

# Regulation of income of NCOs in Azerbaijan





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## **Introduction: key sources of funding for Azerbaijani NCOs**

The legislation of Azerbaijan provides for broad variety of sources of funding for non-commercial organizations (NCOs),<sup>1</sup> including grants, donations, income from economic activity, membership fees, public funding, and other sources not prohibited by law.

Historically foreign funding has been the main source of income for NCOs in Azerbaijan. However, during 2014-2017, access to foreign funding has been seriously hindered. As a result, a number of groups started carrying out traditionally not-for-profit activities through establishing business entities, instead of operating through NCOs, taking into account that regulatory environment for businesses is much less restrictive than the environment for NCOs. However, in this paper we provide an overview of regulation of NCOs only, and will not address peculiarities of legal environment for businesses.

Another important change in structure of sources of income of NCOs was the reduction of state financial support for NCOs. In the recent years, due to the economic crisis in the country, the volume of grants issued to NCOs by key state grant makers, the Council on State Support to NGOs under the President of Azerbaijan (hereinafter – NGO Support Council) and Youth Fund under the President of Azerbaijan (hereinafter – Youth Fund) has been reduced.<sup>2</sup>

As a result of restrictions on access to foreign funding and diminishing state support, many NCOs started paying more attention to other local sources of funding, such as donations, membership fees, and service contracts. Not all of such incomes are tax exempt, creating a new problem for NCOs – a complex separation of accounting for taxable versus non-taxable incomes.

The purposes of this paper are to raise awareness of NCOs about the key possibilities for earning incomes from various sources, established by Azerbaijani law, and to inform them about their legal rights and responsibilities associated with earning various types of income.

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<sup>1</sup> According to Article 43.5 of the Civil Code, a non-commercial organization is a legal person that does not have the generation of profit as its main purpose and does not distribute profit among the participants. An NCO includes public associations, foundations and unions of legal entities. For the purpose of this publication, the terms “NCO” and “NGO” have similar meaning unless noted otherwise.

<sup>2</sup> For example, in 2017, the NGO Support Council received 5.01 million manat, compared with 6.61 million manat in 2016.

## **Chapter 1. Income from private sources**

### **A. Grants<sup>3</sup>**

#### *Introduction*

Note that this Chapter only covers the regulation of grants from private sources (local and foreign), and does not cover the peculiarities of state grants, addressed in the following Chapters.

#### *What is a grant?*

A grant is: “material assistance rendered in order to develop and implement humanitarian, social and ecological projects, works on rehabilitation of destroyed objects of industrial and social purpose, as well as infrastructure in the territories damaged as a result of war and natural disaster, programs in the field of education, health, culture, legal advice, information, publishing and sport, scientific, research and design programs, along with other programs that are important for the state and society.”<sup>4</sup> See information about the differences between grants and donations, which are two different legal terms and are subject to different regulation under Azerbaijani law, under section B. Donations.

#### *What does not constitute a grant?*

Material assistance is not considered a grant if it is used directly for: (i) generation of profit; (ii) political advocacy or lobbying for the adoption of laws or other legislative acts; (iii) political promotion; or (iv) financing the election campaign of any political organization or political figure.<sup>5</sup>

#### *Who may receive a grant?*

The following entities and individuals may receive a grant (“recipient”):

- The Government of Azerbaijan and bodies financed from the state budget of Azerbaijan;
- Municipalities (local government bodies);
- Local and Foreign NCOs, with the latter having registered representative and affiliate offices in Azerbaijan (hereinafter referred to as FNCOs);
- Public legal entities (legal entities established by the state or municipal bodies); and
- Natural persons (i.e., citizens, foreigners, and stateless persons) of the Republic of Azerbaijan.

#### *Who may give a grant?*

The following entities and individuals may make a grant (“donor”):

- Bodies financed from the state budget of Azerbaijan (for example, ministries and other state bodies);
- Legal and natural persons of the Republic of Azerbaijan (for example, citizens or local commercial or noncommercial entities);

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<sup>3</sup> Guide to Registration of Grants in Azerbaijan, 2015 (3<sup>rd</sup> edition), M.Guluzade, published under USAID’s Building Local Capacity for Development program implemented by Chemonics International).

<sup>4</sup> Law on Grants, April 17, 1998, Article 1.

<sup>5</sup> Law on Grants, Article 1.4.

- International organizations and their representative offices, foreign governments and their representative offices, international organizations with charitable, humanitarian and other social purposes, financial and credit institutions, foreign public organizations including funds, associations, federations, and committees as well as branches and representative offices of foreign legal entities registered in Azerbaijan (branches and representative offices of foreign NCOs that signed an agreement with the Ministry of Justice (MoJ)), carrying out activities in the field of development of education, science, health, culture, and sport, so long as such activities are not aimed at the direct generation of profit.<sup>6</sup>

If a foreign donor is a FNCO, it can provide grants to local NCOs and to FNCOs with registered offices in Azerbaijan only if it has a registered representative or affiliate office in Azerbaijan and has received approval from the MoJ to give a grant.

#### *Unregistered NCOs and grant making*

NCOs which are informal groups not registered as legal entities with the MoJ cannot be grant recipients under the Law on Grants.

#### *Content of the grant agreement/decision*

All grant agreements (decisions) shall be in written form, signed by the donor and by the grantee, or by the donor (donor's decision). The text of such agreement shall contain the purpose (objective) of the grant, terms of its receipt and use, the total amount, the duration and content, including any special terms of receipt or use of the grant, such as reporting requirements or restrictions on its use, and define specific activities to be performed under the grant.

#### *Procedure for donor and grant registration*

Presently there are two sets of Rules governing registration of grants:

- Rules on Obtaining the Right to Provide Grants in the Territory of the Republic of Azerbaijan by Foreign Donors;<sup>7</sup> and
- Rules on Registration of Grant Agreements (Decisions).<sup>8</sup>

A donor is required to obtain approval in order to issue every grant, and at the same time, according to another set of rules, each grant agreement requires approval (submitted by the prospective grant recipient or a donor to the MoJ). While the two procedures still exist as separate ones, in practice, it appears to be possible to reconcile the two, as the NCO-grantee and donor applying for registration of a grant, can submit, at once, all of the documents required to obtain both approvals to the MoJ.

#### *List of documents required for grant registration*

The following documents must be submitted by either NCO-grantee or by the donor to the MoJ within 30 (thirty) days since signing the grant agreement (decision):<sup>9</sup>

- Application;

<sup>6</sup> Law on Grants, Article 2.

<sup>7</sup> Approved by Decision of the Government of Azerbaijan No 339, dated October 22, 2015.

<sup>8</sup> Approved by Decision of the Government of Azerbaijan No. 216, dated 5 June 2015.

<sup>9</sup> In some situations, grants are made on the basis of a unilateral decision by the donor rather than an agreement.

- Copy of the grant agreement (decision) signed by the grantee and donor;
- Project description signed by the grantee and donor (this can be a part of a grant agreement as well);
- Copy of ID if a donor or grantee is a natural person;
- Power of attorney if the application is submitted by a person who is not a legal representative of the submitting entity;
- Financial-economic justification of the grant.

Local experts recommend also to attach a document confirming submission of the annual financial report.

There is a standard application form for grant registration (Annex I).

If the documents are issued abroad, they have to be legalized or apostilled, as well as translated into Azerbaijani language.

It should be noted that the obligation to register a grant also applies to cases when information about a grant's purpose, amount, or duration changes or when there is a subgrant or amendment to the grant.

#### *Timelines for grant registration*

The application and relevant documents for grant registration must be submitted to the MoJ within 30 (thirty) days from the signing of the grant agreement (decision).

No later than the next working day after the documents are received, the MoJ shall determine whether they are complete. If they are complete, the MoJ will send the grant agreement (decision) and financial-economic justification of the grant to the Ministry of Finance (MoF), in order to obtain the opinion on financial-economic expediency of the grant. If the documents are not complete, they shall be returned to the applicant and additional 10 days shall be given for the applicant to correct the deficiencies. To address the MoJ's revisions, the applicant has to act expediently, especially if changes require action overseas (i.e., notary of signatures overseas, obtaining an apostille, mailing the revised originals to Azerbaijan, and translating them into Azerbaijani).

There are no criteria for the opinion on financial-economic expediency of the grant as such. In practice, this is just a letter of consent from MoF. If the opinion of the MoF on financial-economic expediency of a grant sent to the MoJ is negative (for example, if the purpose of the grant or its financial-economic justifications were unclear<sup>10</sup>), it shall inform the applicant about it within 3 working days.

In general, if the MoJ finds no issues with the grant, the MoJ should register a grant agreement (decision) within 15 days of submission and issue a notification of registration. If additional study is needed for MoJ (at its discretion), or any document is missing, the deadline for registration of a grant can be extended for another 15 days. Please note that the legislation allows for a lot of discretion on part of the MoJ to decide whether the application package is complete and satisfactory. The expectation shall be that the grant registration will take more than 15 days and up to 54 days (the MoJ can extend its deadline for 15 days, can request applicant to provide a missing document and give 10 days, MoF can issue its opinion within maximum of 14 days). At the end of the term, the MoJ is required to issue a decision, whether it registers a grant or rejects such registration.

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<sup>10</sup> Article 3.4 of the Rules on donor registration, 2015.

### *Submission of application for grant registration*

Application for registration of a grant can be submitted by NCO-grantee or by the donor, in person, by mail, or electronically. Usually, NCO-grantees submit the application.

An NCO may submit an application to register a grant in person by visiting the relevant office of the MoJ. For this, an envelope should be dropped into the transparent mailbox at the office of the MoJ, located at the address shown below.

An application for registration of a grant can also be submitted by regular mail. In such cases, NCOs should make sure that they keep a receipt from the post office indicating the date of dispatch and the addressee. They can also send it by registered mail.

Since May 2014, the MoJ offers NCOs the option to use the “individual e-cabinet” system. Through this system, NCOs can electronically submit their grant contracts to the MoJ. To access the system, an NCO needs to obtain a username and password from the MoJ by submitting a written request to the latter at the address below.

### Contact information for the grant registration department

Head Department of Registration and Notary  
Ministry of Justice  
The Republic of Azerbaijan  
72 Azadliq St, Baku, Azerbaijan, AZ1007;  
Tel. 404-42-81; Fax: 404-42-99;  
email: [notvva@bakinter.net](mailto:notvva@bakinter.net);  
<http://www.justice.gov.az/notariat.php?page=contacts>

### *Grounds for rejection*

The following are the grounds for rejecting the application for a grant registration:

- a) Incomplete application and missing documents required under the law;
- b) If activities under grant violate the legislation of Azerbaijan, or the recipient’s charter, including if the conditions of a grant agreement (decision) contradict the definition of a grant;
- c) If similar areas are financed by the Azerbaijani government;
- d) If the foreign donor does not have a registered office in Azerbaijan;
- e) If the person signing a grant agreement (decision) does not have the authority to do so;
- f) If there is not written consent from the donor that the property purchased under a grant be sold during the project<sup>11</sup>;
- g) If the terms of the grant agreement (decision) are unclear and the planned activities are not specified;
- h) If annual financial reports of NGO-grantee were not submitted to the MoF;
- i) If the opinion of the MoF on financial-economic expediency of the grant is negative (for example, if the purpose or financial-economic justification of a grant were not clear, as determined at the MoF’s discretion);
- j) If deficiencies identified by MoJ are not rectified in a timely manner.

### *Decision on whether to register a grant*

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<sup>11</sup> Article 3.1.8, Rules on grant registration, 2015.



If the MoJ approves the grant agreement, it will issue a notification about registration of the grant. Grant recipients should keep this notification on file as evidence of the grant registration in case of possible review by the MoJ or Ministry of Taxes, or if requested by a bank to access the grant funds. Regardless of the number of separate payments made under the grant, only one notification is issued per a registered grant.

If the MoJ rejects the grant registration or delays beyond the deadlines, the applicant can appeal to court. If the rejection was due to the negative opinion of the MoF, the applicant can challenge the MoF's opinion in court as well.

#### *Registration of grants received by individuals*

The Rules for Grant Registration of 2015 equally apply to individuals. Individuals who receive grants to their private accounts have to register them with the MoJ through the same procedures as NCOs.

#### *Reporting on a grant in the financial report*

According to the Law on NCOs,<sup>12</sup> NCOs shall submit an annual financial report to MoF no later than April 1 of each year.<sup>13</sup> NCOs should include the following information about a grant in the financial report:

- the name of donor;
- amount of grant in manat and the original currency;
- title/purpose of the grant;
- duration of the grant; and
- installments of the total amount which were received in a specific financial year.<sup>14</sup>

At the same time, an NCO shall provide the following information about the grants issued by it to third parties:

- the name of recipient;
- amount of grant in manat and the original currency;
- title/purpose of the grant;
- duration of the grant; and
- installments of the total amount which were wired in a specific financial year.

#### *Fines relating to grants*

Article 432.1 of the Code on Administrative Offenses of the Republic of Azerbaijan (hereinafter - Administrative Code) provides financial penalties for failure to register a grant. This fine is 1,500 to 2,500 manat for managers of NCOs, and 5,000 to 7,000 manat for NCOs.

The law envisages a penalty for NCOs, including FNCOs operating in Azerbaijan, that receive financial aid and (or) other forms of material assistance without a grant agreement (decision). This offense is punishable by a confiscation of means and goods that were the

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<sup>12</sup> Law on non-governmental organizations (public unions and foundations), June 13, 2000, hereinafter "NCO Law."

<sup>13</sup> Article 29.4, NCO Law.

<sup>14</sup> Forms of annual financial report at available at [www.qht-hesabat.maliyye.gov.az](http://www.qht-hesabat.maliyye.gov.az).

object of such aid and with a fine of 2,500 to 5,000 manat for managers, and 8,000 to 15,000 manat for legal entities.<sup>15</sup>

If local and foreign NCOs or banks conduct transactions based on grant agreements (decisions) that are not registered, they may be penalized with fines of 2,500 to 5,000 manat for officials and 5,000 to 8,000 manat for legal entities.<sup>16</sup>

## **B. Donations<sup>17</sup>**

### *What is a Donation?*

The definition of donation was introduced to the NCO Law only in February 2013.<sup>18</sup> It says: “[a] Donation is aid in the form of funds and (or) other material form [...] to a non-governmental organization [...] in accordance with this law without a condition to achieve any purpose.”

### *Key differences between a donation and a grant*

1. Purpose: a donation cannot be given for a specific purpose. No conditionality shall be attached to donation on the part of the donor. Activities under a donation can be implemented at the discretion of an NCO, in compliance with legislation and its charter. In contrast, a grant shall only be provided for a specific purpose or purposes.
2. Recipients: only registered NCOs and FNCOs with a registered office in Azerbaijan may receive donations, while grants can be received by individuals as well.
3. Donors: a citizen of Azerbaijan, a legal entity registered in Azerbaijan, or a FNCO with a registered office in Azerbaijan can give donations. FNCOs with registered offices in Azerbaijan may give donations, with no requirement to obtain additional registration as donors with the Government of Azerbaijan. In contrast, in order to give grants, FNCOs are required to have both registered offices in Azerbaijan and registration as a donor with the Government of Azerbaijan.
4. Assets to be donated under a grant and a donation: donations cannot be given in cash, the exception being when the recipient of a cash donation of up to 200 manat (\$115) is a charity.<sup>19</sup> Rather, donations must be made via bank transfer. Grants (at least, in theory) can be given out in cash as well as through a bank transfer.

### *What and how can be donated*

Donation can be in cash or non-monetary form (material form such real estate, intellectual property, and so on). A donation of any value shall be registered with the MoJ. NCOs cannot give or promise donor any privileges in exchange for a donation that was received or that is promised to them.

Monetary donations must be made via bank transfer, except for when the recipient of a cash donation of up to 200 manat (\$115) is a charity. The legislation does not provide any specific rules for non-monetary donations but the template application for donation registration

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<sup>15</sup> Article 432.2 of the Code of Administrative Offenses.

<sup>16</sup> Article 432.4 of the Code of Administrative Offenses.

<sup>17</sup> Source: Guide to Registration of Donations in Azerbaijan, P.Bayramova, M.Guluzade, Baku, 2014.

<sup>18</sup> Article 24-1 NCO Law, amendment of February 15, 2013.

<sup>19</sup> The law of Azerbaijan does not establish rules for the registration of charities.

requires that in case of an in-kind donation, a composition of donated property shall be stipulated<sup>20</sup>.

A citizen of Azerbaijan, a legal entity registered in Azerbaijan, or a FNCO with a registered office in Azerbaijan can make a promise to give any object to the NCO over time as a donation, such promise shall be in writing and notarized.

### *Registration of a donation*

Similar to a grant, NCOs are required to register donations with the MoJ in accordance with the Rules on Submission of Information about the Amount of Donations Received by NCOs as well as by Branches or Representative Offices of NGOs of Foreign States and about the Donor (hereafter referred to as the “the Donation Rules”).<sup>21</sup>

NCOs have to register donations with the MoJ within 15 days of receiving the donation. It is prohibited to conduct any operations with non-registered donations.

NCO has to submit the following documents for donation’s registration:

- Application per the template provided in the Donations Rules;
- Bank statement showing the donation amount (does not apply for cash donations under 200 manat).

As we see, the list of documents for registration of a donation is much shorter than that for grant registration.

The MoJ can reject the application for registration of donations if:

- the person signing the application does not have such powers;
- the NCO does not have an updated excerpt from the state registry of legal entities;<sup>22</sup>
- the donation is given by a donor which is not envisaged in the legislation of Azerbaijan;
- the activities envisaged by the donation contradict legislation or the organization’s charter;
- the NCO did not observe the anti-corruption, money-laundering and anti-terrorism laws of Azerbaijan;
- the NCO received the donation in cash in violation of the law (exceeding 200 manat); and
- if the validity of the donor’s agreement with the MoJ has expired.<sup>23</sup>

### *How to receive a cash donation?*

In theory, charitable organizations can receive cash donations up to 200 (two hundred) manat.<sup>24</sup> However, the law of Azerbaijan does not establish rules for the registration of

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<sup>20</sup> Annex 1 to the Rules on Submission of Information about Amount of Donation Received by NGOs As Well As by Branches or Representative Offices of NGOs of Foreign States and About the Donor, adopted by the Cabinet of Ministers of the Republic of Azerbaijan on 21 October 2015.

<sup>21</sup> Decision of the Government of Azerbaijan # 336, November 13, 2015.

<sup>22</sup> The MoJ verifies it through the data in the state registry of legal entities and NCO does not need to submit an excerpt from the state registry of legal entities as part of the package for donation registration.

<sup>23</sup> The MoJ verifies it through the data in the state registry of legal entities and NCO does not need to submit an excerpt from the state registry of legal entities as part of the package for donation registration.

<sup>24</sup> Article 24-1.4, NCO Law.

charities, or for certifying an NCO as a charity. An NCO will act at its own risk trying to justify receipt of such donation.

#### *Receiving non-monetary donations*

The law does not contain any terms on how to document non-monetary donations. At the same time, the Donations Rules clearly state that donations must be made via bank transfer, which simply cannot be done with non-monetary donations. Azerbaijani experts believe that the transfer of donations (property, assets) shall be documented according to article 668 of the Civil Code (regarding the form of gifts, even though donations do not equal gifts). If certain property transfer requires special documentation (as in case of real estate or a vehicle), such transfer will require documentation as established by the law. It might be wise to consult with the MoJ on how to properly document a particular non-monetary donation.

#### *Reporting about donation in the financial report*

According to the NCO Law, NCOs shall submit an annual financial report to the MoF no later than April 1 of each year.<sup>25</sup> NCOs should include the amount of received donations and information about legal and individual donors into the annual financial report.<sup>26</sup> If a donor is a legal entity, the following information should be included in the financial report:

- the name of the legal entity;
- the tax ID of the legal person;
- the legal address of the legal entity;
- the bank details of the legal entity; and
- the contact of the legal entity.<sup>27</sup>

If donor is a natural person, the following information about him/her should be included in the financial report:

- the person's name, last name, middle name; and
- other ID data of the person (serial number of an identification document, name of the body that gave identification document, date of issue, and address).

#### *Anonymous donations*

Anonymous donations are not allowed in Azerbaijan, as information about a donor is a part of mandatory information to include in annual financial reports submitted to the MoF.

#### *"Cash Boxes"*

"Cash boxes" are the widely used method to collect donations in the world. In Azerbaijan, there are no rules which would regulate collecting donations by "cash boxes." Technically, they are not allowed. (See section on *Anonymous donations*.) If someone is interested in practicalities and is willing to take the risk, please, see information under Section on Snapshot of Foreign Countries Examples and consult with the MoJ.

#### *Fines related to donations*

The legislation contains several penalties related to donations:

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<sup>25</sup> Article 29.4, NCO Law.

<sup>26</sup> Article 24-1.5, NCO Law.

<sup>27</sup> Forms of annual financial report at available at [www.qht-hesabat.maliyye.gov.az](http://www.qht-hesabat.maliyye.gov.az)

- failure to include information on donations in the annual financial report is punishable by 1,500 to 3,000 manat for officials, and by 5,000 to 8,000 manat for legal entities<sup>28</sup>.
- giving a donation in cash to NGOs exceeding 200 manat (for individuals - from 250 to 500 manat, officials from 750 to 1,500 manat; and legal entities from 3,500 to 7,000 manat<sup>29</sup>).
- there is a penalty for NGOs for receiving cash donations exceeding 200 manat (officials - from 1,000 to 2,000 manat, and legal entities from 7,000 to 10000 manat).

At the time of publication of the present brochure, there were no penalties in the legislation for using a donation without registration and no penalty for banks to process unregistered donations.

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<sup>28</sup> Article 465, Code of Administrative Offences.

<sup>29</sup> Article 466, Code of Administrative Offences.

## **Chapter 2. Income from state sources:**

### **A. Grants**

Grants issued by the Government are regulated by the Law on Grants and, at large, are subject to the same definitions and legal framework as described in the previous section in relation to grants from private sources. In this section, we will only address peculiarities of regulation of state grants, which differ from grants from private sources.

Different ministries and other state bodies issue grants for individuals and NCOs in Azerbaijan. According to Article 2 of the Law on Grants, the grants issued on behalf of the Azerbaijani government shall be provided on a competitive basis.

At present, the following bodies are the primary state grant makers in Azerbaijan:

- NGO Support Council;
- Youth Foundation;
- Ministry of Youth, Sports and Culture of the Republic of Azerbaijan;
- Ministry of Labor and Social Protection of Population of the Republic of Azerbaijan (MoLSPP);
- Department on Fighting Corruption under the Prosecutor General's Office of the Republic of Azerbaijan.

Each of these bodies has developed its own rules and requirements for grant competitions.

For example, the NGO Support Council holds grant competitions for NCOs several times a year and advertises about them on its official website.<sup>30</sup> The NGO Support Council's grant competition is usually announced one month prior to date of submission of project proposals, and the submission is done electronically through the [www.e-qht.az](http://www.e-qht.az) web portal.

#### *Eligibility*

Eligibility for government grant competitions may vary from one body to another. In order to apply for a grant from the NGO Support Council, an NCO must:

- be registered as a legal entity;
- have a bank account;
- have a valid excerpt from the state register of legal entities;<sup>31</sup>
- have submitted an annual financial report for the previous year; and
- have previous experience on the topic for which they submit a proposal to NGO Support Council.<sup>32</sup>

#### *Application*

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<sup>30</sup> Advertisement on grant competition alongside with its terms and conditions is available at [www.cssn.gov.az](http://www.cssn.gov.az) and <http://www.e-qht.az/news/one/66>.

<sup>31</sup> Extract from the state registry has to be obtained in case there was a change of chairperson, in board's membership, legal address, etc. For some NCOs it has to be renewed annually, for others once in 2 years or once in 3 years. This document is mostly needed when NCOs apply for government's grants. In MoJ's practice, the main idea behind this is that if validity of the extract has expired, the chairperson (legal representative) of the organization can no more sign any contracts on behalf of the organization.

<sup>32</sup> Usually it is enough that NCOs describe their previous experience in the grant proposal. However, during interview stage of the evaluation of the applications, documented evidences maybe requested as well.

An application for participation in a grant competition from the NGO Support Council must contain the following documents:

- project proposal;
- implementation plan;
- budget; and
- excerpt from the state register.

#### *Other restrictions*

- The projects submitted to NGO Support Council for financing cannot be longer than 12 months and shall not exceed 3,000 manat for NCOs which have less than 1 year experience after obtaining state registration, and 12,000 manat for NCOs which have more years of experience.
- Applicants who were previously included into the blacklist<sup>33</sup> of the NGO Support Council cannot participate in grant competitions for two years.
- A grant cannot be used for purchase of immovable property, education stipend, political and religious activity, material aid to individuals, and for payment of penalties imposed for violation of the legislation of Azerbaijan.
- An NCO cannot participate in grant competition if it has not completed a previous project financed by NGO Support Council by the start of a new competition.
- Professional sports associations cannot participate in the grant competition.

#### *Evaluation*

Procedure for evaluation of project proposals for state grants may vary from one state body to another. For example, the NGO Support Council uses the following 3-stage evaluation process of grant applications:

1. Preliminary review of the project proposals by the NGO Support Council's Secretariat, which mostly checks the conformity of the project proposal with the competition rules.
2. Expert evaluation of the project proposals by contracted experts. The experts evaluate the projects on a score-based system according to the evaluation sheet approved by the NGO Support Council. Each project is codified (made anonymous by removing names and instead providing it a number/code) by the NGO Support Council and evaluated by three independent experts.
3. Final decision of the NGO Support Council on the project proposals. The 11 members of the Council discuss each project proposal individually and make relevant decision in view of the experts' opinion. The Secretariat then places information about winning organizations on its webpage and notifies them individually by mail.

Those NCOs which project proposals were not successful can appeal to the NGO Support Council within ten days from the time the decision is made. Appealing NCOs are invited to the NGO Support Council to familiarize themselves with the expert opinions on their project proposal. In practice, very few NCOs use this appeal mechanism because: (i) according to NCOs, evaluations of project proposals are conducted rather impartially and NCOs trust the final decision of the NGO Support Council; (ii) chances are slight that an NCO might win an

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<sup>33</sup> An NCO will be included into the "blacklist" if they fail to submit reports to the NGO Support Council for its grant or if there were serious shortcomings in its implementation of a grant.

appeal and NCOs do not want to damage their relationship with the NGO Support Council as they plan to apply for grants in the future.<sup>34</sup>

#### *Registration of government's grants*

The Rules for registration for grant agreements described in the previous chapter also apply to the grants issued by the state bodies with the following differences:

- the grant awarded by the state body must be submitted to the MoJ by the donor no later than 7 (seven) days since signing the grant agreement (decision) in a special format;<sup>35</sup> and
- The state body wishing to award an NCO shall secure the opinion of the NGO Support Council on assessment of the topics and issuance of grant to an NCO.<sup>36</sup>

Failure of the donor to provide information about the grant issued from the state budget does not release the recipient NCO from the obligation to submit the grant agreement (decision) for registration.<sup>37</sup> We are not aware of such instances however.

### **B. Subsidy**

Subsidies are a less popular mechanism for public financing of NCOs in Azerbaijan compared to grants. In practice only a few NCOs receive direct subsidies from the state budget (for example, the Union of Composers, Union of Writers, or Union of Artists).

The only definition of subsidy appears in the Law of the Republic of Azerbaijan on Budget System<sup>38</sup> as “a non-refundable monetary fund granted by the State budget to the budget of the Autonomous Republic of Nakhichevan, local budgets, and legal entities.”

Only a few NCOs are usually eligible to receive subsidies. These are identified in the state budget by name and without any competition. Since subsidies are irrelevant to the majority of NCOs, we do not provide details on their regulation.

### **C. Other Forms of State Funding**

#### *State procurement of goods and services*

The Law on State Procurements<sup>39</sup> permits NCOs to participate in tenders for procurement of good and services. However, Azerbaijani law places burdensome financial prerequisites on participation in government procurement that make it essentially impossible for NCOs to bid

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<sup>34</sup> Assessment of the legal framework for non-governmental organizations in the Republic of Azerbaijan, 2014, (prepared by ICNL for USAID's Building Local Capacity for Development program implemented by Chemonics International)

<sup>35</sup> Annex 5 to the Rules on grant registration. This information includes: name of the donor, its country of origin, name of the recipient, its country of origin, title of grant, its purpose and number, start and end date of the grant, amount and currency of grant, geographic location where the grant will be realized, in-kind contribution of the recipient, organizations involved in its implementation, dates of signature of the parties, name and position of the person signing on behalf of a donor, ID information of person signing on behalf of the recipient, details of power of attorney if the grant is signed by a person who is not a legal representative, opinion of the NGO Support Council on assessment of the topics and issuance of grant to an NCO, emails of the donor, recipient and bank, other relevant information.

<sup>36</sup> Rules on coordination of grants issued by state bodies to NCOs with NGO Support Council, approved by the Decree of the President of the Republic of Azerbaijan # 652 of October 21, 2015.

<sup>37</sup> Rules on grant registration, 2015, Article 1.6.

<sup>38</sup> Law of the Republic of Azerbaijan on Budget System #358 of July 2, 2002.

<sup>39</sup> Law on State Procurements of the Republic of Azerbaijan, #245-IIQ, 2001.



on government contracts. Specifically, the Law on State Procurements requires that a legal entity or natural person pays both a bid security and performance security in order to participate in procurement bids. A bidding entity must provide the government with up to 0.5 percent of the total price of the procurement or the equivalent of 1.5 percent of the costs to cover tender expenses. The Law also requires a security deposit of one to five percent of the total price of the procurement. There is an additional requirement that the contract recipient pays a deposit to guarantee completion of the contract. Guarantees by banks, letters of credit, securities, cash, deposits and any other financial assets can be used as deposits. In practice, even large NCOs are unable to provide the minimum bid security required by the current law.

*State order (contract) for social service*

Implementing social services for the government can become another source of local funding for NCOs. The law “On Social Service”<sup>40</sup> allows state bodies to use state budget funds to purchase social services from NCOs. On December 30, 2012, the Cabinet of Ministers of the Republic of Azerbaijan (Government of Azerbaijan) adopted two decisions: the "Rules of provision social services at homes and state social service institutions on a paid and partially paid basis," and the "Rules on approving rules of providing state orders in the area of social services to municipalities, natural and legal entities, including non-governmental organizations" (hereinafter Rules on State Orders for Social Services). The Rules on State Orders for Social Services were also accompanied by a “sample contract on social orders in the area of social service.” The Rules on State Orders for Social Services cover issues including budgeting for social orders, the procedure for tender commissions, membership in such commissions, participation of NCOs in tenders, responsibilities of the state body and NCO recipient, and supervision over performance under social orders.

Previously, on November 29, 2012, the President adopted another decree<sup>41</sup> assigning implementation of the Law on Social Services to the MoLSPP, the Ministry of Health, the Ministry of Education, and local executive bodies.

According to the Rules on State Orders for Social Services, social orders shall be issued to contractors on a competitive basis by “tender commissions” that will be created at the MoLSPP, the Ministry of Health, the Ministry of Education and local executive powers. Tender commissions are established and operate according to the rules approved by the heads of the relevant state bodies procuring social services. The legislation provides general guidance for such rules. Specifically, members of tender commissions shall include experts from the relevant state bodies. Representatives of central executive bodies, municipalities, and NCOs are invited to meetings of the commissions when questions of interest to them are being discussed. Commissions can invite other experts without voting rights to their meetings. Tender commissions shall be chaired by government officials.

NCOs and municipalities may participate in tenders for social orders. An NCO shall meet the following requirements in order to participate in the tender for a social order:

- the NCO shall fully or partially specialize in the provision of the social service that is being outsourced;
- the NCO shall possess professionalism, experience, technical and financial resources, human resources, management competence, and reliability necessary to perform the contract; and

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<sup>40</sup> Law on Social Service of the Republic of Azerbaijan, #275-IVQ, 2011.

<sup>41</sup> Decree of the President of the Republic of Azerbaijan ‘On additional measures in regards to implementation of the Law # 275-IVQ ‘On Social Service’ of the Republic of Azerbaijan of December 30, 2011’.

- the NCO shall not have outstanding tax or other mandatory payment debts to the state.

According to Rules on State Orders for Social Services, supervision over the performance under a social order contract is conducted by the state body that procures the services. Disputes between parties to social order contract must be settled in court.

On January 9, 2013, for the first time in the history of Azerbaijan, the Government of Azerbaijan allocated 2 million manats from state budget funds for the procurement of social services from NCOs, along with other legal entities and individuals, in order to implement the Law on Social Services. Since then, approximately 20-30 social orders are placed with NCOs annually.

### **Chapter 3. Income from internal sources:**

- membership fees
- entrepreneurial activities, including service contracts<sup>42</sup>.

#### *Membership fees*

Public associations and unions of legal entities as membership-based NCOs, may contain a provision for membership fees in their bylaws. The law does not define what the “membership fee” is, but local experts interpret “membership fees” as payments (fees) to an NCO paid by members of this NCO, in accordance with bylaws of this NCO or a decision of the NCO’s highest managing body. It is up to the NCO and its highest managing body, whether to require the members to pay membership fees and if so, in what amount and how often. For example, some NCOs set membership fees as annual payments. In such cases, NCOs shall report income in the form of membership fees in their annual financial reports. For the purpose of financial reporting, it is important to document receipt of membership fees despite that the legislation does not contain specific rules on this. It is advisable that fees paid in cash be accounted for in compliance with Azerbaijani law for cash receipts and deposited in the NCO’s bank account.

Membership fees, like any other income of the organization cannot be distributed among founders and members and should be spent on the statutory purposes of the organization or to cover routine administrative costs such as utilities, rent, and stationery.

#### *Entrepreneurial activities, including service contracts*

Azerbaijani NCOs may carry out entrepreneurial activities that are consistent with and “aimed at reaching the objectives of the creation”<sup>43</sup> of the organization, so long as income generated is not distributed among the founders or members. The production and sale of goods for profit, the acquisition of securities, property and non-property rights, as well as participation in businesses, are all permitted activities for NCOs as long as they advance the organization’s objectives. An NCO shall keep records of and account for its income and expenditures related to its entrepreneurial activities. As these incomes are subject to tax, an NCO shall keep records of and accounts for them separate from records of and account for income exempt from profits tax.<sup>44</sup> Restrictions on the types of activities an NCO can conduct may be determined only by law.

NGOs engaging in any sale of goods or services are subject to a tax on profits. Usually, NCOs engaged in entrepreneurial activity register as simplified tax payers if the volume of their annual taxable operations does not exceed 200,000 manat. For Baku-based NCOs, the rate of a simplified tax is 4% from the turnover, and for regional organizations it is 2%. However, if the NCO is region-based, but operates mostly in Baku, it will need to pay 4% income tax due to “location of services.”<sup>45</sup> (For more information regarding taxation, see Chapter 4.)

Certain entrepreneurial activities are subject to licensing requirements whether performed by NCOs or other entities, but only a few activities subject to licensing are likely to be relevant to NCOs (e.g., medical activities).

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<sup>42</sup> Regarding state procurement of goods and services and State order (contract) for social service, see Chapter 2.

<sup>43</sup> Article 43.6 of the Civil Code.

<sup>44</sup> Article 22.3, NCO Law.

<sup>45</sup> Article 220.3 of the Tax Code.

In accordance with the Rules on Registration of Service Contracts,<sup>46</sup> NCOs as well as branches or representative offices of FNCOs registered in Azerbaijan shall obtain registration (pre-approval) from the MoJ for any service contract they sign with a foreign contractor.

The procedure for registration of service contracts in the Rules is somewhat similar to the grant registration procedure and the donation registration procedure described in previous chapters.

There is no appeals procedure if the MoJ denies the registration of a service contract unless there is a procedural violation, which can be appealed in an administrative manner to a higher official at the MoJ in accordance with the Code on Administrative Procedure of the Republic of Azerbaijan<sup>47</sup>. At present, the Administrative Code does not contain a specific penalty against local or foreign NCOs for failure to register a service contract.

*Key differences between a service contract between NCO and a foreign entity and a grant from a foreign source include<sup>48</sup>:*

- **Contractors:** Any foreign legal entity or individual can sign a service contract with a local or foreign NCO registered in Azerbaijan, with no requirement to obtain additional registration as a donor with the Government of Azerbaijan and with no requirement to have a registered office in Azerbaijan. In contrast, in order to give grants to Azerbaijani NCOs, foreign NCOs are required to have both registered offices in Azerbaijan and registration as a donor with the Government of Azerbaijan; only foreign NCOs, but not foreign businesses or individuals, can issue grants to NGOs in Azerbaijan.
- **Taxation:** According to the legislation of Azerbaijan, the revenue received as a registered grant is exempt from income tax, but the revenue received through service contracts is not. As a result, a local or foreign NCO-contractor, which signs a service contract with a foreign entity, will have to pay tax.

The Rules on Registration of Service Contracts apply to contracts for the provision of services and the implementation of work, as well as any amendment or change to them. It is the responsibility of the contractor to register a service contract. From the text of the Rules, it appears that the sale of goods shall not be subject to these Rules.

Only registered Azerbaijani NCOs and FNCOs with registered offices in Azerbaijan can sign service contracts as contract implementers.

#### *Timelines for service contract registration*

An NCO shall apply for registration of the service contract within 15 days of the date the contract is signed. The MoJ has 15 days to consider a registration application. The MoJ has the authority to extend this period for another 15 days if it determines that “there is a need for further examination.” In addition, the MoJ has the authority to extend this term for an

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<sup>46</sup> Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NCOs, as well as by Branches or Representative Offices of Foreign NCOs, from Foreign Sources adopted by the Government of Azerbaijan on October 21, 2015, and entered into force with its publication on November 20, 2015.

<sup>47</sup> Code on Administrative Procedure of the Republic of Azerbaijan, 2011.

<sup>48</sup> Overview of the Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NGOs, as well as by Branches or Representative Offices of Foreign NGOs from Foreign Sources, ICNL, November 23, 2015.

additional five days if it identifies deficiencies and requests that the applicant rectify them (thus, all together up to 35 days).

#### *Submission of application for service contract registration*

In order to register a service contract, an NCO-applicant shall submit to the MoJ:

- an application requesting service contract registration, signed by its legal representative and stamped with the NCO's seal, according to the format approved by the Rules;
- the original contract signed by the parties;
- the identification documents of the customer (i.e., a passport in the case of an individual or a registration certification (excerpt from the commercial registry) in the case of a legal entity);
- detailed information about the nature of services to be performed or works to be implemented under the service contract, including information on the contract's purpose, start and end date of the contract, current situation, outcomes, beneficiaries, scope of work and service, amount, and place of service.

According to the Rules, the MoJ has the power to check:

- if all required documents are submitted and all information in submitted documents is accurate;
- if the activities planned to be implemented with the contract comply with Azerbaijani legislation and the charter (regulation) of the NCO-contractor;
- if a duly authorized person is signing the contract;
- if the NCO-contractor submitted its annual financial report to the MoF;
- if the NCO-contractor does or does not observe the Law on fighting corruption,<sup>49</sup> Law on the fight against legalization of financial means or other property obtained by criminal means and against financing terrorism<sup>50</sup> and the Law on fighting terrorism<sup>51</sup>;
- if the project which is a part of the contract is submitted (it is not clear from the Rules what this requirement means; additional interpretation might be required from the MoJ);
- if founding documents of the NCO-contractor comply with legislation (this requirement is to verify that the founding documents are up to date with the recent legislative changes, or if the founding documents have been amended as required by law to incorporate recent legislative changes); and
- if a contract is commercial or non-commercial (there is some concern that if a service contract is recognized as "non-commercial," its registration might be denied based on a conclusion that the contract is in fact a grant agreement, and therefore, should be registered according to grant registration procedure).

The MoJ can deny service contract registration in the following cases:

- if not all documents required by law are submitted;
- if deficiencies are identified in the items subject to review by the MoJ;

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<sup>49</sup> Law on fighting corruption of the Republic of Azerbaijan, # 580-IIQ, January 13, 2004.

<sup>50</sup> Law on fight against legalization of financial means or other property obtained by criminal means and against financing terrorism of the Republic of Azerbaijan, #767-IIIQ, February 10, 2009.

<sup>51</sup> Law on fighting terrorism of the Republic of Azerbaijan, #687-IQ, June 18, 1999.

- if the information described in the application and/or the attached documents is falsified; and
- if a deficiency identified by the MoJ is not eliminated within five days of notification.

The Rules do not require the MoJ to provide justification for a denial of registration.

## Chapter 4. Taxation of NCOs and donors<sup>52</sup>

### A. Taxation of NCOs

The Tax Code uses the term “non-commercial organization,”<sup>53</sup> but does not provide a definition.<sup>54</sup> A non-commercial legal entity is defined by the Civil Code as “a legal person not having the generation of profit as the main purpose and not distributing received profit among participants.”<sup>55</sup> NCOs are generally payers of income (profits) tax under Azerbaijan’s Tax Code. Exemptions from profit tax only apply to certain types of revenues. Many Azerbaijani NCOs do not pay profit tax because they are exempt from paying profit tax on revenues received from grants. (The primary and often single income for many NCOs is grants.) Grants are exempt from profit tax. In addition, revenues received by a non-commercial organization from gratuitous transfers, membership fees, and donations are exempt from profit tax.<sup>56</sup>

The Tax Code also uses term “charitable organizations,” which is defined as a “non-commercial organization conducting charitable activity.”<sup>57</sup> Charitable organizations are exempt from profit tax, except with respect to income received from entrepreneurial activities.<sup>58</sup> The Tax Code provides a definition of “non-commercial activity” as “conducting activity, which is not prohibited by law, which does not pursue the generation of income as the main purpose, and which envisages the use of generated income exclusively in non-commercial purposes, including for the purposes stated in its bylaws, otherwise activity is recognized as commercial.”<sup>59</sup> In addition to explicitly exempt income received as donations, membership fees and gratuitous transfers, income from non-commercial activities might include dividends, interest, income from one time sale of property, and gains from exchanging for foreign currency into local currency, among others. There is, however, no procedure for obtaining the status of charitable organization; hence it is practically impossible to take advantage of this exemption.<sup>60</sup> Moreover, unfortunately, no other laws in Azerbaijan address the “charitable organization” status which appears in the Tax Code. In addition, no objective procedures exist in the Tax Code or elsewhere for distinguishing a “charitable organization” from other NCOs that are not considered charities but do perform educational, health care, social, and other charitable services. This makes it quite difficult to determine with any certainty which NCOs might be eligible for this benefit, or how an NCO might go about claiming the benefit. It is also important to note that because of the lack of a definition in the Tax Code, it is unclear whether an organization must conduct only charitable activities in order to be entitled to this benefit, or, alternatively, whether any NCO which conducts charitable activities (in addition to other non-charitable activities) may qualify.

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<sup>52</sup> In this Chapter ICNL used information from Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Azerbaijan, *Third Edition, 2014* (prepared by ICNL for USAID’s Building Local Capacity for Development program implemented by Chemonics International).

<sup>53</sup> Please recall that the Tax Code uses the term “non-commercial organization,” and not “non-governmental organization,” the term which appears in the NCO Law. *See supra* Section 4.3. However, for the purposes of this paper, we will continue using the term “NGO.”

<sup>54</sup> Article 13.2.42 of the Tax Code only references Civil Code, which is supposed to provide a definition of “non-commercial legal entity.”

<sup>55</sup> Article 43.5 of the Civil Code.

<sup>56</sup> Article 106.1.2. of the Tax Code.

<sup>57</sup> Article 13.2.36 of the Tax Code.

<sup>58</sup> Article 106.1.1. of the Tax Code.

<sup>59</sup> Article 13.2.27 of the Tax Code.

<sup>60</sup> Article 106.1.1 of the Tax Code.

### *Generally Exempt Types of Income*

As noted above, three types of income received by NCOs are exempt from taxation under the Tax Code: gratuitous transfers of assets, membership fees, and donations. These types of income are not defined within the framework of the Tax Code. The NCO Law defines donations as “aid in the form of funds and (or) other material form given to a non-governmental organization in accordance with this law without a condition to achieve any purpose.”<sup>61</sup>

A fourth type of income -- grants -- is exempted from profit taxation, although the Tax Code does not specifically exempt grants.

A prior version of the Law on Grants exempted grants from profit taxation,<sup>62</sup> but the current law notes that “issues of taxation, connected with the obtaining...of a grant or of other monetary or material assistance are regulated by the Tax Code of the Republic of Azerbaijan.” Some local experts believe that for tax purposes, a grant would be equivalent to a “gratuitous transfer,” which is exempt from income tax, but is also not defined in the Tax Code.

### *Taxation of Income from Entrepreneurial (Business) Activities*

Entrepreneurial activity is defined by the Tax Code as activity independently conducted by a person, the primary purpose of which is derivation of profit from the use of property, provision of goods, performance of works, or provision of services.<sup>63</sup>

Under the Tax Code, income from entrepreneurial activities by NCOs, including charitable organizations, is taxed. No distinction is made between income arising from activities related and unrelated to the statutory purposes of the NCO.

The NCO Law requires NCOs to conduct separate accounting for revenues and costs for entrepreneurial activity.<sup>64</sup>

Revenues from charity balls, auctions, and from similar activities undertaken for the purposes of fundraising are presently considered donations if the NCO properly records them as such. As a general rule, all these revenues must also be used for statutory purposes of NCOs.

### *Taxation of Passive (Investment) Income*

When a resident legal entity receives an interest payment that has been taxed at the source, the amount of interest is included in the entity’s taxable income. In this case, the amount of tax withheld at the source can be deducted from the aggregate income tax obligation of the legal entity for the reporting period, provided withholding of interest tax is confirmed by appropriate documents.<sup>65</sup>

### *Social Payments, Land and other Taxes Affecting NCOs.*

Azerbaijan assesses a property tax, a social insurance payment, and a land tax. For the purposes of the property tax, taxpayers are all enterprises and individuals that own taxable

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<sup>61</sup> Article 24-1.1 of the NCO Law.

<sup>62</sup> The Law on Grants used to provide in its Section 5(1) that monetary and other material assistance obtained in accordance with the stipulated procedure shall be exempted from all types of taxes, duties and obligatory payments to the state budget.

<sup>63</sup> Article 13.2.37 of the Tax Code.

<sup>64</sup> Article 22.3 of the NCO Law.

<sup>65</sup> This applies only to interest, not dividends. In the latter case, 10 percent withholding is final.



objects.<sup>66</sup> The tax base for assessing the property tax is, in the case of natural persons, the value of buildings and motor vehicles owned by them; in case of enterprises, the tax base for assessing property tax is the annual average balance sheet value of fixed assets and balance sheet value of motor vehicles. The property tax on fixed assets of enterprises is one percent.

NCOs must pay 22 percent of their consolidated payroll towards the Social Insurance Fund, but those NCOs (local and foreign) that are coordinated by the Government of Azerbaijan and engaged in provision of aid to refugees and internally displaced persons (IDPs) for the period of implementation of the state program to improve the living conditions of those populations are exempt,<sup>67</sup> pay only income tax. In addition, under the bilateral agreement between Azerbaijan's government and the US government (and also Commission of the European Union), grants provided by the latter or its agents are exempted from the 22 percent payroll payment.

For the purposes of land tax, taxpayers are enterprises and individuals who own or use land plots on the territory of the Republic of Azerbaijan. Land tax is paid on an annual basis at various rates based on the size of the land plot owned or used by the taxpayer, its location, and purpose.

Entities exempt from property tax include, *inter alia*, public organizations of the handicapped and publicly financed institutions. The property tax is also not levied on buildings used as artists' workshops. The tax base for assessing the amount of property tax is reduced by the value of buildings (objects) used by institutions of education, health care, culture and sports, if used for their primary purpose. No benefits with respect to the land tax are applicable to NCOs.

The excise tax, road tax, and certain other taxes apply irrespective of an organization's status as commercial or non-commercial.

## **B. Exemptions for donors**

### *Deduction of Charitable Contributions*

Neither legal entities nor individuals are entitled to any deductions for their contributions to charitable organizations or NCOs.

## **C. VAT for NCOs and donors**

*Threshold for Registration.* Organizations conducting entrepreneurial activity are obligated to register as value-added tax (VAT)-payers if the volume of their taxable operations in a year exceeds 200,000 manat (\$115,000).<sup>68</sup> Organizations must register within ten days of the expiration of such period. Entities with income below this threshold may voluntarily register as VAT-payers.<sup>69</sup>

*Tax Exempt Transactions.* Article 164 of the Tax Code establishes a list of supplies and imports that are exempt from VAT, regardless of whether they are performed by commercial or non-commercial entities. Those exemptions are linked to the nature of services, which, *inter alia*, include the following:

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<sup>66</sup> In practice, this tax is imposed on NCOs regardless of their engagement in entrepreneurial activities.

<sup>67</sup> Article 15.18 of the Law of the Republic of Azerbaijan on Social Insurance (February 1997) (hereinafter referred as the "Insurance Law").

<sup>68</sup> Article 155.1 of the Tax Code.

<sup>69</sup> Article 156 of the Tax Code.

- turnover related to the sale and purchase of mass media products including editorial, publishing, and printing activities (except for advertisement services);<sup>70</sup>
- editorial, publishing, and printing activities connected with production of schoolbooks for middle-schools, children’s literature, and publications of national importance, subsidized from the budget;<sup>71</sup> and
- ritual services by funeral bureaus and cemeteries.<sup>72</sup>

VAT Rebate Procedure.

A special procedure has been established for persons acquiring or importing<sup>73</sup> goods, works, or services funded by “gratuitous monetary transfers” from an international organization or foreign legal entity or individuals pursuant to an international agreement to which Azerbaijan is a party. The recipients must claim from the tax authorities any VAT they paid within the calendar month following the month in which the taxable operation or taxable import occurred. Reimbursement is due within 45 days of receipt of the application. This procedure is also available for purchases made with grant funds (all grant-funded transactions meeting certain requirements are subject to a zero VAT tax rate) if the VAT is included in the price, as described above.

Some foreign NCOs which operate in Azerbaijan under the bilateral agreement between the USA and Azerbaijan have faced some difficulties concerning VAT rebate. In particular, the Ministry of Taxes considers that the exemption of zero VAT rate is applicable to grant funds for direct program costs only, and not to overhead fees and indirect costs.<sup>74</sup>

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<sup>70</sup> Article 164.1.7 of the Tax Code.

<sup>71</sup> Article 164.1.8 of the Tax Code.

<sup>72</sup> Article 164.1.9 of the Tax Code.

<sup>73</sup> Apparently, *imports* are also covered, though this is only mentioned once in the VAT Instruction, and not in the Tax Code itself.

<sup>74</sup> Letter from Ministry of Taxes to ABA, 3 April 2012 (on file with author).

## **Chapter 5. Legal regulation of voluntarism**

This chapter will study the issues pertaining to the legal regulation of voluntarism in Azerbaijan as provided for by the Law on Voluntary Activity of the Republic of Azerbaijan of 2009.

### *Who is a Volunteer?*

A volunteer is any individual, whether a citizen of the Republic of Azerbaijan, a foreigner or a stateless person, who freely chooses to carry out gratuitous public benefit activity.

### *Who may organize Voluntary Activity?*

Voluntary activity may be organized by the state bodies, organizations financed from the state budget, local governments, or non-governmental organizations.

### *Types of Voluntary Activity*

The law recognizes the following areas of voluntary activity:

- assistance to the disabled, lonely people, the elderly, low-income families, refugees, and internally displaced persons;
- promotion of humanitarian concerns and tolerance;
- protection of consumer rights;
- legal and cultural education;
- education, childrearing, and programs promoting the physical and mental development of youth;
- development of sports;
- provision of information on diseases and epidemics;
- promotion of healthy lifestyles;
- protection of the environment;
- protection of historical and cultural monuments and heritage;
- disaster and post-conflict assistance, as well as assistance to victims of fires, epidemics, and other emergencies;
- provision of assistance to drug addicts, victims of domestic violence, persons released from penitentiary institutions, and other persons in difficult life situations; and
- other public benefit activities which do not contradict the legislation of the Republic of Azerbaijan.

### *Restrictions and Conditions on Voluntary Activity*

Voluntary activity is subject to the following limitations:

- A person may not perform voluntary activity at his/her workplace.
- Volunteers may not be used to address a shortage of paid staff.
- Voluntary activity may not be used for the benefit of commercial entities.
- Minors may engage in voluntary activity only with the consent of their parents or legal representatives.
- Volunteers may be engaged in voluntary activity only on the basis of a written contract.

### *Rights and Obligations of Volunteers*

A volunteer has the right to:

- demand a safe and healthy working environment and if necessary may request training on safety standards;
- obtain information about the conditions and nature of the voluntary activity;
- disseminate information about the voluntary activity;
- receive a written statement from the organizers of voluntary activity about the location, workload, nature and time of the activities to be carried out;
- demand from the organizers compensation for daily expenses for voluntary activity conducted outside the territory where the volunteer resides;
- receive compensation from the organizers for health damage or personal injury sustained while carrying out the voluntary activity;
- be insured; and
- receive compensation for use of the volunteer's own property in the activity.

A volunteer has the obligation to:

- observe safety and security rules;
- observe the disciplinary rules of the entity organizing the voluntary activity;
- provide information and report on voluntary activities at the request of the organizer;
- accept liability for damages that he or she has caused;
- follow the instructions of the organizers, consistent with the contract governing the volunteers participation in the activity; and
- refrain from disclosing confidential or private information learned in the course of the voluntary activity.

#### *Rights and Obligations of the Organizer of Voluntary Activity*

The organizer has the right to:

- request from the volunteers timely and efficient implementation of duties described in the contract;
- receive information and reports from volunteers on performed activities; and
- undertake actions in accordance with the law to compensate others for material damages caused by volunteer during implementation of the activity.

The organizer has the obligation to:

- conclude a contract with each individual volunteer carrying out the activity;
- explain to volunteers their rights and duties and provide necessary instruction;
- provide appropriate reference letters about the activity at the request of volunteers;
- inform volunteers about any dangers that the activity might pose to their health or safety;
- provide insurance for the life and health of the volunteer;
- prevent discrimination against volunteers; and
- inform the State Migration Service about volunteers who are foreigners or stateless persons.

#### *Contracting with Volunteers*

A contract for voluntary activity must:

- be in writing;
- be signed by the volunteer and the organizer of the voluntary activity;
- contain information on the parties to the contract and their rights and duties, along with the works and services to be performed, the duration of contract, the liabilities of the parties, and procedures for termination of the contract; and
- assign liability and set forth procedures covering damage to third parties caused by implementation of the voluntary activity.

A sample contract regulating relations on voluntary activity can be obtained from Annexes.

## Chapter 6. Snapshot of innovative sources of income in foreign countries

### *Cashboxes*

The legislation of Azerbaijan does not regulate cashboxes, and effectively, does not allow for cash donations. Also, anonymous contributions (i.e., donations) are prohibited, even though they are permitted and common in many countries.

Based on the practice of other countries, collecting donations through "cash boxes" usually require the collector of donations to:

- develop and approve regulations regarding the procedures for collecting public donations;
- make an advertisement about the aim of the donation and to place it on the box;
- sign a contract with the entities where the "cash boxes" will be placed;
- give orders indicating the start of the campaign to collect donations that show the location of "cash boxes," start and finish dates, and names of the committee members and responsible persons who will attend the opening of the box. The box shall be sealed.
- ensure a monitoring process for the box during the action;
- receive a copy of the identity card and full name of each person who donated during the campaign;
- open the box with the participation of the Committee and to make an act of it;
- transfer the collected funds to the bank account of the NCO or its petty cash holding;
- reflect collected amounts in accounting documents;
- include information about the collected funds in the annual financial report.

### *Crowdfunding*

Crowdfunding is a method of financing that directly connects donors with a specific initiative suggested by an NCO, individual, or any other entity.<sup>75</sup> It also provides an opportunity to carry out testing of certain project with the public.

According to article 406 of Civil Code of Azerbaijan, contracts have to be made in a written form. However, written form of a contract is not limited to contract itself, but also covers exchange of letters or other documents that can confirm the will of the donor.

In neighboring Russia, the following options exist for crowdfunding:

- SMS campaigns
- online donation with bank cards
- online donation with e-wallet
- payment through pay-points.<sup>76</sup>

NCOs in Azerbaijan also have experience with these options, except perhaps for e-wallet donations.

Crowdfunding often takes place through fundraising platforms, which are webpages created to facilitate connection and the procedure of monetary transactions. This can be international

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<sup>75</sup> New practices in raising domestic funds by CSOs in Europe, 2014, ECNL, [www.ecnl.org](http://www.ecnl.org).

<sup>76</sup> Краудфандинг в России: Электронные пожертвования НКО. Юридическое обеспечение.

platforms (i.e., [www.causes.com](http://www.causes.com) or [www.kickstarter.com](http://www.kickstarter.com)) or national platforms (for example [www.darujme.sk](http://www.darujme.sk) for Slovakia, or [www.darujme.cz](http://www.darujme.cz) for the Czech Republic).

One of the successful crowdfunding platforms in Russia is [www.boomstarter.ru](http://www.boomstarter.ru). Any person who has creative idea or a project but has no funds for its realization, can present his/her idea or project online, and sponsors all around the world may donate if they like it. If sufficient funds were not collected during certain period, the funds will be returned to the sponsor.

Crowdfunding has potential risks associated with fraud, misuse of funds, misleading advertisement, and return of funds in case the campaign was not successful, among others.<sup>77</sup>

#### *SMS campaigns*

SMS campaigns can mobilize significant amounts of donations in very short time. For example, during earthquake in Haiti in 2010, ICRC launched an SMS-campaign and collected \$43,000,000 within few weeks.

The legislation of Azerbaijan does not allow mobile operators to realize transfer of e-payments. They become an intermediary in this process and the operation is done only by bank or a credit organization.

SMS donations in Azerbaijan are subject to taxation at the rate corresponding to the tax status of the relevant mobile operator. There can also be some costs related to mobile operators or banks.

#### *Bank cards and e-wallets*

The legislation of Azerbaijan does not ban donations through bank cards. However, NCOs which intend to collect funds through bank cards shall have certain guidelines on conducting such a campaign. This can be an internal regulation, policy, or rules. It is also recommended to have an order of the executive body or leader of the organization regarding the start of the campaign. All these documents must be posted on organization's website so that the donators can become familiar with them. Another important document is a contract with a bank for the operations done online.

Once these are all complied, an organization needs to post a contract offer on its webpage. The contract is considered concluded when the donator transfers funds or joins to the contract.

Organizations shall also publically thank the donator and make a report on the use of collected funds.

#### Annexes

- a. Sample application for donor registration
- b. Sample application for grant registration
- c. Sample application for service contract registration
- d. Sample application for donation registration
- e. Sample contract with volunteers
- f. Sample service contract
- g. Excerpts from the Code on Administrative Offences
- h. Sample donation contract (legal person donates in material form)
- i. Sample donation contract (natural person donates in cash)
- j. Act on giving a donation (if donation is goods).

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<sup>77</sup> New practices in raising domestic funds by CSOs in Europe, 2014, ECNL, [www.ecnl.org](http://www.ecnl.org).