



Tax and Legal News 2014 Summary

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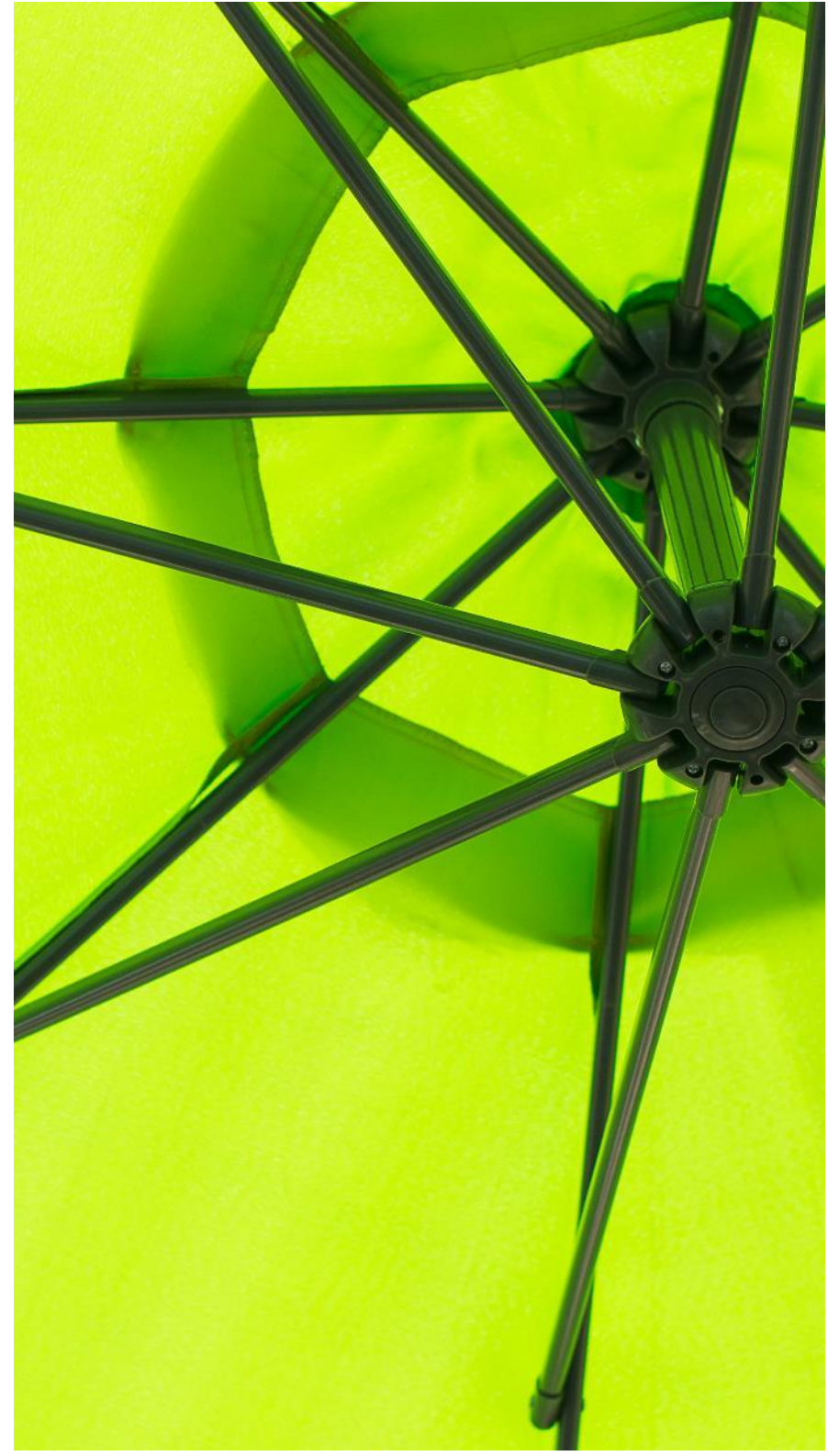
Amendments and changes to the Tax Code

On 22 November 2013 the President signed the law “On Amendments and Changes to the Tax Code”. Below is a summary of the main changes introduced by the law:

Termed tax exemptions contained in the laws of the Republic of Azerbaijan other than the Tax Code are no longer considered a source of tax law. This effectively means that tax benefits like the tax exemption for interest income of individuals earned from bank deposits may be contained only within the Tax Code (as opposed to separate laws, as was the case before).

No other legislative acts other than the Tax Code can stipulate tax exemptions or privileges. This can be considered the most important among all the changes, as it casts doubt over the legal status of tax exemptions and privileges set under Production Sharing Agreements (PSAs) and similar arrangements.

From now on the tax authorities are obliged to require taxpayers (previously, it was at the discretion of the tax authorities) to have documents prepared in foreign languages translated into Azerbaijani.



Amendments to the Law on State Registration and State Register of Legal Entities

According to the Law of the Republic of Azerbaijan “On Making Amendments to the Law On State Registration and State Register of Legal Entities” adopted on 22 November 2013 and effective since 29 December 2013, registration of legal entities and branch/representative offices of foreign legal entities with the Tax Ministry must be conducted in a maximum of 2 days.

The Amendments have modified the liquidation procedure of a legal entity. As per the changes, the liquidation procedure will comprise two stages. Within the first stage, the liquidation committee submits an application for the liquidation of a legal entity along with the following documents:

- Decision by the founder on liquidation;
- The statement from the founder on solvency;
- A document confirming the initial publication of information on the liquidation of the legal entity and the procedure and terms for creditors' claims within print publications of the registration of legal entities in the Republic of Azerbaijan, as well as the seal.

The record on the liquidation of the legal entity shall be entered into the Register within 5 days of submission of the above documents.

The second stage will take place through the distribution or use of residual assets. The liquidation committee shall within 10 days of such distribution or use submit the following documents to the Tax Ministry:

- A liquidation balance;
- Report on the distribution (or use) of the residual assets to the shareholders;

- Original certificate of incorporation, charter (regulations), and seal with the wording "in the process of liquidation" on it;
- In case of joint stock companies, a certificate from the relevant executive authority on the removal of shares from turnover;
- In case of re-organization of a legal entity, along with the above documents a handover act or a division balance shall be submitted as well.

Liquidation of branches or representative offices of foreign legal entities shall follow the same procedure as legal entities.

Amendments to the Code on Administrative Delinquencies effective since 31 December 2013

According to the Law “On Making Amendments to the Code on Administrative Delinquencies of the Republic of Azerbaijan”, adopted on 22 November 2013 and effective since 31 December 2013, willful acceptance by state officials of an official statement on the solvency of a legal entity in order to meet all creditors' claims during the liquidation of a legal entity shall trigger a penalty in the amount of AZN 1,000.

Amendments to the Civil Code of the Republic of Azerbaijan

The Law “On Making Amendments to the Civil Code of the Republic of Azerbaijan”, adopted on 22 November 2013 and effective since 31 December 2013, has introduced modifications to the liquidation procedure of legal entities in the Republic of Azerbaijan.

According to the Amendments, upon the decision to liquidate a legal entity, an official statement (on assets and liabilities) confirming the solvency of the legal entity to meet all creditors’ claims within 12 months must be adopted by the executive body of the legal entity. If the executive body reports that acceptance of the said statement is impossible, a general meeting of participants of the legal entity may engage an independent auditor to confirm the solvency of the legal entity. An independent auditor report shall be considered equivalent to an official statement on the solvency of a legal entity.

The total duration of the liquidation process of the legal entity shall not exceed one year from the date when information on the liquidation of the legal entity was included into the State Register of Legal Entities of the Republic of Azerbaijan.

The Amendments have eliminated the sequence of a legal entity’s repayment of creditors’ claims. As per the Amendments, the creditors’ claims shall be repaid by the legal entity in the order in which the request for payment of such claim was submitted by the creditor.

New Rules on customs valuation of data carrier means

According to the Decision of the Cabinet of Ministers of the Republic of Azerbaijan “On Approval of Rules on Customs Valuation of Data Carrier Means”, adopted on 25 December 2013 and effective since 8 January 2014, new Rules on customs valuation of data carrier means have been approved.

The Rules define data carrier means as compact discs (CDs), magnetic tapes, floppy disks, DVDs and other material objects designated for collection and storage of information or instructions which may be processed by information technology means. For the purposes of the Rules, data carrier means shall not cover electronic integrated circuits, semiconductors, or mechanisms/devices which contain such electronic integrated circuits (computers, hard drives etc.).

Customs value of data carrier means containing information or instructions shall be determined by taking into account only the price or the value of such means. In determining the customs value of the data carrier means, the price or value of the information or instructions contained in such means shall not be taken into consideration and shall be indicated separately from the price or value of the data carrier means.

Pursuant to the Law of the Republic of Azerbaijan "On Customs Tariffs", the customs value of the data carrier means shall be determined based on the respective transaction value.



New Rules “On Assets Classification and Reserves to Cover Potential Losses”

The Central Bank of the Republic of Azerbaijan adopted new Rules “On Assets Classification and Reserves to Cover Potential Losses”, effective since 1 February 2014.

The Rules have established new criteria for assets classification. According to the Rules, assets shall be classified by taking into consideration the number of overdue days and certain quality criteria, i.e. the debtor’s financial condition or profitability of activity, lack of overdue loans within the last six months, or lack of any negative factors affecting the debtor’s solvency and others.

Moreover, as a new change, the Rules provide for separate classification of consumer loans.

The Rules exempt assets backed with certain collateral, i.e. securities issued by governmental authorities of the Republic of Azerbaijan, as well as the Central Bank or the Mortgage Fund of the Republic of Azerbaijan, or securities and guarantees issued by OECD member country governments, and others.

The Rules set a formula for defining the amount of loss provisions which shall be set for bad assets. This formula includes determination of the liquid price of a loan’s collateral.

New Customs Rules

The Cabinet of Ministers of the Republic of Azerbaijan adopted decisions on approval of the following new customs rules, which have been effective since 26 January 2014:

- *Rules “On Determination of Preferential and Non-preferential Origin of Goods”*

The Rules set criteria for determining the origin of goods in order to delineate between preferential and non-preferential treatment of goods. Preferential customs treatment is rendered towards certain member countries of international organizations or agreements to which the Republic of Azerbaijan is a party.

Pursuant to the Rules, in order to qualify for preferential treatment, the goods must be entirely produced in the country with preferential treatment. Nevertheless, when the goods have been manufactured in two or more countries, the country of origin of such goods must be the country in which they were subjected to processing or manufacturing operations meeting the criteria for goods processing sufficiency.

According to the Rules, the criteria for goods processing sufficiency allows goods to be regarded as originating from a given country if the operations involving their processing or manufacture have caused a change to any of the first four digits in the goods classification codes as per the Nomenclature of Goods subject to Foreign Trade.

- *Rules “On Placing Goods Under Special Customs Procedure of Inward Processing”*

Pursuant to the Rules, the inward processing customs procedure constitutes a customs procedure under which imported goods are processed in the customs territory of the Republic of Azerbaijan within a designated period of time (goods processing period) for

processing with complete conditional exemption from customs duties and taxes, provided the goods compensating products are exported from the customs territory of the Republic of Azerbaijan. The maximum period of inward customs procedure is set as three years.

According to the Rules, goods shall be subjected to the inward processing procedure upon permission issued by the appropriate customs authorities. The inward processing procedure shall be permitted when the customs authorities are capable of identifying the imported foreign goods in the resulting (compensating) products manufactured thereof.

- *Rules “On Placing Goods Under Special Customs Procedure of International and Domestic Transit”*

The Rules define customs transit as a customs procedure under which goods are transported under customs controls and without imposing customs duties, VAT, and trade policy measures from one customs office to another. This definition includes national transit operations, i.e. transports between departure and destination offices within the same country, as well as international customs transit, i.e. transport of foreign goods across one or more frontiers in accordance with international agreements of the Republic of Azerbaijan, or by the authorized subjects in accordance with the acts of World Post Union, i.e. post operators or intermediaries.

The Rules further specify certain requirements and conditions towards goods placed under the customs transit procedure.

Amendments to the Labor Code of the Republic of Azerbaijan regarding electronic registration of employment contracts effective since 9 February 2014

According to the Amendments, employment contracts, along with amendments to and termination of such employment contracts, must undergo electronic registration (“e-registration of employment contracts”) with the Ministry of Labor and Social Protection of the Population of the Republic of Azerbaijan (“Labor Ministry”) via an Employment Contract Notification System and enter into force upon receipt of notification of registration of the employment contract. Such notification of registration of the employment contract shall be provided electronically to the employer not later than one business day after the submission of the Employment Contract Notification.

Under the Amendments, Employment Contract Notification is defined as an e-document which is submitted by an employer to the Labor Ministry in order to e-register the employment contract.

Pursuant to the Amendments, employment contracts shall also reflect such additional information as:

- Tax Identification Number, legal address, and Insurer Registration Number of an employer, where the employer is a legal entity;
- Tax Identification Number, State Social Insurance Registration Number, Insurer Registration Number, serial number and Personal ID number of an ID card, and address, where the employer is an individual;
- State Social Insurance Registration Number of the employee; and

- Information on primary and supplementary employment of the employee.

Further rules on e-registration of employment contracts, as well as the template forms for Employment Contract Notifications, shall be defined by the Cabinet of Ministers of the Republic of Azerbaijan.

All employment contracts entered into before 9 February 2014 shall undergo e-registration with the Labor Ministry before 1 July 2014.

The administrative liability for employment of individuals in a manner not compliant with the Labor Code is defined as a fine in the amount of:

- from AZN 1,000 up to AZN 3,000 for individuals; and
- from AZN 20,000 up to AZN 25,000 for legal entities.

Employment of a significant number of individuals (ten or more) in a manner not compliant with the Labor Code shall trigger criminal liability as follows:

- fine in the amount of AZN 7,000 up to AZN 10,000 or imprisonment for a term of up to three years; and
- where conducted repeatedly, imprisonment for a term from three years up to seven years.

Amendments to the Law of the Republic of Azerbaijan “On State Registration of Legal Entities and State Register” effective since 9 February 2014

According to the Amendments, any changes to incorporation documents or changes to information already reflected in the State Register by a legal entity or a branch/representative office of a foreign legal entity shall become effective only upon state registration of such changes. A legal entity or the branch/representative office of a foreign legal entity is not allowed to perform activities which are based on changes not duly registered with the appropriate state authority.

The Amendments have introduced administrative liability for non-compliance with registration requirements under the Law of the Republic of Azerbaijan “On State Registration of Legal Entities and State Register” dated 12 December 2003:

- officials shall be fined in the amount of AZN 1,000 up to AZN 2,000; and
- legal entities shall be fined in the amount of AZN 2,500 up to AZN 3,000.

Pursuant to the Amendments, for the purposes of changing the name of a legal entity or a branch/representative office of a foreign legal entity, the seal of such entity shall be submitted to the appropriate state authority. If the seal has been lost, a published announcement on such loss and a certificate from the police department evidencing loss of the seal shall be provided to the appropriate state authority.

Additionally, according to the Amendments, a legal entity or a branch/representative office of a legal entity which has been eliminated from the State Register is not allowed to perform any further activities in the Republic of Azerbaijan.

New Customs Rules

New Rules “On Placing Goods Under Outward Processing Customs Procedure” have been adopted by the decision of the Cabinet of Ministers of the Republic of Azerbaijan effective since 11 February 2014 (“Rules”).

Under the Customs Code of the Republic of Azerbaijan, the outward processing is defined as a specific customs procedure under which goods are exported from the customs territory of the Republic of Azerbaijan for processing within a designated period of time (goods processing period) and subsequent re-importation of the refined products manufactured from the exported goods with their complete or partial exemption from customs duties and taxes.

Only the goods released for free circulation in the Republic of Azerbaijan shall be eligible for the outward processing customs procedure. According to the Rules, certain goods are prohibited from being placed under the outward processing procedure.

Amendments to the Law of the Republic of Azerbaijan “On the State Register of Immovable Property” and the Civil Code of the Republic of Azerbaijan effective since 7 February 2014

According to the Amendments, for the purposes of notarization of agreements on the disposal of immovable property, the notary public must access the electronic information system of the state register in order to obtain a certificate from the state register on a description of the immovable property, the registered rights on the immovable property, and any restrictions (encumbrances) on the property in real time. A notary public shall obtain such certificate upon provision of the application and certificate of ownership of the immovable property by the disposer or its authorized person, or a person entitled to its inheritance under law or testament.

Under the Amendments, “real time” is limited to a one day time period.

According to the Amendments to the Civil Code of the Republic of Azerbaijan, agreements on the disposal of immovable property shall immediately upon notarization be registered in the electronic information system of the state register of immovable property by a notary public.

New Law on exemptions from personal income tax

Pursuant to new amendments, employment income of up to AZN 250 (previously AZN 200) monthly is exempt from personal income tax up to the amount equal to the living wage of the able-bodied population (currently AZN 136). The changes will have retrospective effect from 1 September 2013.

New Law on tax exemption for interest on income from deposits

This Law prolonged the long-standing tax exemption for interest on individuals' income from term bank deposits for another year from 1 January 2014.

New Law on tax exemption for nurseries, kindergartens and orphanages

According to the new Law, nurseries and public and private kindergartens are exempt from profits tax and simplified tax. This Law entered into force on 1 January 2014 for a period of 10 years.

Amendments to the Tax Code on Foreign Account Tax Compliance

According to the new amendments to the Tax Code, banks and non-bank credit organizations, in accordance with international agreements between Azerbaijan Republic and other countries, should provide the relevant authorities of the foreign countries with information about the financial services rendered by the legal entities and individuals of such foreign countries in the territory of Azerbaijan Republic.

Non-compliance with this new provision of the Tax Code will lead to financial sanction equal to 30% of the total amount of the transaction. If no transaction was conducted on these accounts, a financial sanction in the amount of AZN 400 will be applicable for each of such accounts.

Amendments to the Law on Banks

The provision of the new amendments to the Tax Code on Foreign Account Tax Compliance was also included in the Law on Banks.

Recent changes to the Tax Code

According to the amendments to the Tax Code dated 30 September 2014, provisions on tax audit (excluding desk audit) of the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs” are applicable upon taxation and tax control.

By the amendments dated 20 June 2014 to the Tax Code in cases determined by international treaties between Azerbaijan and other states, banks and non-bank credit organizations must provide information to those states on financial operations conducted in Azerbaijan by the legal entities and individuals of such states through the relevant executive authority in the order and extent defined by such authority.

Banks and non-bank credit organizations failing to provide the above information will be subject to a financial sanction totalling 30% of the total amount of the performed transactions.

The Migration Code

According to the amendment to the Migration Code dated 17 October 2014, the term of registration of foreigners and stateless persons in their place of sojourn is extended from 3 to 10 days as of the date of their arrival.

The Code of Administrative Offenses

According to the amendments to the Code of Administrative Offenses dated 28 October 2014, branches and representative offices of foreign legal entities are also subject to administrative responsibility as per the Code of Administrative Offenses.

The Law “On State Duties”

According to the amendment to the Law “On State Duties” dated 17 October 2014, fees for double entry visas were eliminated.

Additionally, foreigners and stateless persons engaged in paid labor activity in Azerbaijan are exempted from payment of state duties for registration of the issuance of work permits in the following circumstances:

- loss of work permit;
- change of name of employer or the information reflected in the ID;
- change of position at one employer.

The Law “On Protection of Consumer Rights”

As per the amendment to the Law “On Protection of Consumer Rights” dated 30 September 2014, entities are no longer obliged to incur expenses for analyses of retail products, raw material, and other samples conducted by related public authorities.

The Law “On Employment”

As per the amendment to the Law “On Employment” dated 17 October 2014, facilitation of employment of Azerbaijani citizens abroad can not be carried by physical persons.

The Law “On Advertisement”

As per the amendment to the Law “On Advertisement” dated 17 October 2014, advertisement of facilitation of employment of Azerbaijani citizens abroad can be placed only by legal persons holding a special license.

The Law “On Investment Funds”

According to the amendment to the Law “On Investment Funds” dated 30 September 2014, inspection of investment funds must be conducted in accordance with the Law “On Investment Funds” and the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs”.

Specific provisions concerning on-site inspections at investment funds were removed from the Law “On Investment Funds”.

Furthermore, under the said amendment, inspectors are obliged to ensure protection of the information, receipt of which is restricted under the Law “On Obtaining Information”.

Inspections under the Law “On Investment Funds” are conducted at the expense of the monitoring authority.

The Law “On Non-Banking Credit Organizations”

As per the amendments to the Law “On Non-Banking Credit Organizations” dated 30 September 2014, the Central Bank of Azerbaijan is entitled to inspect the activities of non-bank credit organizations in accordance with the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs”.

The Law “On Commercial Activity”

As per the amendment to the Law “On Commercial Activity” dated 30 September 2014, entrepreneurial activities are now inter alia regulated by the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs”. Furthermore, entrepreneurs are assigned the rights and obligations under the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs” in addition to the rights and obligations specified in the Law “On Commercial Activity”.

The rules on the principles, purposes, organization, and performance of inspections in the area of entrepreneurship are defined by the Law “On Regulation of Inspections in the Entrepreneurial Sector and Protection of Rights of Entrepreneurs”.

The Law “On State Registration and State Registrar of Legal Persons”

In accordance with the amendment to the Law “On State Registration and State Registrar of Legal Persons” dated 17 October 2014, a foreign non-governmental organization may establish its representative or branch office in Azerbaijan.

Customs Audit

According to Decree No. 261 of the Cabinet of Ministers adopted on 16 July 2014, the “Rules on Compilation and Form of Acts on Results of Customs Audit” became invalid.

Furthermore, Decree No. 263 of the Cabinet of Ministers dated 22 July 2014 approved the “Rules on Declaration of Goods and Vehicles Passing the Customs Border” (the “Rules”), which became effective as of 1 November 2014.

The Rules provide the list of documents and information required for customs declaration of goods and vehicles and set forth the guidelines for declaration thereof.

The Rules provide definitions of the “green channel” mainly considered for import of personal luggage by physical persons and the “red channel” for regular import of goods.

The Rules introduce rules for submission of the following types of declarations:

1. short import/export declarations
2. periodic declarations
3. incomplete declarations

The Law “On Social Insurance”

According to the amendment to the Law “On Social Insurance” dated 17 October 2014, non-conclusion of an employment agreement or non-registration of employment agreements in the e-system of the Ministry of Labor and Social Protection of People is subject to a penalty of AZN 55 for each employee on a monthly basis.

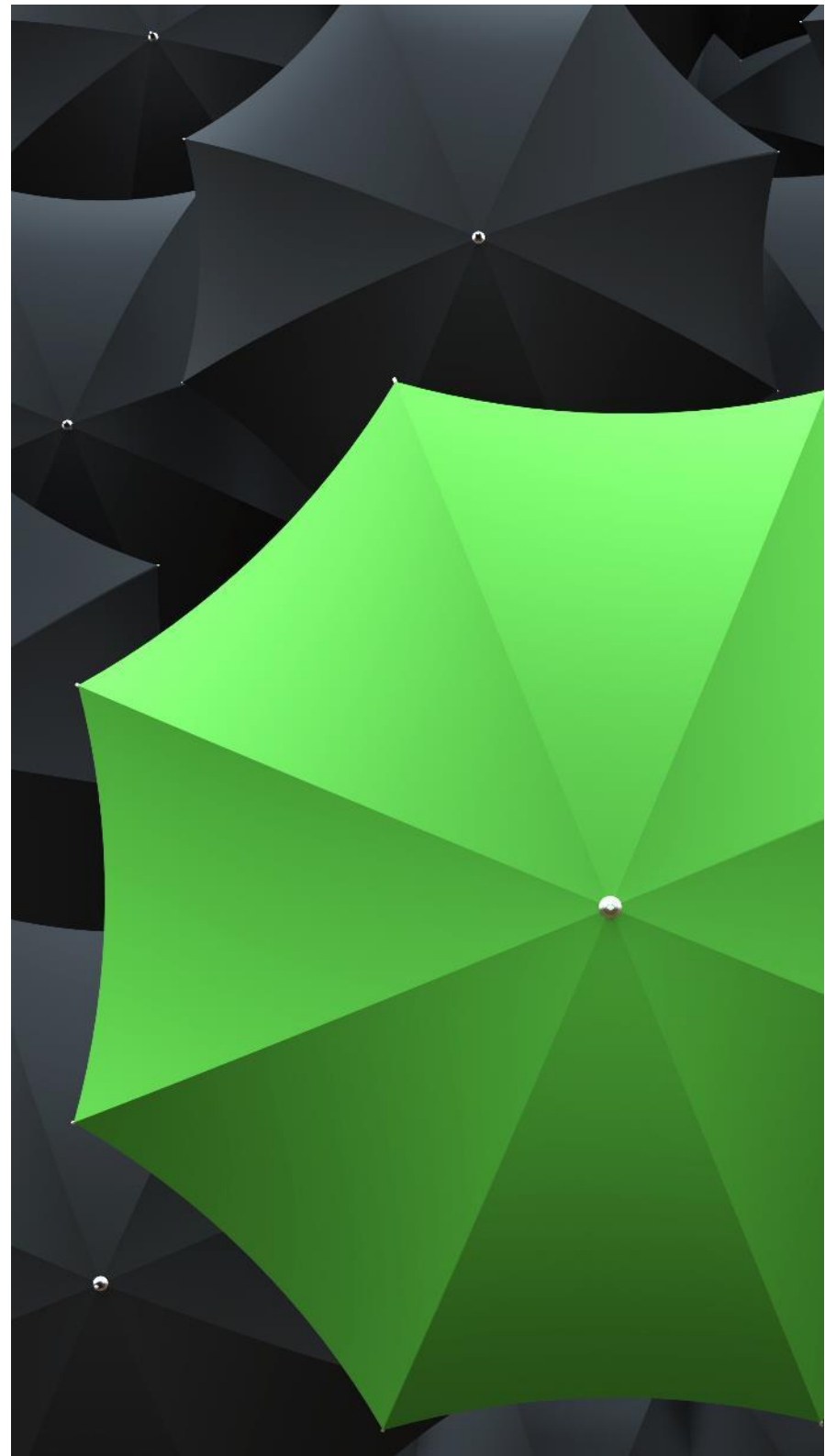
Double Tax Treaty Update

The Double Tax Treaty between Bosnia and Herzegovina and Azerbaijan has come into force. The Government of Azerbaijan ratified the Double Tax Treaty with Bosnia and Herzegovina on 18 October 2012.

On 23 April 2014, the Governments of Spain and Azerbaijan signed the Double Tax Treaty.

The Convention between the Government of the Republic of Azerbaijan and the Government of the Kingdom of Saudi Arabia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed in Riyadh on 13 May 2014, entered into force on 30 September 2014.

Also, The Convention between the Government of the Republic of Azerbaijan and the Government of the Socialist Republic of Vietnam for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital, signed in Hanoi on 19 May 2014, entered into force on 30 September 2014.



New Amounts of the Living Wages for 2015

On 22 December 2014 the President of the Republic of Azerbaijan signed a Decree “On Approval of the Law on the living wage for 2015”.

According to the Law, living wages in Azerbaijan are set as follows:

- AZN 131 for the main socio-demographic groups of population
- AZN 140 for able bodied population
- AZN 108 for pensioners
- AZN 108 for children

The Law comes into force from 1 January 2015.

This change will have a particular impact on personal income tax computation since the Tax Code exempts income up to AZN 250 from personal income tax in the amount of the living wage of the able bodied population (which is currently set in the amount of AZN 136).

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