

GRATA INTERNATIONAL (AZERBAIJAN)



In keeping with GRATA's practice of informing clients regarding important legal developments that might influence their business, we draw your attention to the important recent changes in Azerbaijani legislation.

AMENDMENTS TO GAMBLING REGULATIONS

The Law on "Amendments to the Law on "Lotteries"" (the "**Amendment Law**") was adopted on 27 December 2021 and entered into force on 1 January 2022.

The Amendment Law:

(i) provided the revised definitions of targeted lottery, winning fund, winning, competent authority, and electronic lottery;

(ii) defined the virtual lotteries, virtual environment, lottery terminals, lottery ticket sellers as follows:

- virtual lotteries - a lottery form that is simulated or generated by computer algorithms and (or) on the basis of races selected from real sports and other events that took place in the past by means of computer algorithms, accompanied by the provision of winnings to the owners of winning lottery tickets and (or) creating betting opportunities (Article 2.0.16-1);
- virtual environment - telecommunication networks, information systems and networks, information and telecommunication networks, including internet network, mobile communication networks, social media platforms, other electronic means of communication, internet and mobile telecommunication applications, as well as platforms based on other technologies, created by lottery organizer for playing lotteries (Article 2.0.18);
- lottery terminal - self-service terminals, automated kiosks, and any other technological facilities that allow playing and/or selling lotteries (Article 2.0.19);
- lottery ticket seller - a person operating under contract with lottery organizer and selling lottery tickets directly, through lottery terminals or virtual environment (Article 2.0.20);

(iii) revised the Article 4.1, determining the information that should be included in the lottery terms and adds Articles 4.1.9, 4.1.10 and 4.1-1 in the below content:

- information on the cash value of non-cash winnings in cases established by Article 4.3 hereof;
- information on whether additional funds are invested in the winning fund by the lottery organizer and whether an undemanding part of the winning fund can be withdrawn;
- the lottery organizer may include other information not prohibited by law in lottery terms;

(iv) added Article 5.2-1 stating that "The lottery organizer must agree with the competent authority the list of persons who can become members of the circulation commission and the documents confirming their civil impeccability until the composition of the circulation commission is formed. If the competent authority detects incorrect or distorted information about any of the listed persons within five (5) business days from the date of submission of the list, it informs the lottery organizer and demands this person be removed from the list. If within this time the competent authority does not inform the lottery organizer on the inaccuracy or distortion of the information presented, the list is considered agreed with the competent authority. If, after the list has been agreed with the competent authority, it is detected that any of the persons included in the list has lost his/her civil impeccability, the competent authority requires the removal of that person from the list. If the lottery organizer itself determines that any of the persons

included in the list has lost its civil impeccability, it removes this person from the list of persons who can become members of the circulation commission and informs the competent authority about it. Persons on the list agreed with the competent authority are included in the circulation commission without repeated agreement with the authorized body. The lottery organizer may make changes to the list in the manner prescribed by this article in agreement with the competent authority.”;

(v) removed Article 5.3 requiring to appoint at least one member of the circulation commission from representatives of mass media or public organizations;

(vi) revised Article 5.4 determining the order of notifying the competent authority on members of the circulation commission;

(vii) revised Articles 6 and 7 determining the rules applicable to the winning fund of the lottery and lottery tickets;

(viii) reduced the term for review and adopting a decision by the competent authority on the application of the lottery organizer from fifteen (15) business days to seven (7) business days and other changes related to the registration of the lotteries;

(ix) revised Article 9, determining the procedure for suspension of lottery and termination of its running and Article 10, providing the obligations of the lottery organizer. As per the amendments to Article 9, among other changes, the competent authority will be able to suspend the running of the lottery in the following cases:

- if the lottery organizer does not execute the notification on the elimination of violations of the legislation addressed by the competent authority to it except cases of suspension or cancellation of this notification in accordance with the Law of the Republic of Azerbaijan on “Administrative Proceedings” or by the court;
- if a criminal case is initiated against an official of the lottery organizer and (or) a member of the circulation commission for fraud, corruption crimes and crimes against the interests of service committed during the organization and running of the lottery;
- if an illegal interference in the organization or running of the lottery (interference that causes a change in the chance of winning) is detected;
- if significant violations of lottery terms are detected.

In connection with the adoption of the Amendment Law, several changes to the Law on "Telecommunications", Law on "Prevention of the legalization of criminally obtained funds or other property and financing of terrorism", Law on "Information, informatization and protection of information", Law on "Advertising", Law on "Physical education and sports", Tax Code of the Republic of Azerbaijan were made.

According to these amendments, telecommunication operators will be entitled to take measures as defined by the body (structure) determined by the relevant executive authority for prevention of the organization and running of gambling through telecommunication services, the organization of sale and (or) sale of tickets (or any other right equivalent to a ticket) for participation in gambling games, and participation in gambling games, as well as of access from the territory of the country to the virtual environment of foreign lottery organizers and sports betting operators, as well as their sellers. In addition, the procedure for restricting the access to the websites containing information prohibited by the legislation has been modified and advertising of sports betting games and lotteries suspended, cancelled or prohibited in accordance with the Law on "Physical education and sports" and the Law on "Lotteries" will not be allowed. Moreover, as per the changes to the Tax Code, winnings of up to AZN 500 received by individuals from lotteries run by the lottery organizers and sports betting games run by the sports betting operators will be exempt from income tax.

In addition, new Articles 401, 428.9-1, 429.0.4 and 429.0.5 determining sanctions for violation of the lottery legislation have been added to the Code of Administrative Offences in the following content:

(i) According to Article 401,

- a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities with confiscation of the object used as an instrument of administrative violation, as well as funds or other property invested in gambling games, winning fund, as well as income from gambling games is applied for the organization and running of gambling games;
- a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities is applied for the creation of opportunities for participation in gambling games from the territory of the Republic of Azerbaijan, as well as for the provision of access to the virtual environment where gambling games are played;
- a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities is applied for the organization of sale and (or) sale of tickets for participation in gambling games (or another right equivalent to a ticket);
- a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities is applied for the acceptance of bets for participation in gambling games, acceptance, transfer, payment of cash, goods and intangible assets, payment of winnings, prizes or other income, organization of the above activities and provision of related services;
- a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities is applied for the organization, running of gambling games, sale of tickets for participation (or another right equivalent to a ticket), execution (performance) of payment orders or other operations on the bank account of the customer in connection with participation in gambling games by persons conducting banking operations;

(ii) According to Article 428.9-1, a fine in the amount of AZN 5,000 for individuals, AZN 10,000 for officials, AZN 50,000 for legal entities is applied for advertising the gambling games or organizer (operator) and seller of such games;

(iii) According to Article 429.0.4, a fine in the amount from AZN 800 to AZN 900 for individuals, from AZN 1,000 to AZN 2,000 for officials, from AZN 8,000 to AZN 9,000 for legal entities is applied for non-fulfilment by the operator of sports betting games of the obligations determined by the Law on "Physical education and sports" in the field of organization and running of sports betting games;

(iv) According to Article 429.0.5, a fine in the amount of AZN 500 is applied for allowing minors to participate directly or indirectly in sports betting games by the seller of sports betting games;

and the wording "lotteries (except for incentive lotteries) by a person who does not have the right to do so" has been replaced with the wording "gambling games" in the disposition of Article 192-1.1 of the Criminal Code as a result of which the offences in the field of organizing lotteries have ceased to be the object of criminal law and specific sanctions have been established under criminal legislation for betting games.

Gambling games have been defined as lotteries, sports betting games and other betting games, which are organized or carried out by other persons in the course of entrepreneurial activity, involving the distribution of winnings, prizes or other income, based on uncertainty or coincidence, except for lotteries (including incentive lotteries) conducted by lottery organizers in accordance with the Law of the Republic of Azerbaijan on "Lotteries" and by sports betting operators in accordance with the Law of the Republic of Azerbaijan on "Physical education and sports".

AMENDMENTS TO TAX REGULATIONS

The government of the Republic of Azerbaijan introduced significant changes to the Tax Code, which became effective on 1 January 2022. These amendments cover matters such as preventing tax evasion, providing certain tax exemptions, broadening tax burdens and introducing new concepts (the "**Tax Amendments Law**"). Below is a brief overview of the changes contemplated by the Tax Amendments Law.

Transfer pricing: Under the Tax Amendments Law, the list of controlled transactions for transfer pricing purposes has been expanded. The transfer prices will also apply to transactions between a resident of the Republic of Azerbaijan or a permanent establishment of a non-resident in the Republic of Azerbaijan and non-residents provided that:

- (a) such persons have carried out transactions on products traded on international commodity exchanges and/or;
- (b) the total income of a resident or a permanent establishment of a non-resident has exceeded AZN 30 million during a tax year and the share of transactions with each non-resident in total incomes (expenses) has exceeded 30%.

Controlled foreign enterprise: A new definition "Controlled Foreign Enterprise" has been introduced to the Tax Code. As per the Tax Amendments Law, profits of controlled foreign enterprises incorporated in a preferential tax jurisdiction (i.e., a tax haven as designated by Presidential decree) will be taxed in Azerbaijan if below conditions are met:

- (1) an Azerbaijani resident itself or along with an interrelated party resident or non-resident holds directly or indirectly more than 50% of the voting rights shares in a foreign enterprise or holds more than 50% charter capital of the foreign enterprise or has the right to receive more than 50% of the profits of that foreign enterprise;
- (2) the corporate income tax actually paid by the controlled foreign enterprise is two or more times less than the Azerbaijani corporate income tax;
- (3) more than 30% of the annual income of the controlled foreign enterprise is comprised of:
 - interest received from financial assets;
 - royalties received from intellectual property rights;
 - income received from the alienation of shares and participation interests;
 - income received from a financial lease;
 - income received from insurance, banking, and other financial transactions;
 - income received from enterprises that receive income from goods and services that do not create any economic value.

To avoid double taxation, taxes paid by the foreign controlled enterprise will be taken into account (tax offsetting) when the profits of the controlled foreign enterprise become subject to taxation in Azerbaijan.

Permanent Establishment: The Tax Amendments Law also created new conditions with respect to creating a permanent establishment in Azerbaijan.

Gathering of customer databases and organization of works with customers for non-resident enterprises or non-resident individuals will trigger a permanent establishment for these non-residents.

When a foreign non-resident company, as a head contractor, involves subcontractors in Azerbaijan, under certain conditions duration of the works performed by such subcontractors will be included into the threshold (cumulative 90 days) triggering permanent establishment for the non-resident company, if such duration exceeds 30 days.

Exemptions from permanent establishment specified under Article 19.3 of the Tax Code will not apply to non-residents with respect to certain interrelated party transactions under certain conditions.

Tax audit: The following additional conditions for conducting an on-site tax audit have been introduced:

- (a) if a taxpayer who did not agree with the outcomes of the tax audit and requested in writing to conduct extraordinary on-site tax audit;
- (b) if an appeal was submitted to higher tax authority by the taxpayer under certain circumstances.

Financial sanctions: The Tax Amendments Law implemented new and stricter financial sanctions to the Tax Code for violation of tax regulations:

- (i) financial sanction for failure to file a transfer pricing report has been increased from AZN 500 to AZN 2,000;
- (ii) AZN 2,000 shall be imposed for non-submission of a notification on the controlled foreign enterprise within the specified time or submission incorrect information in the notification;
- (iii) for failure to submit information or submission of inaccurate information on imported goods, a financial sanction at a rate of 2 or 5 percent from the invoice value will apply.

Tax exemptions: The Tax Amendments Law also provided the following tax exemptions:

- (a) freight forwarding services related to international and transit cargo transportation will be taxed at 0% VAT rate;
- (b) import and sale of hybrid cars with a production term of three years and an engine capacity not exceeding 2,500 cubic centimeters will be exempted from VAT (for a period of 3 years from 1 January 2022);
- (c) import of second and third level electric chargers for electric cars will be exempted from VAT (for the period of three years from 1 January 2022).

AMENDMENTS TO LABOR REGULATIONS

A new Order "on raising the minimum monthly wage" (hereinafter "**the Order**") dated 17 December 2021 #3051 was signed by President Ilham Aliyev. As per the Order, the minimum wage has been increased from AZN 250 to AZN 300. The order is enforced from 1 January 2022.

AMENDMENTS TO THE LAW ON CASHLESS SETTLEMENTS

On 3 December 2021, the Law on "Amendments to the Law of the Republic of Azerbaijan "On cashless settlements" dated 16 December 2016 # 461-VQ" was adopted.

According to this Law, the following types of payments shall be carried out in the cashless form from 1 January 2022:

- (i) payments for specialized car sales, including sales via commission and trade organizations;
- (ii) retail sales with amounts over AZN 4,000 per transaction (excluding automobiles);
- (iii) payments for medical services provided by medical enterprises with amounts over AZN 500 per transaction;
- (iv) payouts of winning amounts and payments for participation in the lotteries and sports betting games in the amounts over AZN 3,000.

AMENDMENTS TO THE LAW ON PUBLIC PROCUREMENT

The Law on "Amendments to the Law of the Republic of Azerbaijan "On public procurement" dated 27 December 2001 # 245-IIQ" was adopted.

According to this Law, public procurement agreements may be concluded with non-resident legal entities or individuals that are tender winners for (i) construction, (ii) construction-assembly and (iii) installation of production plants if such entities/individuals have permanent establishments or divisions not forming permanent establishments registered for tax purposes in the Republic of Azerbaijan.

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