax on the income connected with the permanent establishment. Income from employment (salary and pensions) is taxed on a gross basis.

40. Withholding tax is applied on income from employment and non-entrepreneurial activities such as interest income, dividends, income from the lease of property, royalties, capital gains etc. Several types of income are exempt from taxation, for example agricultural income, gifts or inheritance from family members, alimony, capital gains on movable tangible assets (except precious stones, metals, fine work arts and antiques), income from crafts production, lottery prizes, compensation receipts, and there is a standard deduction for war heroes, their families, military officials etc.

41. Legal persons are those enterprises and entities established with the status of legal person in accordance with the legislation of Azerbaijan or legislation of a foreign State (Tax Code, Art. 13.2.2). Legal persons established in accordance with the legislation of Azerbaijan and involved in entrepreneurial activities, or with a place of management in the territory of Azerbaijan, are residents for the tax purposes (Tax Code, Art. 13.2.5.3). Commercial

5. As at 11 September 2015: EUR 1 = AZN 1.1821 (source: The Central bank of Azerbaijan website <http://en.cbar.az/other/azn-rates>).

and non-commercial legal entities in Azerbaijan are structures defined by the Civil Code. A non-resident legal person is one that is not a resident of Azerbaijan. Profit tax of 20% is paid by resident and non-resident enterprises (Tax Code, Art. 103.1). Profit of resident enterprises from capital gains, interest, dividends, rent, royalties, etc. are taxable as normal business income at the general profit tax rate. Non-resident enterprises are taxed on their profit from sources in Azerbaijan. Azerbaijani-source income is income derived by a non-resident enterprise operating in Azerbaijan from an entrepreneurial activity through a permanent establishment (Tax Code, Art. 13.2.16 and 104).

42. Source based taxation (withholding tax) in Azerbaijan is applied on passive income and certain income of the non-residents. Dividends paid by resident enterprises are subject to a withholding tax of 10%. Similarly, the withholding tax for interest income is 10%, and 14% for rent payments on movable and immovable property and for royalty payments. Interest, insurance and reinsurance payments, telecommunication and transport payments, income from services and wages, rent and royalty income received by non-residents from an Azerbaijani source, but not attributable to a permanent establishment of the non-resident located in Azerbaijan, are taxed at the source of payment on a gross basis at rates prescribed in Art. 125 of the Tax Code. However, if concessional rates are provided for any of the income categories in Azerbaijan’s international agreements on double taxation to which Azerbaijan is a party, the tax amounts overcharged by way of withholding tax will be refunded.

43. Social insurance contributions are paid by Azerbaijani nationals and foreign individuals. Employers contribute at a rate of 22% of the employee’s salary and 3% is deducted from the employee’s gross salary. Out of the revenues from State taxes collected in 2013<sup>6</sup>, profit tax contributes 35.6%, VAT 25.9% and personal income tax 12.9%.

44. Mineral royalty tax is imposed on individuals and legal entities extracting mineral resources in Azerbaijan and on the Caspian shelf (metallic minerals-3%, gas-20% and oil-26%). A land tax is imposed on owners and users of land plots, the tax rate varying depending on the use and location of the land. Excise tax is levied on the production or import of excisable goods. Tobacco products, alcoholic beverages and petroleum products are subject to excise tax at fixed rates. Import of passenger cars, leisure and sport yachts are subject to excise tax at varying rates depending on the size of their engines. Import of platinum, gold, diamond and jewellery thereof are subject to excise tax at varying rates.

45. Road tax is paid by non-resident entities and individuals entering Azerbaijan, as well as persons engaged in production or import of motor

6. [www.taxes.gov.az/modul.php?name=statistika&lang=\\_eng](http://www.taxes.gov.az/modul.php?name=statistika&lang=_eng).

petrol, diesel fuel and liquid gas in the Republic of Azerbaijan shall be payers of the road tax. Road tax on foreign vehicles entering the territory of Azerbaijan is collected by the customs authorities at different rates depending on the type, engine capacity, length of stay of vehicles within Azerbaijan and the distance driven.

46. Property tax is imposed on buildings which are the personal property of resident or non-resident individuals in Azerbaijan. The property tax rate for buildings owned by individuals varies from AZN 0.1 (EUR 0.085) to AZN 0.4 (EUR 0.34) depending on their location in Azerbaijan. Water and air transport engines are taxed at the rate of AZN 0.02 per cm<sup>3</sup>. Commercial legal entities are taxed at 1% of the value of the fixed assets.

47. All persons engaged in business activity, whose volume of taxable operations in any month of consecutive 12-month period exceeds AZN 200 000 (EUR 169 190) should register for Value Added Tax (VAT) purposes. If the total cost of the operation per transaction or contract exceeds AZN 200 000 (EUR 169 190), this operation is considered as operation subject to VAT, and the person performing this operation prior to the date of carrying out of operation, must submit an application for registration for VAT purposes. (Tax Code, Art 155.1)

48. A simplified tax system is available to small taxpayers. Individuals and legal entities engaged in entrepreneurial activities but not registered for VAT purposes whose volume of taxable transactions during any month of consecutive 12 month period is AZN 200 000 (EUR 169 190) or less are deemed as small taxpayers. In general, the rate of simplified tax is 4% for Baku and 2% for other regions. The rate for the operator of sports betting games is 4%. Registration of VAT for legal entities and individual entrepreneurs with an income of more than AZN 120 000 (EUR 101 514) is mandatory. Simultaneously, persons, involved in trading and (or) public catering activities, whose volume of taxable transactions in any month during a consecutive period of 12 months exceeds AZN 200 000 manats have the right to become payers of simplified tax (Tax Code, Art. 218.1.2). The rate of simplified tax system for taxpayers engaged in trading activity is 6% and for public catering activity 8% (Tax Code, Art 220.1-1).

### ***Overview of commercial laws and the financial sector***

49. The Civil Code of Azerbaijan (CC) governs the types and legal status of persons, protects their rights and lawful interests and regulates contractual and other obligatory relationships (CC, Art. 2). A legal entity<sup>7</sup> is subject to

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7. A legal entity is defined as a specially established organisation, which has completed State registration provided by law, owns its property, bears liability for



State registration with the relevant executive authority (CC, Art. 48). A legal entity can be established by one or more founders, legal or natural. Legal persons engaging in entrepreneurial activity<sup>8</sup> can take the form of: a general partnership, a limited partnership, a limited or additional liability company or a joint stock company (CC, Art. 64).<sup>9</sup> A non-commercial entity may be established in the form of a public association, a fund, a union of legal entities and in other forms stipulated by law (CC, Art. 43.6). It may engage in entrepreneurial activities only if such activity supports the primary purpose of the existence of the non-commercial entity.

50. The legal and organisational basis of the State registration and State register of the legal persons is governed by the Law of the Republic of Azerbaijan on State Registration and State Register of Legal Persons (State Registration Law). All the commercial legal entities, as well as representations or affiliates of foreign legal entities, have to undergo State registration before commencing their commercial activity.

51. A co-operative is a voluntary union of individuals and legal entities created on the basis of membership with the purpose of satisfying the material and other needs of the participants through the consolidation of the participants' material contribution. Profit of the co-operative will be distributed to its members in proportion to their share interest as well as their personal contributions or labour to the activities of the co-operative.

52. Azerbaijani laws do not envisage the creation of any type of trusts. However, there are no restrictions in Azerbaijani legislation that could prevent an Azerbaijani resident from functioning as a trustee of a foreign trust. At the same time, as the Civil Code does not recognise the legal relationship between a settlor and a trustee; the trustee enjoys all ownership rights of trust assets in Azerbaijan and is individually liable.

53. The financial sector comprises banking, insurance, securities market, payment systems and non-banking credit institutions. Banks dominate the financial sector market in Azerbaijan, holding about 95% of total financial sector assets. The non-banking sector is mainly catered by the local lending institutions. The leasing industry of Azerbaijan is very small and focuses

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its obligations, has the right to acquire and exercise property and personal non-property rights on its own behalf and acts as a plaintiff or defendant in court (CC, Art 43).

- 8. Entrepreneurial activity is defined as a person's activity conducted independently and for the main purpose of obtaining profit from the use of property, the sale of goods, and the performance of works or provision of services (CC, Art. 13).
- 9. Sole proprietors can engage in entrepreneurial activity. They exercise their rights and liabilities in business relations as natural persons and are not considered as legal person (CC, Art. 28).

on financing the purchase of equipment. Insurance services, venture capital and private equity are at a nascent stage. Capital markets are dominated by government securities and corporate bonds but the sector itself is very small.

54. The Central Bank of Azerbaijan was created by the “Law on the Central Bank of Azerbaijan Republic”. Until February 2016, the Central Bank had issued licences, regulated the work of the banks and exercised control over the banking operations under the authority provided to it by Law of the Republic of Azerbaijan on Banks. Pursuant to the creation of the FMSA, the “Law on the Central Bank of Azerbaijan Republic” was amended on 4 March 2016. With this, the Central Bank’s authority to issue licences and to regulate banking operations was handed over to the FMSA. As of June 2016, the banking system consisted of 37 banks, including 17 banks with foreign capital. Around 100 non-bank credit organisations operate in Azerbaijan. The state owned banks, the International Bank of Azerbaijan and Azer-Turk Bank are the largest banks in Azerbaijan with more than 40% of the market share of banking business. Commercial banks can only carry out activities in accordance with:

- the Constitution of Azerbaijan;
- the Law on Banks;
- the Law on the Central Bank of Azerbaijan Republic;
- the Law on non-bank credit organisations;
- the Law on credit unions;
- the Civil Code; and
- other normative-legal acts.

55. The activities of banks include cash and settlement operations, receiving interest-bearing and interest-free deposits, extending consumer loans, mortgage loans and other credits etc. The total assets held by banks in Azerbaijan are about USD 24.47 billion as at 1 July 2016 (USD 27.7 billion as at 1 July 2015). The Ministry of Communications and High Technologies (the national postal operator) renders financial services based on the special permit (licence) granted by the Central Bank (the FMSA, from March 2016).

56. Legal entities created under the Civil Code of Azerbaijan can conduct business activities in the financial sector as investment companies, funds and leasing companies. However, in order to operate in the financial market, entities need to obtain a special permit in the form of a bank licence from the Central Bank (the FMSA, since March 2016) (Law on Banks, Art. 3.1).

57. As of 2016, Azerbaijan’s insurance market comprised 25 insurance companies and one reinsurer. There are 3 life and 22 non-life insurance

companies in the insurance market. The law that governs the insurance sector in Azerbaijan is the “Law of the Republic of Azerbaijan on Insurance activity”. The insurance system consists of the participants of the insurance market (insurers, re-insurers, insurance agents, actuaries, independent auditors, independent experts and legal entities rendering services in the field of insurance) and the insurance control institutions (insurance regulatory powers exercised by the Ministry of Finance until February 2016 and the FMSA thereon). As of July 2016, there are 12 individual insurance brokers, 8 institutional insurance brokers, 662 individual insurance agents, 63 legal entity insurance agents, 35 legal entities rendering agency services for insurance, 19 individual independent experts and 26 institutional independent experts in the Azerbaijanian insurance market. In 2015, insurance premiums worth AZN 443 million were issued while insurance payments were AZN 189 million. Other participants of the insurance market include the insured, policy holders and beneficiaries.

58. The Baku Stock Exchange (BSE) is the only stock exchange in Azerbaijan. It is a closed joint stock company, which was previously licensed by the State Committee on Securities to operate in the securities market. The trading and clearing operations on primary and secondary markets of public securities are carried out solely by BSE. As of 2015, the other professional market participants of Azerbaijan’s securities market are 12 brokerage companies, 13 dealers, 3 security managers, 1 clearing house, 2 registrars and 2 depositories. All professional market participants required a special permit (licence) from the State Committee for Securities (the FMSA since March 2016) to operate. First equity transactions at BSE were recorded in 2001. The corporate bonds market was started in 2004. As of July 2016, the number of joint stock companies registered in the stock market was 953. In 2015, the government and corporate sectors comprised 0.2% and 39.77% of the overall turnover of Azerbaijan’s securities market. Repo and derivatives trading comprise the rest of 60.03% of the overall turnover.

## Recent developments

59. Azerbaijan ratified the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters on 30 January 2015, which entered into force on 1 September, 2015. Azerbaijan enacted the Law of the Republic of Azerbaijan on Securities Market (the Law No. 1284-IVQ dated 15 May 2015), which entered into force on 14 July 2015. This law provides the rules for the issue of shares, State registration and public offering of securities, the depository system and circulation of securities, the organisation, management and liquidation of the licensed participants in the securities market, as well as the State regulation and supervision over the securities market in Azerbaijan.

60. Azerbaijan also introduced rules and limits for facilitating automatic reporting of information about financial operations carried out by physical and legal entities of foreign States in the Republic of Azerbaijan to the competent authorities of these States, which was approved under decree No. 211, dated 3 June 2015, of the Cabinet of Ministers of the Republic of Azerbaijan.

61. The FMSA, a super-regulator for the monitoring and supervision of financial activities in Azerbaijan, was established as a public legal entity by the Decree 760 of the President of the Republic of Azerbaijan on 3 February, 2016. This agency has been granted the powers of licensing, regulation and control over the securities market, investment funds, insurance companies and credit institutions (banks, non-bank credit organisations) and payment systems. With the creation of the FMSA, the State bodies listed below have been abolished:

- a. State Securities Committee of Azerbaijan
- b. State Insurance Control Service under the Ministry of Finance of Azerbaijan
- c. Financial Monitoring Service under the Central Bank of Azerbaijan.

62. Following the recommendations of the Global Forum in its Phase 1 peer review report, Azerbaijan proposed a series of amendments to the Tax Code, the Civil Code, State Registration law, law on commercial secrecy and the accounting law. The entire package of amendments was submitted on 14 December 2015 to the Cabinet of Ministers, which gave a preliminary approval for consideration of various stakeholders. On 7 January, 2016, the list of amendments was sent to relevant ministries and regulatory bodies for their feedback. The amendments to the abovementioned laws have been reviewed and revised by the Ministry of Taxes taking into account the feedback of relevant ministries and the last revised version of amendments was sent to the Cabinet of Ministers in July 2016.

# Compliance with the Standards

## A. Availability of information

### Overview

63. Effective EOI requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority<sup>10</sup> may not be able to obtain and provide it when requested. This section of the report describes and assesses Azerbaijan's legal and regulatory framework for availability of information. It also assesses the implementation and effectiveness of this framework.

64. Relevant entities that can be formed in Azerbaijan include: limited liability companies, joint stock companies (JSCs), co-operatives, general partnerships, limited partnerships, funds and public associations. Ownership information in respect of these entities is available either with the public authorities or service providers or with the entity itself.

65. Adopting a single window registration principle, Azerbaijan requires all commercial legal entities in Azerbaijan to register with the tax authorities,

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10. The term "competent authority" means the person or government authority designated by a jurisdiction as being competent to exchange information pursuant to a double tax convention or tax information exchange.

which in turn transmits information to other authorities. All regulations relating to companies are governed by the provisions of the Civil Code. There is no specific law to govern companies and consequently there is no regulator in particular to regulate and monitor the activities of these entities. The State Committee on Securities (SCS) regulated the activities of open JSCs, which access the public through the stock exchange for raising capital. All other commercial entities, which include partnerships and other legal entities, are also governed by the Civil Code.

66. A legal entity is established through the preparation of its charter and upon registration. The charter of a legal entity shall specify the name of the legal entity, its address, the procedure for the management of its activities, and the procedure for its liquidation. In addition, the charter of a non-commercial entity should specify the scope and purposes of its activities. The charters of all entities established in Azerbaijan are available to the tax authorities as they are submitted as part of the registration process. The registration authorities need to be informed of any change to the charter within 40 days of the date of change.

67. The legal requirements for entities to register with the State are provided by the Civil Code of Azerbaijan (Articles 43 to 54 and 54 to 113, CC). Foreign companies with sufficient nexus to Azerbaijan have to register with the tax authorities when establishing a branch or representation<sup>11</sup> in Azerbaijan and provide updated ownership information. Updated ownership information on all entities, except for JSCs, is available with the tax authorities. Ownership information of JSCs that have more than 20 shares was is available with the register holders. Ownership information is directly available from JSCs that have 20 or fewer shares, or alternatively was available with register holders until July 2015.

68. The Law of the Republic of Azerbaijan on Securities market (new securities market legislation), introduced new obligations for JSCs and register holders to hand over shareholder registers maintained by them to the central depository on or before 15 September 2015. Further, all the depositories holding certificated investment securities were required to hand over those securities to the central depository. These changes have direct impact on the way ownership information is held within Azerbaijan. With the changes effected in the given timelines, all ownership information relating to JSCs is available with the central depository in Azerbaijan.

69. Nominees are not AML obligated institutions and need not obtain a special license from the SCS or from the FMSA to provide services in

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11. Article 53.1 of the Civil Code: A representative office (representation) is a subdivision of a legal entity located somewhere other than the legal entity's location, which represents the interests of the legal entity and protects such interests.

Azerbaijan. Until July 2015, nominees did not have specific obligation under the Civil Code to maintain information on the person for whom they held shares. However, the new securities market legislation has imposed obligations on nominees to maintain and report the actual ownership information to the SCS (and to the FMSA since March 2016) or the central depository within 5 working days, failing which administrative penalties or criminal sanctions would be imposed on the nominee holders for not maintaining or disclosing actual ownership information.

70. Prior to 15 July 2015, under Article 997-2 and Article 1078-6 of the Civil Code, bearer shares could have been issued by JSCs. A new Law on Securities Market was enacted by Azerbaijan on 14 July 2015. This new securities market legislation prohibits the issue of bearer shares by JSCs. The relevant provisions in the Civil Code that dealt with bearer shares were repealed by a presidential decree on 15 July 2015. The new Law on Securities Market ensures that ownership information of all shareholders of JSCs in Azerbaijan will be available with the central depository. Further, the Azerbaijani authorities believe that no bearer shares exist in Azerbaijan. However, for the reasons specified in the paragraphs 140 to 152 of this report, the assessment team is of the view that bearer shares issued by JSCs under the Civil Code prior to 15 July 2015 could exist, and while there are some provisions under the AML law and the Tax Code that may allow the identity of holders of bearer shares to be identified, these are not sufficient to identify holders of bearer shares in all cases.

71. While there are some provisions under the AML law and the Tax Code that may allow the identity of holders of bearer shares to be established these legal requirements and mechanisms are not sufficient to immobilise or abolish any bearer shares that could have been in circulation prior to 15 July 2015 to ensure that ownership information on bearer shares is available in all cases. The SCS stated that it had not permitted the issue of bearer shares by JSCs in the past. Otherwise, according to the SCS authorities, bearer shares should have been registered in the Electronic Service Register of Securities. The Azerbaijani authorities have not identified or come across any company having issued bearer shares.

72. General partnerships and limited partnerships formed in Azerbaijan must register with the tax authorities. The tax authorities have full ownership information for all forms of partnerships, through registration and/or reporting requirements. The obligation to maintain and provide updated ownership information on foreign partnerships that have income, deductions or credits for tax purposes in Azerbaijan, or carrying on business in Azerbaijan, is similar to that of domestic partnerships and therefore required information as per the international standard is available.

73. While Azerbaijani laws do not recognise the concept of trusts, there are no restrictions on an Azerbaijani resident acting as a trustee or administering a foreign trust. The legal risks involved in administering a foreign trust in Azerbaijan or owning assets in the name of the foreign trustee, render the possibility of the existence of foreign trusts in Azerbaijan unlikely. Even if they exist, obligations imposed by tax and AML legislation, and the general fiduciary obligations of Azerbaijani residents to perform the duties of trustees indirectly ensure that ownership information in respect of foreign trusts is maintained in Azerbaijan. In practice, Azerbaijani authorities have not come across a trust in Azerbaijan.

74. The Azerbaijani Civil Code does not provide for the creation of foundations. Nonetheless, other types of legal structures can be created under the Civil Code for non-profitable activities. Public associations, funds and unions of legal entities are non-commercial legal entities created under the Civil Code and permitted to engage in non-profitable activities in Azerbaijan. All non-commercial entities are registered with the Ministry of Justice of Azerbaijan and the submission of information about the members of these entities is a requirement for obtaining a registration with the public authority. The Ministry of Justice regularly provides information about the registration of non-commercial entities to the Ministry of Taxes.

75. The availability of identity and ownership information in practice is ensured mainly through (i) filing requirements with the State registration office of the Ministry of Taxes and the tax authorities, (ii) the newly introduced legal obligations on all JSCs to dematerialise their shares, (iii) the creation of a central depository system to which all JSCs in Azerbaijan are required to submit their share registers before September 2015, and (iv) the application of sanctions. Ownership information on companies and other legal entities is also available with financial institutions and service providers under AML obligations, to the extent they are engaged by these companies or other legal entities. Legal entities also maintain ownership information for regulatory compliance purposes. However, the central depository system was established only in July 2015. The effectiveness of the oversight mechanism of the Central Depository to ensure that all JSCs dematerialise their shares and hand over their share registers to the Central Depository has not been sufficiently tested in practice. It is therefore recommended that Azerbaijan monitors the implementation of the new securities market law to ensure that updated ownership information on all JSCs is available in Azerbaijan.

76. In the case of nominees, the new Securities Market Law 2015 has entrusted the Central Depository to ensure that ownership information held by nominees is available in Azerbaijan. However, the monitoring and oversight mechanism of the Central Depository to ensure that nominees provide actual ownership information has not been tested in practice. It is therefore



recommended that Azerbaijan monitors the implementation of legal obligations to ensure that nominees held ownership information is available in practice.

77. All relevant entities are required under Azerbaijan’s accounting law to keep accounting records that correctly explain the entity’s transactions, enable it to determine the entity’s financial position with reasonable accuracy at any time and allow financial statements to be prepared. Requirements under the accounting law are further supplemented by obligations imposed by the Tax Code. But there are no explicit obligations either in the Tax Code or the Law on Accounting that requires entities and individuals to maintain underlying documentation. A general legal requirement to keep accounting records for five years is in place for all relevant entities pursuant to tax obligations and accounting law. However, there are other inconsistent provisions in the Tax Code that may enable the entities and individual entrepreneurs not to maintain accounting information for more than 3 years.

78. The availability of accounting information in practice is ensured by (i) tax return filing requirements of taxpayers, (ii) monitoring, enforcement and other operational control measures adopted by tax authorities, (iii) annual auditing and report filing requirements of JSCs with the SCS, and (iv) imposing sanctions on defaulters. Azerbaijan provided all the accounting information sought by its treaty partners during the review period. The information covers underlying documentation and documents relating to periods of more than 3 years.

79. Availability of banking information to the international standard is ensured in Azerbaijan through a combination of banking, tax and AML legislation. Anonymous accounts are explicitly prohibited. The obligations under the legislation were adequately monitored and supervised in practice by the Central Bank of Azerbaijan and the AML authority during the review period.

80. During the period under review, Azerbaijan received in total 185 requests for information. The table below gives summary of requests for ownership and accounting information received during the period under review. In addition, during the same period Azerbaijan received 45 requests for banking information. One request can relate to different types of information and entities.

Type of requested information*	Companies	Partnerships	Trusts	Other entities/ individuals
Ownership information	58	0	0	14
Accounting information	92	0	0	26

\* Note: In 5 cases, Azerbaijan received requests on both companies and other entities/ individuals.

81. Requested information was provided completely in all cases in a timely manner (see further section C.5). The statistics provided by Azerbaijan on its performance of EOI in practice are impressive and the peer inputs received from Azerbaijan’s EOI partners were very encouraging and positive. This confirms that ownership and accounting information are available in Azerbaijan despite potential legal impediments.

### A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

82. The Ministry of Taxes of Azerbaijan is the sole authority for the registration of all commercial entities (except entities engaged in educational activities) that wish to operate in Azerbaijan. There are comprehensive filing requirements for both newly formed legal persons as well as for any changes to identity information for existing legal persons. All such information filed concerning the identity of legal persons is publicly available. There are filing requirements to provide ownership information for all commercial entities at the time of registration, but ownership changes are not recorded in the public register in all cases.

83. All information recorded in the state register of legal entities will be maintained by the registering authority for the full period during which the entities are active and for 75 years after their termination<sup>12</sup>.

#### *Companies (ToR 13 A.1.1)*

84. The Civil Code establishes and regulates entrepreneurial activities in Azerbaijan. A legal entity<sup>14</sup> has civil rights and bears civil liability from the moment of state registration (Art. 44, CC). A legal entity is established

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12. According to Article 8.6 of the Guidelines for implementation, use and protection of the State register of the legal entities approved under Decision No.70 of 13 April 2005 of the Cabinet of Ministers of Azerbaijan, in case where a legal entity is terminated, the book is stored for 75 years after the termination.
  13. Terms of Reference to Monitor and Review Progress towards Transparency and Exchange of Information.
  14. Article 43 of the Civil Code: A legal entity is a specially established organisation, which has completed State registration as provided by the law, owns its property, bears liability for its obligations to the extent of its property, has the right to acquire and exercise property and personal non-property rights on its own

through its incorporation and the preparation of its charter<sup>15</sup> (Art. 45, CC). Amendments to a charter become legally effective with respect to third parties from the moment of their State registration. Therefore, the founders of a legal entity are compelled to register the creation of entities and amendments made to the registration documents.

85. Pursuant to Article 64 of the Civil Code (CC), a company can be established under two legal forms:

- a. **Limited or additional liability company (LLC).** An LLC is a company established by one or more persons, either individuals and/or a legal entity. The capital of a LLC is divided into shares, the sizes of which are specified by charter. The liabilities of LLCs are borne by the participants to the extent of the value of their contributions to the capital. However, the founders of the LLC bear joint responsibility associated with the establishment of the LLC and up to its State registration. Participation interest in LLCs can be freely transferable to other participants but to third parties only if provided in the charter of the LLC. The number of LLCs registered during the year 2015 is 6006. The number of registered LLCs (as on 31 December 2015) in Azerbaijan is 64754. In an additional liability company, participants of such a company jointly bear a joint secondary liability for obligations of the company by their property commensurate with the value of their contributions, and determined by the company's charter. Upon bankruptcy of one of the participants, his/her liability for obligations of the company is divided among remaining participants in proportion to their contributions, provided that the company's charter does not stipulate another procedure of distribution of liability.
- b. **Joint stock company (JSC).** A JSC is a company the capital of which is divided into a quantifiable number of shares. A JSC can issue shares. The shareholders are liable for the obligations and bear the risk of loss of a JSC to the extent of the value of the shares held by them. A JSC may be established by one person (natural or legal). The charter of a JSC carries additional information on the categories of the shares to be issued, their nominal value and quantity, total share capital, rights of shareholders, etc. (Art. 102, CC).

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behalf, is liable for its obligations, and acts as a plaintiff or defendant in court. A legal entity has its own balance sheet.

15. Article 47 of the Civil Code: The charter of a legal entity, approved by its founder(s), is the foundation document of the legal entity. It should specify the name of the legal entity, its address, the procedure for the management of its activities, and procedure for its liquidation. The charter of a non-commercial legal entity shall specify the scope and purposes of its activities.

86. The Civil Code permits the creation of two types of JSCs: closed and open. The shares of closed JSCs are distributed only among its founders or other predetermined persons. The closed JSC cannot hold a public subscription of shares. The shareholders of a closed JSC have a pre-emptive right to acquire shares sold by other shareholders of the company. If shareholders refuse to purchase, the company can purchase the shares. If the company also refuses, the shares can be sold to third parties. The number of registered closed JSCs (as on 31 December 2015) in Azerbaijan is 227.

87. An open JSC can issue its shares to the public without any limitation. The shareholders of open JSCs can transfer their shares without the consent of other shareholders. Public placement of shares is possible only for open JSCs and is done through stock exchanges. Placement of investment securities by Azerbaijan legal entities outside the territory of Azerbaijan can be done upon the approval by the SCS (the FMSA since March 2016). The number of registered open JSCs (as 3 December 2015) in Azerbaijan is 1612.

#### *Information held by the authorities*

88. All types of companies must undergo State registration to obtain the status of a legal entity and protection of the State's laws. The representations or branches of foreign entities are also required to undergo State registration and are included into the State registry. All commercial entities including representations or affiliations of foreign entities can conduct their activities only after the State registration (State Registration Law, Article 4).

89. The Tax Code of Azerbaijan, enacted in 2000, required all taxpayers to register separately with the tax authorities to obtain a Taxpayer Identification number (Art. 34.6). In 2008, to facilitate entrepreneurial activities in Azerbaijan, the Government introduced the one-stop-shop principle and appointed the Ministry of Taxes of Azerbaijan as the single State registration authority for commercial legal entities and representations and branches of the foreign commercial legal entities under the State Registration Law. The registration process for commercial entities takes two working days. The electronic State registration of LLCs with local investments within rapid e-State registration is done at once, while the ordinary e-State registration and online registration of commercial entities are done within 1 day of filing an application (Art. 7-1, State Registration Law). All taxpayers (individual entrepreneurs) are required to register with the tax authorities (Art. 34.1, Tax Code). The registration requirements under the Tax Code are similar to those of the State Registration Law. The Ministry of Justice is the registration authority for non-commercial legal entities and entities engaged in educational activities, and the process is governed by the State Registration Law. For a commercial legal entity to register, the application is signed by all founders of an entity, or their appointed trustee on the basis of a power of attorney approved by a notary.

90. The details provided in the application form comprehensively captures identity information of companies, Azerbaijani or foreign. Companies should disclose:

- the name;
- legal address in Azerbaijan;
- actual address of carrying business;
- contact phone numbers in Azerbaijan;
- email address;
- the holding company's Taxpayer Identification Number;
- the amount of share capital;
- main activities;
- Identity details of the founder(s) of the legal entity.

91. Ownership information of resident companies is captured as stipulated by the State Registration Law. If the founder(s) is a natural person, their surname, first name, middle name, place of residence, number and date of identification document need to be provided. If the founder(s) is a legal entity, its name, location and registration number need to be provided in the application (State Registration Law, Art, 5.3)

92. In addition to the basic identity documents, the entity is required to submit the charter (foundation document) signed by all founders, a notary approved copy of the State registration document of the founder and the charter (if founder is a legal entity) or the copy of the identification document (if the founder is a natural person) and a document verifying the legal address of the company (State Registration Law, Art. 5.4). If a legal representative is acting on behalf of a founder, a copy of the identity of the representative should also be submitted with the application.

93. The charter (foundation document) of an LLC should contain its name, address, the procedure for management and liquidation, the amount of charter capital of the company, the size of the share of each participant and the composition of the contribution of each participant of the LLC (Art. 89, CC). A JSC's charter should contain its name, address, the procedure for management and liquidation, the amount of charter capital of the company, the categories of the shares to be issued and their nominal value, the quantity of shares to be issued and legal rights of the shareholders (Art. 102, CC). The charter of a JSC does not contain information on the founders or subsequent shareholders, unlike that of an LLC. The charter of a non-commercial legal entity shall specify the scope and purposes of its activities.

94. The tax authorities maintain the State register of legal entities, which is kept in hard copy as well as in electronic form. The State register carries information on the organisation, registration and liquidation of resident legal entities and on representations or branches of foreign entities as well as information on changes to charter documents and all the documents submitted for registration. After registration, all legal entities receive a State registration certificate. The certificate of the commercial legal entities contains the taxpayer identification number, which is the universal identification code for legal entities and representations or branches of foreign entities. All non-profit legal entities and entities engaged in educational activities receive a registration number from the Ministry of Justice.

95. The documents submitted by entities at the time of registration with the tax authorities are stored at the Government archive. These documents will be retained during the time the entities are in existence. According to Art. 8.6 of the “Guidelines for implementation, use and protection of the State Register of the Legal entities” approved under decision No.70 of 13 April 2005 of the Cabinet of Ministers of Azerbaijan, if the entities are struck off from the register upon liquidation, the register will be retained for 75 years after the last termination.

96. All information included in the State register, except for information about the founders of commercial legal entities and their share in the charter capital, is published in the official state newspaper (Art. 18.2, State Registration Law). Unpublished information on founders is provided, upon request, to the courts, state agencies, anti-money laundering authorities etc. (Art. 15.9, State Registration Law).

97. Companies have to file their tax returns by 31 March every year to the tax authorities in accordance with the Tax Code (Art. 149, Tax Code). If a company was not involved in any entrepreneurial activity within the reporting period, or did not implement any taxable operations, it shall submit a note to the tax authority instead of a tax return. The tax return does not require any additional identity and ownership information to be filed by legal entities.

98. Article 9 of the State Registration Law requires that each change to the charter documentation as well as each change to the registered facts shall be subject to registration. It is necessary to report such changes to the tax authorities within 40 days from the date of change, supported by documents verifying the change. After verification, the tax authorities will register such changes within 5 working days.

99. In general, all companies provide detailed identity information to the State registration authority and therefore any change in the identity information will be registered with the registration authority within 40 days. In the

case of LLCs, their charter contains ownership information by recording the information about each participant and his share in the LLC. If there is a change in the participants' information, the LLC charter should be amended accordingly. Since the charter information is part of the registration information, the registration authority shall be informed and the change should be recorded in the State register within 40 days. Therefore, with a delay with a maximum of 40 days, the updated identity and ownership information for LLCs in Azerbaijan is available with the tax authorities.

100. In the case of JSCs, their charter documents and the initial registration documents reflect complete identity information of the JSCs and ownership information of all founders of the JSCs. The State Registration Law (Art. 9) requires JSCs to register changes in information provided in the registration application and charter of JSCs. The State Registration Law does not explicitly require a change in ownership information to be reported to the tax authorities. Unlike LLCs, wherein changes to the ownership are recorded in their charters, JSCs need not change their charters to record the changes in their ownership. Therefore, when there is a change in the ownership information (as result of the issue of new shares by a JSC or as result of the transfer of shares of the founders to third parties), the law does not require the JSCs to report to the tax authorities as the change in ownership does not affect the charter information as well as the information provided for registration. In such cases, updated ownership information is not available with the State registration authority (the tax authorities) but such ownership information is available with the Central Depository (see the section on “information held by companies and service providers”).

### Ownership information in practice

101. Azerbaijan launched the tax system modernisation process 10 years ago and this project has achieved considerable success. The modernisation of taxation management included implementation and expansive use of information technology, which helped tax authorities improve their tax administration, taxpayer service and effective control on taxpayer activities. The Ministry of Taxes implemented an Automated Tax Information System (AVIS), which integrated the administration of all taxes, enabled electronic filing and the establishment of a one-stop-shop registration for entities. The services include online registration of taxpayers; personal account record for taxpayers; electronic storage and access of work folders; electronic tax audits; electronic communication between taxpayers and tax officials through secure channels; integration of tax offices with other governmental organisations; tracking the work of officials and recording the reports; document management and retrieval system; investigation of fiscal crimes; analysis, forecasting and GIS integration of taxpayers; and e-services via internet and mobile

applications. As a result of this modernisation process, the Ministry of Taxes has most information (ownership, accounting and banking) in its database.

102. Before 2008, entrepreneurs looking to create an entity for commercial activities in Azerbaijan had to register with 5 different agencies. Azerbaijan simplified the entity registration system in 2008 by introducing a one-stop shop State business registry. This registry is administered by the Ministry of Taxes. Once an application is filed with relevant supporting documents, the State registration authority within the Ministry of Taxes verifies the documents filed by the applicant and if all the documents are found to be in order, the entity is registered and incorporation/registration certificate is provided to the applicant. The Ministry of Taxes supervises this entire process of registration and co-ordinates with other State authorities for sharing the new entity information.

103. As part of the tax modernisation process, a new Taxpayer Identification Number (TIN) system was introduced in 2004 to provide a unique ID for all legal entities and individual entrepreneurs. The taxpayer registration process for entities has been integrated into the entity and business registration process. The common set of documents submitted by applicants for entity registration forms are used for registering the entity as a taxpayer into the tax system. The State registration authority verifies if all the requisite conditions are met by the applicant including furnishing documents on confirmation of the legal address from the landlord, notarisation of foundation and relevant registration documents, and the payment of a registration fee. A TIN will be allotted to the applicant upon registration. A TIN is mandatory for all legal entities and individual entrepreneurs. Salaried employees in Azerbaijan are not required to have a TIN as their income is withheld by their employer and remitted to the Government account.

104. Since 2011, the application for registration can be filed online and all the documents related to registration are digitised by the State registration authority. The authority registers and provides the certificate of registration online if all the requirements for registration are fulfilled. An update to registration information may also be effected online. Since 2008, the Ministry of Taxes has been the primary source of all commercial entity information in Azerbaijan. All other agencies receive this information from the tax authorities for their registration and regulatory purposes. The entire activity of the Ministry of Taxes for information collection, registration and sharing of information with other agencies is automated. The Ministry of Justice registers all non-commercial entities separately and conducts inspection on these entities independently.

105. The State registration authority is managed by 15 staff members in the Baku region. 5 staff members work in the state service centre (ASAN), which also helps the State registration authority in receiving applications



for registration from its 8 centres in Baku. The State registration authority has 12 territorial representative offices, which each have 3 staff members. Additionally, since June 2012, 10 387 entities and 83 370 individual entrepreneurs have been registered online. Although the registration documents are verified by the staff for correctness and completeness, there are no monitoring or supervisory measures conducted on the registered entities following registration.

106. As of 31 December 2015, the total number of taxpayers registered with the Ministry of Taxes is 690 186. The number of registered legal entities is 96 544 and the total number of individual taxpayers is 593 642. The total number of companies is 72 174. The number of foreign companies registered is 7 458. The Azerbaijani authorities state that approximately 90% of registered companies are LLCs and 2.5% are JSCs. Closed JSCs comprise 12% of all JSCs registered, and most are State-owned enterprises. Entrepreneurial activity can start once an entity is registered by the Ministry of Taxes. Without this registration, an entity cannot open a bank account, cannot clear goods through customs, or cannot carry any other business transaction since the import/VAT invoice should contain the TIN of the transacting parties in Azerbaijan.

107. Ownership information of entities is not captured in the annual tax returns filed by taxpayers for tax purposes. However, during the review period, tax officials conducted inspections on registered entities to verify their ownership information with the information available in the records of the State registration authority. If the information with the State registration authority had not been updated by the taxpayer, financial sanctions were imposed on the defaulting taxpayer in accordance with the Administrative Offences Code, which came into effect from February 2014. Out of 140 cases tried under this Code between February 2014 and June 2015, 63 cases were caused by a failure to provide the change in ownership information in a timely manner. There were 1 045 financial sanctions imposed between July 2012 and February 2014 (i.e. before the enactment of the Administrative Offences Code) for the violation of various tax offences, of which 327 were caused by a failure to provide ownership information. The quantum of these sanctions was AZN 13 080 (EUR 11 065). Before the administrative Offences Code came into force, financial sanctions were imposed under the Tax Code. In addition, the tax authorities conduct on-site inspections and off-site audits of tax audit purposes, in which case the ownership information is also verified. The tax officials of Azerbaijan conducted on-site audits on 20 363 taxpayers (13 202 legal entities and 7 161 physical persons) during the review period.

*Information held by companies and service providers*

108. JSCs must maintain a register of shareholders (CC, Art. 106-2) and ensure registration of shareholders within 30 days of the State registration of the company. A JSC could have maintained the register itself if the number of nominal shares is 20 or fewer. In other cases, a JSC was required to entrust a register holder, which is a professional participant of the security market, to hold its register. The new securities market legislation requires that shareholder registers held and managed by JSCs, or entrusted with register holders, must be handed over to the central depository on or before 15 September 2015. The securities of JSCs are transferred and held in the central depository in an uncertificated form. Every shareholder should have a depot account (account with the central depository) in which his shares in a JSC are recorded.

109. The new securities market legislation was administered by the SCS until February 2015 and was taken over by the FMSA in March 2016. Under this legislation, the FMSA is the relevant executive authority exercising the State regulation and supervision over the securities market. With effect from 14 July 2015, the central depository is the sole agency in Azerbaijan responsible for maintaining the shareholders register and record keeping of the ownership information of all JSCs in Azerbaijan. It is also the national depository centre governing the depository system in Azerbaijan. It is a non-profit commercial entity founded by the SCS and is based in Azerbaijan. All investment securities, which are held by depositories in the form of physical certificates should be transferred to the central depository and converted into uncertificated securities. With the introduction of the new securities market legislation, amendments were made in the Civil Code to give effect to these changes. Article 106-2.2 of the Civil Code requires that registers of shareholders of JSCs shall be maintained by the central depository.

110. Under the existing legal arrangement, to establish the ownership of the shareholders of registered securities, and to fulfil its duties towards its shareholders as per its charter, companies shall maintain the share register and update shareholder information. The shareholder of a JSC had to inform the register holder of changes to be made to the information relating to him in the register within 10 days (Art. 106-1.6.2, CC). The new shareholders shall inform the register holder in writing to claim the transfer of the ownership of the security (Art. 993, CC). With the new securities regulatory system brought in by the enactment of the new securities market legislation, there is neither a legal requirement for a shareholder to inform the JSC nor a requirement for a JSC to inform the register holder of the changes in ownership. All securities will be converted from documented (certificated) to uncertificated form. With this, the transfer of ownership can only be effected by informing the central depository to record the changes in ownership. The transfer

will be effected by changing the record of ownership from the seller's depot account to the buyer's. The list of documents and information to be recorded in the register of securities owners maintained by the central depository under the new securities legislation are listed below:

- For owners that are legal entities: full name, address and legal entity identification number (State registration number);
- For owners that are natural persons: name, father's name, last name, address and individual identification number (identification document of citizens);
- The central depository will regularly update the information on legal entities based on the information received from the State register when the State registration number is changed or when the number of the identification document is changed, and on natural persons based on the information provided by them.
- Under the enhanced disclosure obligations for publicly listed companies, JSCs that have issued shares to the public through the stock exchange are mandated to disclose ownership information of their shareholders holding more than 10% of the charter capital (SCS regulations and Art. 1078-47.1.4, CC).

111. The Civil Code does not specifically prescribe LLCs to keep a register of shareholders/participants. Updated information on the owners of an LLC is nonetheless available with the LLCs as such information is part of the charter of the LLCs and the law requires LLCs to report any ownership change to the tax authorities.

### *Ownership information with companies and service providers in practice*

112. During the review period, the SCS was responsible for overseeing both securities market operations and certain civil law obligations on JSCs during the review period. The SCS has obtained information from securities market participants on their client activities. It has conducted inspections and when necessary, summoned witnesses to aid the investigation of irregularities of market participants. The SCS has imposed sanctions, participated in civil suits against violators, suspended and terminated licenses and trading. However, the SCS did not have powers under the law to institute criminal cases and it did not carry out on-site inspections on JSCs to verify compliance on filing requirements. The legal department of the SCS was mainly responsible for the enforcement of legal obligations of JSCs. All JSCs were required to get approval from the SCS before shares were issued to their shareholders. On complaints or information received by the SCS about JSCs

failing to receive approval from the SCS before issuing shares, its legal department initiated investigations into the defaulting entities.

113. During the review period, the legal department of the SCS monitored the annual financial report filing requirements of all JSCs with the SCS. However, neither the share issuance approval application nor the annual financial reporting obligations explicitly included disclosure of ownership information of JSCs. Consequently, the SCS did not have updated ownership information in respect of JSCs. The SCS was not therefore considered a primary source of ownership information in Azerbaijan. The Competent Authority sought this information from either the registered agents or the entities during the review period. In March 2016, Azerbaijan established a super-regulator (the FMSA) for the monitoring and supervision of financial activities and thereupon the SCS has been subsumed into this new regulator. As of the end of 2015, 358 JSCs were registered with the SCS for issuance of shares. A total of 499 annual reports of JSCs were received by the SCS during the review period.

114. With the creation of a Central Depository from July 2015, the responsibility of companies and registered agents has become irrelevant for the purpose of this review. All registered agents and private depositaries registered with the SCS had to wind up their activities before 15 September 2015 and hand over their share registers and certificated securities to the Central Depository. JSCs were also required to hand over their share registers to the Central Depository by 15 September 2015. The Central Depository stated that the licenses of all registered agents and private depositaries have been revoked and that all relevant documents have been deposited at the Central Depository before the cut-off date.

115. According to the Central Depository, almost all JSCs have deposited their share register. Since the Central Depository has only been entrusted with this work very recently, it needs to monitor JSCs to ensure that all JSCs in Azerbaijan deposit their share register to the Central Depository. Given that there are no explicit sanctions for non-conversion of paper securities to electronic format (dematerialised securities) and the probable existence of inactive JSCs in Azerbaijan, the monitoring of Central Depository is necessary. The total number of JSCs having deposited the share registers with the Central Depository is 1735 as of July 2016. The share of inactive JSCs out of the total number of inactive entities recorded by the Ministry of Taxes is 1.4% as of July 2016. At the same time, the shareholders of those JSCs whose shares have not been dematerialised cannot sell their shares for the reason that the notaries in Azerbaijan are not permitted since 15 September 2015 to notarise sale document of JSC shares, which is otherwise a legal requirement for the sale/purchase of shares. Although this requirement forces the dematerialisation of all shares of JSCs, the Central Depository should have

an independent supervisory mechanism to ensure that all shares in JSCs are dematerialised in a timely manner. Therefore, it is recommended that the Central Depository of Azerbaijan monitors the implementation of the new securities market law to ensure that updated ownership information on all JSCs is available in Azerbaijan.

116. In the case of LLCs, registration documents and updated ownership information is collected by the State registration authority. The respective structural units of the Ministry of Taxes have the authority to supervise the compliance by LLCs with their obligation to report updated ownership information. Although the annual tax return does not capture LLC ownership information, during the review period, the tax authorities supervised the ownership obligations of LLCs by conducting audits regularly and by imposing sanctions. The information on monitoring and enforcement measures highlighted in the paragraph 107 and in the section: *Enforcement provision to ensure availability of information* (ToR A.1.6) is the cumulative statistics on sanctions for all entities including LLCs. In addition, there are inherent checks and balances within the legal setup, which enforces that updated ownership information is made available to the State registration authority. For example, any change in ownership information is effected only through a notary public. Unless a change in ownership of LLC is recorded in the State register, the State will not accord legal protection to the new shareholder and thus the legal rights associated with the ownership is not validated, thus forcing the change in ownership to be recorded without any delay.

### *Requirements under AML legislation*

117. Under the Law of the Republic of Azerbaijan on the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism (AML Law), credit institutions hold some information on companies, though not necessarily updated ownership information of their clients. During the review period, the financial monitoring agency for AML purposes in Azerbaijan was the Financial Monitoring Service, which operated under the Central Bank of Azerbaijan (since subsumed into the newly established FMSA). Although the SCS had been a supervisory authority under the AML Law, it only had supervisory powers over brokers and fund managers. Register holders and depositaries were not monitoring entities under the AML Law and were therefore not required to conduct customer due diligence exercises nor verify records of the shareholders in accordance with AML obligations.

118. Auditors, notaries, lawyers and other persons providing audit or legal services who carry out transactions for their customers are covered by the AML Law only with respect to select activities, including the managing of customer funds, securities or other property, the creation, the operation

or management of legal persons, the buying and selling of legal persons, and the organisation of contributions for the creation and the operation or management of legal persons. Auditors, notaries, lawyers and other persons providing audit or legal services will act as monitoring entities only if they provide these services. However, there are no restrictions in Azerbaijani legislation stating that these services can only be undertaken by auditors, notaries, lawyers etc. in Azerbaijan. Therefore, to the extent that companies engage such professionals for the aforesaid services, they will be subjected to customer due diligence under the AML Law, and thereby the ownership information of those companies may be maintained or made available in Azerbaijan.

119. Banks and other credit institutions are one of the monitoring entities under the AML Law (Art. 4). Until February 2016, the Central Bank had been the supervisory authority for banks and was empowered under the AML Law to supervise the compliance of banks with the requirements of the AML Law. Violations of the requirements of this law by the monitoring entities operating under a licence may lead to revocation of this licence or to administrative penalties imposed by the Central Bank (the FMSA, from March 2016).

120. The AML Law (Article 9.2) prescribes that monitoring entities shall identify their customers and beneficial owners before opening bank accounts or carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. A beneficial owner is defined in the AML Law in line with the FATF requirements. Identification is carried out on the basis of a notarised copy of the charter and the State registration certificate of legal entities (Art. 9.4). Monitoring entities are also required to verify the identity information of their customers and beneficial owners using reliable and independent sources (Art 9.8, AML Law) such as comparing information from the State register, information from mass-media, the internet, or official publications, and to compare the latest information with the previously received information. Since most JSCs will establish a relationship with one or more of the monitoring entities in Azerbaijan in the course of their business activities, it is likely that ownership information of JSCs is also available with the monitoring entities to comply with the obligations under the AML Law.

### *Implementation of AML regulations in practice*

121. In practice, neither auditors nor lawyers in Azerbaijan provide company formation or management services. Authorised public notaries do provide services to all entities and shareholders by notarising the transfer of shares; the articles of association; and other charter documents of entities. If there are changes to the articles of association or the charter documents,

the notary public is required to notarise these changes. Notarisation is a requirement for registration of all these documents with register holders and depositaries, and is required before they are accepted by service providers/public authorities. The only exception where a notary public is not required is when share transactions are performed in dematerialised form. Since in all other cases the purchase or sale transaction agreement is entered into in the presence of a notary, the due diligence obligations of the notary public under the AML legislation requires him to obtain new ownership information and thus information will be available. The Ministry of Justice is the supervisory authority to notaries for the AML compliance. It has the power to oversee whether notaries comply with the reviewing procedures. Upon supervision and if any defaults are detected, it revokes or suspends the license or applies other measures prescribed in the respective laws. During the review period, 238 notaries were investigated by Ministry of Justice.

Year	Number of authorised notaries	Number of notaries investigated by the Ministry of Justice	%age of notaries investigated to the total number of notaries	Number of warnings regarding notaries as the results of investigation
2012	163	57	35	21
2013	173	62	36	22
2014	179	71	40	17
2015	188	118	63	25

122. The Central Bank of Azerbaijan supervised the AML compliance of banks and other financial institutions during the review period. The Financial Monitoring Service (FMS) was established in 2010 and placed within the Central Bank. Its primary responsibility was to monitor the implementation of AML regulations by monitoring entities, to conduct supervision on certain types of financial entities, and to support and advise the supervisory authorities. The FMS did not conduct inspections on its own but provided advisories based on the verification of suspicious transaction reports and other third party information. The FMS directly obtained information from monitoring entities electronically, in real-time. In March 2016, the newly established super-regulator, the FMSA, absorbed the FMS and taken over all of the FMS' functions. Violations of the requirements of this law by the monitoring entities operating under a licence may lead to revocation of this licence or to administrative penalties imposed by the FMSA. During the review period, the FMS used a standard UN-sponsored software application for obtaining and sharing information with monitoring entities and other state organisations. There were 140 monitoring entities registered with the FMS. Information on PEPs, anonymous accounts, and suspicious transactions were sent to the FMS by way of electronic reports (STRs). 1086 STRs were

received by FMS during the review period. Following the 2014 MONEYVAL report on Azerbaijan, a National Risk Assessment was conducted by the FMS and remedial actions based on risks identified are being undertaken. Within the methodology developed for Customer Due Diligence with the help of the World Bank, the FMS looked into transactions on a risk basis and conducted qualitative and quantitative assessments. The results are fed into the risk matrix and remedial measures are proposed to the supervisory authorities.

123. The FMS also conducted awareness training programmes for monitoring entities to provide professional and methodological assistance to monitoring entities and to improve AML compliance. No monitoring entity has been penalised during the review period.

124. To sum up, updated identity and ownership information in respect of all companies is available in Azerbaijan, either at the entity level or with service providers and/or with public authorities. There are additional obligations under the AML Law for monitoring entities to maintain identity and ownership information. In practice, availability of ownership information with companies relies primarily on companies' practical need to properly handle their relations with shareholders/members, as the case may be. Additionally, there are restrictions in change of ownership in closed JSCs and LLCs (see paragraphs 85 and 86). The obligation under the new securities market law for dematerialisation of all JSC shareholdings and creation of a Central Depository ensures that the ownership information of JSCs is available. The Central Depository is required to monitor the conversion and deposition of dematerialised shares by shareholders of all JSCs in Azerbaijan. Further, the tax authorities conduct supervision on all entities registered with the State registration authority. Notaries, being monitoring entities under the AML legislation, conduct due diligence on their clients and this also ensures that ownership information of entities is available.

### *Foreign companies*

125. According to the Tax Code, a foreign company is a resident of Azerbaijan for tax purposes if it is involved in entrepreneurial activities with its place of management in Azerbaijan (Art. 13.2.5.3 of the Tax Code). Foreign companies are required to file tax returns and are subject to profit tax on their worldwide income. Non-resident companies are subject to tax on net income from Azeri sources attributable to their permanent establishment located in Azerbaijan (Art. 104 of the Tax Code). If a non-resident company does not have a permanent establishment in Azerbaijan, it is subject to withholding tax at a lower rate on a gross basis on certain passive income, such as royalties, interest, dividends, insurance payments etc., earned by it in Azerbaijan (Art. 125 of the Tax Code). A permanent establishment is a fixed place in Azerbaijan where a foreign company conducts its entrepreneurial



activity for a period not less than 90 days in a year. This place includes a subdivision, office, branch or agency, construction sites etc. (Art. 19 of the Tax Code).

126. Any entity that operates in Azerbaijan needs to register with the designated State registration authority (tax authority). This requirement is equally applicable to foreign companies operating in Azerbaijan. Consequently, the permanent establishments of foreign companies are required to register with the tax authorities before they commence their operations in Azerbaijan. The State Registration Law requires permanent establishments to register as representations<sup>16</sup> or branches of foreign legal entities. Representations and branches are not legal entities and act on the basis of regulations approved by the legal entities. However, for the purposes of registration, the representations and branches of foreign entities have a separate identity in Azerbaijan and taxpayer identification numbers are allotted to them. Foreign companies that are treated as residents of Azerbaijan for tax purposes (by virtue of having their place of management located in Azerbaijan) are also registered as foreign companies that have representations in Azerbaijan.

127. Representations and branches of non-resident foreign companies are registered as separate structures different from that of their foreign principals. The information required to be submitted by representations or branches of non-resident foreign companies for State registration are: the foreign company's name, location, registration number and date of registration, extracts from the company's shareholder register (filed with the public authorities of residence State of those foreign companies), power of attorney's identification details, and a notarised copy of the decision of the foreign legal entity to establish the representation or branch and the appointment of the head of such representation or branch (Art. 6, State Registration Law). According to Article 9 of the State Registration Law, the tax authorities will be notified of a change in the registration documents, and of changes to registered facts, within 40 days from the date of change. This update of documents and facts sufficiently covers the requirement for maintaining updated identity and ownership information of foreign companies that have sufficient nexus in Azerbaijan.

128. The tax returns that the representations or branches of foreign companies need to submit to the tax authorities do not require the disclosure of ownership information. Under the AML Law, general due diligence measures are conducted by banks and other credit institutions (monitoring entities,

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16. Art. 53 of the Civil Code defines representative offices and branches as subdivisions of the legal entities located somewhere other than the legal entities' locations, which represent the interests of the legal entities and protect their interests.

Article 4 – AML Law) on their customers before opening bank accounts or before carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. The verification includes ascertaining the identity information of legal entities and persons conducting transactions on behalf of those entities. Enhanced due diligence measures are also performed by the monitoring entities for higher risk categories of customers, which include non-resident customers, legal persons or arrangements such as trusts that are personal asset holding vehicles and companies that have nominee shareholders or bearer shares (Art. 9.13). Foreign companies do not require the services of professional company service providers in Azerbaijan. However, if auditors, notaries or lawyers in Azerbaijan perform services relating to the operation and management of foreign companies, they are covered under the AML Law as “other persons involved in monitoring” (Article 5, AML Law). In such cases, they conduct customer due diligence measures for customers as the monitoring entities do. General audit, notary and legal advisory services are not covered under the AML regulations.

129. The enhanced due diligence measures performed by the monitoring entities include verification of accounts and business relationships, learning the names of the shareholders and their shares (where the customer is a legal person), and obtaining from reliable sources more precise information about the customers and beneficial owner(s) and comparing this information. If the monitoring entity is unable to identify the shareholder(s), it shall not open the account, commence business relations or perform transactions; it will also inform the Financial Monitoring Service (the FMSA from March 2016 onwards) about the entity (Art. 9.15). These additional due diligence requirements are applied to existing customers on the basis of materiality and risk (Art. 9.16). Since all foreign companies that are customers of banks in Azerbaijan are subjected to AML regulations, and it is required that identification of all shareholders of foreign companies is obtained by banks, ownership information on foreign companies should be available with banks to the extent they maintain bank accounts of foreign companies operating in Azerbaijan. However, the provision to apply enhanced due diligence measures was introduced in the AML Law that only came into force in 2010<sup>17</sup>. In respect of bank accounts that existed before 2010, banks will take additional measures to identify the shareholders of foreign companies only under certain circumstances based on materiality and risk.

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17. The Law of the Republic of Azerbaijan # 973-IIIQ, “on amendments to individual legislative acts of the Republic of Azerbaijan to enhance the prevention of the legalisation of criminally obtained funds or other property and the financing of terrorism” (adopted by the Parliament of the Republic of Azerbaijan 5 March 2010) has introduced a new article to the AML/CFT relating to unusual transaction.

130. The “Limits and Rules for provision of information about financial operations carried out by physical and legal entities of foreign States in the Republic of Azerbaijan to the competent authorities of these States”, which was approved under decree No. 211, dated 3 June 2015, of the Cabinet of Ministers of the Republic of Azerbaijan is a specific regulation for facilitating the automatic exchange of financial information on foreign residents, which include foreign companies that have a financial account with reportable financial institutions in Azerbaijan. The due diligence mechanisms adopted under this regulation are similar to those followed for AML purposes. As explained above, ownership information could be available with these financial institutions under certain circumstances.

131. In practice, the State registration authority follows the same procedure that is adopted for domestic entities when registering foreign companies. Once registered, tax authorities responsible for audits conduct the monitoring and supervision on foreign companies in a manner similar to the measures taken for domestic entities. In addition, since enhanced due diligence measures in accordance with the AML regulations are applied on all foreign entities establishing relationship with the monitoring entities in Azerbaijan, ownership information is mandatorily collected by banks and service providers establishing a relationship with the foreign entities. In a number of cases, STRs have been sent by financial institutions to the FMS on suspicious transactions involving foreign companies. The Azerbaijani authorities state that in the cases where a foreign company was a customer of a bank, the ownership information was always available to the bank directly from the customer. As of December 2015, there were 7 458 foreign companies registered with the State registration authority.

132. To sum up, the identity and ownership information of all foreign companies that have sufficient nexus in Azerbaijan is sufficiently available with the tax authorities as required by the Standard and is updated with a delay of up to 40 days. Banks and other credit institutions are mandated under the AML Law to maintain ownership information of all foreign companies among their customers.

### *Nominees*

133. The Civil Code of Azerbaijan and the new securities market legislation regulate the status and functions of nominees in holding shares on behalf of the actual owners. The shareholders of JSCs are permitted to use the services of nominal shareholders. A nominal shareholder of securities, on the instructions of the actual owner, registers his identity information in the list of holders of securities but does not possess ownership rights of the shares (Art. 992-1.5, CC). The new securities market legislation requires the nominal

holder to disclose the identity information of the actual owner of the shares to the central depository in Azerbaijan within five days of notice.

134. The nominal holder is an external depositor or an external investment company, which exercises securities-related rights on the instruction of the actual owner. The nominal holder and the securities owner enter into a written agreement to establish a commercial relationship between them. Alternatively, the securities owner may execute a power of attorney rights on the nominal holder. The depot account will be in the name of the nominal holder but he should have all necessary information on the identification of the actual owner. The nominal holder should submit the information about the actual owner within five working days from the date of receipt of notice either from the SCS (the FMSA, from March 2016) or from the central depository. In the securities register the central depository will record the full name, address and State identification number similar to the requirements for an actual owner of securities. Since the basic identification document is the State registration number (for legal entities) or identification document of citizens, only an Azerbaijani citizen or an Azerbaijani entity could provide the services of a nominal holder in Azerbaijan. Further, if a nominal holder fails to maintain actual ownership information or to provide such information to the central depository or the SCS (the FMSA, from March 2016), he is liable for a violation and will be subject to administrative penalties as prescribed under the Code of Administrative Violations as well as to criminal liability under the Criminal Code of Azerbaijan.

### *Requirements under AML legislation*

135. Nominal holders of securities are not obligated entities under AML legislation. In the absence of any obligation under the AML Law, neither the SCS nor any other supervisory authority supervises the activities of nominal shareholders for AML purposes. Professional brokers of the securities market and those who are engaged in the professional management of securities are the monitoring entities under the AML Law. They are required to conduct due diligence measures on their customers. The verification includes ascertaining the identity information of their customers and beneficial owners using reliable, independent sources. Brokers and professional managers should also determine whether the customer is acting on behalf of another person, and should then verify the identity of that person. To the extent that nominees enter into a business relationship with brokers and professional managers on behalf of actual owners, the beneficial ownership information might be made available under the AML obligation in Azerbaijan. In addition to general due diligence measures, enhanced due diligence measures, as detailed in paragraph 129, are performed by monitoring entities for higher risk categories of customers, which include companies that have nominee shareholders or shares in bearer form (Art. 9.13, AML Law).

136. Considering the above facts, the conclusion is that with the introduction of the new securities market legislation, a legal requirement for nominal holders to maintain the identity of persons on whose behalf shares are held by them is available in Azerbaijan.

### *Nominees in practice*

137. During the review period, Azerbaijan did not receive any request from its treaty partners that involved nominee shareholding information. The requirement for nominees to disclose the identity information of the actual owner of the shares to the Central Depository has come into force following the end of the review period. The practice in this regard has not been tested and the compliance levels are not known. Commercial banks, investment firms and brokerage companies are subject to comprehensive AML/CFT obligations and supervision by the Central Bank of Azerbaijan (the FMSA, from March 2016). The FMS monitored the compliance of monitoring entities on due diligence verification compliance. The Central Depository is not subject to AML/CFT obligations as it was 100% owned by the SCS. Pursuant to the changes in the Law on Securities Market, the Central Depository is now a non-commercial legal entity funded by the FMSA (Art 16.1)).

138. Since the Central Depository has been entrusted with this work very recently, it has not tested its authority to collect information from nominee holders in practice. The SCS had powers to cancel the licence of nominees who were not complying with the notice of the SCS to provide actual ownership information on the shares held by them. However, these sanction powers of SCS had also not been tested in practice and this applies to the FMSA. It is therefore recommended that Azerbaijan monitors the implementation of this new obligation to ensure that nominees held ownership information is actually available in Azerbaijan.

### Conclusion

139. The tax authorities have full and updated identity information of all companies pursuant to registration and reporting requirements. During the review period, ownership information of Azerbaijani JSCs was available with the companies and partly with the register holders. With effect from 15 September 2015 such information should be available with the Central Depository in accordance with the requirements under the new securities market legislation. Since the Central Depository system was established in July 2015, its monitoring and supervisory mechanisms to ensure that all JSCs in Azerbaijan dematerialise their shares within the specified timelines have not been sufficiently tested in practice. This also applies to compliance by nominees to provide actual ownership information as the monitoring and

supervision mechanisms of the Central Depository have not been tested in practice. It is therefore recommended that Azerbaijan monitors the implementation of the new securities market legislation to ensure that updated ownership information on all JSCs and ownership information held by nominees is available in Azerbaijan.

***Bearer shares (ToR A.1.2)***

140. Between 1998 and 2003, Azerbaijan had a specific law on securities, which governed the creation and possession of bearer shares. This law was repealed in 2003<sup>18</sup> and the provisions in that law were included in the Civil Code. The Civil Code permits the creation and possession of bearer securities<sup>19</sup> along with registered securities<sup>20</sup>. Chapter 54 (Articles 987 to 1078-47) of the Civil Code deals with the creation and management of securities in different forms. Article 987 of the Civil Code states that a security should be a document certifying a pre-determined right to a person to whom the debtor issuing that security is obliged to perform. A security can be issued in three forms: registered, bearer, or an order security (Articles 989-991, CC). These forms of security can be issued for different purposes, which are specified in Article 997 of the Civil Code.

141. Bonds and stocks are termed as investment securities (Article 997.2, CC) whereas orders, checks and promissory notes are termed as payment securities (Article 997.3, CC). Similarly, commodity papers, and futures and options are termed as title and subsidiary securities respectively. Up until 15 July 2015, under Article 997 of the Civil Code, a bearer form of investment security could have been issued by a JSC in the same manner it issued registered investment securities. This meant that a bond could be a bearer or a registered bond, in the same way a stock could be a bearer or a registered stock. A stock was defined in Article 1077 of the Civil Code as a security (share) certifying membership in a JSC, as well as certifying the right of an owner (stockholder) to receive a part of income of a JSC in the form of a dividend, right to participate in the management of activities etc.

142. Up until 15 July 2015, open JSCs willing to issue shares through public offer by accessing the securities market could have issued investment

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18. Law of the Republic of Azerbaijan on securities was repealed by the Law 566-IIQD dated 23 December 2003.
  19. Article 990 of the Civil Code – Bearer Securities: A security shall be considered to be a bearer security where according to it a debtor undertakes upon himself performance of an obligation in respect of any person presenting that bearer security.
  20. Article 989.1 of the Civil Code – A security issued in the name of a person shall be considered a registered security.

securities in three forms: registered, bearer, and dematerialised shares (Article 1078-6, Civil Code). The State Committee of Securities, which was the securities market regulator of Azerbaijan during the review period, governed and regulated the issue of shares, trading of securities, licensing and monitoring professional market participants etc. Open JSCs needed to register with the SCS for public issuing of shares and were therefore subject to the arising regulatory requirements. However, several provisions in the Civil Code under the sub-chapter 13 (Capital Securities) dealt with the manner and procedures on the operation of bearer shares in the securities market.

143. Prior to 15 July 2015, under Article 997-2 and Article 1078-6 of the Civil Code, bearer shares could have been issued by JSCs. Banks and State companies have always been prohibited from issuing bearer shares. The amendments made to the Civil Code (Article 997-2) on 15 July 2015 mean that bonds and stocks can only be issued in registered form. Additionally, the other relevant provisions of the Civil Code (Articles 1078-6 to 1078-47) that dealt with regulating the securities market (which allowed for the possibility of the issue and circulation of bearer shares) were repealed on 15 July 2015 through a Presidential Decree (No. 1285, dated 15 July 2015). Similarly, Azerbaijan enacted the “Law on Securities market”, which entered into force on 14 July 2015. This Law stipulates that open JSCs that issue shares to the public can issue only normal registered shares in the dematerialised form (Art. 23.1, Law on Securities Market). With effect from 15 September 2015, all securities traded on the stock exchange should be dematerialised and held by the Central Depository by setting up depot accounts for shareholders. The transitional provisions (Art. 91, Law on Securities Market) provide that transactions in the exiting securities issued before the effective date of the present Law can be concluded only after those securities are converted into dematerialised (electronic) securities in the Central Depository.

144. The Azerbaijani authorities state that, in reality, no bearer shares existed in Azerbaijan in the past and no JSCs issued bearer shares. Accordingly, in order to remove any legal uncertainties regarding bearer shares that may exist in their domestic legislation, the relevant provisions that dealt with securities (including bearer form) have been amended or repealed and the new Law on Securities Market has been enacted. In effect, the Azerbaijani authorities are of the view that the issue on bearer shares have been dealt with in totality.

145. The various legal changes that have recently been brought into force fully ensure that bearer shares cannot be issued by JSCs with effect from 15 July 2015. But these changes do not sufficiently ensure that the ownership information on any potentially existing bearer shares is available in Azerbaijan. There are no provisions in Azerbaijani legislation that require the conversion or immobilisation of any existing bearer shares (issued before

15 July 2015) except in cases where a bearer share holder transfers his share through the stock exchange or market intermediaries. There are however some other mechanisms in place which may ensure that bearer shares holders are identified. It is possible that a company while issuing bearer shares may have recorded their owners. For instance, a JSC is deemed to be established only if the foundation meeting is held with full quorum of all founders (or their representatives) to agree on the distribution of shares among founders and to approve the company charter. Therefore, ownership information gathered at the time of the issuing of the bearer shares may be available with companies, if such information is retained. However, there is no direct obligation under the Civil Code to maintain ownership information of bearer shares.

146. While the Tax Code does not require the ownership information of bearer shares to be kept by JSCs, or for it to be disclosed to the tax authorities, there are indirect obligations under the Tax Code that require JSCs to gather such information and provide it to the tax authorities, and that also oblige owners of bearer shares to disclose their identity. Article 122 of the Tax Code requires all Azerbaijan's resident enterprises to withhold tax at the source of payment when dividends are paid to their shareholders (legal entities and individuals; resident or non-resident). Article 150.3.3 of the Tax Code stipulates that all resident enterprises that pay dividends to their shareholders should file a declaration to the tax authorities in the form prescribed by the Ministry of Taxes, by the 20th day of the successive month. The Azerbaijani authorities state that the dividend withholding declaration form requires the resident enterprises to disclose information on the dividend withheld, with identity information (name and state identity number) of the shareholders to whom the dividends have been distributed.

147. The Tax Code also requires that any income by way of capital gains from the sale of assets (including shares) and income from dividends are treated as taxable income in the hands of individuals and legal entities (Article 96 (for natural persons) and 104 (for legal entities)). Therefore, it is the responsibility of those earning income from dividends to report to the tax authorities and pay taxes accordingly. The tax authorities have the right to audit any taxpayer and can gather additional information, which further obliges the taxpayers to maintain all relevant information about the ownership of shares, as stipulated by the Tax Code. Failing to disclose taxable income entails liability on the taxpayer, which may attract penalties, from administrative fines to criminal sanctions.

148. Following FATF's recommendations in 2008, Azerbaijan enacted the AML Law in 2010 wherein certain obligations are imposed on monitoring entities for identifying owners of bearer shares. Under the AML Law, enhanced due diligence measures, as detailed in the paragraphs 128 and 129,



are performed by banks and other monitoring entities for higher risk categories of customers, which include companies that have shares in bearer form (Art. 9.13, AML Law). The 4th round of evaluation report of MONEYVAL on Azerbaijan dated 10 December 2014 took note of the changes introduced by Azerbaijan in the AML Law to deal with the bearer share issue and recommended that the Azerbaijani authorities assess the potential risk of the use of bearer shares for criminal activities.

149. Despite express obligations under AML Law, there may be limitations to the availability of ownership information on any potentially existing bearer shares, due to the fact that the provisions to apply enhanced due diligence measures were introduced in the AML Law that came into force in 2010, but the legal basis for the creation of bearer shares has existed since 1998. For the existing customers having business relationship before 2010, monitoring entities will take additional measures to identify the actual shareholders under certain circumstances based on materiality and risk.

150. Although the obligations under AML Law require banks and other monitoring entities to ascertain ownership information on bearer shares, the bearer share holders are not themselves required under the substantive laws that govern their activities (Civil Code) to disclose such information to the company or any service providers or to the authorities, except in limited circumstances explained under this section. Companies have no legal right to obtain beneficial owner information from bearer share holders. Therefore, the requisite information may not be provided by these companies to the monitoring entities under AML obligations.

151. Despite the assertion of the Azerbaijani authorities that, in practice, bearer shares do not exist in Azerbaijan, the legal validity of any bearer shares that could have been issued before 15 July 2015, and the lack of adequate mechanisms to identify those holding bearer shares, renders the possibility of the existence of bearer shares with no information on the owners. It is recommended, therefore, that Azerbaijan should ensure that ownership information on bearer shares is available by bringing in place sufficient mechanisms that allows owners of any bearer shares in existence before July 2015 to be identified.

### *Bearer shares in practice*

152. Azerbaijani officials reported that although the existence of legal provisions concerning bearer shares provided an opportunity for JSCs to issue bearer shares before 15 July 2015, the authorities have not come across any entity having issued bearer share in practice. One reason is that when JSCs intend to issue shares, they needed to file an application with the SCS for approval. The corporate governance provisions and the provisions for keeping

register in the Civil Code are impossible to implement if bearer shares are issued. Therefore, in principle, the SCS never gave concurrence for bearer shares to be issued. In the past, one JSC filed an application to issue bearer shares, but the approval was denied by the SCS. Given that a JSC has to maintain a register containing information about its shareholders, and shall convene and conduct a shareholders meeting once a year, the SCS authorities state that allowing bearer shares jeopardises adherence to other obligations under the Civil Code. The authorities further stated that prior to 15 July 2015, any issued bearer shares would have been registered in the Electronic Service Register of Securities system of the SCS and, as no bearer shares were registered in the system, this provides further evidence that bearer shares do not exist in Azerbaijan. However, the fact remains that JSCs need not approach the SCS if they do not want to issue shares after the initial allotment of shares to their founders. Given that the monitoring and oversight of the SCS on JSCs (other than listed open JSCs) has not been very effective in the past, the possibility of the existence of bearer shares before 15 July 2015 cannot be completely discounted. The Phase 1 recommendation has therefore been retained, although it is acknowledged the possibility of the existence of bearer shares is remote.

### ***Partnerships (ToR A.1.3)***

153. Two types of partnerships<sup>21</sup> exist in Azerbaijan: general partnerships and limited partnerships. Partnerships are legal persons<sup>22</sup> recognised by the Tax Code as taxable entities and are liable to pay legal profit tax at a rate of 20% on their net income. The income distributed by the partnerships (subject to a withholding tax of 10% on dividends) is tax exempt in the hands of the partners. Partnerships can own properties. Only individual entrepreneurs and (or) commercial organisations can become partners in general partnerships and general partners in limited partnerships. Natural persons and legal entities may be limited partners in limited partnerships. The total number of partnerships is 1 140.

### ***General partnerships and limited partnerships***

154. A general partnership is established by the general partners in accordance with the charter of the partnership and is engaged in entrepreneurial activities on behalf of the partners. The partners, either legal entities

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21. Article 64.1 of the Civil Code – business partnerships and company associations are commercial organisations with charter (statutory) capitals divided into shares of the founders (participants).
  22. Article 13.2.2 of the Tax Code – Legal person is defined as enterprises and entities established with the status of legal person in accordance with the legislation of Azerbaijani Republic or legislation of a foreign State.

or individuals, bear unlimited liability of the general partnership to the extent of their property ownership. The firm name of a general partnership shall contain the names of one or more or even all of the partners. The charter of a general partnership contains the basic information applicable to all entities as specified in Article 47.2 of the Civil Code<sup>23</sup>. In addition, the charter contains limits on the amount and composition of the statutory capital of the partnership; on the amount and procedure for the change of the share of each participant in the statutory capital; the contributions and liabilities of the participants etc. A person may be a partner in only one general partnership. Each partner has one vote in the partnership unless stated otherwise in the charter. The partners can transfer their shares or part thereof to another partner or a third party, with the consent of other partners.

155. A limited partnership is established similarly, but besides the general partners who conduct business activities on behalf of the partnership and bear unlimited liability, it should have at least one partner with limited liability to the extent of his contribution and who does not take part in the business activities of the partnership. A person may be a general partner in one limited partnership only. All other regulations for a limited partnership are similar to that for a general partnership. A charter of a limited partnership contains the basic information applicable to all entities as specified in Article 47.2 of the Civil Code. In addition, the charter contains the amount and composition of the statutory capital of the partnership; the amount of and procedure for the change of the share of each general partner in the statutory capital; the contributions and liabilities of the partners etc. Partners in a limited partnership have the first right to buy shares from another partner. If none of them exercises the right, the shares can be transferred to a third party.

156. Information on the identity and owners of general partnerships and limited partnerships is maintained by the tax authorities as mandated by the State Registration Law. General partnerships and limited partnerships must register with the State authorities before starting their business operations. For commercial legal entities to register, the application is signed by all partners of the entity or their appointed trustee on the basis of a power of attorney approved by a notary.

157. The details provided in the application form for the registration of a partnership captures the identity information of the partnership and that of the partners, Azerbaijani or foreign. Partnerships should disclose their name, legal address in Azerbaijan, actual business address, contact phone numbers in Azerbaijan, email address, the amount of statutory capital, main activities,

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23. The charter of a legal entity shall specify the name of the legal entity, its address, the procedure for the management of its activities, and the procedure for its liquidation.

the identity details of the head of the partnership etc. Ownership information of resident partnerships is captured as stipulated by the State Registration Law. If the founder(s) is a natural person, his (their) surname, first name, middle name, place of residence, number and date of the identification document need to be provided. If the founder(s) is a legal entity, its (their) name, location and registration number need to be provided in the application. (State Registration Law, Art. 5.3)

158. In addition to the basic identification documents, partnerships are required to submit the charter (foundation document) signed by all partners, a notary approved copy of the State registration document of the partners, the charter if partner is a legal entity or a copy of the identification document if the partner is a natural person and a document verifying the legal address of the partnership (State Registration Law, Art. 5.4). If a legal representative is acting on behalf of a founding partner, a copy of the identification document of the representative should be submitted with the application.

159. Ownership information on the partners of domestic partnerships is updated in the State register on the basis of Article 9 of the State Registration Law. The tax authorities should be notified of any changes to the charter documents and information provided for registration within 40 days from the date of such changes (State Registration Law, Art 9.1). Without the changes recorded in the State register, the ownership changes do not have any legal effect and do not receive legal protection. The charter of a partnership contains details of all partners in the partnership, the share of capital and profit of each partner etc. Therefore, in case of an ownership change in a partnership, such change is recorded in the charter and should be reported to the State authorities as per the legal requirement under the State Registration Law.

### ***Tax law***

160. Any partnership (including foreign partnerships) carrying out commercial activities in Azerbaijan must register with the tax authorities. All partnerships generating income from commercial activities must file tax returns with the Ministry of Taxes. Resident partnerships must pay taxes on their worldwide income. Non-resident partnerships must pay taxes on their income from Azerbaijani sources. Foreign partnerships can operate in Azerbaijan by establishing branches and representative offices. The Tax Code does not prescribe a separate registration for tax purposes. A taxpayer identification number is provided by the tax authorities under the State Registration Law. No additional documentation requirements relating to ownership information are needed when filing a tax return.

### *Foreign Partnerships*

161. In the case of foreign partnerships that have income, deductions, or credits for tax purposes in Azerbaijan, or those carry on business in Azerbaijan, the information to be submitted to the tax authorities for registration is similar to the information submitted by foreign companies, as detailed above. The identity information of foreign partners in a foreign partnership or Azerbaijani-resident partners in a foreign partnership operating in Azerbaijan will be made available in all cases, as part of the documents required to register the foreign partnerships. The State Registration Law requires that identity and ownership information of foreign partnerships is available in Azerbaijan. According to Article 9 of the State Registration Law, a change in the registration documents as well as a change of registered facts shall be updated to the tax authorities within 40 days from the date of change. This update of documents and facts sufficiently covers the requirement for maintaining updated identity and ownership information of foreign partnerships that have income, deductions or credits for tax purposes or carries on business in Azerbaijan.

162. Auditors, notaries, lawyers and other persons providing audit or legal services will act as monitoring entities only if they provide select services listed by AML Law. Therefore, to the extent that foreign partnerships engage auditors, lawyers, notaries etc. for those specified services, they will be subjected to customer due diligence under the AML Law and thereby the ownership information of those foreign partnerships may be maintained or made available in Azerbaijan. However, there are no restrictions in Azerbaijani legislation that these services can only be undertaken by auditors, notaries, lawyers etc. in Azerbaijan. General audit, notary and legal advisory services are not covered under the AML regulations.

163. Under the AML Law, general due diligence measures are conducted by banks and other monitoring entities on their customers before opening bank accounts or before carrying out occasional transactions above AZN 15 000 (EUR 12 689), or when a transaction is suspicious and doubts arise regarding the veracity or adequacy of previously obtained client identification data. Further, enhanced due diligence measures are performed by the monitoring entities for higher risk categories of customers, which include all non-resident customers (Art. 9.13, AML Law).

164. The enhanced due diligence measures required to be performed by monitoring entities on all non-resident customers include verification of accounts and business relationships, learning the names of the shareholders (and their shareholdings if the customer is a legal person), and obtaining from reliable sources more precise information about the customers and beneficial owner(s) and comparing this information to the information provided by the customers. If the monitoring entity is unable to identify the beneficial owner, it shall not open an account, commence business relations

or perform transactions, and shall notify the Financial Monitoring Service (the FMSA from March 2016) (Art. 9.15, AML Law). These additional due diligence requirements are applied to existing customers on the basis of materiality and risk (Art. 9.16, AML Law). Since all foreign partnerships that are customers of banks in Azerbaijan are subject to AML regulations and identification of all partners of foreign partnerships is obtained by banks, the ownership information under AML Law may be available in Azerbaijan in most cases. However, enhanced due diligence measures were introduced in the AML Law that only came into force in 2010. In respect of bank accounts that existed before 2010, banks will take additional measures to identify the beneficial owners of foreign partnerships only under certain circumstances based on materiality and risk. The ownership information on foreign partnerships that have no relationship with monitoring entities is also not maintained in Azerbaijan for the AML purposes.

### *Partnerships in practice*

165. Partnerships are not prominent in Azerbaijan. No partnership was registered in Azerbaijan during the review period. Similar to companies, as described under section A.1.1 of this report, general partnerships and limited partnerships are considered formed once the application for registration with the State registration authority has been accepted. All changes in partners of general and limited partnerships are only effective once registered with the State registration authority after notarising the change in the partnership deed which must be performed through a notary public, who will verify the identity of the partners prior to finalising the deed. No request was received by Azerbaijan on partnerships during the review period.

166. Once registered, the tax authorities conduct monitoring, supervision and other operational control measures on partnerships are similar to the measures taken for other domestic entities. Apart from specific inspections on entities for ownership information, this information is verified during routine tax audits and on-site inspections. The information on monitoring and enforcement measures highlighted in the paragraph 107 and in the section: *Enforcement provision to ensure availability of information (ToR A.1.6)* include actions taken against defaulting partnerships. The authorities stated that entity-wise statistics on enforcement measures has not been maintained by Azerbaijan. However, they confirmed that they have not detected any violation by partnerships regarding maintaining ownership information during the review period.

167. To sum up, the updated identity and ownership information of all foreign partnerships that operate in Azerbaijan is sufficiently available with the tax authorities as required by the standard and is updated with a maximum delay of 40 days.

## Cooperatives

168. A co-operative is a voluntary union of individuals and legal entities on the basis of membership with the purpose of satisfying the material and other needs of the participants through the consolidation of the participants' material contributions. Members of a co-operative can be individuals and (or) legal entities. There are two types of members: primary members and associated members. Primary members pay the membership contribution, the mandatory and additional share payment as specified in the charter of co-operative, participate in its activities and have voting rights. Associated members make membership and mandatory share payments; have no right of participation in the activities of the co-operative and have no voting rights. A co-operative can be formed in any sector to conduct commercial activities. The total number of co-operatives registered with the tax authorities is 1 410.

169. The charter of a co-operative contains information about the contributions of its members, their shares, the management of the co-operative, etc. Co-operatives maintain a membership book, which is updated whenever new members are added to the co-operative. The content of the records in the membership book is established under the co-operative charter. The first right of refusal lies with the existing members of a co-operative if a member wishes to transfer his share to others.

170. A co-operative needs to register itself before it commences commercial activities in Azerbaijan in accordance with the State Registration Law. The application for registration is filed with the tax authorities with the information as stipulated in the State Registration Law. The information submitted to the tax authorities includes the name, the address, information about its members and the charter of the co-operative. In addition, co-operatives also maintain the membership book and keep updated information. Co-operatives should file an annual tax return on their income and pay tax on their profits.

171. To sum up, sufficient identity and ownership information of co-operatives is available in Azerbaijan. In practice, the requirements under the registration procedures for updated ownership information and the monitoring and oversight mechanism put in place by the tax authorities ensure up-to-date ownership information in relation to co-operatives. The information on monitoring and enforcement measures highlighted in the paragraph 107 and in the section: *Enforcement provision to ensure availability of information* (ToR A.1.6) include actions taken against defaulting co-operatives. The authorities stated that entity-wise statistics on enforcement measures has not been maintained by Azerbaijan.

*Trusts (ToR A.1.4)*

172. The Civil Code of Azerbaijan does not recognise the concept of a trust and Azerbaijan is not a party to the Hague Convention on the Law Applicable to Trusts and on their Recognition<sup>24</sup>. Nonetheless, nothing in the Civil Code prohibits a resident of Azerbaijan to act as a trustee, protector or administrator of a trust formed under a foreign law. Rules established by Civil Law apply to relationships with foreign natural persons, stateless persons and foreign legal entities (Art. 9.2, CC).

173. The State Registration Law recognises foreign legal entities<sup>25</sup> but does not recognise foreign legal arrangements. The fact that the foreign legal arrangements are not recognised by the State law creates a legal risk for the persons involved in a trust. If a foreign trust owns an asset in Azerbaijan, the trustee is registered as the owner of the asset. Foreign trusts have no legal protection in Azerbaijan against Azerbaijani trustees in case of a dispute. This creates an inherent insecurity for a foreign trust being administered in Azerbaijan or owning any property in Azerbaijan. For example, if an Azerbaijani trustee who owns a property on behalf of a foreign trust dies, his legal heirs will get automatic succession of the ownership of the property as per the Azerbaijani Civil Code. Similarly, there could be potential actions by the creditors of the Azerbaijani trustees on the trust's assets in Azerbaijan. As a consequence, foreign trusts are unlikely to have trustees resident in Azerbaijan or be administered from Azerbaijan.

174. If a foreign trust possesses assets generating income in Azerbaijan and has some income generated from these assets in Azerbaijan, since the assets are legally considered as the assets of the Azerbaijani trustee, he will register with the State registration authority (tax authorities) as an individual entrepreneur. If he is already a registered taxpayer in his individual capacity, he is not required to register separately for the income of the foreign trust. In any case, there is no legal requirement for the trustee to disclose identity information of the trust or its ownership information i.e. the identity of the settlors, protectors and beneficiaries of the foreign trust.

175. The Tax Code of Azerbaijan does not explicitly require trustees to identify income generated from a trust's assets separately or to disclose the trust arrangement including identity and ownership information, because there are no special privileges for trust income under the Tax Code. Normally, the Azerbaijani resident acting as trustee of a foreign trust will include the foreign trust's taxable income under the Azerbaijani Tax Code to his total taxable income and pay any resulting tax liability. He may treat the

24. [www.hcch.net/index\\_en.php?act=conventions.text&cid=59](http://www.hcch.net/index_en.php?act=conventions.text&cid=59).

25. [Legal entity established outside of the Azerbaijan Republic \(State registration law, Art. 2.0.2\)](#).



tax paid as expenses for the trust and may be reimbursed by the foreign trust. In such cases, no information relating to the foreign trust is furnished to the State registration authorities or tax authorities. However, under the general provisions of the tax law the trustee would have an obligation to keep records and accounts demonstrating the source of all income and assets. This would require him to have available all information relevant to the trust he is administering, which would include the trust deed and information on the settlors and beneficiaries of the foreign trust, which would need to be produced during a tax audit. Failure to keep such records would result in additional tax liability and is an offence which may be subject to a civil penalty and criminal prosecution (Article 213, Code of Criminal Offences). He should also maintain the trust information as a part of his general obligation under the trust law under which the foreign trust was created or under any applicable common law obligations.

176. Under AML Law, a trustee is not a monitoring entity and therefore neither supervised by the supervisory authorities nor controlled by the Financial Monitoring Agency. Any individual may choose to act as a trustee of a foreign trust but may not conduct due diligence on the foreign trusts. The trustee services are not an exclusive activity of professional service providers in Azerbaijan and therefore the trustees are not subjected to AML obligations. However, AML Law covers foreign trusts if they establish a business relationship with financial institutions. Article 9.2 of the AML Law requires that monitoring entities (banks, other credit institutions, investment firms) conduct regular due diligence measures to identify their customers and the beneficial owners associated with their customers. In addition, enhanced due diligence measures are adopted by these monitoring entities for higher risk categories of customers, which includes arrangements such as trusts that are personal asset holding vehicles. Under AML obligations, the Azerbaijani trustee must disclose the trust information to the monitoring authorities if he establishes business relationship with them on behalf of the foreign trust.

177. For those foreign trusts whose trustee is an Azerbaijani resident but have no assets or commercial activities in Azerbaijan, there are no legal obligations in Azerbaijan that require the trust or trustee to register with the tax authorities, or to file tax returns. However, according to the Tax Code, all Azerbaijani residents should pay tax on their worldwide income. If a foreign trust has income from non-Azerbaijani sources, the trustee in Azerbaijan must treat this trust income as his personal income and pay tax on it. While there are no explicit obligations under the Tax Code to ensure that an Azerbaijani resident acting as a trustee of a foreign trust maintains the information about the settlors, beneficiaries and other trustees, the combination of AML, general documentation requirements under the Tax Code and general obligations on a trustee to maintain and disclose information may ensure that relevant information is available in Azerbaijan. In addition, there

is a very low possibility of a trust being misused as an investment vehicle in Azerbaijan due to legal and material risks involved. No trust has been registered with the tax authorities.

### *Issue of trusts in practice*

178. Any Azerbaijani taxpayer acting as a trustee of a foreign trust is required to include the trust income on his personal tax return. There is no special tax form or procedure to deal with trusts. Moreover, trustees that have accounts with financial institutions must disclose the trust ownership information in order to maintain an account, since a relationship with a trustee obligates financial institutions to conduct enhanced due diligence to identify the trust ownership information. During the review period, Azerbaijan did not receive any requests in relation to trusts. The Azerbaijan authorities stated that they have not come across a foreign trust having its presence in Azerbaijan or administered by an Azerbaijani resident.

### *Conclusion*

179. While Azerbaijani legislation does not recognise trusts, nothing prevents a trust created under the law of a foreign jurisdiction from being administered by a resident of Azerbaijan. In the case of an Azerbaijani resident trustee of a foreign trust, to the extent that the trustee engages with AML obligated entities, the ownership information would be collected by these entities. However, since the requirements under AML Law were introduced in 2010 and existing customers are only subjected to enhanced Customer Due Diligence (CDD) measures on basis of materiality and risk, and moreover, the trustees need not engage with AML obligated entities in Azerbaijan, ownership information on trusts may not always be available with the authorities or service providers. At the same time, there is a general obligation on Azerbaijani residents acting as trustees of foreign trusts to maintain the identity and ownership information of foreign trusts. Lastly, legal and material risks involved in administering a foreign trust in Azerbaijan by an Azerbaijani resident acting as a trustee renders the possibility of existence of such foreign trusts very unlikely. To sum up, considering the inherent legal uncertainty for foreign trusts choosing to be administered in Azerbaijan and the combination of legal requirements explained above, there are no material gaps in the availability of identity and ownership information of trusts in Azerbaijan. However, it is recommended that Azerbaijan takes reasonable measures to ensure availability of settlor, trustee and beneficiary information relating to foreign trusts where those trusts are either administered in Azerbaijan or in respect of which a trustee is a resident of Azerbaijan.

**Foundations (ToR A.1.5)**

180. Azerbaijani Civil Code does not provide for the creation of foundations.

**Other entities**

181. Other legal entities that could be created in Azerbaijan are: public associations, funds<sup>26</sup> and unions of legal entities. All these legal entities can only be created for non-commercial purposes and are permitted only to engage in non-profitable activities in Azerbaijan. Properties contributed by founders (participants) are the properties of these non-commercial entities. Commercial activities are authorised only to support the realisation of the goals of the entities. The profits earned as a result of commercial activities cannot be distributed to the founders, members, donors, or to the managers. Upon liquidation, the property shall be used for the purpose of the entity's charter or, wherever this is not possible, will be transferred to the State's budget. The total number of other entities registered with the Ministry of Justice is 4278.

182. A non-commercial entity, wishing to obtain the status of a legal entity, as well as representations or branches of foreign non-profit legal entities, should register with the relevant executive authority under the State Registration Law. The Ministry of Justice is the executive authority for registering non-profit entities. The registration is completed within 40 days. The information provided by non-profit entities for registration cover the identity and ownership of these entities and is similar to that of the requirements of commercial entities.

183. The non-commercial legal entities are only established for charitable purposes in Azerbaijan. They are considered to be of low risk for the review purposes because the beneficiaries of a charitable organisation are the general public and not specific persons. Further, these entities are subject to higher regulatory scrutiny by the Ministry of Justice for the reason that these entities collect funds for specific charitable purposes and are exempt from tax liability. Reciprocally, the State has to ensure that these entities actually serve public interest. In the case of Azerbaijan, Ministry of Justice registers, monitors and enforces compliance of all non-commercial entities. In any case, information about the founders of these entities is available with the Ministry of Justice and/or with entities. During the period under review, Azerbaijan has not received requests for ownership information in relation to non-commercial legal entities.

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26. Article 115-1 – A fund is a non-membership organisation established by individuals and/or legal entities based on their voluntary contributions.

***Enforcement provisions to ensure availability of information***  
*(ToR A.1.6)*

184. Under the Terms of Reference, Azerbaijan should have in place effective enforcement provisions to ensure availability of ownership and identity information. Under Azerbaijani laws, there are penalties to sanction non-compliance in all cases where there are legal obligations. Identity and ownership information of all legal entities are provided to the authorities at the time of registration and subsequently when any change thereto occurs. Entities obtain legal status only after registration with the tax authorities (Art. 4.1, State Registration Law). If the application for registration (or for updating registered data) does not include any required information the tax authorities would ascertain the deficiency in the application and will give the entity an additional 20 days to eliminate the deficiency (Art. 8.2, State Registration Law). After the end of the 20-day period, if the requisite information is not furnished or still found to be deficient, the tax authorities will reject the application within 10 days and inform the applicant. Any changes to the charter document of an entity and information provided with the application for registration takes legal effect from the moment it is registered with the tax authorities. Any breaches of the requirements of the State Registration Law will invite liabilities under the Azerbaijani penal legislation: the Code of Administrative Violations (CAV). For instance, submission of false information by legal entities during the process of State registration or during the registration of changes to the entities' information is subject to a penalty of AZN 700 (EUR 592) on physical persons and AZN 4 000 (EUR 3 384) on legal persons (Art. 200-1, CAV).

185. Failure to apply to the relevant executive authority within the time-frame and in the manner prescribed by the State Registration Law for the registration of legal entities and branches and representative offices of foreign legal entities in Azerbaijan and for the notification of changes in the information provided for at the time of registration is subject to a penalty of AZN 1 000 (EUR 846) to AZN 2 000 (EUR 1 692), imposed on officials of the entity, and of AZN 2 500 (EUR 2 115) to AZN 3 000 (EUR 2 538), imposed on the legal entity itself (Art. 405, CAV). During the review period, JSCs had to keep a register of shareholders (for number of shares fewer than 20), or through an independent register holder. Since July 2015, the register of shareholders of JSCs should be maintained by the Central Depository (CC 106-2.2). The CAV imposes administrative liability on companies and register holders of the securities market for not maintaining a register of shareholders. Register holders of the securities market are subject to penalties for not maintaining proper records of shareholders. A penalty<sup>27</sup> of AZN 700-

27. Article 416.0.4 of the Code of the Azerbaijani Republic on administrative violations.

800 (EUR 592-677) can be imposed on officials and AZN 5 000-6 000 (EUR 4 230-5 076) on legal entities for violation of the rules for keeping the register. If the standards for record keeping are violated by JSCs, a penalty<sup>28</sup> on officials of AZN 300-400 (EUR 254-338) and on legal persons of AZN 1 500-2 000 (EUR 1 269-1 692) can be imposed. A penalty of AZN 40 (EUR 34) may be imposed on taxpayers, who fail to submit their tax report or application mentioned in Article 16.2 of the Tax Code without valid reason within the specific period.

186. Under the new securities market legislation, any person responsible for informing the authorities of any change in the information on the securities register or record keeping information held by the central depository should do so within the timeframe prescribed by the legislation<sup>29</sup> or the Civil Code or any other normative-legal act requiring such person to do so. If there is any breach, the person will be held liable and administrative penalties under CAV and criminal liabilities under the Criminal Code could be imposed.

187. Under the AML Law, monitoring entities must conduct proper due diligence measures to ascertain the ownership of the entities. The monitoring entities shall discontinue their relationship with the customers and report to the Financial Monitoring Agency (the FMSA since March 2016) if sufficient information as required by AML obligations is not provided by their customers. In the event the Central Bank (the FMSA since March 2016) detects that a bank has not met its AML obligations, it may impose enforcement measures, which include imposing fines and penalties on the bank and bank administrators, as per the CAV or revoking the bank license (Art. 49, LoB). However, violation of the AML regulations carries no criminal sanctions. Under Article 348-3 of the CAV, sanctions can be levied on monitoring entities and others involved in monitoring by imposing a penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and AZN 15 000 (EUR 12 689) to legal entities.

188. For all entities, other than JSCs, the primary responsibility in Azerbaijan for ensuring the availability of ownership information lies with the tax authorities. In the case of JSCs, the responsibility lies with the Central Depository and the SCS. As the state registration authority, the Ministry of Taxes oversees the registration process by verifying documents submitted by applicants. Once registration is complete, regular inspections are conducted for the purpose of enforcing the state registration law requirements with respect to keeping ownership information updated. Ownership information of entities is also verified during routine audits and onsite inspections. Monitoring by the SCS on the

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28. Article 417 of the Code of the Azerbaijani Republic on administrative violations.

29. Article 90 of the law of the Republic of Azerbaijan on Securities Market.

obligation of JSCs to maintain ownership information has been carried out through offsite inspections only, based on information received.

189. In general, the enforcement measures of tax authorities have had adequate deterrent effect. During the first 9 months of 2015, 1 621 criminal cases have been launched by the Department of Primary Investigation of Tax Crimes including 748 cases as a result of field tax audits on account of tax evasion and illegal entrepreneurship; 2 077 cases on account of non-payment of tax debts; and 49 cases based on data obtained from operative tax control measures. Investigation on 115 criminal cases relating to 143 persons was completed during this period and these cases were sent to the courts for indictment. 573 criminal cases were investigated and completed, and 41 accused persons were imprisoned. 31 persons have been searched for committing tax crimes and have been arrested.

190. During the operative control measures undertaken by tax authorities in the first 9 months of 2015, 57 834 taxpayers have been found to be in violation of the Tax Code on issues such as non-compliance to cash payment rules; the use of unauthorised cash registers; operation of unregistered entrepreneurs, etc.

191. The Office of the Prosecutor General is the State law enforcement agency, in-charge of investigation of different economic crimes in Azerbaijan, which includes the investigation of violations of the Tax Code. Any criminal offence identified and investigated by the Ministry of Taxes is referred to the Prosecutor General's office for indictment in the courts. 320 criminal cases involving approximately 342 persons were sent to the courts through the Prosecutor's office with a bill of indictment and in all cases, they were sentenced by the court. In case of falsification of documents by an applicant for registration of a new entity, a preliminary verification is done and the case is reported. During the review period, 2 cases of submission of false documents were identified and one prosecution was launched. The Code of Administrative Violations (CAV) was amended in February 2014. According to the changes introduced, the Ministry of Taxes is identified as a public agency for conducting investigations and gathering evidence. The Ministry of Taxes takes the offenders to court for trial directly. 140 cases were taken to trial between March 2014 and June 2015. 1 045 financial sanctions (AZN 41 800 (EUR 35 361)) were imposed between 2012 to February 2014. In cases where the offence requires a complex investigation, a joint investigating body of the Prosecutor General's office and the Ministry of Taxes is set up.

192. 1 238 complaints were investigated by the SCS during the review period (267 in 2012, 329 in 2013, 333 in 2014 and 309 in 2015). However, the Azerbaijani authorities stated that due to the on-going reorganisation and restructuring of relevant government bodies as a result of creation of the FMSA, it was not possible to gather information on the number of

administrative proceedings carried out on the defaulters. Similarly, statistics on penalties issued against JSCs for non-filing of annual reports and for non-furnishing information and documents were not available. BSE has the authority to delist the listed JSCs for breach of listing rules, and can suspend trading. BSE's trading department is responsible for surveillance.

### *EOI ownership information*

193. In response to EOI requests received from the EOI partners, Azerbaijan provided ownership information in respect of 58 companies during the review period:

Period	Number of EOI requests on companies	Number of EOI requests on other types of entities
July-Dec 2012	8	0
2013	16	11
2014	27	2
Jan-June 2015	7	1

194. No ownership information on partnerships was sought by peers during the review period. Similarly, no ownership information on trusts was sought by peers during this period. Azerbaijan ensured that ownership information was provided in all cases.

195. To sum up, enforcement measures are generally in place for all entities that are required to keep identity and ownership information in Azerbaijan.

### **Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
Prior to 15 July 2015, JSCs potentially could have issued bearer shares, but there are not sufficient mechanisms in place to ensure that the ownership information of holders of bearer shares is maintained and available.	Azerbaijan should take necessary measures to ensure that ownership information on potentially existing bearer shares, issued before 15 July 2015, is maintained and available.

Phase 2 rating	
Largely Compliant	
Factors underlying recommendations	Recommendations
The new securities market law of July 2015 has established a central depository and requires all JSCs to deposit their share registers with this custodian before September 2015 but the compliance has not been monitored. Similarly, the new law has obligated shareholders of all JSCs to dematerialise their shares before 15 July 2015. The effective implementation of these obligations has not been tested in practice.	It is recommended that the Central Depository of Azerbaijan monitors the implementation of the new securities market law to ensure that updated ownership information on all JSCs is available in Azerbaijan.
The requirement on nominees to disclose the identity information of the actual owner of the shares to the Central Depository has come into force after the review period and the compliance has not been tested in practice.	It is recommended that Azerbaijan monitors the implementation of this new obligation to ensure that nominees held ownership information is actually available in Azerbaijan.

## A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

196. The Terms of Reference set out the standards for the maintenance of reliable accounting records and the necessary accounting record retention period. They provide that reliable accounting records should be kept for all relevant entities and arrangements. To be reliable, accounting records should: (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting records should further include underlying documentation, such as invoices, contracts, etc. Accounting records need to be kept for a minimum of five years.

197. In Azerbaijan, the legal provisions requiring relevant entities and arrangements to keep accounting records are found in the specific accounting legislation as well as in tax legislation. A specific category of taxpayers such



as small entrepreneurs is exempted from maintaining detailed accounting records and registers<sup>30</sup>.

### ***General requirements (ToR A.2.1)***

#### *Specific accounting legislation*

198. General accounting obligations of all legal entities and natural persons in Azerbaijan including foreign entities conducting business in Azerbaijan are stipulated by the Law of the Azerbaijan Republic on Accounting<sup>31</sup>. The law requires that all the Public Interest Entities (PIE) in Azerbaijan prepare their financial statements solely on the basis of the International Financial Reporting Standards (IFRS)<sup>32</sup>. Public interest entities (Art.2.1.9 of the Accounting law) are credit institutions, insurance companies, investment funds, non-State (private) social funds, legal entities with securities traded on the stock exchange<sup>33</sup>, and commercial organisations that on the date to which the financial statements are prepared, exceed two of the thresholds<sup>34</sup> (for annual revenue, average number of employees during the financial year and total balance sheet) in an amount determined by the relevant executive authority. The Cabinet of Ministers of Azerbaijan approved the “Rules on providing, period of reporting, and publishing of annual financial reports and consolidated financial statements of commercial entities” in 2010. These rules apply to commercial entities other than lending agencies and small businesses. In accordance with these rules, the Ministry of Finance is responsible

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30. Article 16.1.8 of the Tax Code provides that taxpayers engaged in certain types of business activities (for eg. sale of securities, lottery, passenger and cargo transportation, hotels etc.) are exempted from maintaining cash registers.
  31. Law was enacted in 2004 – According to Art. 1.1 of the Law on Accounting, the mentioned law regulates the organisation and treatment of accounting, including rules on preparation and submission of financial statements by legal entities and individual entrepreneurs, regardless of their legal and ownership forms that carry out the activity in Azerbaijan.
  32. International Financial Reporting Standards are the accounting standards, financial reporting standards and the interpretations of the Standing Interpretations committee elaborated, adopted or approved by the International Accounting Standards Board (IASB), an independent accounting standard-setter based in London, United Kingdom.
  33. Starting from 1 January 2008 Open JSCs having their shares circulated at the stock exchange shall keep accounting in accordance with IFRS.
  34. The Cabinet of Ministers’ Decree dated 20 June 2005, implementing the new Accounting Law, sets out the following thresholds: annual income of AZN 120 million (EUR 102 million), average number of employees amounting to 1200, and total balance sheet of AZN 30 million (EUR 25 million).

for providing policy advice to business entities on the manner of application of the IFRS or National Accounting Standards (NAS) and the enforcement of other relevant actions provided for in the legislation.

199. The NAS (which are broadly based on IFRS) are developed and approved by the Ministry of Finance, which is the relevant executive authority for accounting in Azerbaijan. All commercial entities (non-PIEs) must prepare their financial statements in accordance with the National Accounting Standards. Optionally, these commercial entities may prepare their financial statements in accordance with the IFRS. Non-governmental organisations (NGOs) should prepare their financial statements in conformity with the NAS for NGOs (based on International Public Sector Accounting Standards). Simplified Accounting Rules for subjects of small entrepreneurship are special rules prescribed for small entrepreneurs<sup>35</sup> in preparing their financial statements.

200. Persons who do not prepare and submit accounting financial statements and consolidated financial statements, or do not maintain their books and records in accordance with the accounting legislation, are liable to be punished under Azerbaijani laws (Art. 16, Law on Accounting). Penalties can be levied under the CAV for violations of the accounting legislation. Violation by those persons required by the law for prepare, file and publish statutory financial reports and other statements result in imposition of a penalty on official persons<sup>36</sup> of AZN 300-400 (EUR 254-338) and on legal entities of AZN 1 500-2 000 (EUR 1 269-1 692) (Art. 462, CAV).

201. The Tax Code does not obligate legal entities or individual entrepreneurs to maintain information based on the IFRS or the National Accounting Standards. Non-maintenance of accounting information based on one of these two standards is therefore not an offence under the Tax Code. The rules for furnishing final financial statements are provided in the Tax Code and are different from the general financial results. The provisions in the Tax Code are focused on calculating the tax base and tax due.

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35. Small entrepreneurs are those whose annual income is up to AZN 200 000 (EUR 169 190) and who employ up to 25 persons. The Ministry of Finance notified Simplified Accounting Rules under the Accounting Law for small entrepreneurs vide its Order No.I-06 dated 13 January 2009.
36. Art. 17 – Code of Administrative Violations – The officials mean persons who carry out duties of a representative of the State power, persons working full-time or part-time at economic-administering positions at State authorities, institutions of local governing, Armed Forces of the Azerbaijan Republic, at other bodies of troops established in accordance with the legislation of the Azerbaijan Republic, at State and non-State organisations, establishments and enterprises, or persons who perform similar duties in view of special authority, also natural persons who perform such duties dealing with business undertakings without establishing a legal person.

202. The IFRS require all relevant entities to keep accounting records to the standard. All PIEs mandated to follow the IFRS based accounting system are open JSCs owing to the nature of their activities. These companies regulated by IFRS should maintain accounting records that:

- accurately explain business transactions (cash flow statement);
- disclose the financial position of the company at any point of time with reasonable accuracy (income and expenditure statement);
- disclose the details of assets held by the company; and
- allow the companies to prepare financial statements at any time (balance sheet, profit and loss accounts)

203. The National Accounting Standards (NAS) as approved by the Ministry of Finance are based on the IFRS and cover all subjects regulated by the IFRS. The requirements of maintaining reliable accounting records as mandated by the IFRS are reflected in the NAS. To sum up, under the Accounting Law, all entities in Azerbaijan are required to keep reliable accounting records that correctly explain the entity's transactions, enable it to determine the entity's financial position with reasonable accuracy at any time and allow financial statements to be prepared.

### *Tax law*

204. Under the Tax Code, the taxpayer is responsible for keeping records of all income (costs) and articles of taxation (Art. 16.1.3, Tax Code); for submitting tax reports to the tax authorities in accordance with laid-down procedures, and when an audit is required, he must co-operate with the auditor (Art. 16.1.4, Tax Code). He should also submit the necessary information and documents, and in the case of accounting information being maintained in an electronic format, such information when requested (Art. 16.1.6, Tax Code). The taxpayer is also responsible for the safekeeping of accounting books and other documents necessary for tax collection and payment, as well as documents that confirm income obtained (for legal persons, also costs incurred) and paid (withheld) taxes (Art. 16.1.7, Tax Code). The taxpayers shall maintain a cash register for recording cash settlements in general (Art. 16.1.8, Tax Code) but there is an exemption from maintaining cash registers for cash transactions in over 30 entrepreneurial activities including the sale of securities, lotteries, gambling, banking activities, attorney, notaries and other legal services. The tax agent<sup>37</sup> is responsible for submitting to the

37. Art. 17.1, Tax Code – Tax agent is a person who in accordance with this Code is authorised to calculate taxes, withhold them from the taxpayer and make the payment to the budget.

tax authorities information necessary to control and verify the tax calculation and the withholding and payment of tax.

205. A taxpayer's obligation needs to be given effect by the specific requirements in the Tax Code and in accordance with the procedure established in the law. Article 71 of the Tax Code prescribes the accounting documentation requirements of a taxpayer. It states that any person shall be obliged to document any operation that:

- Entails a tax obligation for that person;
- Entails an obligation to withhold tax for that person; or
- Entails an obligation for that person to submit information.

206. Taxpayers shall be obliged to maintain records indicated in Article 71.1 of the Tax Code in accordance with an established procedure. Article 130 of the Tax Code prescribes the procedure for recording income and expenditure. With a view to clearly reflecting taxable income (or profit), the taxpayer is obliged to maintain accurate and timely records of income and expenditure on the basis of documented data. Taxpayers shall assign income and expenditure to relevant reporting periods in which they were received or incurred. The Tax Code recognises both cash based and accrual based accounting. The method of accounting chosen by a taxpayer shall be consistently followed and takes into account all requirements concerning the manner of recording expenditures and receipts. The taxpayer is obliged to ensure that all operations connected to his activity are recorded in such a manner that their beginning, course and end can be discerned.

207. The Tax Code prescribes a set of accounting requirements including the methods to be adopted by taxpayers for recording transactions and maintaining accounts. The requirements also prescribe the manner in which income and expenses are recognised in cash and accrual based accounting. But the Tax Code does not directly recognise the Accounting Law. Neither has it any reference to the IFRS nor the NAS. Rather, the Tax Code requires taxpayers to maintain their accounting records according to the rules described by the law. The Azerbaijani authorities advise that this reference indirectly points to the Accounting Law. The standalone accounting requirements in the Tax Code may not fulfil the requirements set out in A-2 of the Terms of Reference, but the combination of requirements of the Accounting Law and the Tax Code appears to ensure reliable accounting records are maintained in Azerbaijan.

208. In the case of a violation of the legal obligations by the non-maintenance of cash registers, non-issue of receipts or other accountable forms, the taxpayer is subjected to financial sanctions of AZN 400 (EUR 338) for the first time during the calendar year, AZN 800 (EUR 677) for the second time

during the calendar year and AZN 1 200 (EUR 1 015) for third time or more during the calendar year. This penalty is limited to the purposes of the non-maintenance of cash registers. In a broad sense, there are no administrative penalties under the CAV or the Tax Code for failing to maintain accounting records except for the abovementioned violation. Similarly, the Criminal Code does not impose any criminal sanctions against taxpayers for breaching the accounting rules. Non-maintenance of accounting records may be subjected to adverse inference during tax audits and additional tax liabilities may be imposed by auditors by disallowing unproven expenses. In addition, administrative sanctions can be imposed on taxpayers that fail to submit accounting records in a timely manner to the tax authorities (discussed in B.1 below). This indirectly extends the penalty for non-maintenance of accounting records. Therefore, while explicit penal provisions in the Accounting Law, the CAV and the Criminal Code are absent, the Tax Code does provide for indirect checks and penalties to ensure that proper and reliable accounting records are maintained in Azerbaijan that meet the accounting requirements in line with the standard.

### ***Underlying documentation (ToR A.2.2)***

209. In the Tax Code, an entity registered as a VAT payer and conducting a taxable operation shall be obliged to issue an electronic invoice to the person receiving goods, work or services (Art. 176, Tax Code). The electronic invoice shall contain basic information about the buyer and seller, their identification numbers, a description of the goods, the amount and VAT payable, invoice number etc. Similarly, electronic invoices are issued by taxpayers supplying excisable goods. Apart from issuing electronic VAT and excise invoices, taxpayers in Azerbaijan are not required to maintain any other underlying documents supporting entries in the accounting records. The Tax Code (Art. 71) specifies that the taxpayer document every operation but does not require the taxpayer to retain underlying supporting documents. However, the tax authority has the right to examine all financial documents, accounting books, reports, estimates, cash securities, and other assets on hand, returns, declarations and other documents relating to the calculation and payment of taxes with respect to all legal and physical persons (Art. 23.1.2, Tax Code). Thus, during tax audits, the tax authority may verify the original source documents with regard to the genuineness of the transactions for ascertaining the actual total income and tax liability. If the tax authority finds that a taxpayer has not maintained or submitted underlying documentation for verification, the authority can conduct an on-site inspection at the taxpayer's commercial premises to obtain documents or information and retain them, if necessary. To this extent, there is an indirect obligation on the taxpayers to maintain all supporting documents.

210. The Accounting Law does not specifically obligate taxpayers to maintain underlying documents. The obligation under the Accounting Law is that entities shall prepare their financial statements in conformity with the IFRS or the NAS. There is an indirect reference to the underlying documentation in the Law on Accounting (Article 15), which states that the contents of the source documents, accounting registers and other documents related to accounting are a commercial secret. Article 16 of the Accounting Law provides that the persons guilty of breaching legislative provisions relating to the preparation, submission and publishing of financial statements, and the maintenance of accounting documents, shall bear responsibility in the established manner. The NAS does not require entities to maintain underlying documentation although there are indirect requirements under book keeping rules.

211. To conclude, the combination of accounting and tax requirements under Azerbaijan's laws indirectly require all necessary underlying documentation to be available. But the absence of explicit legal requirements to maintain this documentation may allow entities and individuals not to maintain such documents. Therefore, it is recommended that Azerbaijan introduces express obligations in its relevant laws, in order to ensure all underlying documentation is maintained by all relevant entities and individuals in Azerbaijan in line with the standard.

### ***Minimum 5-year retention standard (ToR A.2.3)***

212. The Accounting Law relies on the IFRS or the NAS to oblige all entities to keep reliable accounting records. According to the IFRS or the NAS, accounting records should be retained during the period that substantive laws (say, the Tax Code) require entities to maintain the records, or as long as the records are required for verification by the relevant executive authorities. Since the Tax Code prescribes accounting records to be retained for 5 years, the Accounting Law also subscribes to 5 years for retention. Persons violating the provisions of the Accounting Law by not maintaining books and records will be subjected to sanctions (Art. 16, Accounting Law). In addition, persons violating their accounting obligations under the Accounting Law are subject to administrative sanctions as determined in the amended CAV (Art. 462, CAV).

213. Under Article 71.4 of the Tax Code, taxpayers must keep accounting documents in electronic and (or) paper format for at least 5 years in a readable form. However, no person can be called to account for violation of the tax legislation, and no tax liabilities may arise, if a period of 3 years had passed from the date of the tax violation (Art. 56, Tax Code). The tax authorities can assess and reassess taxes, levy penalties and financial sanctions on taxpayers within this 3 year period from the termination of taxable accounting period. The interpretation of Article 56 of the Tax Code with regard to the

maintenance of accounting records is that the taxpayer does not violate the Tax Code if he does not maintain accounting records in respect of a period beyond 3 years. Further, the tax authorities cannot take any measures or issue notices to the taxpayer calling for information that relates to the period of more than 3 years ago. Therefore, in effect, while, on the one hand, the Tax Code imposes an obligation on the taxpayers to maintain accounting records for a period of 5 years, there are inconsistent provisions in the Tax Code that may be invoked if taxpayers do not maintain accounting records for a period of more than 3 years. For example, if a taxpayer did not maintain accounting records for a particular accounting year more than 3 years ago and the tax authorities require the accounting records to be submitted by the taxpayer for that particular accounting period, the taxpayer may maintain that he has not kept the records for that year and since 3 years have lapsed from the date of the tax violation, he cannot be held liable by the tax authorities under the Tax Code. However, the Azerbaijani authorities state that where a preliminary investigation of a criminal case against a taxpayer is underway on account of violation of the tax law (regarding tax evasion), the taxpayer concerned can be brought into liability within 7 years, and therefore the 3 year limitation does not apply for criminal tax investigations.

214. In general, financial sanctions are applied to the taxpayers for failure to maintain accounting records for a period of 5 years. Article 57.3 of the Tax Code stipulates that an administrative penalty of AZN 100 (EUR 85) will be imposed on taxpayers for failing to submit accounting records within the timeframe specified by the tax authorities, or for not meeting the obligation to maintain accounting records for a period of 5 years. As discussed in the previous paragraph, as the taxpayer cannot be held accountable for any violation if 3 years has passed from the date of violation, it is difficult to comprehend how an administrative penalty under Article 57.3 of the Tax Code could be imposed by the tax authorities in respect of periods beyond 3 years. No criminal sanctions are attached to this provision in case of non-compliance.

215. Therefore the conclusion is that the inconsistent legal provisions in the Tax Code do not sufficiently ensure that the accounting records are maintained for a minimum period of 5 years.

### *Accounting information in practice*

216. Entities that do not maintain accounting records or prepare financial statements in accordance with the accounting standards as prescribed in the Accounting Law are liable to financial sanctions. The Ministry of Finance is responsible for the administration of this law. It monitors the activities of commercial entities in Azerbaijan for the implementation of accounting rules and imposes penalties on defaulting entities. The Accounting Policy Division of the Ministry of Finance is responsible for monitoring and supervising the

accounting law obligations. This division provides warnings and administrative penalties on defaulters as a result of its monitoring and supervision exercise. It performed desk audits over 1 128 commercial entities during the review period. The statistics on enforcement actions of this division during the review period are as follows:

Years	Administrative warnings	Penalties
2013	33	64 (AZN 72 100 (EUR 60 993))
2014	114	2 (AZN 700 (EUR 592))
2015	8	15 (AZN 11 000 (EUR 9 305))

217. All JSCs are required to publish an annual financial report and file these reports with the SCS every year. The legal department of the SCS (the FMISA, from March 2016) monitors the annual financial report filing requirement. During the review period, only 105 annual reports were filed by JSCs. The Azerbaijani authorities stated that due to reorganisation and restructuring of relevant government bodies as a result of the creation of the FMISA, it was not possible for them to gather information on supervisory and enforcement actions of the SCS on JSCs. The Law on Accounting, the Civil Code, and the new Securities Market Law require that every JSC's financial accounts should be audited by a qualified chartered accountant, licensed by the Chamber of Auditors. An independent auditor's report is attached to the financial statements when the annual report is filed with the SCS. Special licensed entities such as banks, insurance companies etc. also subject their books of accounts for financial audits, and the auditor's report is published with the annual report. The chartered accountant conducting the audit should confirm that the financial statements are in agreement with the accounting records which should have been properly kept for examination. The Code of Ethics for Chartered Accountants requires all Chartered Accountants (CAs) to be honest and truthful in professional relationships and must not to make false declarations or misrepresent the facts, including statements in connection with tax compliance.

218. The Chamber of Auditors is a self-regulated body in Azerbaijan. It licenses CAs and regulates their professional conduct. The Chamber monitors and supervises its members, and any misconduct is investigated. The Chamber exercises disciplinary powers against its members who are found guilty of misconduct. During the review period, the license of an auditor and an audit company was suspended due to misconduct. The Representatives of Chamber of Auditors consider that this is an adequate deterrence given that there are only 100 licensed auditors (50 individuals/50 companies) in Azerbaijan.

219. Around 3 500 audits are conducted annually. This includes a large number of entities (other than JSCs) which have their books of accounts



audited voluntarily for commercial purposes. Wherever the books of accounts are audited, the respective audit report should be submitted by those entities while filing tax returns. An auditor in Azerbaijan has the power to visit a company for audit purposes and to review the accounting documents for verification. The representatives of the Chamber of Auditors advise that all large and medium business entities are likely to undergo an audit in practice. This includes multinational companies, foreign companies and listed entities. However, inactive JSCs may not undergo an audit due to the lack of transactions or awareness.

### *Accounting information with tax authorities*

220. The main sources of accounting information in Azerbaijan are the Ministry of Taxes and taxpayers. Tax returns are accompanied by financial statements and tax reports, which are prepared and signed by independent auditors. Tax returns are filed annually. In 2016, around 94.3% of tax returns were filed electronically. Since July 2011, the total number of individual entrepreneurs registered online was 332 995. AVIS enables the tax administration to store and process data in the integrated information database and to ensure electronic document circulation and rapid information exchange among tax authorities and other government agencies.

221. From January 2010, paper VAT invoices were substituted by electronic VAT invoices. Processing through the e-invoice system of the Ministry of Taxes and issuing an electronic invoice for every transaction is mandatory for all taxpayers engaged in the production and/or sale of goods and services. The system also ensures that VAT is debited from the buyer's VAT sub-account and credited into the seller's VAT sub-account directly. If a taxpayer issues a VAT invoice outside the e-invoice system of the Ministry of Taxes, no VAT credit is provided by the tax authority. This measure acts as a deterrent against tax evaders because none of the taxpayers in the chain of production and sale are able to process and claim VAT credit outside the e-invoice system. The AVIS system not only processes, but also enables taxpayers in generating financial statements and availing other accounting services. This system ensures that the tax authorities can monitor in real-time the economic activities of a taxpayer and can ascertain the financial information (e.g. sales, purchases, expenses, etc.) of a taxpayer without any manual intervention. All taxpayers that file tax and VAT returns use e-invoicing and the VAT sub-accounts facility, which facilitates the online record keeping system. VAT returns are submitted on a monthly basis or on a quarterly basis for simplified taxpayers.

222. Following the introduction of the one-stop-shop registration process, the Ministry of Justice sent registration documents of around 60 000 registered commercial entities to the Ministry of Taxes for migration into the new system. At

the same time, the TIN system was revamped. The 9-digit TIN used until 2007 was replaced by a 10-digit TIN. All taxpayers that had the old series of TINs were compelled to migrate to the new 10-digit TIN. The Ministry of Taxes conducted a re-registration exercise in 2008 in which 35 000 entities were found to be active. These entities were re-registered by being issued with a new TIN (10-digit).

223. The remaining 25 000 entities did not apply to migrate their old TIN to a new 10-digit TIN. The authorities identified these entities as having been registered during the period 1990 to 1995. Most of these entities filed an application under the Tax Code informing about the suspension of their business activity. These entities were declared as inactive entities and were removed from the tax register. A division under the tax accounting department of the Baku tax office continuously monitors the activities of commercial entities in Azerbaijan. This division analyses various inputs from the AVIS system and examines risk levels of entities based on 12 risk criteria identified for monitoring compliance. One of the criteria is to verify the activity of inactive entities. The tax administration conducts inspections to check whether the inactive entities have resumed business operations without filing tax returns, or to check if they have deliberately not obtained a new TIN. The tax system has access to databases of the State Social Protection Fund, the State Customs Committee, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Labour and Social Protection, the FMS, the Central Bank, the Ministry of Finance, the National Security Service, the State Statistics Committee, and commercial banks, which helps in risk analysis. During the review period, the tax administration conducted inspections on 4 063 persons based on information about their alleged business activities despite their inactive status and detected violations. The enforcement actions resulted in submission of tax returns and payment of relevant taxes and penalties in all these cases.

224. A Cabinet order issued in 2004 in relation to the implementation of the TIN as the primary identification document for all persons in Azerbaijan, requires every government authority and licensed service provider to engage only with taxpayers that use the new 10-digit TIN. Accordingly, without a new TIN, an entity cannot conduct any transaction in Azerbaijan. For example, no import or export activity can be performed, and no bank account can be opened in Azerbaijan. In addition, for any transfer of shares or the registration of property or authentication of documents, notary verification is mandatory but cannot be executed without the new TIN. This requirement ensures that the inactive entities cannot resume their business operations without re-registration or without a new TIN. As stated in the previous paragraph, the tax authorities conduct compliance checks to see whether entities perform business transactions in practice without obtaining a TIN. This also applies to newly established businesses. The list of documents that are required to be submitted to a bank in order to open a bank account includes a registration document from the State registration authority and a TIN.

225. As of December 2015, of all the entities registered with the State registration authority, 33 409 companies are identified to be active and 48 776 companies are identified to be non-active. Similarly, there are 235 295 active, and 358 347 non-active individual entrepreneurs in the tax system, based on the information provided by these taxpayers when applying to suspend their business activities. The application to suspend business activities (which would include a suspension from the obligation to file tax returns) is valid for a maximum of 5 years. This information is recorded in the AVIS tax monitoring system and the tax authorities are reminded of the expiry of the permission granted at the end of 5 years. Either the taxpayer renews his application or he will receive a tax notice from the tax authorities for the 6th year to explain his business activities.

226. The risk monitoring system of the tax administration monitors the activities of the taxpayers and every year reports are prepared for the management action. Further, on-site and off-site inspections are conducted extensively to assess the correct income of the taxpayers. Penalties are levied for violation of various provisions of the Tax Code including non-maintenance of accounting records. For example, 98 667 taxpayers delayed to provide 182 378 statements, for which they were fined in the amount of AZN 7 295 100 (EUR 6 171 305). The tax administration have audited 20 363 taxpayers on-site during the review period and the total number of audits conducted was 32 150. For non-compliance relating to the maintenance of accounting records, penalties were levied in approximately 30 cases in 2015.

227. Compliance with the required retention period for accounting documents is supervised by the supervisory authorities together with availability of accounting records. The same supervisory and enforcement measures apply as outlined above.

228. Azerbaijan exchanged accounting information on companies in 92 cases during the review period:

Period	Number of EOI requests on companies	Number of EOI requests on other types of entities	Number of cases where underlying documentation was provided on companies*	Number of cases where underlying documentation was provided on other entities*
July – Dec 2012	10	5	2	0
2013	26	14	9	3
2014	29	6	5	1
Jan-June 2015	27	1	3	2

\* This column represents the total number of EOI requests where underlying documentation was sought by EOI partners.

229. General accounting information on four individuals was provided during the review period (1 in 2013, 2 in 2014 and 1 in 2015) and on one co-operative society was provided in 2012. In no case did Azerbaijan fail to furnish complete accounting information.

### *Conclusion*

230. The IFRS (for PIEs) or the NAS (for other entities), which are binding under Azerbaijan's Accounting Law, require all relevant entities to keep accounting records that correctly explain all transactions, enable the financial position of the entity to be determined, allow financial statements to be prepared, and would include the maintenance of underlying documentation. The Tax Code also requires maintenance of proper accounting records for all commercial entities and individual entrepreneurs.

231. There are no clear and explicit obligations on legal entities and individuals under the Tax Code or the Accounting Law to compel the maintenance of underlying documentations. The indirect obligations under accounting and tax laws require the taxpayer to maintain necessary underlying documentation to an extent. However, the absence of explicit legal requirements may create uncertainties regarding the availability of source documents. Therefore, it is recommended that Azerbaijan take the necessary legal measures to ensure that all underlying documentation be maintained by all relevant entities and individuals in Azerbaijan, in line with the standard.

232. While the Tax Code requires taxpayers to maintain accounting records for a minimum period of 5 years, there are inconsistent provisions in the Tax Code that do not impose sufficient obligations on taxpayers to maintain accounting records for more than 3 years. Therefore it is recommended that Azerbaijan should clarify its Tax Code to ensure that full and reliable accounting information, and underlying documentation, are available for a minimum period of 5 years.

233. In practice, these minor deficiencies in the legal framework have not affected the availability of information in Azerbaijan in line with the standard. Azerbaijan has reported that it has not found any problems in practice with taxpayers duly maintaining accounting records. During the review period, Azerbaijan received 92 EOI requests relating to different types of accounting information, including underlying documentation in respect of different types of entities. There has been no case where the Competent Authority was not able to provide the accounting information required. Inputs received from Azerbaijan's peers confirmed this fact.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
While Azerbaijan's accounting and tax laws indirectly require the keeping of underlying documentation, lack of explicit obligations in Azerbaijan's legislation may provide the opportunity for some entities not to maintain underlying documentation	Azerbaijan should introduce express obligations in its relevant laws that require all relevant entities to maintain underlying documentation.
The Tax Code has inconsistent provisions that do not impose sufficient obligations on taxpayers to maintain accounting records for a period of more than 3 years	Azerbaijan should ensure clarity and consistency in the provisions in the Tax Code to maintain accounting records for a period of at least 5 years

<b>Phase 2 rating</b>
<b>Largely Compliant</b>

**A.3. Banking information**

Banking information should be available for all account-holders.

234. Access to banking information is of interest to the tax administration when the bank has accurate and reliable information about its customers' identity and the nature and amount of their financial transactions.

235. Banks and non-banking financial institutions can operate in Azerbaijan after State registration as an open JSC is completed (Civil Code and State Registration Law). Carrying on the business of commercial banking is a regulated activity in Azerbaijan, for which a banking licence<sup>38</sup> has been

38. Article 1 – Law on Banks – Bank license – special permit issued in accordance with procedures established under this Law, providing exclusive rights for implementation of activities, related to attraction of deposits from natural persons or legal entities or other reimbursable funds, award of credits on its behalf at own expense, as well as provision of payment, cash-desk and wire transfer operations by client request.

granted by the Central Bank of Azerbaijan during the review period, under the Law of the Azerbaijani Republic on Banks (LoB)<sup>39</sup>, as well as other legal-normative laws. Since March 2016, the authority to grant licenses lies with the FMSA. The information to be submitted by banks to obtain a licence to operate in Azerbaijan is provided for in the Decree of the President of the Republic of Azerbaijan on “improvement of regulations for granting special permits (license) for some types of activities”. As of June 2016, there were 37 banks operating in Azerbaijan.

236. Under the AML Law, banks are one of the monitoring entities obligated to conduct customer due diligence measures to properly identify their account holders and any beneficial owners. Their activities are supervised by the Central Bank of Azerbaijan (the FMSA, from March 2016), which is the designated supervisory authority for exercising control over banks. If the Central Bank’s (the FMSA, from March 2016) supervision reveals non-compliance by the banks in their responsibility in identifying their customers, as prescribed by the AML Law, the imposition of an administrative penalty or other measures shall be taken by the Central Bank (the FMSA, from March 2016). In the event the Central Bank detects that a bank has violated prudential norms and requirements or violates the requirements of the AML Law, the Central Bank (the FMSA, from March 2016) may impose enforcement measures, which include imposing fines and penalties to the bank and bank administrators, as per the CAV<sup>40</sup> or revoking the bank license (Art. 49, LoB).

237. Article 348-3 (new Art 598) of the CAV penalises monitoring entities and others involved in monitoring by imposing a penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and AZN 15 000 (EUR 12 689) to legal entities:

- for failure to comply with the requirements of identification and verification of the client, his representative or beneficiary, and documenting information;
- for failure to fulfill the obligations associated with the storage of identification documents and documents relating to money or other assets; or
- for late or incomplete performance by the monitoring entities and other entities of written instructions made by the supervisory authorities or the financial monitoring authority in accordance with the law and in appropriate cases.

39. Article 3.1 of the law of the Republic of Azerbaijan on Banks.

40. Article 223-6.1 Failure to execute instructions of the Central Bank of the Azerbaijan Republic to banks to take corrective measures shall entail imposition of penalty on officials: AZN 1500-2000, legal persons: AZN 10000-15000 (EUR 8460-12,689).

238. Article 35 of the Tax Code provides that legal entities (including representations and affiliates of foreign non-commercial legal entities) shall submit an application to open a bank account with the tax authorities along with the application for State registration or any time after registration. Other taxpayers shall file an application with the tax authorities for opening a bank account upon obtaining a certificate of registration. The tax authorities issue a duplicate certificate to taxpayers. Banks will open accounts for all entities only upon submission of the certificate issued by the tax authorities. Banks will retain one part of the document and send the other part to the tax authorities, which in turn capture all the information about the bank account. If the tax authorities do not receive the notification from banks on the opening of a bank account within 10 days of issue of the duplicate certificate, the issued certificate will be considered invalid. This legal requirement ensures that the identity information of bank account holders is made available with the tax authorities. Any violation of this obligation by banks shall attract an administrative penalty of AZN 400 (EUR 338) for each account (Art. 60.1.1, Tax Code).

239. All persons engaged in entrepreneurial activity are obliged to notify the tax authorities of the opening of foreign bank accounts. For the opening of accounts with non-resident banking institutions and other non-resident credit institutions for business purposes without obtaining the duplicate certificate from the tax authorities, a penalty of 100% of the funds deposited into the account thereof is imposed.

### ***Availability of banking information in practice***

240. The LoB has granted regulatory and supervisory authority to the Central Bank of Azerbaijan over the banking system in Azerbaijan. During the review period, the Central Bank regularly supervised banks and other financial institutions to improve the reliability of the banking sector and to protect the interests of creditors and depositors. Off-site inspections were conducted using computer-based statistical and reporting systems, early warning systems, and other inspection tools. These regulatory and supervisory activities have been taken over by the FMSA since March 2016. On-site inspections are risk-based.

241. The Central Bank was also authorised to investigate the administrative violations in respect of non-bank lending institutions whereas the Ministry of Finance has such authority in respect of non-lending financial agencies, especially, insurance, re-insurance and insurance brokerage. With the establishment of the FMSA, the authority to investigate violation of all non-bank lending institutions as well as non-lending financial institutions was transferred to the FMSA. The Central Bank's (now, the FMSA) function

of banking supervision is based on Basel<sup>41</sup> international banking regulations. Supervisory functions of the Central Bank also included AML supervision over financial institutions and specific non-financial institutions.

242. Bank licenses are issued after two stages of verification and provided or rejected within 180 days of filing of an application. Shareholder information and investment details are verified. The applicant bank has to disclose shareholder information exceeding 10% shareholding and the Central Bank conducts a fit-and-proper test in the areas of operation of the applicant bank. As of March 2016, there were 37 banks that operated under a banking licence. Two branches of foreign banks operate in Azerbaijan and around 50% banks in Azerbaijan have a foreign interest. Within the scope of its supervisory functions, the Central Bank has received periodic prudential reports from commercial banks in order to assess their financial status. Once the Central Bank has issued a bank licence, the bank is required to submit periodic reports. Some monitoring is on a daily basis, some is weekly, monthly or annual depending on the nature and requirement.

243. During the review period, the total number of on-site inspections conducted by the Central Bank was 46, out of which 33 on-sites were conducted on AML monitoring. Inspections on commercial banks could be on a 1-year or 3-year cycle. The inspection cycle is shortened if the bank is classified under AML supervision.

244. An on-site inspection ends with an inspection report to be jointly approved by the Central Bank (the FMSA, since March 2016) and the commercial bank. The report incorporates all discrepancies with regard to AML and banking regulations. Consequently, banks are asked to take corrective measures and failure to take action will result in sanctions imposed. The overwhelming majority of issues relate to the financial status, risk management and corporate governance of banks.

245. Based on the inspections, the Central Bank applied corrective measures and sanctions on 6 banks and the licenses of 4 banks were revoked. Corrective measures and sanctions on two banks remained in force until July 2016. Furthermore, the Central Bank appointed a temporary administrator on one of the banks and measures were taken on remediation of the bank's financial standing. These enforcement powers were transferred to the FMSA in March 2016. However, the FMSA does not have the authority to prosecute banking officials, but it forwards the case to Prosecutor's office, if it is deemed appropriate.

246. Non-bank credit institutions and credit unions control less than 5% of the financial sector. They cannot maintain asset accounts and cannot receive

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41. [www.bis.org/bcbs/basel3.htm?m=3%7C14%7C572](http://www.bis.org/bcbs/basel3.htm?m=3%7C14%7C572).



deposits and the reporting requirements are comparatively less. The money exchanges are considered to be a banking activity and are regulated.

247. The FMS was established in 2009 within the Central Bank. During the review period, the FMS monitored the banking system and received Suspicious Transaction Reports (STR) from banks and financial institutions. The FMS analysed the STRs received and several cases have been referred to the Prosecutor General’s Office (for AML related offences) and to the State Security Service (for Counter Terror-Financing related offences). In March 2016, the FMSA was established. This body has absorbed all the functions of the FMS, thus creating an independent status for the AML agency. The number of cases referred by the FMS each year is as follows:

Year	Office of Prosecutor General	State Security Service
2012	4	6
2013	45	19
2014	31	13
2015	33	10
<b>Total</b>	<b>113</b>	<b>48</b>

### *Record-keeping requirements (ToR A.3.1)*

248. Banks must know the identity of the client. Commercial banks shall take appropriate measures in identifying the customer, beneficial owner and the authorised representative, as well as for verifying the identity information already received (Art. 42.1, LoB). The additional due diligence measures to fulfil the requirements of the AML Law is to be performed by the banks (Art. 42.2, LoB). No anonymous accounts, including anonymous savings accounts and anonymous certificates of deposit, can be opened (Art. 42.1, LoB). Article 9.1 of the AML Law also prevents banks and other credit institutions from keeping anonymous accounts, accounts in fictitious names, or anonymous deposit accounts, and from the issue of anonymous deposit certificates. All anonymous accounts or accounts in fictitious names, which had been opened before the entry into force of the AML Law, have been shut down. The Azerbaijani authorities confirmed that no such accounts currently exist. Besides, to prevent financial institutions from opening anonymous accounts and accounts in fictitious names, the Azerbaijani legislation stipulates liability. Any violation would result in imposition of penalty of AZN 800-1 500 (EUR 677-1 269) to erring officials and of AZN 8 000-15 000 (EUR 6 770-12 689) to legal entities (Art. 348-3, CAV). Documentation that identifies the client and verifies payment and transfer operations shall be retained by the bank for a minimum period of 5 years upon termination of relations with clients and completion of payments (transfers).

249. Article 10 of the AML Law establishes a clear obligation on all financial institutions to keep account transactions, customer correspondence, and to retain documents supporting customer identification. In accordance with Article 9 of the AML Law, financial institutions shall maintain CDD documents on the customer, beneficial owner or authorised representative for a period of at least 5 years after the account is closed, or after the termination of the relationship with the customer. Similarly, financial institutions shall retain documents on the transactions with funds or other property conducted by the customer (account files, business correspondence and other relevant documents) at least for 5 years following the completion of the transaction. In Azerbaijan, record keeping is considered as a low risk area of compliance under the risk matrix.

250. Without registering with the State registration authority, no entity can open a bank account. The bank accounting opening application can be filed online along with the entity registration application. The State registration authority, upon registration, sends a duplicate of the registration document to the bank, and based on that, a bank account is opened. The bank will send a confirmation to the tax office with information on the account number. Individuals need to provide a TIN before opening a current account with the banks.

251. Current accounts of individuals can be opened only upon providing the TIN to banks as part of the “know your client” documents. For both deposit and current accounts, the purpose for which the account is opened should be disclosed to the bank. For non-entrepreneurial purposes, a deposit account can be opened but should not be used for commercial purposes. Tax authorities conduct field inspections in banks and penalise defaulting banks for violating the account opening rules or for allowing deposit accounts to be used for commercial transactions. The tax authorities can access the transactional information on accounts and this information is used for risk analysis. Inspections on banks are conducted once a year or less depending on the risk involved. Fourteen inspections have been conducted during the review period. As a result, 103 cases of deviations in 8 banks were identified. The main infraction was that the clients opened bank accounts without quoting a TIN.

252. In 2008-09, the Central Bank and the Ministry of Taxes signed a “Joint Agreement on E-Document Exchange among the Central Bank of Azerbaijan, the Ministry of Taxes and Commercial Banks” that legally regulates electronic information exchange. The Ministry of Taxes and commercial banks have been exchanging certificates of registration and information about taxpayer accounts electronically and real-time. A similar MoU was signed with the FMS in 2010.

253. The Central Bank authorities affirmed that Azerbaijani banks do not need any pre-requisite or justification to provide client information to tax authorities. Every year, on an average, information on approximately 15 thousand bank accounts is accessed by the government authorities including the tax authorities. There has never been a case where the request was rejected by a bank. In 22 cases out of 45 EOI requests received, information was sought from banks during the review period. In no case did Azerbaijan fail to furnish complete banking information.

Period	Total number of EOI requests	Number of EOI requests on companies	Number of EOI requests on other types of entities	Number of cases where supporting documentation was provided on companies	Number of cases where supporting documentation was provided on other entities
July-Dec 2012	3	3	-	0	0
2013	16	10	4	2	1
2014	13	12	1	3	0
Jan-June 2015	13	13	0	4	0

254. The Banking and AML laws in Azerbaijan ensure that full and reliable banking information of all account holders in Azerbaijan is available for a minimum period of 5 years. These obligations are properly implemented to ensure availability of banking information in practice through on-going monitoring and oversight system of the Central Bank (now, the FMSA) and the Ministry of Taxes.

#### Determination and factors underlying recommendations

Phase 1 determination
The element is in place

  

Phase 2 rating
Compliant



## B. Access to information

### Overview

255. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Azerbaijan’s legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards would be compatible with effective EOI. It also assesses the effectiveness of this framework in practice.

256. The competent authority responsible to collect information and reply to an exchange of information (EOI) request is the Ministry of Taxes, which is in possession of most of the identity and ownership information relevant to EOI purposes, and it is readily accessible to the competent authority.

257. The Tax Code empowers the competent authority to obtain information directly from taxpayers and/or to perform an audit in respect of any person within its territorial jurisdiction. However, there are certain obstacles and deficiencies in Azerbaijan’s legal framework which could impede the access of information as required by the international standard. The tax authorities have powers under the Tax Code to take tax control measures to obtain information from “taxpayers” only. The tax authorities cannot employ their access powers to obtain information from exempted entities and non-taxable persons. However, a specialised department under the Ministry of Taxes has authority under the “Law on Operational Investigative Activities” to obtain information from non-taxpayers and provide it to the competent authority of Azerbaijan under an administrative arrangement.

258. Although there is an obligation on taxpayers to maintain information for a period of 5 years, the Tax Code absolves the liability of the taxpayers for the violation of tax legislation under the Tax Code if a period of 3 years

has passed from the date of the tax violation. This provision could restrict the access of information from taxpayers to a maximum of only 3 years. Such limitations in the access of information are not in line with the standard.

259. In practice, the competent authority has been able to gather information from all persons in Azerbaijan to respond to EOI requests. Moreover, the Ministry of Taxes maintains a comprehensive tax and accounting database which is directly accessible to the competent authority. Most of the information sought by Azerbaijan's EOI partners was available with the tax administration. The competent authority had never faced any obstacle in accessing any kind of information and in obtaining information more than 3 years old.

260. The Tax Code (Art.30) deems all tax information held with the tax authorities to be a "commercial (tax) secret". The Law on Accounting protects the contents of source documents, accounting registers and other documents included in accounting information as commercial secrets. All of Azerbaijan's EOI agreements have provisions that do not obligate the requested State to exchange information that constitutes a commercial or trade secret. Since Azerbaijan's agreements with other jurisdictions do not specifically define the term "commercial secret", it is left to the domestic laws to determine what a "commercial secret" is. Azerbaijan's "Law on Commercial Secret" defines the term commercial secret and its scope is in line with the international standard. However, this definition is in conflict with those of the Tax Code and Law on Accounting. As a result, it is unclear how the different definitions under these laws might affect the ability of the Azerbaijani authorities in accessing and exchanging identity, ownership, and accounting information. In practice, the competent authority has not encountered difficulties in obtaining tax or accounting information.

261. Under the Law on Banking, the information received by banks from their clients, account information, and details of banking transactions are maintained as secret. Limited access to banking information is provided to the tax authorities under the Tax Code, but it does not include client identification information. Since the Law on Banks does not define what kind of banking information is protected under the term "client information", there are uncertainties in accessing full banking information in some cases. Therefore, it is recommended that Azerbaijan ensures that its competent authority has access powers in respect of client information held by banks. In practice, the competent authority had unhindered access to client information from banks in all cases requested for, which includes 22 EOI cases.

262. The tax authorities can use compulsory powers to obtain information, but these powers are limited to the access of documents and information pertaining to periods of not more than 3 calendar years ago. On-site inspections, at which the tax authorities can extract information, can take place at

business premises but the tax authorities cannot conduct on-site inspections in premises other than those used for business activities. This restricts the compulsory access powers of the tax authorities. In practice, the Department for the Primary Investigation of Tax Crimes within the Ministry of Taxes used its compulsory powers to access information from taxpayers and third parties and did obtain information going back more than 3 years.

263. In general, a domestic tax interest is required to access information from taxpayers and banks under the Azerbaijani Tax Code. However, the Tax Code and the banking legislation were amended in 2012 and in 2014 respectively to include provisions which enable the tax authorities to obtain and provide information from taxpayers and banks required for EOI purposes irrespective of a domestic tax interest. In addition, the Constitution of Azerbaijan and the Tax Code provide that ratified international agreements prevail over conflicting domestic laws (hereinafter referred to as the “treaty prevails rule”). The Azerbaijani authorities confirmed that Azerbaijan will exchange information with other jurisdictions under the respective EOI agreements in all cases, which include cases which have no domestic tax interest for Azerbaijan. Further, such exchanges are not restricted to EOI agreements that contain a paragraph similar to Article 26(4) of the OECD Model Tax Convention. Therefore, Azerbaijan’s legal framework fulfils the requirement under the international standard on access powers in the absence of domestic tax interest. In practice, Azerbaijan was able to gather information for EOI even when a domestic tax interest was absent.

264. The scope of professional secrecy attached to advocates and notaries is in line with the international standard of EOI. However, the scope of professional secrecy applied to auditors provided under the Law on Auditors is broader than that established in the international standard of exchange of information. Azerbaijan’s Tax Code provides a notification right to the persons concerned with the information provided by the banks. There are no exceptions to this prior notification provided for in the Tax Code or the Law on Banking. Although the persons concerned have a right to appeal administratively and/or in courts, the banking information will be sent to the tax authorities within 15 days of their notice to banks. Nevertheless, the rights and safeguards that apply to persons in Azerbaijan are not fully compatible with effective EOI. In practice, no appeal has been made by customers whose information is shared with the tax authorities in connection to EOI requests.

265. The peer inputs indicate that all of Azerbaijan’s EOI partners are completely satisfied with their EOI relationship with Azerbaijan. The information provided by Azerbaijan indicates they not only provided complete information in all cases, but did so within 90 days in almost all cases.

## B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

266. The competent authority of Azerbaijan is the Ministry of Finance and Ministry of Taxes. Since the tax administration is the responsibility of the Ministry of Taxes, the EOI function is carried out by the Ministry of Taxes. According to the internal procedures of the Ministry of Taxes, the Deputy Minister responsible for international relations performs the functions of the competent authority under the international agreements. While the Tax Code does not provide direct access powers to the competent authority, the State tax authorities, being administratively sub-ordinate to the Deputy Minister of the Ministry of Taxes, can obtain information for EOI purposes in line with administrative directions.

### *Ownership and identity information (ToR B.1.1) and Accounting records (ToR B.1.2)*

267. The tax authorities are the sole authority for the State registration of commercial legal entities and individual entrepreneurs. The ownership and identity information of all these entities and individuals, to the extent it is submitted to the tax authorities, is directly accessible by the competent authority, in electronic and paper formats. Updated ownership information of non-commercial entities (funds, public associations etc.) is held by the Ministry of Justice. This information is regularly transmitted to the tax authorities (see section A.1.1 above). In addition, the tax authorities can obtain documents and other necessary information from other governmental bodies, pursuant to Article 26 of the Tax Code. Customs authorities provide information on a regular basis. The tax authorities also maintain a database of information on bank accounts opened and closed in Azerbaijan by entrepreneurs and enterprises as well as by foreign enterprises<sup>42</sup>.

268. According to the Tax Code (Art. 16.1), taxpayers are responsible for filing tax returns with the tax authorities, and for submitting the necessary information and documents as required by procedures established by the Tax

42. Art. 35 of the Tax Code – banks should send one part of the duplicate certificate issued by the tax authority for opening a bank account within 10 days of the issue of such duplicate certificate after opening the bank account. As a consequence, the basic information about the bank account of the taxpayers will be available with the tax authorities.



Code. Regarding accounting information maintained in electronic format, taxpayers should also provide direct or remote access to the data on their electronic media. Article 23 of the Tax Code establishes the rights of the tax authorities to access information for tax purposes, specifically, the rights to examine all financial documents, accounting books, reports, estimates, cash, securities and other assets on hand, returns, declarations, and other documents relating to the calculation and payment of taxes.

269. The State authorities can examine the relevant documents and access information by conducting off-site (desktop) and on-site tax inspections in accordance with procedures established under the Tax Code. However, the tax authorities can apply these access powers only to “taxpayers”<sup>43</sup>. Third parties can be accessed by the tax authorities, but only in connection with a taxpayer in whose case an on-site tax inspection is being conducted, and in order to verify the information on the activities of the taxpayer, if the documents from the third parties are required<sup>44</sup>. If a request for information is received that pertains to information held by a non-taxpayer, the tax authorities would not be able to utilise access powers under the Tax Code to obtain information. Since a non-taxpayer who has no commercial activities for the year or who does not have taxable income needs to submit a simple declaration under the Tax Code, there may not be enough information in the possession of the tax authorities. Moreover, there are certain categories of persons who are exempted from profit tax or income tax in Azerbaijan and who are not considered “taxpayers” unless they are liable to another tax under the Tax Code.

270. When a request for information pertains to information held by a non-taxpayer, a specialised department (“Department for the Primary Investigation of Tax Crimes”) under the Ministry of Taxes may use their law enforcement powers provided for in the Law of the Republic of Azerbaijan No. 728-IQ dated 28 October 1999 on “Operational Investigative Activities” to obtain and provide such information. In accordance with the Decree of the President of the Republic of Azerbaijan No. 507 dated 19 June 2001, the Ministry of Taxes is determined as one of the authorised bodies to interrogate any person in Azerbaijan and make inquiries, including by entering and inspecting buildings, etc. There is no restriction to use these powers for

43. Tax Code – Article 13.2.4 defines a taxpayer as any person who shall pay taxes from subjects of taxation determined in accordance with the Tax Code.

44. Art. 36.3 of the Tax Code – If during the performance of tax inspection, the tax authorities have documented evidences in the necessity of receiving the information on the taxpayer which is connected with *third* persons and is relevant to the inspection, the tax authorities may require such persons to provide documents related with inspected taxpayer’s activity. For such actions the ministry of taxes’ motivated decision of tax authority is necessary.

EOI purposes. This department has broad competences and works in close co-operation with other law enforcement agencies, such as the police, prosecutors, border control etc. to obtain information. The competent authority seeks assistance from this department whenever a request pertaining to non-taxpayers is received from EOI treaty partners. The Azerbaijani authorities state that they have been able to obtain information within Azerbaijan without any limitations.

271. As detailed in paragraph 213, taxpayers are not held accountable for any violations of the Tax Code and no tax liabilities arise if a period of 3 years had passed from the date of the tax violation (Art. 56, Tax Code). In accordance with Article 36 of the Tax Code, on-site inspections can be conducted for accessing information for EOI purposes but they can cover the period of no more than 3 calendar years of the taxpayer activities (Art. 36.3, Tax Code). This means that the information sought by a requesting jurisdiction beyond 3 calendar years from the date of request cannot be obtained by using enforcement access powers of the tax authorities if a taxpayer refuses to provide the information.

272. The Law on Banks (LoB) provides access to the tax authorities to obtain information from banks (Art. 41, LoB). The access of banking information to tax authorities is extended for EOI purposes through the amendment of Tax Code and Law on Banks in June 2014. But the extent of information that can be provided by the banks seems to be more limited than the requirements of the standard. Article 76 of the Tax Code empowers the tax authorities to only obtain information on bank accounts and operations of the banks' customers, which raises the question of whether the competent authority is able to access client information. Access to banking information is not restricted to "taxpayers".

273. The Civil Code requires banks to maintain confidentiality of bank accounts, operations and residues on the account, as well as client information, including name, address and management of the account. When required, banks can provide this information to the clients or their representatives, the Central Bank, external auditors, insurance supervisory authorities and to the AML authorities under a valid court order. To the tax authorities, however, banks are only required to provide information on bank accounts and transaction details of legal entities or private entrepreneurs. The information to be disclosed to the tax authorities does not cover identity information about the client. Although the LoB does not define what kind of banking information is protected under the term "client information" it could include identity documents, account opening documentation, signature cards, etc. If Article 41 of the LoB is read with the purpose of Article 76 of the Tax Code (which determines the tax liability of the taxpayer in circumstances where the taxpayer has not maintained records; or not filed income tax returns; or failed

to provide access of information to tax authorities), it leads to the interpretation that the extent of banking information available to the tax authorities is limited to bank balances and transactional information. These restrictions for domestic purposes were not relaxed for the purpose of EOI in the amendments made to the Tax Code and the banking legislation in 2014.

274. At the same time, Article 151 of the Azerbaijani Constitution provides for a treaty prevails rule whenever there is a disagreement between any of the normative-legal acts of Azerbaijan (except the Constitution of Azerbaijan and acts accepted by way of referendum) and international agreements. A similar treaty prevails rule is provided in the Tax Code (Article 2.5). According to this rule, the provisions of international agreements ratified by Azerbaijan will be applied if those provisions differ from the provisions of the Tax Code. The treaty prevails rule is applicable only when there is a contradiction between the treaty provisions and domestic legislation. The EOI instruments require the competent authorities to exchange information for tax purposes. It is uncertain whether Azerbaijan's agreements that have explicit provisions for exchange of banking information akin to Article 26(5) of the OECD Model Tax Convention would provide powers to gather client information which is excluded for the domestic powers. Generally, where there is a conflict between a specific provision in a statute and a general provision, the specific provision will prevail. Thus, the above domestic restrictions on client information may apply even if banking information is requested under a treaty containing Article 26(5) of the OECD Model Tax Convention, irrespective of Azerbaijan's international treaty prevails rule.

275. Therefore, it is recommended that Azerbaijan provide sufficient access powers to the tax authorities to access all kinds of information, including client information, held by banks as per the international standard.

### *Access to information in practice*

276. A total of 2 448 officials are involved in tax administration in the Ministry of Taxes. This number excludes the staff and officials providing support services for the tax administration. An automated tax information system (AVIS) has been implemented which provides a digital platform to facilitate real-time or near real-time collection and assessment of taxpayer data in an integrated database, and allows for easy retrieval and information exchange. All taxpayer declarations are filed and stored in electronic format. AVIS has an online record keeping system, which facilitates correspondence between taxpayers and the tax administration. Every taxpayer has a personalised mail box with the Ministry of Taxes. Taxpayers receive notices and tax information from the tax administration in their mailboxes. When a message is sent, an alert is sent to the mobile number registered by the taxpayer.

277. The VAT administration is carried out electronically. All VAT payers are required to pay VAT through a VAT deposit account with the tax administration. This arrangement facilitates VAT settlement and credit claims of taxpayers and at the same time curtails VAT evasion and provides comprehensive information about taxpayer activities. Tax audits are conducted online and documents are submitted electronically. Once an audit is complete, all information is preserved electronically, thereby facilitating the easy access of documents at later dates. E-invoices and a VAT sub-account system enable the tax authorities to monitor taxpayers' business activities and obtain most accounting information in real-time. VAT payers, except for simplified taxpayers, file VAT returns on a monthly basis.

278. Legal entities file profit tax returns on or before 31 March every year. Individual entrepreneurs are required to file personal income tax returns by 31 March every year. The deadline can be extended for three months upon filing an application. If a taxpayer ceases his entrepreneurial activity during a tax year, he is required to file a tax return within 30 days of that event. If a taxpayer has not conducted any commercial activity or has not earned any income during a year, he can file a statement to this effect instead of a tax return.

279. The tax authorities perform two kinds of operational control measures: desk audits and field audits. The desk audit is an automated process where tax returns are verified with other information. If gaps appear the system ascertains any additional taxes due. The findings of the desktop audit are emailed to the taxpayer. The recipient of the notice has to file additional information within 5 days. If a taxpayer provides sufficient information or revises a tax return and pays additional taxes, the case is deemed closed. If the taxpayer fails to do so, additional taxes are confirmed and the taxpayer is directed to pay the tax. If he does not pay, a payment order is sent to the bank and the assets are identified and auctioned.

280. Desktop audits are conducted on all taxpayers. Approximately 800 variables are used by the risk analysis system to identify cases with high risk potential. On-site inspections are carried out in such cases. Around 10 000 on-site inspections are conducted every year on an average. The tax administration has audited 20 363 taxpayers on-site during the review period and total number of audits conducted was 32 363. In 2015, as a result of field inspections, an additional revenue of AZN 1 060 million (EUR 896 710) was yielded. Between 500 and 700 tax auditors conduct desktop and onsite audits. Approximately, 400 auditors are deployed for onsite inspections.

281. In relation to criminal tax investigations, requests received from other jurisdictions are handled by the Main Department of International Cooperation and Tax Monitoring in Financial Institutions. This department sends a request to the Department for the Primary Investigation of Tax

Crimes to collect the information. In some cases, the information requested may be in the possession of law-enforcement agencies other than the tax authorities. In these cases, the Department for the Primary Investigation of Tax Crimes can apply to the Ministry of Internal Affairs, the Prosecutor General's office, the Ministry of Justice, or the judicial authorities for information, as required. In practice, during the review period, the Department for the Primary Investigation of Tax Crimes processed EOI requests and furnished information, especially in relation to tax crime investigation. In these cases, information from agencies such as the Ministry of Internal Affairs, the State Border Service and the State Migration was received to service requests. The Ministry of Taxes has signed MOUs with other State authorities including the FMS for facilitating the exchange of information domestically. The databases of many agencies such as banks, the Central Bank, the FMS and the SCS are accessed by tax officials in real-time for audit activities.

282. To access residential premises, the tax authorities must apply to the court to obtain permission. In such cases, court administrators can be directed by the court to get the information. If the taxpayer fails to submit the information again, the tax authorities will estimate the tax liability.

283. If a company is liquidated, all documents held by the company are required to be submitted to the archive office so that the information will continue to be available. If a company is active, the documents can either be with the archive office or with the company itself.

284. A non-filers/stop-filers list is generated and reviewed automatically. During the review period, around 28 000 taxpayers with taxable income were identified to have not filed tax returns. Penalties totaling AZN 2.4 million (EUR 2 million) were levied. In addition, 98 667 taxpayers have been identified to have delayed in submitting statements (either for tax declarations, VAT returns or declarations related to suspension of business etc.), for which they were fined a total of AZN 7 295 100 (EUR 6 171 305).

285. All correspondence in the Ministry of Taxes is carried out via AVIS, which is used to log and track EOI requests received. All requests, along with attached documents, received by the Ministry of Taxes, are registered as electronic documents with specific numbers assigned before being submitted to the relevant body with a timeline determined for fulfilment. The fulfilment of requests is monitored through “operation history” in AVIS. The control over the fulfilment of requests is exercised by the Performance and Labour Discipline Control Division within the Ministry of Taxes. Officials of every structural division and unit can get a daily updates about the status of requests. There is special reporting on “international requests”, which is monitored centrally. Once the final handler of an EOI request in the local office is determined, the EOI section establishes regular contact to obtain information.

286. Where information is required to be kept but the record keeper disputes the obligation to keep the information, the subject matter of the dispute is investigated comprehensively. The legislative requirements on retention of the information and the rights and responsibilities of the taxpayer regarding retention of information are explained to the taxpayer.

287. Where the information is required to be kept but the record retention period has expired, the tax official handling the case checks if the relevant records have been handed over to the archive office. If so, an application is sent to the archive department to retrieve the information. The tax officials conduct an e-audit without going to banks, enterprises, organisations and companies. The e-audit is performed on the basis of the electronic tax return filed by a taxpayer, the electronic transactions of the taxpayer directly imported from the e-accounting system of AVIS, and verifying with the electronic third party information collected on the taxpayer. The tax system has real-time integration with most of the commercial banks in Azerbaijan, and the bank account transaction information of all taxpayers can be viewed online by the tax auditors for audit and EOI purposes.

288. As a result, at least part of the requested information in 94% of the cases was directly available with the EOI unit in the tax database. In 3% of cases, information was sought from other governmental authorities. In 4% of the cases, the information was in the control of a third party and in 11% of cases, information was received from banks or financial institutions. The head of the EOI division has unrestricted access to the tax database with reduced access permissions to persons below in the EOI unit depending on the hierarchy. The access levels are decided depending on the type of information requested.

289. If the information is already in the hands of the tax authorities (e.g. tax return information, documents in the case file of a taxpayer), it is provided within 15 days. If the information is in the hands of another governmental authority, the Ministry of Taxes files an official request to that authority who fulfils the request in accordance with the “Guidelines for records management in State bodies, State owned legal entities, legal entities the controlling interest of which is held by the State, and State financed organizations” approved under Decree No. 935 of September, 2003. Requested information should be provided by other governmental authorities to the Ministry of Taxes within 30 days.

290. If the information is in the possession or control of the taxpayer that is subject of the enquiry, the tax authority requests the taxpayer to provide a copy of the records within 20 days. Where the record keeper refuses to provide the requested information within the established timeframe, an unannounced on-site tax inspection will be conducted into the taxpayer’s activity in accordance with the Tax Code. If the information is in possession

or control of a bank or other financial institution, the tax authority issues a notice to the bank of financial institution concerned to furnish information within 15 days.

***Use of information gathering measures absent domestic tax interest (ToR B.I.3)***

291. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if the first-mentioned party has an interest in the requested information for its own tax purposes. In Azerbaijan, the tax authorities derive their access powers to obtain information by conducting inspections, which may be off-site (desktop based) or on-site (planned or without prior notice). These inspections are executed by the tax authorities for the purposes of complete and timely collection of taxes (Art. 32.1, Tax Code).

292. Article 37 of the Tax Code (off-site inspections) stipulates that the action shall be carried out on the basis of documents and information received from a known source that affects the calculation and payment of taxes, and documents on taxpayer activity. The off-site inspection is a routine procedure of checking the tax returns and other reportable information submitted by taxpayers. The tax authorities can seek additional documents, information and explanations from the taxpayers but this exercise is restricted to the reassessment of the tax liability of the taxpayers on the basis of information from other sources. The Azerbaijani authorities state that the tax authorities cannot conduct off-site inspections to obtain information from taxpayers for EOI purposes. The Azerbaijani authorities confirmed that whenever any information is required to be obtained from taxpayers concerned for EOI purposes, the tax authorities seek this information from the taxpayers through a general notice. If information is not provided within due period specified in the notice, the tax authorities will conduct on-site inspections as empowered under Article 38 of the Tax Code.

293. In an on-site inspection,, the tax authorities can access information for the purposes of responding to an EOI request made under an international treaty as a result of an amendment<sup>45</sup> to the Tax Code in 2006 to facilitate EOI with partner jurisdictions. Access to banking information is not restricted by a domestic tax interest requirement. Article 76.1 of the Tax Code primarily applied to circumstances where the taxpayer has not maintained records or

45. Article 42.4 of the Tax Code: “Documents required for performance of tax control and implementation of enquiries made under international treaties to which the Republic of Azerbaijan is a signatory, or their appropriately approved copies on the basis of enquiry of the tax authority shall be submitted by the taxpayer within 20 days period.”

not filed income tax returns, or failed to provide access to information to the tax authorities. This Article was amended in 2012 to include the phrase “and if requested by the relevant authorities of other States on the basis of information exchange provisions of international agreements on taxation concluded by the Azerbaijani Republic with other States” to provide access for EOI purposes. Article 41.2 of the LoB was also amended to lift bank secrecy, thereby enabling banks to submit information on their clients’ bank accounts and financial transactions to the tax authorities in accordance with the procedures stipulated in the Tax Code.

294. Moreover, the treaty prevails rule in Azerbaijan’s Constitution and the Tax Code is applied when there is a contradiction between the treaty provisions and domestic legislation. The Azerbaijani authorities confirm that Azerbaijan will exchange information with other jurisdictions under the respective EOI agreements in all cases, which includes cases in which Azerbaijan does not have any domestic tax interest. Of all Azerbaijan’s EOI agreements, 103 contain provisions obliging the contracting parties to use information-gathering measures to exchange requested information without regard to a domestic tax interest (see section C.1.4 below). There are 8 EOI agreements that do not contain a provision to exchange information without a domestic tax interest. However, Azerbaijan’s position is that EOI exchanges are not restricted to those EOI agreements that contain a paragraph similar to Article 26(4) of the OECD Model Tax Convention.

295. In practice, Azerbaijan has not faced any issues in relation to EOI requests in which Azerbaijan the tax authority does not have a domestic interest. Azerbaijan has not rejected any request on this ground. No issue has been raised by peers in relation to the ability of the tax authorities to obtain information absent a domestic tax interest.

296. To sum up, Azerbaijan’s legal framework fulfils the requirement under the international standard on access powers in the absence of domestic tax interest. In addition, the primacy of international agreements over domestic legislation (which includes the Tax Code) and the fact that EOI agreements have an overriding effect on the provisions of the Tax Code provides sufficient comfort that the treaty prevails rule will give the tax authorities enough powers to access information in the absence of a domestic tax interest. Azerbaijan’s EOI practice confirms this position.

### ***Compulsory powers (ToR B.1.4)***

297. Jurisdictions should have in place effective enforcement provisions to compel the production of information. In Azerbaijan, the tax authorities exercise their compulsory powers by conducting on-site inspections. When the information is requested by tax authorities for the purpose of responding to



an EOI request, it shall be submitted by the taxpayers within a 20 day period from the date of notice (Art. 42.4, Tax Code). If there is a failure in providing the documents within the stipulated time, or if the information provided is not authentic or distorted, an unplanned on-site inspection can be conducted by the tax authorities.

298. Although on-site inspections are primarily for domestic tax purposes, enquiries can be conducted for obtaining information for EOI purposes. However, on-site inspections can only be conducted in commercial premises. Documents that are kept in the residential premises of taxpayers cannot be forcibly accessed by the tax authorities. Consequently, on-site inspections cannot be conducted on non-commercial entities. Further, on-site inspections can be conducted only once a year for any entity (Art. 38.2, Tax Code). The Tax Code does not provide for any other ways to compulsorily access information for EOI purposes in cases where an on-site inspection of a taxpayer has already been conducted in that year. Further, in accordance with Article 36 of the Tax Code, on-site inspections cannot be conducted for a period more than 3 calendar years of the taxpayer activities for accessing information for EOI purposes (Art. 36.3, Tax Code). This means that the information sought by a requesting jurisdiction beyond 3 calendar years from the date of request cannot be obtained by using enforcement access powers of the tax authorities if a taxpayer refuses to provide the information.

299. Administrative penalties are levied under the Tax Code in certain circumstances. A penalty of AZN 40 (EUR 34) is levied on taxpayers who do not submit a tax report in a timely manner. The penalty is imposed by the head and deputy head of the tax authority. If a taxpayer delays the submission of documents (including electronic documents), violating provisions in Article 23.1.2 of the Tax Code, or submits them in a deliberately distorted way, and thereby without a good reason delay the submission of accounting documents or information as stipulated in Article 71.4 of the Code, the tax authority can levy a penalty of AZN 100 (EUR 85). In relation to banking information, no penalty is imposed on banks if the requisite information is not provided by them.

300. In cases which require detailed investigation, cases where the information holder is not a taxpayer or cases where an on-site inspection has already been completed during the year, EOI requests are forwarded to the Department of the Primary Investigation of Tax Crimes through the Main Department of International Cooperation and Tax Monitoring in Financial Institutions, both within the Ministry of Taxes. The Primary Investigation of Tax Crimes Department has processed 31 EOI requests during the review period by exercising its law enforcement powers provided for in the Law on Operational Investigative Activities to obtain information without the limitations specified above. This Department does not need any additional requirement to conduct

enquiries/investigation. The EOI request forms a valid ground for processing these cases. Officers are able to summon the person under investigation or the information holder to the department, where that person is questioned or asked to provide documents. The requisite documents are collected and forwarded to the competent authority, usually within 30 days.

301. To sum up, it is recommended that Azerbaijan should ensure that the compulsory measures are adequate and cover all cases including those cases where information relates to a period of more than 3 years old. In practice, information relating to more than 3 years was provided in EOI cases. In a couple of cases, the tax authorities used their compulsory powers to obtain information.

### ***Secrecy provisions (ToR B.1.5)***

302. Jurisdictions should not decline on the basis of secrecy provisions (e.g. bank secrecy, corporate secrecy) to respond to a request for information made pursuant to an EOI mechanism.

303. Any taxpayer information gathered by the tax authorities in the course of performing their official duties is treated as a “commercial (tax) secret”. The tax authorities are obliged not to disclose this confidential information (Art. 30, Tax Code) except in cases stipulated by the Tax Code. The exceptions to this rule include sharing information to relevant government authorities of other States in accordance with international agreements to which Azerbaijan is a party. At the same time, all international tax agreements to which Azerbaijan is a party contain provisions that restrict the exchange of information under certain circumstances. Accordingly, the agreements do not impose an obligation on Azerbaijan to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process or information, the disclosure of which would be contrary to public policy. Since the agreements do not define commercial secret, the definition or the meaning has to be construed from the domestic legislation of both States.

304. In Azerbaijan’s Tax Code, taxpayer information collected by the tax authorities is categorised as a “commercial (tax) secret”. At the same time, Azerbaijan has a specific law which deals with commercial secret information. The “Law on Commercial Secret” defines the term commercial secret and its scope is in line with the international standard. However, this definition is in conflict with definitions in the Tax Code and the Law on Accounting. As a result, it is unclear how the different definitions under these laws could affect the ability of the Azerbaijani authorities in accessing and exchanging identity, ownership, and accounting information.

305. The Azerbaijani authorities maintain that the term “commercial (tax) secret” in the Tax Code refers to the confidentiality with respect to taxpayer

information. The exceptions to this general provision are provided to give full access to taxpayer information wherever necessitated by the Tax Code. The exceptions also include information to be exchanged with other tax authorities under EOI arrangements. With Article 30.6.4 of the Tax Code, which allows for exchange of information with other States in accordance with the relevant international agreements, Azerbaijan considers it to be enough and undisputable basis for the exchange of such information. When there is a need to apply the commercial secrecy provision, the competent authority refers to the commercial secrecy law, which defines the true definition of what comprises a commercial secret. This definition and the approach of the competent authority are in line with the international standard.

306. The Azerbaijani authorities further state that the term “commercial (tax) secret” under the Tax Code needs to be differentiated from the term commercial secret as mentioned in the Law on Commercial Secret. While the argument of Azerbaijani authorities is acceptable, as there is a specific law in Azerbaijan that deals with commercial secret and is applicable to all purposes and in all cases, there is an ambiguity in having different definitions with varying scope in different laws, which may lead to some taxpayers disputing the action taken by the tax authorities before courts or administrative appellate bodies. However, in Azerbaijan’s view, the tax authorities have unhindered access powers to obtain and exchange taxpayer information for EOI purposes without any limitations. Furthermore, Azerbaijan has not encountered any disputes in its courts or appellate bodies in relation to its access powers. To avoid any potential disputes in future, it is recommended that Azerbaijan clarify the position in its domestic law in this respect so that any doubts are removed. In practice, the competent authority has been able to access information on numerous taxpayers, as well as access to accounting information, and his actions have been guided by the provisions of the underlying EOI agreements and the Tax Code. The interpretation of “commercial (tax) secret” has been consistently followed in practice in line with the intention of the international standard.

307. Similar provisions on commercial secrecy exist in the Law on Accounting (Art. 15). The confidentiality provision states that the contents of source documents, accounting registers and other documents are a commercial secret. The Law on Accounting governs the accounting records requirement of all entities in Azerbaijan. The Azerbaijani authorities maintain that the tax auditors in Azerbaijan can access all accounting information pursuant to notice under Article 42.4 of the Tax Code and by conducting an on-site inspection. Further, in practice, the Azerbaijani authorities have not encountered any dispute regarding disclosure of commercial secret and exchange of such information. Despite this, the categorisation of all accounting information as commercial secret may conflict with the definition provided in the Law on Commercial Secret. This would lead to an uncertainty in the application of the provisions

of these laws and could potentially impede the power of the tax authorities to obtain accounting information from taxpayers and other persons if disputed.

308. Article 41 of the Law on Banks stipulates that banks are required to submit information only on bank accounts and transaction details of legal entities or private entrepreneurs. The information to be disclosed to the tax authorities does not cover information about the client. Although the Law on Banks does not define what kind of banking information is protected under the term “client information” it could include identity documents, account opening documentation, etc. As a result, there are uncertainties in accessing certain kinds of information held by banks, although the tax authority in Azerbaijan maintains it has not encountered any such issues in accessing client information. During the review period, banks were sent 1 548 requests including EOI requests. These requests related not only to bank accounts and transaction details, but also extended to client information in many cases. Moreover, these requests were made based on the general access powers of the tax authorities. No bank refused to provide the information sought, regardless of whether the purpose was for domestic or international assistance. Further, if the tax authorities do not disclose the reason for requesting access to bank information, banks did not use the bank secrecy provisions in the Law on Banks to restrict access to information. Thus, it can be concluded that the legal ambiguity in the Law on Banks has no adverse effect on the access powers of the tax authorities of Azerbaijan in practice.

309. The Law of the Republic of Azerbaijan on Advocates and Advocates’ activity establishes legal professional privilege attaching to advocates. The scope of the law is restricted to rendering legal assistance to natural and legal persons in Azerbaijan. Article 17 of this law states that information received by an advocate, rendering consultations and issuance of certificates (notaries) in connection with carrying out of professional activity represents an advocate’s secrecy. The violation of a professional secret by an advocate may result in the sanctions foreseen under the law. While the term “professional activity” is not defined by the Advocates Law, the rights and duties of an advocate under this law is restricted to rendering legal assistance in a trial or pre-trial.

310. The scope of professional secrecy attached to advocates is in line with the international standard of exchange of information. The standard establishes that the contracting parties to an EOI agreement are not required to exchange confidential communications between a client and an attorney, solicitor or other admitted legal representative, produced for the purposes of seeking or providing legal advice, or produced for the purposes of use in existing or contemplated legal proceedings. The scope of professional secret established in the Law on the Advocates is limited to “confidential communications” between a client and an advocate and therefore, is in line with the standard.

311. Independent auditors and audit organisations licensed by the Chamber of Auditors have a duty of confidentiality in respect of information obtained during an audit. This obligation is enshrined in the Law on Auditing, which dates from, 1994. The confidentiality obligation on auditors is triggered by a specific request from their clients to keep all the accounts and related documents as confidential. The only exception provided in the Law on Auditing is when the information request is from judicial bodies.

312. The tax authorities are of the view that the Tax Code provides them the unrestricted right to obtain information from any person in Azerbaijan, including auditors or audit organisations. However, the Chamber of Auditors considers that there is no legal obligation for auditors to disclose client information to the tax authorities. Representatives of the Chamber of Auditors stated, during the review, that auditors can share the information in their possession only with the consent of their clients. An exception to this applies to the courts and prosecutor general’s office of the Government of Azerbaijan. In practice, information has been shared by auditors with AML and National Security agencies if summoned by courts to co-operate.

313. In Azerbaijan’s case, the confidentiality requirements in the Law on Auditing are much broader than the scope intended in the international standard. Azerbaijan is therefore, recommended to ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard for EOI.

314. Nevertheless, as explained above in B.1.1 and B.1.2, most of the taxpayer information is readily available in the database of the Ministry of Taxes and on no occasion during the period under review did the tax authorities request information from an auditor or other legal professional. Moreover, none of the peer input highlighted issues regarding the application of professional secrecy or rights and safeguards in Azerbaijan during the review period.

### *Conclusion*

315. Azerbaijan’s competent authority has some limitations in its access powers to obtain and provide information held by persons within its territorial jurisdiction. There are certain obstacles and deficiencies in Azerbaijan’s legal framework which may impede the access of full information, as required by the international standard. Similarly, the compulsory access powers are limited to 3 years. There is ambiguity in the scope of different laws in defining the term “commercial secret”. Similarly, the scope of professional secrecy that applies to Auditors is broader than the requirements of the international standard. This may affect the access powers of the competent authority of Azerbaijan. Azerbaijan should ensure that adequate access powers to obtain

information in line with the international standard are vested with the competent authority. Despite the existence of several minor deficiencies in the legal framework that might influence the access powers of the tax authorities, in practice these issues have not affected the powers of tax authorities in accessing information from any persons in Azerbaijan. Similarly, no restrictions were faced while accessing information in respect of a period of more than 3 years and in obtaining information on taxpayers, as well as accounting information, regardless of a requirement to have a domestic tax interest or the scope of the term “commercial (tax) secret” or on account of the broader scope of professional secrecy privilege to auditors.

### Determination and factors underlying recommendations

<b>Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
There is ambiguity in the scope of different laws in defining the term “Commercial Secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI.	Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI.
Uncertainties in accessing certain types of client information from banks and in accessing information using compulsory powers for periods beyond 3 calendar years may restrict the access to information in certain cases.	Azerbaijan should ensure that the competent authority has adequate access powers including compulsory powers unhindered by the 3 years limitation and is able to access client information from banks in all situations for EOI purposes, to bring them in line with the standard.
Azerbaijan’s EOI Agreements do not define the term “professional secret” and the scope of this term under the domestic law restricts the tax authorities’ access to any information held by auditors.	Azerbaijan should ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard.

<b>Phase 2 rating</b>
<b>Largely Compliant</b>

## B.2. Notification requirements and rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

### *Not unduly prevent or delay exchange of information (ToR B.2.1)*

316. Rights and safeguards should not unduly prevent or delay effective EOI. For instance, notification rules should permit exceptions from prior notification (e.g. in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

317. Rights and safeguards are mainly established under the tax legislation of Azerbaijan. When any information is sought from persons, the Tax Code empowers the tax authorities to obtain information directly from taxpayers. The tax authorities can issue notices to the taxpayers without any legal requirement to approach courts/tribunals to seek information from the taxpayers.

318. In the case of banking information, Azerbaijan's Tax Code does not require the tax authorities to inform the person concerned of the existence of an exchange of information request. The Tax Code (Art. 76.2) obligates banks and other financial institutions to notify the account holder about the information to be provided to the tax authorities. Upon receipt of notice from the tax authorities, the credit institutions or banks shall send the information sought by the tax authorities to the account holder within 5 days and then provide it to the tax authorities in 15 days. There is no exception to this provision for prior notification in the Tax Code or in the Law on Banks. The procedure to communicate with the client or the extent of disclosure of information by banks is not specified.

319. Any taxpayer or affected person has the right to know that the tax administration has accessed their bank information but cannot prevent the tax authorities from receiving the information from banks or stop the tax authorities from exchanging this information with EOI partners. The Azerbaijani authorities confirmed that the taxpayer or affected person is not informed of the specific purpose for which the information is being accessed by the tax authorities, and would not be aware that access to the information is a result of an EOI request. An account holder whose bank account information has been sent to the Ministry of Taxes can exercise the general legal right to appeal to the courts against the action of the tax authorities. However, this legal process has no effect in delaying or restricting the information by the banks to the tax authorities. The information will be sent to the tax authorities within 15 days irrespective of an appeal pending before the courts or administrative authorities. Azerbaijan confirmed that no taxpayer has ever appealed against the action of the tax authorities obtaining banking information or against banks that provided to the tax authorities.

320. The Law on Banks stipulates that information on bank accounts and bank operations of any legal entity or individual taxpayer serviced by a bank, shall be submitted to the tax authorities only in cases and in accordance with the Tax Code (Art. 41, LoB). The Azerbaijani authorities have confirmed that Azerbaijani legislation does not provide any exception to the banks’ notification requirements.

321. Thus, the Phase 1 determination is that this essential element is in place but certain aspects of the legal implementation of the element need improvement. Azerbaijan should introduce legal changes in the Tax Code to provide exceptions to prior notification (e.g. in cases in which the information request is of a very urgent nature, or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

322. In practice, the EOI requests received and the information provided were not subject to dispute. During the review period, Azerbaijan generally obtained the information requested by its treaty partners from the database of the tax administration, other government agencies, financial institutions or directly from taxpayers through the procedures described in section B.1 of this report. In no instance has the taxpayer been notified by the tax authorities of the existence of an EOI request, or the fact that information was going to be transmitted to a foreign competent authority. However, financial institutions informed their clients of the account information to be sent to tax authorities. In practice, during the period of review, no appeals have been made by clients whose information is shared with the tax authorities in connection to EOI requests.

323. Peers input provided to this review has not raised concerns regarding rights and safeguards applicable in Azerbaijan.

**Determination and factors underlying recommendations**

<b>Determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
There are no exceptions to prior notification of the person concerned for accessing bank account information.	Notification rules in Azerbaijan should permit exceptions from prior notification, e.g. in cases where the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation.
<b>Phase 2 rating</b>	
<b>Largely Compliant</b>	



## C. Exchanging information

### Overview

324. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Azerbaijan, the legal authority to exchange information is derived from its EOI instruments and from domestic law. This section of the report examines whether Azerbaijan has a network of information exchange that allows it to achieve effective exchange of information in practice.

325. Azerbaijan’s network of EOI instruments covers 111 jurisdictions. It comprises 51 bilateral Double Taxation Conventions (DTCs), and one Tax Exchange Information Agreement (TIEA), of which 48 are in force and the Convention on Mutual Administrative Assistance in Tax Matters. Azerbaijan is a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. It signed the Protocol amending the original Convention on 23 May 2014 and deposited its instrument of ratification on 29 May 2015. The Protocol entered into force for Azerbaijan on 1 September 2015.

326. Azerbaijan’s network of exchange agreements covers all its main trading partners (Italy, Germany, Indonesia, Russia, Israel, Turkey, France, United States, United Kingdom, Thailand, Spain, India, China, Czech Republic and Georgia) except Thailand. Azerbaijan’s main EOI partners in last few years have been Russia, Belarus and Ukraine. There have been some EOI exchanges with the United Kingdom, Norway, Georgia, Germany, Lithuania, Turkey, Italy, Kazakhstan, Kyrgyzstan, Uzbekistan and the Netherlands. Comments were sought from Global Forum members in the course of the preparation of this report and in no case has Azerbaijan refused to enter into an EOI agreement. Though most of Azerbaijan’s bilateral EOI relationships do not contain sufficient provisions to enable Azerbaijan to exchange all relevant information, by being a Party to the Multilateral Convention, Azerbaijan still has EOI arrangements with 100 jurisdictions that are in line with the standard. Element C.2 is therefore rated “Compliant”.

327. Azerbaijan’s domestic legislation has ambiguity in the scope of different laws in defining the term commercial secret that may limit the possibility of effective exchange of information. Although Azerbaijan has a long standing practice of exchanging information with its treaty partners, the access powers of Azerbaijan’s authorities could be limited in rare situations which could in turn possibly limit the effective exchange of information. It is therefore recommended that Azerbaijan addresses these domestic law issues to give full effect to all its EOI arrangements and to bring all its EOI relationships in line with the standard. However, in practice, the competent authority has not encountered any issues on account of the legal ambiguity in the scope of the term “commercial secret” while processing EOI requests, receiving information or furnishing this information to the requesting States. Further, no issues in respect of the application of Azerbaijan’s EOI Agreements arose during the period under review and in no case, Azerbaijan refused to provide the requested information. Thus, the element C.1 is rated “Largely Compliant”.

328. All of Azerbaijan’s EOI agreements contain confidentiality provisions that meet the international standard and are backed by appropriate confidentiality provisions and enforcement measures in its domestic legislation. As already highlighted, the confidentiality provisions in Azerbaijan’s EOI instruments apply equally to all information received and sent, including background documents to requests, and any other documents reflecting such information, including communications within the tax authorities of Azerbaijan on EOI matters.

329. The tax authorities are generally barred from disclosing taxpayer information. In specific cases and to specific authorities, the tax authorities can provide the tax and taxpayer information under Article 30.6 of the Tax Code. Information can be shared with relevant government authorities of other jurisdictions in accordance with international agreements to which Azerbaijan is a party. In practice, the Azerbaijani authorities handled EOI requests in full adherence with the confidentiality requirements of the international standard. Only information that is necessary to receive a response has been disclosed to tax auditors, third parties and taxpayers. During the period under review, no case of unlawful disclosure of EOI requests or information has been reported. Azerbaijan took adequate measures to ensure confidentiality of information to meet the international standard and the input received from peers does not indicate any issues in this regard. As a result, element C.3 is rated as “Compliant”.

330. Azerbaijan’s EOI agreements protect rights and safeguards in accordance with the standard, by ensuring that the parties are not obliged to provide information that would disclose any trade, business, industrial, commercial or professional secret or information the disclosure of which would be contrary

to public policy. The scope of attorney-client privilege as defined in domestic legislation is in line with the international standard but the professional privilege on auditors is broader than that is intended by the international standard. It is therefore recommended that Azerbaijan ensures that the scope of professional privilege is consistent with the international standard. However, in practice, the competent authority has not encountered any issues on account of the legal limitations. Thus, the element C.4 is rated “Compliant”.

331. There appear to be no legal restrictions on the ability of Azerbaijan’s competent authority to respond to requests within 90 days of receipt by providing the information requested or by providing an update on the status of the request. During the review period (from 1 July 2012 to 30 June 2015), Azerbaijan received 185 requests from 15 jurisdictions. Azerbaijan was able to provide a final response within 90 days to 98% of the requests, and within 180 days to 100% of the requests. Peers acknowledged the responsiveness and efficiency of the Azerbaijan competent authority. Element C.5 is rated as “Compliant”.

## C.1. Exchange of information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

332. Sovereign powers of Azerbaijan in international matters are restricted solely to the international agreements to which Azerbaijan is a party (Constitution, Art. 7). The President of Azerbaijan, as Head of State, is responsible for fulfilling obligations under these international agreements (Constitution, Art. 8). The President is vested with the power to conclude inter-governmental treaties and agreements. He shall submit the interstate treaties, to the Milli Mejlis (the legislature) for ratification or denunciation (Constitution, Art. 109). The Milli Mejlis ratifies or denounces international treaties, agreements and conventions by an absolute majority of 63 votes (Constitution, Art. 95).

333. International agreements, to which Azerbaijan is party, are an inalienable part of the legislative system of the Azerbaijani Republic (Constitution, Art. 148). If any dispute or contradiction arises between international agreements and normative-legal acts of Azerbaijan (excluding the Constitution and acts passed through referendum), the provisions of international agreements are applied (Constitution, Art. 151). Provisions of international agreements prevail over the provisions of the Tax Code of Azerbaijan and other legislative acts established on taxes (Art. 2.5, Tax Code).

334. International agreements establishing rules other than those provided by national legislation are ratified by the Milli Mejlis (Article 8 of the Law on the Order for Conclusion, Execution and Denunciation of the International

Agreements of Azerbaijani Republic). The Proposals for ratifications/ accession are made by the Cabinet of Ministers to the President (Art. 2.1 of the Rules for submitting Proposals for conclusion and Denunciation of the international Agreements of Azerbaijan Republic by Central Executive Authorities and State Owned Enterprises).

335. DTCs and TIEAs are negotiated by the representatives of the Ministry of Finance and the Ministry of Taxes. The competent authority for exchange of information purposes is the Ministry of Finance and the Ministry of Taxes. In some agreements, the competent authority for EOI is the Ministry of Finance.

336. Azerbaijan's network of EOI instruments covers 111 jurisdictions. It comprises 51 bilateral DTCs, of which 47 are in force, one TIEA which is also in force and the Convention on Mutual Administrative Assistance in Tax Matters. Azerbaijan's DTCs with Jordan, Spain, Sweden and Malta have been signed but at the time of writing have not yet entered into force. Azerbaijan is also a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. It signed the Protocol amending the original Convention on 23 May 2014 and deposited its instrument of ratification<sup>46</sup> on 29 May 2015. The Protocol entered into force on 1 September 2015. The Convention on Mutual Administrative Assistance in Tax Matters, as amended (Multilateral Convention) provides for administrative co-operation between parties in the assessment and collection of taxes, in particular with a view to combating tax avoidance and evasion in accordance with the standard.

337. The DTCs with Switzerland and Austria do not meet the standard for several reasons. Firstly, only information that is "necessary for carrying out the provisions of the Convention" can be exchanged. Secondly, the agreements do not allow for the exchange of banking and financial information. In addition, the treaty with Switzerland imposes the pre-condition that the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. However, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention which will enable these jurisdictions to exchange information to the standard once it is in force for these jurisdictions (it is already in force in Austria and in Azerbaijan).

338. The jurisdictions with which Azerbaijan has only DTCs are Pakistan, Uzbekistan, Belarus, the United Arab Emirates, Tajikistan, Qatar, Jordan, Kuwait, Iran, Serbia, Bosnia and Herzegovina, Montenegro, Former Yugoslav

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46. The Protocol amending the original Convention signed by Azerbaijan on 23 May 2014 together with the two declarations made at the date of signing was adopted by the Parliament of Azerbaijan by the Law No. 1128-IVQ on 16 December 2014.

Republic of Macedonia (FYROM) and Viet Nam. With the exception of Bosnia and Herzegovina, Montenegro and Viet Nam, these DTCs do not have EOI provisions that adhere to the standard. Overall, 11 out of 111 EOI arrangements that Azerbaijan has with other jurisdictions do not meet the international standard.

***Foreseeably relevant standard (ToR C.1.1)***

339. The international standard for EOI envisages information exchange upon request to the widest possible extent, but does not allow “fishing expeditions,” i.e. speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of “foreseeable relevance” which is included in Article 26(1) of the Model Tax Convention and Article 1 of the OECD Model TIEA set out below:

The competent authorities of the contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or for the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the contracting States or their political subdivisions or local authorities in so far as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

340. EOI provisions of Azerbaijan’s DTCs are generally based on the pre-revised versions of Article 26 of the OECD Model Tax Convention and UN Model Tax Convention. Out of 51 DTCs, 13 refer to the term “foreseeably relevant”. The TIEA with Argentina uses the term “essential”. The majority of Azerbaijan’s DTCs use the term “as is necessary”. The DTCs with Norway and Belgium use the term “relevant” in lieu of “as is foreseeably relevant”. The Azerbaijani authorities stated that Azerbaijan has used a model DTC since April 2010 and the Article on Exchange of Information in this model DTC is based on OECD and the UN Model Tax Convention.

341. All the bilateral agreements<sup>47</sup> negotiated by Azerbaijan after 1 January 2012 meets the international standard. Of these, only the DTCs with Montenegro, Bosnia and Herzegovina and Viet Nam have been signed and entered into force DTCs with Malta and Sweden have been signed but not entered into force yet. The rest of the agreements negotiated after January 2012 are yet to be signed.

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47. Treaties with Malta, San Marino, Montenegro, Israel, Slovakia, Ireland, Viet Nam, Sweden, Albania, Bosnia and Herzegovina, Portugal, Bangladesh, Malaysia and the Protocol amending the tax treaty with Kazakhstan.

342. The Commentary to Article 26(1) of the Model Tax Convention recognises that the change in Article 26(1) in 2005 from “necessary” to “foreseeably relevant” was made to achieve consistency with the Model TIEA and was not intended to alter the effect of the provision. The commentary adds that the Contracting States may agree to an alternative formulation of the standard of “foreseeable relevance” that is consistent with the scope of the Article and is therefore understood to require effective EOI, for instance by replacing “foreseeably relevant” with “necessary”. The Azerbaijani authorities have confirmed that Azerbaijan interprets all these alternative formulations as equivalent to the term “foreseeably relevant” and may accept any formulation during the negotiations proposed by the counterpart.

343. The DTCs with Switzerland and Austria restrict the scope of the Article on EOI to the exchange of information that is “necessary for carrying out the provisions of the Convention” only. Further, the DTC with Switzerland imposes another pre-condition that the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. Accordingly, these DTCs do not meet the standard. Nonetheless, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention, which meets the international standard.

344. In practice, Azerbaijan did not decline any request for information during the review period on the basis that the requested information was not foreseeably relevant. Azerbaijan does not specify a list of mandatory information or supporting documentation in order to demonstrate the tax purpose for which information is sought. The procedure involved in this regard is as follows: the Ministry of Taxes, as the competent authority, receives all the EOI requests. The Minister/Deputy Minister(s) in-charge sends the EOI requests to the Head of the Main Department of International Cooperation and Tax Monitoring at financial institutions, who is the delegated competent authority for EOI. The requests are processed by the EOI unit, which verifies the validity of requests received. The validity check is limited to: the legal basis; a check of the competent authority’s authorised signatory; and the taxes covered by the agreement.

345. On this basis, two requests were rejected during the review period. One request was on account of the fact that the underlying EOI Agreement was not in force. Another request was rejected for the reason that it was sent mistakenly to Azerbaijan but was meant for a different jurisdiction. Further, if a taxpayer or information holder is not identifiable from the request, clarification/additional information is sought from the sending jurisdiction. This practice is in line with the foreseeable relevance standard. Peers have not pointed out any issue with Azerbaijan in relation to interpretation of the criteria of foreseeable relevance. It is therefore concluded that Azerbaijan interprets this criteria in line with the international standard.

*In respect of all persons (ToR C.1.2)*

346. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard envisages that EOI mechanisms will provide for exchange of information in respect of all persons.

347. Article 26(1) of the Model Tax Convention specifies that “the exchange of information is not restricted by Article 1”, and thereby extends the personal scope of the Article on EOI beyond the persons who are residents of one or both of the Contracting States. Most of Azerbaijan's DTCs and the TIEA with Argentina specifically provide for the exchange of information in respect of all persons thereby expanding the scope of application of the EOI provisions beyond the residents of the contracting States. Eleven of Azerbaijan's DTCs do not contain such specific provision and therefore may limit the application of the agreements to residents of the contracting States<sup>48</sup>. However, Azerbaijan maintains that these DTCs (with the exception of DTCs with Austria and Switzerland) implicitly do provide for the exchange of information as is necessary (*or relevant*) for carrying out the provisions of the respective DTCs or of the domestic laws of the Contracting States. To the extent that domestic laws are applicable to residents and non-residents, information under these DTCs can also be exchanged in respect of all persons, including non-residents. In practice, no issues restricting exchange of information in respect of all persons have been experienced by Azerbaijani authorities or reported by peers.

348. Under the DTCs with Austria and Switzerland, it is not possible to exchange information in respect of all persons, since the relevant DTCs only provide for the exchange of information for the purposes of carrying out the Convention. In the case of DTC with Russia, the Global Forum's peer review of Russia concluded that the treaty with Azerbaijan is not in line with the standard as Russia interprets the absence of an explicit extension to persons not covered in the Convention as limiting the scope only to persons who are residents of one or both Contracting States. This report maintains that stance. As such, the DTC with Russia is also not in line with the international standard. However, Azerbaijan, Switzerland, Austria and Russia are covered by the Multilateral Convention, which will enable these jurisdictions to exchange information to the standard once it is in force for these jurisdictions (it is already in force in Austria, Russia and Azerbaijan). In practice, Azerbaijan responded to all the requests from Russia during the review period including requests related to persons that were not residents of one or both the States.

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48. Turkey, United Kingdom, Uzbekistan, Georgia, Russia, Poland, Ukraine, Austria, Japan, Switzerland, and Viet Nam.

***Obligation to exchange all types of information (ToR C.1.3)***

349. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The *OECD Model Tax Convention* and the *Model Tax Information Exchange Agreement*, which are authoritative sources of the standards, stipulate that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

350. Only six of Azerbaijan's DTCs (with Viet Nam, Montenegro, Malta, San Marino, Sweden and Slovenia) include provisions akin to Article 26(5) of the OECD Model Tax Convention, which provides that a contracting party may not decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

351. The remainder of Azerbaijan's EOI agreements do not contain a provision akin to Article 26(5) of the OECD Model Tax Convention. Nonetheless, it is noted that the absence of this provision does not automatically create restrictions on the exchange of bank information in Azerbaijan. The commentary on Article 26(5) indicates that whilst paragraph 5 represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information. In June 2014, Azerbaijan amended its Tax Code and Law on Banks to provide access to bank information for tax purposes (see Part B). With the removal of banking secrecy in its domestic law and enabling access of the tax authorities to banking information, Azerbaijan's view is that it can exchange banking and other financial information with all of its treaty partners regardless of whether the relevant agreements contain an explicit provision similar to Article 26(5) of the OECD Model Tax Convention.

352. At least two treaty partners (Austria and Switzerland) currently have restrictions in accessing bank information, which limits the effective EOI under these DTCs. However, Azerbaijan, Austria and Switzerland are covered by the Multilateral Convention, which meets the international standard. Azerbaijan has EOI arrangements with 14 jurisdictions that are not signatories to the Multilateral Convention. Of these, DTCs with 12 jurisdictions do not contain the explicit provision to exchange banking information. DTCs with two jurisdictions (Viet Nam and Montenegro) are in line with the standard in this respect. While Azerbaijan has confirmed that there are no restrictions on exchanging banking information without an express provision in the DTC, exchange of information will be subject to reciprocity and domestic limitations may exist in these partner jurisdictions. In such cases,



it is not possible to exchange banking and financial information with those jurisdictions. Moreover, out of the 12 jurisdictions for which DTCs are not to the standard, 9<sup>49</sup> are either not members of the Global Forum or have not yet been reviewed by the Global Forum.

353. Notwithstanding the EOI agreements, as detailed in section B.1.5 of this report, Azerbaijan's laws define the scope of the term commercial secret differently and this results in ambiguity in the extent of applicability of the secrecy provisions. This inconsistency in defining commercial secrecy could possibly affect the access powers of the competent authority in obtaining information in line with the international standard. Uncertainties in accessing information for periods beyond 3 calendar years may restrict access to information in certain cases.

354. Regarding banking information, general bank secrecy provisions are applied to all bank accounts and client information collected under the Law on Banks, but only selective access is provided to the tax authorities, access which does not include certain types of client identification information. Although the Law on Banks does not define the term client information, banking institutions could possibly refuse to provide certain types of client information, such as opening account contracts, signature cards etc. As a result, there are uncertainties in the access powers of tax authorities on certain types of client information held by banks. This limitation on access by the tax authorities is equally applicable for EOI purposes because of the specific reference to applicability of the international agreements on taxation in the relevant article of the Tax Code (Art. 76). According to the legislation of Azerbaijan Republic on normative acts, where there is a conflict between a specific provision in a statute and a general provision, the specific provision will prevail. Thus, the above domestic restrictions could apply even if banking information is requested under a treaty containing Article 26(5) of the OECD Model Tax Convention and irrespective of Azerbaijan's international treaty prevails rule.

355. As a result of uncertainties in the domestic laws with respect to access and exchange of information, Azerbaijan may not have EOI relationships in line with the international standard with its EOI partners. Therefore, it is recommended that Azerbaijan ensures that all types of requested information can be provided under its EOI agreements, and, if it encounters obstacles in the exchange of information with EOI partners on account of the absence of provisions akin to Article 26(5) of the Model Tax Convention, it should renegotiate relevant the DTCs to include provisions similar to Article 26(5) of the Model Tax Convention.

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49. All except Qatar, Pakistan and the United Arab Emirates.

356. In practice, Azerbaijan has never faced any issues in obtaining banking information from its financial institutions. In around 45 cases, banking information has been provided to its treaty partners. In no case has Azerbaijan declined a request because the information was held by a bank (or other financial institution), or nominees, or persons acting in an agency or fiduciary capacity, or because the information related to an ownership interest. Azerbaijan responded positively to requests for banking information from various treaty partners regardless of the presence or absence of explicit provisions in the respective Agreements akin to Article 26(5) of the OECD Model Tax Convention. Further, no adverse comment in this regard has been provided by peers.

***Absence of domestic tax interest (ToR C.1.4)***

357. The concept of “domestic tax interest” describes a situation where a contracting party can only provide information to another contracting party if the first-mentioned party has an interest in the requested information for its own tax purposes. An inability to provide information on the result of a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. This obligation is set out in Article 26(4) of the OECD Model Tax Convention and Article 5(2) of the Model TIEA.

358. Of Azerbaijan’s 52 bilateral EOI arrangements:

- thirteen DTCs (with Jordan, Korea, Serbia, Croatia, Bosnia and Herzegovina, FYROM, Spain, Montenegro, Slovenia, Malta, San Marino, Sweden and Viet Nam) contain provisions similar to Article 26(4) of the OECD Model Tax Convention, which oblige the contracting States to use their information gathering measures to obtain and provide information to the requesting jurisdiction even in cases where the requested State does not have a domestic tax interest in the requested information.
- All other DTCs do not contain explicit provisions obliging the contracting States to use information-gathering measures to obtain and exchange requested information without regard to a domestic tax interest.
- The TIEA with Argentina does not contain provisions equivalent to Article 5(2) of the Model TIEA

359. The DTC with Switzerland provides for the competent authorities can only exchange information that is at their disposal under their respective taxation laws in the normal course of administration. Coupled with the absence of provisions similar to Article 26(4) of OECD Model Tax Convention and

a restrictive access of the competent authorities to information for EOI purposes the DTC does not meet the international standard.

360. Azerbaijan and Switzerland are covered by the Multilateral Convention, which meets the international standard. Similarly, of the remaining 38 bilateral EOI arrangements that are inconsistent with the international standard, on account of the absence of a domestic tax interest clause, the alternative EOI mechanism, by way of the Multilateral Convention, is available with respect to 30 jurisdictions that are covered by the Convention.

361. Outside the network of Multilateral Convention, Azerbaijan has EOI agreements with 14 jurisdictions. EOI arrangements with 8 jurisdictions<sup>50</sup> do not contain the explicit provision to exchange information in the absence of a domestic tax interest. While Azerbaijan confirms that there are no restrictions in exchanging information without an express provision in the DTC, exchange of information will be subject to reciprocity and domestic limitations may exist in these partner jurisdictions. In such cases, it is not possible to exchange information with those jurisdictions. Moreover, 4 out of these 8 jurisdictions (all except Qatar, Pakistan, Kuwait and the United Arab Emirates) with which Azerbaijan has a DTC are either not members of the Global Forum or have not yet been reviewed by the Global Forum.

362. There are no restrictions in Azerbaijan's domestic legislation and with the existence of treaty prevails rule in the Constitution of Azerbaijan and the Tax Code, Azerbaijan's competent authority has sufficient powers to access information for EOI purposes in all cases. However, 8 of its EOI agreements do not have explicit provisions for exchanging information in the absence of a domestic tax interest. Therefore, it is recommended that Azerbaijan ensures exchange of information in the absence of a domestic tax interest, and if encountered with obstacles in exchange of information on account of the absence of provisions akin to Article 26(4) of the Model Tax Convention, it should renegotiate relevant DTCs to include provisions equivalent to Article 26(4).

363. In practice, Azerbaijan has not declined any request for the absence of domestic interest. Azerbaijan responded positively to all the requests received during the review period from various treaty partners regardless of the presence or absence of explicit provisions in the respective Agreements akin to Article 26(4) of the OECD Model Tax Convention. Further, no issues in this respect were reported by peers.

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50. Pakistan, Uzbekistan, Belarus, United Arab Emirates, Tajikistan, Qatar, Kuwait and Iran.

***Absence of dual criminality principles (ToR C.1.5)***

364. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested jurisdiction if it had occurred in the requested jurisdiction. In order to be effective, EOI should not be constrained by the application of the dual criminality principle.

365. There are no dual criminality requirements in any of Azerbaijan's DTCs or the TIEA. Accordingly, there has been also no case in practice where Azerbaijan declined a request because of dual criminality requirement as has been confirmed by peers.

***Exchange of information in both civil and criminal tax matters (ToR C.1.6)***

366. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

367. All of Azerbaijan's DTCs and TIEA provide for exchange of information in both civil and criminal tax matters.

368. Azerbaijan does not require information from the requesting competent authority as to whether the requested information is sought for criminal or civil tax purposes and no peer input indicated any issue in this respect. The same procedures for handling requests apply in respect of exchange of information for civil and criminal tax matters. The Azerbaijani authorities confirmed that Azerbaijan will not require the requesting jurisdiction to use other instruments for exchange of information in criminal matters, even if the requesting jurisdiction indicates that the information will be used in criminal tax proceedings.

***Provide information in specific form requested (ToR C.1.7)***

369. In some cases, a contracting party may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such formats may include depositions of witnesses and authenticated copies of original records. Contracting parties should endeavour as far as possible to accommodate such requests. The requested party may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal to provide the information in the form requested does not affect the obligation to provide the information.

370. There are no restrictions in the EOI provisions in Azerbaijan’s DTCs. The Tax Code does not empower the tax authorities to obtain a deposition of witnesses for the domestic purposes. The tax authorities are authorised under the Criminal Code to take testimony of witnesses during an inquiry or investigation for certain criminal offences. Under the Criminal Code, the Department for the Primary Investigation of Tax Crimes within the Ministry of Taxes is responsible for conducting investigations and gathering evidences under the Criminal Code. The Azerbaijani authorities advise that the Department for the Primary Investigation of Tax Crimes assists other jurisdictions under the Mutual Legal Assistance treaties or any international agreements, including a tax agreement, provided that the request for deposition of witness is related to a criminal offence in the requesting jurisdiction. Therefore, Azerbaijan could provide information in the form of deposition of witnesses if the request is related to criminal tax matters. In practice, the Department for the Primary Investigation of Tax Crimes rendered assistance in one case during the review period where a request was received from a partner jurisdiction related to criminal investigation in that jurisdiction. The Azerbaijani authorities further state that since deposition of witnesses are always related to criminal matters, Azerbaijan could provide information in all such cases. It is therefore considered that there are no restrictions in laws that would prevent Azerbaijan from providing information in a specific form. Peer inputs indicate that Azerbaijan provides the requested information in an adequate format and no issue in this respect has been reported.

***In force (ToR C.1.8)***

371. Exchange of information cannot take place unless a jurisdiction has EOI arrangements in force. The international standard requires that jurisdictions must take all steps necessary to bring agreements that have been signed into force expeditiously.

372. The President is vested with the power to conclude inter-governmental treaties and agreements. He must submit the interstate treaties, to the Milli Mejlis (the legislature) for ratification or denunciation (Constitution, Art. 109). The Milli Mejlis ratifies or denounces international treaties, agreements and conventions by an absolute majority of 63 votes (Constitution, Art. 95).

373. Of Azerbaijan’s 51 DTCs, 47 are in force. The TIEA with Argentina is also in force. Of the 4 DTCs not yet brought into force (Jordan Spain, Malta and Sweden), Azerbaijan has completed all internal procedures to bring the agreement in force including ratification of all of these DTCs but awaits counter-parties to ratify the agreements. Azerbaijan has ratified the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters, which entered into force on 1 September 2015.

374. Azerbaijan’s negotiations are based on its model DTC, which is exchanged with potential treaty partners before the commencement of negotiations. After a draft agreement is initialled at the official level, the Ministry of Taxes, with the authorisation of the President, signs the agreement. This agreement is then sent to the Ministry of Foreign Affairs, which prepares the memo and forwards the signed agreement to the office of the President, who in turn presents it to the Parliament for ratification. The time for ratification ranges from 1 month to 8-9 months depending on the Parliament’s work schedule and priorities.

***Be given effect through domestic law (ToR C.1.9)***

375. For EOI to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

376. The President of Azerbaijan, as Head of State, is responsible for fulfilling the obligations under the international agreements in force (Constitution, Art. 8). Since the treaty prevails rule exists in Azerbaijan’s constitution and the Tax Code, Azerbaijan does not need to enact specific legislation to implement EOI agreements.

377. To sum up, Azerbaijan’s laws are not compatible with the requirements of the international standard to exchange all types of information from all persons in Azerbaijan on account of general restrictions in access powers and of secrecy provisions discussed in C.1.2 and C.1.3 above. Azerbaijan should take necessary steps to ensure that it can exchange all types of information as per the standard with its treaty partners irrespective of the secrecy provisions in its domestic laws.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>	
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	
<b>Factors underlying recommendations</b>	<b>Recommendations</b>
The issues identified under element B.1 may affect Azerbaijan’s ability to give effect to its EOI mechanism.	Azerbaijan should address the recommendations made under element B.1.
<b>Phase 2 rating</b>	
<b>Largely Compliant</b>	

## C.2. Exchange of information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

378. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order properly to administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

379. Azerbaijan has concluded 52 bilateral EOI instruments (51 DTCs and 1 TIEA), of which 48 are in force. Azerbaijan is a party to the original Convention on Mutual Administrative Assistance in Tax Matters, which has been in force in Azerbaijan since 1 October 2004. On 23 May 2014 it also signed the 2010 Protocol amending the original Convention, which entered into force on 1 September 2015. These bilateral and multilateral agreements create EOI relationships with 111 jurisdictions, including:

- all of its major trading partners<sup>51</sup> except Thailand;
- 98 Global Forum member jurisdictions;
- all the OECD Member States; and
- All the G20 countries.

380. Azerbaijan has initialled 7 DTCs and is negotiating with 11 other jurisdictions. During the course of the assessment, no jurisdiction has advised that Azerbaijan has refused to enter into negotiations or the conclusion of an EOI agreement. During the review period, Azerbaijan rejected a request from one jurisdiction for signing a DTC but suggested signing a TIEA instead. The negotiations are ongoing. It is recommended that Azerbaijan should continue to develop its EOI network with all relevant partners.

381. Notwithstanding that Azerbaijan has a vast treaty network with all relevant partners, the ability of Azerbaijan to exchange information with its treaty partners is partly restricted by uncertainties in access powers of the competent authority on account of ambiguity in secrecy provisions in different laws, including professional secrecy under the Law on Auditing, and some

51. Italy, Germany, Indonesia, Russia, Israel, Turkey, France, the USA, the UK, Spain, India, China, Czech Republic and Georgia.

limitations in accessing certain client information from banks and accessing information beyond three calendar years, which are explained in B.1 and C.1 above. It is therefore recommended that Azerbaijan ensure that it gives full effect to the terms of its EOI agreements in order to allow for exchange of information to the standard.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
	Azerbaijan should continue to develop its EOI network with all relevant partners.
Phase 2 rating	
Compliant	

## C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

### *Information received: disclosure, use, and safeguards (ToR C.3.1)*

382. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

### *Double Tax Conventions*

383. All exchange of information articles in Azerbaijan's DTCs and the TIEA have confidentiality provisions modelled on Article 26(2) of the OECD Model Tax Convention and Article 8 of the Model TIEA, which must be respected by Azerbaijan as a party to these agreements.



*Azerbaijani domestic laws*

384. The confidentiality provisions of Azerbaijan’s agreements are backed by confidentiality provisions in its domestic legislation. In general, it is the responsibility of the tax authorities to preserve the confidentiality of information concerning taxpayers, including tax and commercial confidentiality in accordance with the Tax Code and other legislation (Art. 24.0.8, Tax Code). Information on taxpayers is treated as a “commercial (tax) secret” and provisions on its disclosure and protection are laid down in Article 30 of the Tax Code. The Code provides that the tax authorities and their officials for the period of their work in tax office and after they have left the service, or retired, shall maintain confidentiality of all information concerning taxpayers. Certain types of information, such as information disclosed with the consent of the taxpayer, tax arrears, tax violations etc. are not treated as confidential (Art. 30.2, Tax Code).

385. Confidential information can only be disclosed to a number of persons identified in Article 30.6 of the Tax Code, including government authorities of other countries in accordance with the international agreements of Azerbaijan (Art. 30.6.4, Tax Code). Other bodies entitled to receive information from the tax authorities in accordance with domestic legislation include financial monitoring authorities (for AML/CT purposes), customs authorities and courts. However, Article 151 of the Azerbaijani Constitution provides for a treaty prevails rule whenever there is a disagreement between any of the normative-legal Acts of Azerbaijan and international agreements. A similar treaty prevails rule is provided in Article 2.5 of the Tax Code. The State tax authorities should preserve the confidentiality of information concerning taxpayers, including the tax and commercial confidentiality, in accordance with provisions of the Tax Code and other legislation (Art. 24.0.8, Tax Code) failing which the authorities concerned are liable for penalty and prosecution in accordance with the Code of Administrative Offences and the Criminal Code. Azerbaijan has confirmed that its tax authorities are bound by the confidentiality provisions in international agreements and cannot disclose any EOI information to persons other than the ones specified in the respective agreements and for non-tax purposes.

386. The Law of the Republic of Azerbaijan on Right to Obtain Information (ROI) ensures free, unrestricted and equal information access to all persons in Azerbaijan as prescribed by the Article 50 of the Constitution. (Art. 1, ROI). Other legal Acts of the Republic of Azerbaijan cannot provide for any regulations contradicting the requirements of this law (Art. 5.2, ROI). However, the ROI does not apply to the limitations imposed by the international agreements to which Azerbaijan is a party.

387. Contracts on data security are signed by tax officials and other employees hired by the tax authorities. These contracts obligate the persons

concerned to protect confidential taxpayer information. The breach of confidentiality is an administrative as well as a criminal breach of trust which is punishable in accordance with the legislation of Azerbaijan. Illegal use or distribution of data comprising a “commercial (tax) secret”, if the inflicted damage is insignificant, entails imposition of penalty at the rate of two to four fold of the damages (gained income) caused as a result of administrative offense but not exceeding AZN 100 000 (EUR 84 595) (CAV, Article 431). If the inflicted damage is significant, the offence will attract a penalty at the rate of three to five fold of the damages caused as a result of criminal offences or corrective works for a term up to two years, or imprisonment up to six months (Art. 202.2, Criminal Code).

### *All other information exchanged (ToR C.3.2)*

388. The confidentiality provisions in Azerbaijan’s EOI agreements do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to all information received and sent, background documents to requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

### *Ensuring confidentiality in practice*

389. The Ministry of Taxes has been certified by an accredited certifying agency for organisation-wide ISO-27001:2013 international best practice standard compliance on information security management, both at the strategic and operational levels. The certification is valid until 2018. The following measures have been adopted by the Ministry of Taxes to ensure the confidentiality of information exchanged pursuant to an EOI request.

### Handling and storage of EOI requests and related information

390. Azerbaijan received a total of 185 requests over the review period. The competent authority provided the requested information in all cases and peers have not raised any confidentiality issues. In addition to legal obligations, the internal EOI regulation (Article 6 of the Procedural Rules on Provision of Mutual Assistance in tax matters) stipulates that all the structural divisions handling the EOI requests should comply with the confidentiality provisions enshrined in the Agreements under which assistance is sought. All requests are processed by the Main Department of International Cooperation and Tax Monitoring in Financial Institutions, located at the Ministry of Taxes. Access to this building is strictly monitored and controlled. All external visitors must obtain a visitor pass from security in order

to enter this building which must be displayed at all times. The visitor pass is issued only after the visitor establishes his identity.

391. Over the review period, when a request for information was received by the Ministry of Taxes, the request letter and its annexures are scanned by the staff of the Ministry of Taxes and fed into the specific EOI module of the AVIS system. The requests are then stored in separate folders with file references, labelled as EOI confidential information and are kept in the secure rooms. The storage and custody procedures are compliant with the international standard rules.

392. The head of the tax monitoring department receives the EOI request in his personal dashboard of the AVIS system's EOI module. This clerical subsystem ensures that no paper documents are handled at the tax monitoring department. The Head of the Department assigns these requests to the EOI section, where the requests are processed. As discussed in Section B.1 of this report, the Ministry of Taxes has most of the taxpayer information in its tax database. Further, the AVIS system has real time access to databases of other State regulatory agencies. Financial institutions, on request, also provide complete banking information online through the AVIS system. This procedure precludes the necessity of movement of EOI related documents and information through physical communication channels and thereby avoids any possible leakage of confidential information. Once a request is processed and information is received from information holders, the documents are forwarded to the Minister of Taxes through the same channel in the AVIS system. The office of the Minister of Taxes takes print out and forwards the information to the requesting jurisdiction. A copy of the information is stored in the request folder, which is stored in secure filing cabinets.

393. The computers are assigned to individual users and are password protected. The AVIS application has strong user authentication features to deny access to unauthorised staff. All staff in the Ministry of Taxes are required to adhere to clean desk and clear screen policies. If information is sought from third parties through the tax auditors, the minimum information necessary is disclosed but in no case the competent authority details or the confidential contents of the requests are disclosed. Internal communications through the AVIS system between the officials of the Ministry of Taxes are not encrypted and password protected as the Government's network is internal and physically isolated (intranet network).

394. The ROI prohibits disclosure of tax related information. Azerbaijani officials asserted that they had not received any application from the public under the ROI seeking information related to EOI requests.

## Personnel

395. The Tax Code and the EOI regulation set out strict confidentiality obligations for all employees of Ministry of Taxes with regard to maintaining all taxpayer information secret and this obligation extends to EOI request or information received by these officials. Further, the Human Resources Policy of the Ministry of Taxes requires all employees to adhere to confidentiality requirements. Background checks are conducted before inducting an employee to the tax office. References, integrity and qualification checks are conducted as part of the employment process. All employees must sign an agreement of Non-disclosure on their employment with the Ministry of Taxes. Administrative sanctions are applied regularly for misconduct of employees. There were a number of administrative sanctions (4 sanctions in 2014 and 8 sanctions in the first half of 2016) imposed on employees that violated rules on the use of mobile devices, secret materials, etc. The Azerbaijani authorities advise that no offence has been committed by employees engaged with the EOI work and therefore, none of the sanctions specified above have been imposed on employees working on EOI matters.

396. The officers responsible for EOI in the tax monitoring department have also previously worked in other departments in the Ministry of Taxes and are professionally aware of their obligations of confidentiality. Azerbaijan's policies on data safeguards also adhere to the joint Global Forum/OECD publication *Keeping It Safe: Guide On The Protection Of Confidentiality Of Information Exchanged For Tax Purposes*. Further, the officers that have dealt with EOI requests within Azerbaijan over the review period have attended OECD/Global Forum regional training seminars, in which EOI confidentiality formed a substantive part.

397. Azerbaijani officials state that training and workshops have been held regularly for the EOI section staff, as well as to the tax auditors in general wherein topics on confidentiality are also covered. Specific training on EOI and the obligations attached to it are also provided to EOI officials from time to time.

## Conclusion

398. Azerbaijan has a comprehensive system of measures in place to assure confidentiality when processing EOI requests. There are clear handling and storage security measures and all personnel are bound by strict confidentiality rules against any disclosure of information concerning EOI requests. Over the review period, no peer raised any issue regarding confidentiality measures of Azerbaijan.

### Determination and factors underlying recommendations

Phase 1 determination
The element is in place.
Phase 2 rating
Compliant

## C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

### *Exceptions to requirement to provide information (ToR C.4.1)*

399. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, information can be declined where the requested information would disclose any trade, business, industrial, commercial or professional secret or trade process.

400. The limitation on information exchanged under Azerbaijan’s DTCs mirror those provided for in the international standard. There are deviations in the language used in two of Azerbaijan’s agreements with reference to this limitation. The TIEA with Argentina does not compel the requesting country to supply information which is not obtainable under its own legislation. A similar wording is used in the DTC with Switzerland. Since Azerbaijan’s domestic legislation and regulations sufficiently provides protection against disclosure of any trade, commercial or professional secret or trade process, these EOI arrangements can be said to have sufficient safeguards for taxpayers and third parties that confirms to the international standard. There was no case during the period under review where the requested information was related to trade, business, industrial, commercial or professional secrets.

401. It is noted that “professional secret” is not defined in the DTCs and the TIEA. The relevant domestic legislation would then be applicable. The Law on Advocates covers both lawyers and notaries in Azerbaijan. As discussed in B.1.5, the scope of legal professional secrecy applicable to lawyers/attorneys is in line with the international standard. The term “commercial secret” is defined in the Law on Commercial Secret the scope of which is in line with the international standard. At the same time, any taxpayer information gathered by the tax authorities in the course of performing their duties is considered a “commercial (tax) secret”. Similarly, all accounting information and related accounting records maintained by an entity is treated

a commercial secret. This creates ambiguity in the scope of the term “commercial secret” which may be, in some cases, interpreted wider than that intended by the international standard. Therefore, a recommendation has been included in element B.1 for Azerbaijan to remove this ambiguity.

402. As noted under Section B.1.5 of this report, independent auditors and audit organisations licensed by the Chamber of Auditors have a duty of confidentiality in respect of information obtained during an audit, unless requested by their clients or required by judicial bodies. The tax authorities are of the view that the Tax Code provides them the unrestricted right to obtain information from any person in Azerbaijan, including auditors and audit organizations. However, the Chamber of Auditors considers that there is no legal obligation for auditors to disclose their client information to the tax authorities. During the on-site visit, a representative of the Chamber of Auditors stated that auditors can share the information in their possession only with the consent of their clients. The exception to this condition applies to courts and prosecution office of the Government of Azerbaijan. In practice, information has been shared by auditors with AML and National Security agencies if required by the courts. It is recommended that Azerbaijan ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard for EOI.

403. Nevertheless, as stated in Section B.1 of this report, most of the taxpayer information is readily available in the database of the Ministry of Taxes and in no occasion during the period under review did the tax authorities require to request information from an auditor or other legal professional. Moreover, none of the peers that provided input to this review indicated about any issue regarding the application of professional privilege or rights and safeguards in Azerbaijan during the review period.

### Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Ambiguity in the scope of different domestic laws in defining the term “commercial secret” may result, in some cases, in interpreting this term wider than that permitted by the international standard.	Azerbaijan should remove any ambiguities in its domestic laws to bring the scope of the term “commercial secret” in line with the international standard.

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	Recommendations
Azerbaijan's EOI Agreements do not define the term "professional secret" and the scope of this term under the domestic law restricts the tax authorities' access to any information held by auditors	Azerbaijan should ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard
Phase 2 rating	
Compliant	

### C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

#### *Responses within 90 days (ToR C.5.1)*

404. In order for EOI to be effective, it needs to be provided in a time-frame which allows the tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time, the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

405. An order of the Ministry of Taxes, which regulates documents circulation stipulates that a response should be provided to a request for information made by the competent authority of a foreign State under an international treaty within 60 days of the receipt of the request. The maximum period for responding to such requests may be prolonged for 30 more days in extraordinary cases, i.e. 90 days.

406. Azerbaijan received 185 EOI requests during the review period (from 1 July 2012 to 30 June 2015) from 15 jurisdictions. Azerbaijan's response times are indicated in the table below:

	2012		2013		2014		2015		Total	
	Jul.-Dec						Jan.-Jun.			
	num.	%	num.	%	num.	%	num.	%	num.	%
Total number of requests received*	23	100	55	100	56	100	51	100	185	100
Full response**:										
≤90 days	23	100	52	94.55	56	100	51	100	182	98.38
≤180 days (cumulative)	0	0	3	5.45	0	0	0	0	3	1.62
≤1 year (cumulative)	0	0	0	0	0	0	0	0	0	0
>1 year	0	0	0	0	0	0	0	0	0	0
Declined for valid reasons	0	0	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	0	0	0	0	0	0	0	0	0	0
Requests still pending at date of review	0	0	0	0	0	0	0	0	0	0

\* Azerbaijan counts each written request from an EOI partner as one EOI request even where more than one person is the subject of an inquiry and/or more than one piece of information is requested. Separate letters on different matters in respect of a single taxpayer are registered as separate requests. Request for further information relating to the same taxpayer and the same matter is registered as a separate request.

\*\* The time periods in this table are counted from the date of receipt of the request to the date on which the final response was issued. It does not take into account partial responses provided in the meantime or any delays resulting from the need to seek clarifications of requests from a requesting jurisdiction.

407. The number of EOI requests increased steadily from 2012 to 2015. The competent authority indicated that accounting information was the type of information requested more often during the review period (on 118 occasions), followed by ownership information (in 72 occasions) and banking information (in 45 occasions).

408. Overall, Azerbaijan was able to provide a final response within 90 days to 98% of the requests, and within 180 days to 100% of them. During the review period, the three requests that took more than 90 days were related to technical issues. In 2 cases, the persons concerned were not in Azerbaijan at the time, which resulted in a delay. The third case involved multiple enquiries. However, in all these cases, complete information was sent within 120 days. Although the number of requests has grown over the years, the competent authority managed to continue to reply to them in a timely manner. This has been confirmed by peer input.

409. Azerbaijan rarely sought clarification from the requesting countries. In one case, the requesting jurisdiction did not enclose the requisite documents referred in its request letter. In another case, the name of the entity was mis-spelled by the requesting jurisdiction. In another case, the identification of the taxpayer was not possible as the data search threw a number of results.



410. During the period under review or any other time, Azerbaijan has neither declined to provide information requested by its treaty partners nor has it been restrained or restricted by courts or appellate bodies from accessing or providing information to its treaty partners.

411. During the period under review, in the three cases where information was provided after 90 days, Azerbaijan provided status updates systematically. The obligation to provide status updates within 90 days has been provided in the EOI regulation and the AVIS system has systemic controls which ensure that updates are provided within 90 days in all cases.

### ***Organisational process and resources (ToR C.5.2)***

412. Administration of EOI under Azerbaijan's treaty network is the responsibility of Azerbaijan's competent authority, in practice the Ministry of Taxes. In the TIEA with Argentina, the competent authority's responsibility is vested with the Ministry of Taxes. In the Multilateral Convention, the responsibility vests with Ministry of Taxes, the State Customs Committee, the Ministry of Labour, the Social Protection of Population, and the Ministry of Finance.

In July 1990, the Tax Service was established under the Ministry of Finance. In October 1991, the tax service was separated from the Ministry of Finance and made into an independent body, the Main State Tax Inspection of the Republic of Azerbaijan. Under the President's Decree dated 11 February 2000, the Main State Tax Inspection was liquidated and the Ministry of Taxes was created as a central government authority responsible for ensuring implementation of state tax policy, timely and full collection of taxes and other budget revenues and carrying out state control in this field. The EOI regulation was first published in 2004. This regulation has undergone several revisions and the recent update was approved in 2016. The rules under this regulation fully cover the procedures and processes required to be followed for exchange of information purposes.

### ***Organisation of competent authority***

413. Many EOI Agreements define both the Ministry of Finance and the Ministry of Taxes as competent authorities for EOI purposes. However, since the Ministry of Taxes is responsible for tax administration, the EOI requests are normally handled by this ministry. In cases where a request is sent to the Ministry of Finance, those requests will be sent to the competent authority of Ministry of Taxes by a well-established administrative arrangement. The Department for Tax Monitoring at Financial Institutions under the Ministry of Taxes discharges EOI functions on behalf of the competent authority.

414. The EOI regulation and the Rules for Clerical Work in State Tax Authorities prescribe a time limitation for processing a request and furnishing information. These timelines are based on the international standard and international agreements. These rules require that every EOI request be serviced successfully within 60 days of the receipt of the request at the competent authority office. Once a request is received by the competent authority, his staff will register the request in the EOI module of the AVIS system, scan the documents and fed them into the respective file folder in the system. The original documents are preserved at the competent authority office in separate folders for each case. The folders are labelled and recorded with the file number allocated by the system for reference. The case is forwarded to the Department for Tax Monitoring at Financial Institutions. The case record will immediately appear in the dashboard of the head of this department, who will assign the case to officers in the EOI section. If the request is compliant with the minimum requirement, a compliance letter is prepared and sent to the other jurisdiction acknowledging the receipt of the request. An internal letter is sent to the Department of Tax Audit with a 30 day limit for response. The tax audit main department will identify the relevant territorial office where the taxpayer in question is registered. The territorial tax office sends the response to the Tax Audit main department along with any necessary documents attached.

415. If information is available with other government authorities, financial institutions or third parties, online notices are sent to them through the AVIS system to obtain the requisite information. Once received, the information is digitised if in paper form and the response is sent to the EOI section through the AVIS system. Most of the taxpayers are registered with the Ministry of Taxes for e-tax services including registering for tax purposes, filing annual returns, paying taxes etc. To avail this facility, they have registered their mobile numbers for e-signature and other tax services. When an EOI request is sent to a taxpayer, he is sent a Short Message Service (SMS) informing him that he has received a message on his personalised tax-service page. The taxpayer can send his response online. Since different aspects of a request may be dealt with by different departments, the EOI section will compile answers from all these authorities, verify for accuracy and send the case response to the Head of the Tax Monitoring department, who in turn forwards it to the competent authority.

416. At the competent authority office, printouts of the response are taken and sent through mail to the requesting jurisdictional competent authority. If there is any disagreement about the information received, or if any deficiencies are found, a notice is sent again to seek the required information. If a request received is defective, a clarification is sent to the requesting jurisdiction within 10 days citing the reasons, and seeking additional information if required. However, in no case was a clarification sought without adequate reasons and the practice is in line with the international standard. The tax authorities used their compulsory powers to obtain information in a couple of cases.

417. The Ministry approved EOI regulation is the governing document for processing EOI requests. This is applied to the tax monitoring department. Tax auditors are governed by general rules for clerical work which require that tasks should be completed in 15 days in normal cases and in 30 days in complex cases. In every Ministry of the Government of Azerbaijan and in departments within the Ministry of Taxes, persons responsible to handle EOI requests have been earmarked and training has been provided. Although there are minor legal impediments in accessing information, as described in B.1.1 of this report, the competent authority has not faced any issues in practice in obtaining information from any person difficulty pertaining to periods beyond 3 years if the information is available. For each valid information exchange request handled by the EOI section, the authorised officer first determines how to best gather the requested information. In most situations, the Ministry of Taxes have the information in its taxpayer database and it can be accessed readily by the EOI section.

418. The AVIS system has been built in such a way that if a task is not completed within the given allocated time, the system gets automatically locked and the official cannot perform his functions in relation to that case. He has to make a specific request to the Minister of Taxes for extending the deadline to complete that task with the reasons as to why the task could not be completed in the allocated time. This arrangement has been the prime reason for timely responses of Azerbaijani authorities to the EOI requests. The Azerbaijani authorities state that such occurrences are a rarity in the Ministry of Taxes as the lapse tantamount to reprimand for the official concerned. They also state that in most cases, the requests have been responded within 60 days.

419. In EOI Agreements where both the Ministry of Finance and Ministry of Taxes are competent authorities for EOI purposes, the competent authority of the Ministry of Finance communicated to all the relevant counterpart competent authorities that the Ministry of Taxes has been performing the functions of the Competent authority for EOI requests and thus requested that the EOI requests be sent to the Ministry of Taxes directly. This includes the one EOI agreement where the competent authority for Azerbaijan is the Minister of Finance. In that case the other jurisdiction has been sending requests to the Ministry of Taxes directly thereon. The Minister of Taxes performs the competent authority functions. He has also delegated this function to his Deputy Minister. Therefore, the EOI letters are signed by either the Minister of Taxes or his Deputy Minister. The competent authority maintains regular contact with EOI partners through official correspondence, and telephone contact or meetings when necessary and is identified on the Global Forum website.

### *Resources*

420. With 24 staff members in the Main Department of International Cooperation and Tax Monitoring at financial institutions and 5 dedicated EOI staff in the EOI section, well budgeted financial resources and dedicated technical resources (computers, printers, scanners, shredders, internet access, dedicated intranet facility to communicate with other tax offices, government agencies and financial institutions, direct access to all tax and corporate databases), Azerbaijan's current resource levels are sufficiently adequate to deal with the information exchange requests received. Further, Azerbaijan indicated that it will increase its resources as appropriate, should the numbers of requests increase over time. Indirectly, over 150 employees are involved in the EOI process in Azerbaijan. With the increasing importance of international exchange of information in taxation, the Main Department of International Cooperation and Tax Monitoring at financial institutions was established in March 2016, and the EOI division was placed under this department.

421. The EOI section operates a separate filing system that is not accessible to other work-groups and its EOI related documents are stored in a dedicated fire-proof safe. IT resources are password protected to deny access to unauthorised staff. The staff of the EOI section have been assigned key performance indicators by the Minister of Taxes and are guided by the EOI regulation to ensure that job performance meets the requirements of the international standard.

422. The staff of the EOI section have been trained locally, and have also been undertaken international trainings during the review period. The Ministry of Taxes conducted its last training sessions in December 2015 to "train the trainers". Representatives of all territorial tax offices and departments of the Ministry of Taxes, who attended the trainers' training programme, led trainings in their relevant offices for the employees thereof. In addition, regular awareness raising activities are held in the departments of the Ministry of Taxes.

### ***Absence of restrictive conditions on exchange of information*** (ToR C.5.3)

423. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. With the exception of some restricted access to obtain information as highlighted in section B.2.1 of this report, there are no laws or regulatory practices in Azerbaijan that impose restrictive conditions on EOI. In practice, Azerbaijan has not faced any restrictions while accessing or furnishing information with respect to EOI requests.

**Determination and factors underlying recommendations**

<b>Phase 1 determination</b>
<b>This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>
<b>Phase 2 rating</b>
<b>Compliant</b>



## Summary of determinations and factors underlying recommendations

Overall Rating		
<b>Largely Compliant</b>		
Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities. <i>(ToR A.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>		
<b>Phase 2 rating: largely Compliant</b>	Prior to 15 July 2015, JSCs potentially could have issued bearer shares, but there is no sufficient mechanism in place to ensure that the ownership information of holders of bearer shares is maintained and available.	Azerbaijan should take necessary measures to ensure that ownership information on potentially existing bearer shares, issued before 15 July 2015, is maintained and available.

Determination	Factors underlying recommendations	Recommendations
<p><b>Phase 2 rating: largely Compliant</b> <i>(continued)</i></p>	<p>The new securities market law of July 2015 has established a central depository and required all JSCs to deposit their share registers with this custodian before September 2015 but the compliance has not been monitored. Similarly, the new law has obligated shareholders of all JSCs to dematerialise their shares before 15 July 2015. But the effective implementation of these obligations has not been tested in practice.</p>	<p>It is recommended that the Central Depository of Azerbaijan monitors the implementation of the new securities market law to ensure that updated ownership information on all JSCs is available in Azerbaijan.</p>
	<p>The requirement on nominees to disclose the identity information of the actual owner of the shares to the Central Depository has come into force after the review period and the compliance has not been tested in practice.</p>	<p>It is recommended that Azerbaijan monitors the implementation of this new obligation to ensure that nominees held ownership information is actually available in Azerbaijan.</p>
<p>Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements. <i>(ToR A.2.)</i></p>		
<p><b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b></p>	<p>While Azerbaijan's accounting and tax laws indirectly require the keeping of underlying documentation, lack of explicit obligations in Azerbaijan's legislation may provide the opportunity for some entities not to maintain underlying documentation.</p>	<p>Azerbaijan should introduce express obligations in its relevant laws that require all relevant entities to maintain underlying documentation.</p>
	<p>The Tax Code has inconsistent provisions that do not impose sufficient obligations on taxpayers to maintain accounting records for a period of more than 3 years.</p>	<p>Azerbaijan should ensure clarity and consistency in the provisions in the Tax Code to maintain accounting records for a period of at least 5 years.</p>



Determination	Factors underlying recommendations	Recommendations
<b>Phase 2 rating: largely Compliant</b>		
Banking information should be available for all account-holders. ( <i>ToR A.3.</i> )		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information). ( <i>ToR B.1.</i> )		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	There is ambiguity in the scope of different laws in defining the term “Commercial Secret”. This may affect the access powers of the competent authority in obtaining information in line with the international standard on EOI.	Azerbaijan should clarify its laws to ensure that the scope of the term “commercial secret” is in line with the international standard on EOI.
	Uncertainties in accessing certain types of client information from banks and in accessing information using compulsory powers for period beyond 3 calendar years may restrict the access to information in certain cases.	Azerbaijan should ensure that the competent authority has adequate access powers including compulsory powers unhindered by the 3 years limitation and is able to access client information from banks in all situations for EOI purposes, to bring them in line with the standard.
	Azerbaijan’s EOI Agreements do not define the term “professional secret” and the scope of this term under the domestic law restricts the tax authorities’ access to any information held by auditors.	Azerbaijan should ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard.
<b>Phase 2 rating: largely Compliant</b>		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information. <i>(ToR B.2.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	There are no exceptions to prior notification of the person concerned for accessing bank account information.	Notification rules in Azerbaijan should permit exceptions from prior notification, e.g. in cases where the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation.
<b>Phase 2 rating: largely Compliant</b>		
Exchange of information mechanisms should allow for effective exchange of information. <i>(ToR C.1.)</i>		
<b>The element is in place, but certain aspects of the legal implementation of the element need improvement.</b>	The issues identified under element B.1 may affect Azerbaijan’s ability to give effect to its EOI mechanism.	Azerbaijan should address the recommendations made under element B.1.
<b>Phase 2 rating: Largely Compliant</b>		
The jurisdictions’ network of information exchange mechanisms should cover all relevant partners. <i>(ToR C.2.)</i>		
<b>The element is in place.</b>		Azerbaijan should continue to develop its exchange of information network with all relevant partners.
<b>Phase 2 rating: Compliant</b>		
The jurisdictions’ mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received. <i>(ToR C.3.)</i>		
<b>The element is in place.</b>		
<b>Phase 2 rating: Compliant</b>		

Determination	Factors underlying recommendations	Recommendations
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties. <i>(ToR C.4.)</i>		
<b>The element is in place.</b>	Ambiguity in the scope of different domestic laws in defining the term “commercial secret” may result, in some cases, in interpreting this term wider than that permitted by the international standard.	Azerbaijan should remove any ambiguities in its domestic laws to bring the scope of the term “commercial secret” in line with the international standard.
	Azerbaijan’s EOI Agreements do not define the term “professional secret” and the scope of this term under the domestic law restricts the tax authorities’ access to any information held by auditors.	Azerbaijan should ensure that the scope of professional secrecy that applies to auditors is consistent with the international standard.
<b>Phase 2 rating: Compliant</b>		
The jurisdiction should provide information under its network of agreements in a timely manner. <i>(ToR C.5.)</i>		
<b>Phase 1 determination: This element involves issues of practice that are assessed in the Phase 2 review. Accordingly no Phase 1 determination has been made.</b>		
<b>Phase 2 rating: Compliant</b>		



## **Annex 1: Jurisdiction’s response to the review report**<sup>52</sup>

Azerbaijan highly appreciates the hard and productive work done by the Secretariat of the Global Forum and the assessment team throughout the Peer Review of Azerbaijan.

Azerbaijan would also like to express its deep gratitude to the Peer Review Group for the objective assessment of Azerbaijan’s regulatory and legislative framework during the Phase 1, of the implementation of the standards in practice within the Phase 2 and for the adoption of this Report.

Azerbaijan is satisfied with the current text of the Phase 2 Report and accepts that it reflects correctly Azerbaijan’s situation relating to the exchange of tax information with the counterparts under the concluded international agreements. The Review Process was carried out professionally and dialogue with the Global Forum Secretariat was extremely helpful.

Azerbaijan is strongly committed to the requirements of international standards for the exchange of information for tax purposes and has continuously been improving its legislation and administrative practice to bring them to the compliance with those standards.

Azerbaijan will continue its efforts on constant improvement of its legislation and practice relating to the exchange of tax information with a view to have its overall rating upgraded within the next round of Peer Reviews.

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52. This Annex presents the jurisdiction’s response to the review report and shall not be deemed to represent the Global Forum’s views.

## Annex 2: List of exchange of information mechanisms

On 23 May 2014, Azerbaijan signed the Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters and ratified it on 30 January 2015. The Convention as amended (Multilateral Convention) entered into force in Azerbaijan on 1 September 2015. The chart of signatures and ratification of the Multilateral Convention is available at [www.oecd.org/ctp/eoi/mutual](http://www.oecd.org/ctp/eoi/mutual).

The list of EOI agreements signed by Azerbaijan as at 19 August 2016, including bilateral and multilateral instruments is set out below:

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
1	Albania	Multilateral Convention	01-03-2013	01-09-2015
2	Andorra	Multilateral Convention	05-11-2013	Not yet in force in Andorra
3	Anguilla <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
4	Argentina	Multilateral Convention	03-11-2011	01-09-2015
		TIEA	17-12-2012	22-04-2013
5	Aruba <sup>b</sup>	Multilateral Convention	Extended	01-09-2015
6	Australia	Multilateral Convention	03-11-2011	01-09-2015
7	Austria	DTC	04-07-2000	23-02-2001
		Multilateral Convention	29-5-2013	01-09-2015
8	Barbados	Multilateral Convention	28-10-2015	Not yet in force in Barbados <sup>c</sup>
9	Belarus	DTC	08-08-2001	29-04-2002
10	Belgium	DTC	18-05-2004	12-08-2006
		Multilateral Convention	04-04-2011	01-09-2015
11	Belize	Multilateral Convention	29-05-2013	01-09-2015
12	Bermuda <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
13	Bosnia and Herzegovina	DTC	18-10-2012	26-12-2013
14	Brazil	Multilateral Convention	03-11-2011	Not yet in force in Brazil <sup>d</sup>

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
15	Bulgaria	DTC	12-11-2007	25-11-2008
		Multilateral Convention	26-10-2015	01-07-2016
16	British Virgin Islands <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
17	Cameroon	Multilateral Convention	25-06-2014	01-10-2015
18	Canada	DTC	07-09-2004	23-01-2006
		Multilateral Convention	03-11-2011	01-09-2015
19	Cayman Islands <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
20	Chile	Multilateral Convention	24-10-2013	Not yet in force in Chile <sup>e</sup>
21	China (People's Republic of)	DTC	17-03-2005	17-08-2005
		Multilateral Convention	27-08-2013	01-02-2016
22	Colombia	Multilateral Convention	23-5-2012	01-09-2015
23	Costa Rica	Multilateral Convention	01-03-2012	01-09-2015
24	Croatia	DTC	12-03-2012	18-03-2013
		Multilateral Convention	11-10-2013	01-09-2015
25	Curaçao <sup>b</sup>	Multilateral Convention	Extended	01-09-2015
26	Cyprus <sup>f</sup>	Multilateral Convention	10-07-2014	01-09-2015
27	Czech Republic	DTC	24-11-2005	16-06-2006
		Multilateral Convention	26-10-2012	01-09-2015
258	Denmark	Multilateral Convention	27-5-2010	01-09-2015
29	Dominican Republic	Multilateral Convention	28-06-2016	Not yet in force in Dominican Republic
30	Estonia	DTC	30-10-2007	27-11-2008
		Multilateral Convention	29-05-2013	01-09-2015
31	El Salvador	Multilateral Convention	01-06-2015	Not yet in force in El Salvador
32	Faroe Islands <sup>g</sup>	Multilateral Convention	Extended	01-09-2015
33	Finland	DTC	29-09-2005	29-11-2006
		Multilateral Convention	27-05-2010	01-09-2015
34	FYROM	DTC	19-04-2013	12-08-2013
35	France	DTC	20-12-2001	01-10-2005
		Multilateral Convention	27-05-2010	01-09-2015
36	Gabon	Multilateral Convention	03-07-2014	Not yet in force in Gabon
37	Georgia	DTC	18-02-1997	01-12-1997
		Multilateral Convention	03-11-2010	01-09-2015

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
38	Germany	DTC	25-08-2004	28-12-2005
		Multilateral Convention	03-11-2011	01-12-2015
39	Ghana	Multilateral Convention	10-07-2012	01-09-2015
40	Gibraltar <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
41	Greece	DTC	16-02-2009	11-03-2010
		Multilateral Convention	21-02-2012	01-09-2015
42	Greenland <sup>g</sup>	Multilateral Convention	Extended	01-09-2015
43	Guatemala	Multilateral Convention	05-12-2012	Not yet in force in Guatemala
44	Guernsey <sup>a</sup>	Multilateral Convention	17-04-2014	01-09-2015
45	Hungary	DTC	18-02-2008	15-12-2008
		Multilateral Convention	12-11-2013	01-09-2015
46	Iceland	Multilateral Convention	27-5-2010	01-09-2015
47	India	Multilateral Convention	26-01-2012	01-09-2015
48	Indonesia	Multilateral Convention	03-11-2011	01-09-2015
49	Ireland	Multilateral Convention	30-06-2011	01-09-2015
50	Iran	DTC	10-03-2009	25-01-2010
51	Isle of Man <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
52	Israel	Multilateral Convention	24-11-2015	Not yet in force in Israel
53	Italy	DTC	21-07-2004	28-04-2010
		Multilateral Convention	27-05-2010	01-09-2015
54	Jamaica	Multilateral Convention	01-06-2016	Not yet in force in Jamaica
55	Japan	DTC	30-05-2005	11-04-2008
		Multilateral Convention	03-11-2011	01-09-2015
56	Jersey	Multilateral Convention	Extended	01-09-2015
57	Jordan	DTC	05-05-2008	Not yet in force
58	Kazakhstan	DTC	16-09-1996	07-05-1997
		Multilateral Convention	23-12-2013	01-09-2015
59	Kenya	Multilateral Convention	08-02-2016	Not yet in force in Kenya
60	Korea	DTC	19-05-2008	25-11-2008
		Multilateral Convention	27-05-2010	01-09-2015
61	Kuwait	DTC	10-02-2009	18-04-2012
62	Latvia	DTC	03-10-2005	19-04-2006
		Multilateral Convention	29-05-2013	01-09-2015



No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
63	Liechtenstein	Multilateral Convention	21-11-2013	Not yet in force in Liechtenstein
64	Lithuania	DTC	02-04-2004	13-11-2004
		Multilateral Convention	07-03-2013	01-09-2015
65	Luxembourg	DTC	16-06-2006	02-07-2009
		Multilateral Convention	29-05-2013	01-09-2015
66	Malta	Multilateral Convention	26-10-2012	01-09-2015
		DTC	26-04-2016	Not yet in force
67	Mauritius	Multilateral Convention	23-06-2015	01-12-2015
68	Mexico	Multilateral Convention	27-05-2010	01-09-2015
69	Moldova	DTC	27-11-1997	28-01-1999
		Multilateral Convention	27-01-2011	01-09-2015
70	Monaco	Multilateral Convention	13-10-2014	Not yet in force in Monaco
71	Montenegro	DTC	12-03-2013	04-11-2013
72	Montserrat <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
73	Morocco	Multilateral Convention	21-05-2013	Not yet in force in Morocco
74	Nauru	Multilateral Convention	28-06-2016	Not yet in force in Nauru <sup>h</sup>
		DTC	22-09-2008	18-12-2009
75	Netherlands	Multilateral Convention	27-05-2010	01-09-2015
		DTC	22-09-2008	18-12-2009
76	New Zealand	Multilateral Convention	26-10-2012	01-09-2015
77	Nigeria	Multilateral Convention	29-05-2013	01-09-2015
78	Niue	Multilateral Convention	27-11-2015	Not yet in force in Niue <sup>i</sup>
79	Norway	DTC	24-04-1996	19-09-1996
		Multilateral Convention	27-05-2010	01-09-2015
80	Pakistan	DTC	10-04-1996	01-07-1997
81	Philippines	Multilateral Convention	26-09-2014	Not yet in force in Philippines
82	Poland	DTC	26-08-1997	20-01-2005
		Multilateral Convention	9-7-2010	01-09-2015
83	Portugal	Multilateral Convention	27-5-2010	01-09-2015
84	Qatar	DTC	28-08-2007	11-03-2008
85	Romania	DTC	29-10-2002	20-01-2004
		Multilateral Convention	15-10-2012	01-09-2015

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
86	Russia	DTC	03-07-1997	03-07-1998
		Multilateral Convention	3-11-2011	01-09-2015
87	San Marino	Multilateral Convention	21-11-2013	01-12-2015
		DTC	08-09-2015	02-05-2016
88	Saudi Arabia	DTC	13-05-2014	01-05-2015
		Multilateral Convention	29-05-2013	01-04-2016
89	Serbia	DTC	13-05-2010	01-12-2010
90	Seychelles	Multilateral Convention	24-02-2015	01-10-2015
91	Senegal	Multilateral Convention	04-02-2016	Not yet in force in Senegal
92	Singapore	Multilateral Convention	29-05-2013	01-05-2016
93	Sint Maarten <sup>b</sup>	Multilateral Convention	Extended	01-09-2015
94	Slovak Republic	Multilateral Convention	29-5-2013	01-09-2015
95	Slovenia	DTC	09-06-2011	10-09-2012
		Multilateral Convention	27-05-2010	01-09-2015
96	South Africa	Multilateral Convention	3-11-2011	01-09-2015
97	Spain	DTC	23-04-2014	Not yet in force
		Multilateral Convention	11-03-2011	01-09-2015
98	Sweden	Multilateral Convention	27-10-2010	01-09-2015
		DTC	10-02-2016	Not yet in force
99	Switzerland	DTC	23-02-2006	13-07-2007
		Multilateral Convention	15-10-2013	Not yet in force in Switzerland
100	Tajikistan	DTC	13-08-2007	11-02-2008
101	Tunisia	Multilateral Convention	16-07-2012	01-09-2015
102	Turkey	DTC	09-02-1994	01-09-1997
		Multilateral Convention	03-11-2011	Not yet in force in Turkey
103	Turks and Caicos Islands <sup>a</sup>	Multilateral Convention	Extended	01-09-2015
104	Uganda	Multilateral Convention	04-11-2015	Not yet in force in Uganda <sup>l</sup>
105	Ukraine	DTC	30-07-1999	03-07-2000
		Multilateral Convention	27-05-2010	01-09-2015
106	United Arab Emirates	DTC	20-11-2006	25-07-2007
107	United Kingdom	DTC	23-02-1994	29-09-1995
		Multilateral Convention	27-05-2010	01-09-2015

No.	Jurisdiction	Type of EOI agreement	Date signed	Date in force
108	United States	Multilateral Convention	27-05-2010	Not yet in force in United States
109	Uruguay	Multilateral Convention	01-06-2016	Not yet in force in Uruguay
110	Uzbekistan	DTC	27-05-1996	02-11-1996
111	Viet Nam	DTC	19-05-2014	11-11-2014

*Notes:* a. Extension by the United Kingdom.

b. Extension by the Netherlands.

c. Barbados has deposited its instrument of ratification on 4 July 2016, and the Multilateral Convention will enter into force on 1 November 2016.

d. Brazil has deposited its instrument of ratification on 1 June 2016, and the Multilateral Convention will enter into force on 1 October 2016.

e. Chile has deposited its instrument of ratification on 7 July 2016, and the Multilateral Convention will enter into force on 1 November 2016.

f. Footnote by Turkey: The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Footnote by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

g. Extension by Denmark.

h. Nauru has deposited its instrument of ratification on 28 June 2016, and the Multilateral Convention will enter into force on 1 October 2016.

i. Niue has deposited its instrument of ratification on 6 June 2016, and the Multilateral Convention will enter into force on 1 October 2016.

j. Uganda has deposited its instrument of ratification on 26 May 2016, and the Multilateral Convention will enter into force on 1 September 2016.

## **Annex 3: List of all laws, regulations and other relevant material**

### **Civil and commercial legislation**

- Civil Code of the Republic of Azerbaijan (of 28 December, 1999, No. 779-IQ)
- Law of the Republic of Azerbaijan on State registration and State registry of legal entities (of 12 December 2003; No. 560-IIQ)
- Law of the Republic of Azerbaijan on Banks (of 16 January, 2004; No. 590-IIQ)
- Law of the Republic of Azerbaijan on Insurance Activity (of 25 December, 2004; No. 519-IIIQ)
- Law of the Republic of Azerbaijan on the Central Bank of the Republic of Azerbaijan (of 10 December, 2004; 802-IIQ)
- Tax legislation
- Tax Code of the Republic of Azerbaijan (of 11 July, 2000; No. 905IQ)

### **Miscellaneous**

- Law of the Republic of Azerbaijan on Accounting (of 29 June 2004; No. 716-IIQ)
- Criminal Code of the Republic of Azerbaijan (of 30 December, 1999, No.787-IQ)
- Code of the Republic of Azerbaijan on Administrative offences (of 11 July, 2000, No. 906-IG)
- Constitution of Azerbaijan, 1995

Law of the Republic of Azerbaijan on combating legalisation of criminally obtained funds or other property and financing of terrorism (of 10 February, 2009; No. 767-IIIQ)

Law of the Republic of Azerbaijan on Advocates and Advocate's activity, 1999

Law of the Republic of Azerbaijan on Personal Information (of 11 may 2010; No.998-IIIQ)

Decree of the President of the Republic of Azerbaijan on improvement of regulations of granting special permissions (Licenses) for some types of Activities (Approved by the Decree No 782 of the President of the Republic of the Republic of Azerbaijan dated 2 September 2002)

Chartered accountants – code of ethics

Law on Auditing Services

## **Annex 4: Persons met during the onsite visit**

Deputy Minister of the Ministry of Taxes of the Republic of Azerbaijan  
Officials from the Department of International Cooperation and Tax  
Monitoring at Financial Institutions, Ministry of Taxes  
Official from the Main Department of Analysis and Control Over Tax  
Risks, Ministry of Taxes  
Official from the Main Department of Tax Policy and Strategic Research,  
Ministry of Taxes  
Official from the Department of Tax Audit and Operative Control,  
Ministry of Taxes  
Official from the Department for the Primary Investigation of Tax  
Crimes, Ministry of Taxes  
Officials from the Central Bank of Azerbaijan  
Officials from the Ministry of Finance of Government of Azerbaijan  
Officials from the Ministry of Justice of Government of Azerbaijan  
Officials from the State Committee on Securities  
Officials from the Financial Monitoring Service  
Representative from the Chamber of Auditors  
Officials from the Prosecutor General's Office

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

The OECD is a unique forum where governments work together to address the economic, social and environmental challenges of globalisation. The OECD is also at the forefront of efforts to understand and to help governments respond to new developments and concerns, such as corporate governance, the information economy and the challenges of an ageing population. The Organisation provides a setting where governments can compare policy experiences, seek answers to common problems, identify good practice and work to co-ordinate domestic and international policies.

The OECD member countries are: Australia, Austria, Belgium, Canada, Chile, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. The European Union takes part in the work of the OECD.

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# Global Forum on Transparency and Exchange of Information for Tax Purposes

## PEER REVIEWS, PHASE 2: AZERBAIJAN

This report contains a “Phase 2: Implementation of the Standards in Practice” review, as well as revised version of the “Phase 1: Legal and Regulatory Framework review” already released for this country.

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 130 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 *OECD Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the *OECD Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the *UN Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. “Fishing expeditions” are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdiction’s legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please visit [www.oecd.org/tax/transparency](http://www.oecd.org/tax/transparency) and [www.eoi-tax.org](http://www.eoi-tax.org).

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