



ANNEX C1: Twinning Fiche

Project title: Support to the Ministry of Taxes of the Republic of Azerbaijan in Transfer Pricing and developing Anti-Tax Avoidance measures

Beneficiary administration: Ministry of Taxes of the Republic of Azerbaijan

Twining Reference: AZ/13/ENPI/FI/01/17 (AZ/50)

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EU funded project

TWINNING INSTRUMENT

1. Basic Information

- 1.1 **Programme:** ENPI/2013/024-494 Framework programme in support of EU-Azerbaijan Agreements (AAP 2013) / Direct management
- 1.2 **Twinning Sector:** Finance
- 1.3 **EU funded budget:** € 1,200,000

2. Objectives

2.1 Overall Objective(s):

To introduce and implement an efficient Transfer Pricing Legislation and Transfer Pricing Auditing by the Ministry of Taxes of the Republic of Azerbaijan

2.2 Specific objective:

To support the Ministry of Taxes of the Republic of Azerbaijan in aligning Transfer Pricing legislation with European standards and establish resources for best practice auditing processes.

2.3 The elements targeted in strategic documents i.e. National Development Plan / Cooperation agreement / Association Agreement / Sector reform strategy and related Action Plans

EU-Azerbaijan agenda

After its enlargement in May 2004, the EU faced a new geopolitical situation and adopted the **European Neighbourhood Policy (ENP)**, which is a new framework for the relations with its neighbours. The central element of the ENP is a bilateral **Action Plan (AP)** which clearly sets out policy targets and benchmarks through which progress with an individual neighbouring country can be assessed over several years. The AP defines a considerable number of priority areas. With regard to Taxation, the EU-Azerbaijan ENP Action Plan sets out a list of priorities to be pursued (Priority N°4 of the AP):

- Continue the modernization, simplification and the use of information and communication technologies by the tax administration.
- Ensure the smooth and transparent enforcement of the Tax Code also by defining all necessary administrative structures, procedures and policies, including the cooperation with the taxpayers and tax compliance, ethics policy, a fiscal control strategy, audit and investigation methods.

In particular, **section 4.5.5** of the AP contains specific reference on cooperation between Azerbaijan and the EU in the field of Taxation, as follows:

- Continue efforts to complete the network of bilateral agreements between Azerbaijan and EU;
- Member States on avoidance of double taxation including the improvement of transparency and the exchange of information in accordance with international standards;
- Initiate a dialogue on the principles of the EU Code of Conduct for Business Taxation with a view to ensuring fair conditions for Azerbaijan in its future process of integration into the EU internal market;
- Develop and implement a detailed strategy plan for tax management and broaden opportunities for the use of information and communication technologies;

- Develop the tax system of the Republic of Azerbaijan in compliance with general EU and international principles.

Moreover a need in harmonisation of the tax system of the Republic of Azerbaijan to general EU and international principles is underlined as the main objective of the reform in the taxes sphere in the Institutional Reform Plan 3 (in **Section 3.7. “Taxes”**) within the EU Comprehensive Institution Building (CIB) mutually agreed framework document.

3. Description

3.1 Background and justification:

Current situation in the Finance sector

Transfer pricing is characterized as a price applied in intra-branch operations presented by persons to related enterprise for tangible and intangible property and services. This price differs from market prices formulated after negotiations of independent parties. However, unlike market prices, transfer pricing is not set up between existing independent parties, but associated enterprises and adjusted to market prices with the application of arm's length principle. Nonetheless, this adjustment is quite sophisticated for implementation. At the time being key issues facing tax administrations are an investigation and verification of transfer prices used by transnational corporations. Analysis of issues related to transfer prices and appliance of transfer prices in intra-branch operations is highly prioritised in recent years, both in developed and in developing countries. To determinate these operations the relevant departments dealing with transfer prices are established by tax administrations. As it is known, a lot of international enterprises, corporations and transnational companies consisting of subordinate legal persons have been conducting business in Azerbaijan. Increase in number of enterprises, in one hand empowers an economic effectiveness of country, improves an investment climate and creates more job places increasing living standards and taking the well-being and lifestyle of population to the new level, on the other hand, forces tax administrations to conduct more detailed investigation of correct determination of income and expenses and issues related to taxation. Implementation of proposed Twinning project is aimed to assist the Ministry of Taxes of the Republic Azerbaijan in modification of tax legislation to fight with the tax avoidance schemes and increase tax revenue by minimizing tax avoidance.

Problems (direct and indirect) to be addressed

Problems in Legislation

The definition for related parties is included in the standard tax code. It covers requirements for transfer pricing purposes. At the same time TP rules approved by the Minister of Taxes of the Republic of Azerbaijan in January 27, 2017 envisage peculiarities for recalculation of taxes by taxpayer or tax authorities from the controlled transactions within which prices of provided or purchased goods (works, services) are not consistent with prices defined for comparable transactions.

Documentation requirements: There is a statutory requirement in Azerbaijani law that requires transfer pricing documentation to be prepared. The methods are used only if it is established that no comparable information exists or it is not possible to obtain information on the price of the goods in transactions between other persons. The taxpayer must notify the tax authority of transactions subject to transfer pricing where the total amount exceeds AZN 500,000 per annum. Taxpayers are still liable to comply with the Rules even if controlled transactions do not exceed AZN 500,000. According to the Rules, the taxpayer may approach the tax authorities with the official inquiry by presenting the details of transaction along with the contract and request to specify the transfer pricing method in advance. The Rules also

introduce provisions on double taxation, dispute resolution procedures between taxpayers and tax authorities over transfer pricing matters.

CbC reporting does not exist. Though there is exchange of information there is no exchange of tax rulings between foreign jurisdictions and Azerbaijan yet.

Transfer pricing legislation: Currently, besides linked provisions stipulated in the tax code, there are “Rules on transfer pricing and its application”. According to the Rules, to the extent it is possible, strict priority shall be given to application of comparison of prices. Other methods may only be applied, if the transfer price cannot be determined by direct application of this method. Problems are arising with the concept of Production Sharing Agreements in the oil industry. Basic Controlled Foreign Company (CFC) legislation does exist but needs to be refined to international standards. Anti-Hybrid Instruments legislation does not exist, there may be open tax gaps between Azerbaijan and foreign jurisdictions.

Advance pricing agreements (APAs): According to the TP Rules, the taxpayer may approach the tax authorities with the official inquiry by presenting the details of transaction along with the contract and request to specify the transfer pricing method in advance

Deduction of interest: there don't exist thin capitalisation rules or interest barriers or specific anti-abuse rules. But the Azeri law allows only a maximum amount of 125% on the inter-banking rate as interest deductible limiting the excessive use of interest deductions for actual amount of interest on debts obtained from abroad, and also paid to each other by interconnected persons.

Problems in Practice

Risk management and analysis in Transfer Pricing: there is already a risk analysis system established, but there are no indicators (e.g. permanent losses of distribution companies) for the purposes of the specific transfer pricing issues yet. There are no specific programmes to identify specific risks (e.g. whether there are low tax jurisdictions involved in procurement...).

Transfer Pricing audits: there is little experience in applying the transfer pricing as per OECD Guidelines (Functions and risk analysis, selection of Transfer Pricing methodology and establishing a price, intangible assets, group synergies etc.) in practice.

Business sectors expertise: since there is no specific Transfer Pricing Auditing there is little experience and industry knowledge.

E-Commerce: there are no experiences in dealing with the specific problems of information gathering and implementing appropriate taxation.

Exchange of information: there is no spontaneous or automatic exchange of information with foreign jurisdictions in the field of transfer pricing, there are no experiences in running Multilateral Controls (MLCs). Azerbaijan is not represented in the OECD JITSIC network.

Abusive tax haven schemes: there is little experience by which existing legal means (Transfer Pricing, Place of effective management, permanent establishment, withholding taxes, beneficial ownership, substance over form, abuse of law, non-deductibility of costs) these schemes shall be tackled. Neither exist local tax schemes catalogues in order to spread this knowledge between auditors.

Liaison with customs authorities: The tax and customs authorities communicate with each other on various transfer pricing issues and have access to each other's respective databases. Different approaches of a high import price for customs and a low import price for Transfer Pricing must be noted. It is unclear how the import pricing accepted for customs purposes is also relevant for Transfer Pricing.

Secondary adjustments: The impact of primary adjustments on withholding taxes in tax treaties (e.g. on services, royalties) needs to be clarified. For equity shifted due to wrong transfer pricing needs to be adjusted for in the accounts in order to avoid constructive dividends and capital contributions.

Impact of VAT in Transfer Pricing: Since there are no practical case experiences it is not clear which mutual impacts exist. In the absence of practical case experiences the impact of transfer pricing on VAT calculation is unclear.

Access to international data bases: Ministry of Taxes subscribed to Thomson Reuters information system (4 modules –One Source Benchmark, Checkpoint World, OneSource TP Loan Module, EIKON) for Transfer Pricing purposes.

Human resources: currently there are local auditing competences in Transfer Pricing. There is not always sufficient English knowledge in order to go forward efficiently in eventual audits. Qualification of staff is a critical factor in implementing a reasonable audit.

Horizontal monitoring: tax compliance activities of the authority are still based on traditional ex post audit activities. Specifically transfer pricing may provide for a broad scope of uncertainty about the taxes to be due. Investment decisions can therefore not be supported by a clear expectation of the investor in terms of the tax framework.

Legislation related to the project

The main legislative document adopted to regulate the sector is:

- 11 July, 2000 - Tax Code of Azerbaijan Republic approved by the Law No.905-IG of the Azerbaijan Republic (with number of amendments)

Tax Code establish the tax system of the Republic of Azerbaijan, general principles of taxation in the Azerbaijan Republic, rules for determining, payment and collection of taxes, the rights and responsibilities of taxpayers and State tax authorities, as well as other parties to taxation procedures, tax control forms and methods, liability for tax law violations and the procedures for lodging complaints against unlawful actions (failure to take actions) committed by tax agencies and officials thereof.

Under the Article 14 (where market price and transfer pricing provisions are mentioned) of Tax Code, in following cases the assessment of taxes may be carried out according to market price:

- ✓ Barter (Exchange of goods), during the trade operations
- ✓ When business transactions made between inter-dependant persons
- ✓ when prices for similar or homogeneous goods, applied by taxpayers, has changed (up or down) more than 30% over the 30 days
- ✓ when business property is insured for price exceeding its residual value
- ✓ In event of necessity of determination of real estate`s (except housing stock) monthly rental fee for the purpose of taxation.

Market price is determined according to prices emerging during most recent operations for homogeneous (similar) good (work, service) from 30 days (after or before) supply of good (service, work) till the moment of sale of good (work, service). However, in the cases of absence of any operation with homogeneous or similar goods (works, services) in relevant commodity market, and lack of information about these goods (works, services) in official and open sources, following methods can be used:

- ✓ On the basis of next sale price
- ✓ Cost valuation method
- ✓ Via expert – if determination of prices for goods (works, services) is not possible with before mentioned methods, market prices are set by an expert appointed via contract

Nevertheless, according to the Article 18 for the purpose of taxation inter-dependant persons are legal persons that can directly affect results of their economic activities or activities of persons they represent.

Inter-dependant persons are:

- ✓ If one person directly or indirectly holds 20% of share of property rights
- ✓ If one person is dependant from other person through his/her official status or directly or indirectly under control of the other
- ✓ Persons are under control of third person
- ✓ Third person directly or indirectly is under joint control of other persons

According to the Tax Code (Article 13.2.65) of the Republic of Azerbaijan arithmetical average of prices in comparable uncontrolled transactions are determined by dividing the total sum of prices to the numbers of transactions. The transfer pricing concept is introduced to the Tax Code (Article 14-1) since January 2017.

Taxes may be computed based on the transfer price for transactions concluded between the following persons:

- 1) a resident and a non-resident in a related party relationship;
- 2) a permanent establishment of a non-resident and such non-resident or any representative office, branch office or other unit of such non-resident in other countries;
- 3) a resident and (or) a permanent establishment of a non-resident and persons established (registered) in a country with a favourable tax regime.

In such cases, corporate income (personal income) tax is computed based on the transfer price regardless of the actual value of the transaction. The transfer price is determined based on the following methods:

- 1) Resale price method;
- 2) Cost plus method;
- 3) Comparable profit method;
- 4) Profit split method.

The methods are used only if it is established that no comparable information exists or it is not possible to obtain information on the price of the goods in transactions between other persons. The taxpayer must notify the tax authority of transactions subject to transfer pricing where the total amount exceeds AZN 500,000 per annum. On 27 January 2017, the Ministry of Taxes approved the “Rules on transfer pricing and its application”. According to the Rules, to the extent it is possible, strict priority shall be given to application of comparison of prices. Other methods may only be applied, if the transfer price cannot be determined by direct application of this method. Notification on controlled transactions (“Notification”) must be filed by 31 March of following reporting year. Failure to comply with filing requirement is subject to a financial sanction of AZN 500. Taxpayers are still liable to comply with the Rules even if controlled transactions do not exceed AZN 500,000. According to the Rules, the taxpayer may approach the tax authorities with the official inquiry by presenting the details of transaction along with the contract and request to specify the transfer pricing method in advance. The Rules also introduce provisions on double taxation, dispute resolution procedures between taxpayers and tax authorities over transfer pricing matters.

- 4 August, 2016 - Decree of the President of the Republic of Azerbaijan N 2257 on “Directions of tax reforms to be implemented in 2016 and improvement of tax administration”.

3.2 Ongoing reforms:

“**Azerbaijan 2020: Look into the future**” Concept approved by the Decree of the President of the Republic of Azerbaijan dated 29 December, 2012 highlights the transition to active tax system as one of the main priorities for the country development in its Article 4.1. “Developing an economic model based on effective state governance and mature market relations”. Thus, the “...In order to increase the competitiveness of the economic system even further, while the measures to be carried out to improve tax rates will help create a favourable environment for business activity”.

The Ministry of Taxes (MoT) has elaborated a **new strategic plan for the development of the tax system for 2013-2020** approved by the order of the Minister of Taxes of the Republic of Azerbaijan No 1317040100175800 dated March 19, 2013. The Strategy consists of 22 objectives and 86 measures including improvement of efficiency of tax administration, compliance with the tax legislation to the European Union laws and the requirements of the World Trade Organization, creation of institutions of tax ombudsman and private tax consultants, expansion of co-operation with public organizations of employers, etc.

According to the paragraph 9 of the Strategic Plan the legislative and administrative control mechanism for the regulation of the transfer pricing is identified as the main goal of the Ministry.

3.3 Linked activities:

Other related EU activities

Twinning projects:

- As regards developing efficiency of tax audit techniques and reducing tax evasions risks, assistance was provided by the Dutch Tax and Customs Administration under the two-year **EU Twinning project “Support to the Ministry of Taxes of the Republic of Azerbaijan in the field of Computer Assisted Audit system”**. The project was successfully completed in May 2013 resulting in the development of a legal basis for e-audit, in building an e-audit system, which meets the EU best practice standards, with the establishment of an e-audit database, the elaboration of an e-audit methodology and a methodological documentation with training of auditors on the application of the e-audit methodology, etc.
- In 2014-2016 the **EU Twinning project “Support to the Ministry of Taxes of the Republic of Azerbaijan in Human Resources Development”** has been implemented by the Spanish Institute for Fiscal Studies/IEF in consortium with the French Public Finance General Directorate. The Project drafted the Human Resources Development Strategy and Development Plan along with the set of normative guidelines and procedures manuals which will play a regulatory role to ensure development and effective management of human resources at the Ministry of Taxes. In addition, a sustainable education and multi-stage training system was designed in accordance with the EU experience and latest information technologies in order to increase the level of professionalism of the staff.
- The Overall Objective of the **EU Twinning project “Support to reforms in the field of standards of taxpayers service, optimal management model and the evaluation”** (in pipeline) is to increase efficiency of taxpayers-focused and in general citizen-focused service delivery by the Ministry of Taxes of the Republic of Azerbaijan. The project implementation started in March 2017. The project has four main components:
 - I. Continuous Improvement Programme in Taxpayer Service Processes
 - II. Identification and Management of Service Demand
 - III. Identification of KPI’s of Taxpayer Service and improvement of existing
 - IV. Setting up the Data Analytics Support Tools for Enhanced Service Provision across all Channels based on the best methodologies.

TAIEX projects:

- Expert Mission “Improvement of Performance Evaluation System” (11-14 March, 2014). During four days mission European experts dealt with analysing current situation in the field of performance assessment and made proposals for advancement.
- Expert Mission “Taxation of e-commerce” (13-15 April, 2015). The aim of this assistance was to discuss tax prospective of e-commerce in four major market segments: business to business, business to consumer, consumer to consumer and consumer to business. The mission covered the legal framework of taxation of ecommerce as well as the administrative framework of taxation of e-commerce.
- Workshop on “Stimulation of cashless transactions” attended by Mr. Adam Janisewski Tomasz, representative of Polish Financial Supervision Authority took place on 5-7 May 2015, in the framework of TAIEX Expert Mission. The aim of the expert mission was to discuss possible measures in diminishing cash payments and stimulating cashless transactions in Azerbaijan. This included legislative as well as administrative measures.
- Another workshop on “Application of e-invoice in tax system” in the framework of TAIEX Expert Mission was held on 1-3 September 2015, with the involvement of Mr. Lucien Gimenez, representative of the Ministry of Economy and Finance of the Republic of France. The aim of this assistance was to provide the beneficiary with knowledge and support on e-invoices, including the legislative and administrative sides of the e-invoice system, the management of technical processes and the exchange of best practices.
- TAIEX Study Visit to the Tax and Customs Directorate General of Hungary on Taxation of E-Commerce and on Non-Cash Payments (1-3 December 2015). The aim of the study visit was to provide the beneficiary with knowledge on e-commerce operations with a view of improving the efficiency of audit operations and combating tax evasion by regulating e-commerce. During the study visit “Technical background of online cash register, the audit of cash register”, “Transfer pricing”, “One-Stop-Shop-Scheme (MOSS) system” and “Internet payment systems like PayPal, SMS payment system and Bitcoin” were presented to participants.
- TAIEX Study Visit to Spain on Voluntary Compliance of Taxpayers (14-16 December 2015). The aim of the study visit was to transfer knowledge on data mining (ZUJAR tool) and voluntary compliance.
- TAIEX Expert Mission on the Establishment of an Independent Institute for Taxpayers’ Rights Protection took place on 13-15 June 2016 with the involvement of Ms. Elsa Henriques Dias, representative of the Ombudsman Office of the Portuguese Republic. The aim of the mission was to provide the beneficiary with detailed information on the establishment and functioning of an independent institution conceived to promote and protect taxpayers’ rights.
- TAIEX Expert Mission on the Taxation of Household Workers on 14-15 September 2016. The aim of the mission was to discuss legislative as well as administrative aspects of Tax Control of Household Workers. At the end of the mission a draft input to the legislation as well as tax guidance for governing household employees was mutually prepared.
- TAIEX Study Visit to Estonia on Combating Tax Crime in the Digital Economy (19-21 September 2016). The aim was to explore best practices in the prevention and control of tax evasion and fraud in the digital environment, by combining the experience of four different host institutions.

Related international initiatives

- From 2003 to 2008 the Ministry of Taxes hosted a resident technical assistance mission from the US Treasury which provided support in the field of internal audit, strategy planning and management, HR training and audit methodology improvement.

- The Ministry of Taxes was also the beneficiary of short term missions from IMF experts. In 2005 the IMF missions provided assistance in strengthening the system of VAT administration. In 2008 an expert of the IMF on tax compliance carried out two short-term missions, preparing recommendations for the Tax Administration Reform Strategy for 2009-2012 as well as proposals for the introduction of a computerised audit system.

3.4 List of applicable Union acquis/standards/norms:

- **Council Directive (EU) 2016/881** of 25 May 2016 amending **Directive 2011/16/EU** as regards mandatory automatic exchange of information in the field of taxation: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0881>

This Directive and its predecessors regulate the exchange of information and enhanced cooperation of EU tax administrations. For the purposes of Transfer Pricing the automatic exchange of Country by Country (CbC) reporting and the exchange of tax rulings must be mentioned.

- **Council Directive (EU) 2016/1164** of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. <http://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX:32016L1164>

This Directive provides for EU minimum standards of anti-tax avoidance in terms of: interest limitation rule, exit taxation, general anti-abuse rule and controlled foreign company rule.

- The **Multilateral Convention on Mutual Administrative Assistance in Tax Matters** amended by the 2010 Protocol: http://www.oecd-ilibrary.org/taxation/the-multilateral-convention-on-mutual-administrativeassistance-in-tax-matters_9789264115606-en

This Convention regulates the exchange of information and enhanced cooperation of all accessing tax administrations.

- **OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2010**: <http://www.oecd.org/tax/transfer-pricing/oecd-transfer-pricing-guidelines-for-multinational-enterprises-andtax-administrations-20769717.htm>

- **Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report**: <http://www.oecd.org/tax/transfer-pricing/transfer-pricing-documentation-and-country-by-country-reportingaction-13-2015-final-report-9789264241480-en.htm>

- **Aligning Transfer Pricing Outcomes with Value Creation, Actions 8-10 - 2015 Final Reports**: <http://www.oecd.org/tax/aligning-transfer-pricing-outcomes-with-value-creation-actions-8-10-2015-finalreports-9789264241244-en.htm>

These 3 documents regulate the transfer price determination and the OECD minimum standards for documentation requirements and exchange of information in terms of transfer pricing.

- **Transfer pricing and developing countries**

The Communication of the European Commission („EC“) on „Tax and Development – Cooperating with Developing Countries in Promoting Good Governance in Tax Matters“ highlighted the need to support developing countries“ capacity in mobilising domestic resources for development in line with the principles of good governance in taxation. It is in this context that big consulting firms have been asked to conduct a study on transfer pricing („TP“) and developing countries.

https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/transfer_pricing_de_v_countries.pdf

- **Practical manual on transfer pricing for developing countries**

This second edition of the United Nations Practical Manual on Transfer Pricing for Developing Countries (the Manual) is intended to draw upon the experience of the first edition (2013) including feedback on that version, but it is also intended to reflect developments in the area of transfer pricing analysis and administration since that time.

[http://www.un.org/esa/ffd/wpcontent/uploads/2016/12/13STM TPM Foreword SecondEdition 20161120 v3_clean.pdf](http://www.un.org/esa/ffd/wpcontent/uploads/2016/12/13STM_TPM_Foreword_SecondEdition_20161120_v3_clean.pdf)

- **Joint Transfer Pricing Forum**

The EU Joint Transfer Pricing Forum (JTTPF) assists and advises the European Commission on transfer pricing tax matters.

http://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricingforum_en

- **The Platform for Collaboration on Tax: DISCUSSION DRAFT: A Toolkit for Addressing Difficulties in Accessing Comparable Data for Transfer Pricing Analyses**

This discussion draft has been prepared in the framework of the Platform for Collaboration on Tax by the OECD and the World Bank Group, under the responsibility of the Secretariats and Staff of the four mandated organisations. The draft reflects a broad consensus among these staff, but should not be regarded as the officially endorsed views of those organisations or of their member countries.

<http://www.imf.org/en/News/Articles/2017/01/24/PR1715-The-Platform-for-Collaboration-on-Tax-Invites-Comments-on-a-Toolkit>

- **Transfer Pricing and Developing Economies: A Handbook for Policy Makers and Practitioners**

This handbook is part of the wider WBG engagement in supporting countries with Domestic Resource Mobilization (DRM) by protecting their tax base and aims to cover all relevant aspects that have to be considered when introducing or strengthening transfer pricing regimes.

<https://openknowledge.worldbank.org/handle/10986/25095>

- **Transfer pricing legislation – a suggested approach June 2011**

This paper, which has been prepared by the OECD Secretariat, contains a suggested approach to the drafting of transfer pricing legislation.

<http://www.oecd.org/tax/transfer-pricing/45765682.pdf>

3.5 RESULTS per component

Result 1: Effective transfer pricing legal framework is developed in line with best EU standards.

Key output indicator(s)

- “Rules on transfer pricing and its application” and related provisions stipulated in the Tax Code in compliance with EU and international standards. This may refer to some possible simplified legislations or guidance (e.g. on low adding value services, management fees and on specific TP penalties and guidance for its application).
- Recommendation on implementation of administrative guidance and monitoring processes

Result 2: “Advance Pricing Agreements” and “Mutual Agreement Procedures” systems in the field of transfer pricing are developed.

Key output indicator(s)

- New administrative approach to dispute prevention and conflict resolution in transfer pricing.
This may be the introduction and implementation of horizontal monitoring procedures.
- Recommendation for development of bilaterally correspondent Advance Pricing Agreements and such practice.
- Concept of Advance Pricing Agreements system in terms of EU standards.
- Administrative approach to MAP process
- The best practices related to the implementation of MAP in the BEPS framework.

Result 3: Setting up the administrative supervisory mechanisms in the field of transfer pricing regulation in compliance with the EU standards and increase an institutional capacity of MoT in this area.

Key output indicator(s)

- Creation and structuring of special transfer pricing team/unit of 20-30
- Sources of information that should constitute basis for database necessary for transfer prices' control
- Transfer Pricing methodology
- Setting up of a Transfer Pricing Risk management strategy, implementing it (incl. governance aspects)
- Design of a Transfer pricing program and roadmap
- Definition of taxpayers' rights and obligations
- Training sessions for relevant MoT staff on Transfer Pricing methodology and its applications
- Adapted appropriate risk management system including transfer pricing risks' rules and procedures

3.6 Means/input from the EU Member State.

Partner Administration(s)*:

The MS partner administration is expected to provide the Project Leader (MS PL) and Resident Twinning Advisor (RTA) as well as a team of short term experts to support them in implementation of the project activities.

The MS PL should be a high-ranking civil servant or equivalent staff commensurate with the requirement for an operational dialogue and backing at political level.

The MS PL is the key link between the partners, acting at an overall operational and strategic level. The MS PL is complemented by the RTA. The RTA is seconded and resides in the BC. He/she co-operates day-to-day with the BC partners and coordinates the input of the STEs. STEs will work in Azerbaijan on the basis of specific Terms of Reference (ToR) which will be designed by the RTA for each mission together with the Beneficiary.

It has proved to be an advantage for the project implementation in previous Twinning projects when the MS has designated a senior STE to be responsible for each mandatory result/component of the project (i.e. a component leader) and to liaise with the respective component leader to be nominated by the Beneficiary Administration (BA). The BA will nominate counterparts to these key roles (see section 6.2).

The required MS experts must either be civil/public servants of the relevant MS administration or be permanent staff of authorised mandated bodies. All experts must comply with the requirements set in the Twinning Manual.

The nature of work for technical assistance abroad requests strong initiative, good analytical, interpersonal and language skills. All experts shall possess these qualities.

The RTA will be supported by a permanent RTA Assistant. In collaboration with the BA, the RTA assistant will handle administrative arrangements for conferences, training, seminars, etc. including provision of interpreters and the ensuring the translations. One assistant will be selected during the Twinning contract preparation period.

A full-time interpreter/translator may also be recruited in Azerbaijan and funded by the project. (S)he will perform most of the required interpretation/translation services. Whenever required and needed on a clear justified request, e.g. for simultaneous interpretation during seminars and workshops, additional interpretation may be procured and funded by the project. (S)he will provide day-to-day interpretation/translation to the RTA and project experts during meetings.

The RTA is supported in his or her MS administration for logistics, accounting and administrative tasks.

3.6.1 Profile and tasks of the PL:

Qualification and skills

- An university degree in economics/law or another relevant discipline and experience in the national implementation of international instruments
- Good command of written and spoken English

General professional experience

- Preferably at least 7 years of professional experience at a senior management level in her/his MS public service in the tax sector
- Experience in project management

Specific professional experience

- Broad knowledge of current EU-policies, existing structures and methods in the sector
- Experience in project organisation
- Experience in income taxation would be an asset
- Specific experience in the management of the implementation of international instruments would be an asset
- Experience in EU funded projects would be an asset

3.6.2 Profile and tasks of the RTA:

Qualification and skills

- A University degree in economics/law or another relevant discipline
- Good command of written and spoken English

General Professional Experience

- At least 5 years' experience in the income/corporate tax sector
- Working experience in Transfer Pricing
- Experience in managing teams of experts
- Experience in developing, co-coordinating and conducting training programmes

Specific Professional experience:

- Familiarity with current EU-policies, existing structures and methods in the tax sector
- Good knowledge of the institutional environment relating to the implementation and enforcement of relevant EU legislation
- Experience in conducting legal reviews would be an asset
- Experience in working in a different cultural environment would be an asset

3.6.3 Profile and tasks of Component Leaders:

Component Leader 1 - "Transfer Pricing Legal Framework".

Qualification and skills

- A University degree in economics/law or another relevant discipline
- Good command of written and spoken English

General Professional Experience

- At least 3 years' experience in the relevant field
- Working experience in foreign countries would be an asset

Specific Professional experience:

- Familiarity with current EU-policies, existing structures and methods in the tax sector
- Good knowledge of the institutional environment relating to the implementation and enforcement of relevant EU legislation
- Up-to-date knowledge and current experience in the respective field of project activity
- Knowledge of effective transfer pricing legal framework in line with best EU standards

Component Leader 2 - “Advance Pricing Agreements” and “Mutual Agreement Procedures” systems in the field of transfer pricing

Qualification and skills

- A University degree in economics/law or another relevant discipline
- Good command of written and spoken English

General Professional Experience

- At least 3 years' experience in the relevant field
- Working experience in foreign countries would be an asset

Specific Professional experience:

- Familiarity with current EU-policies, existing structures and methods in the tax sector
- Good knowledge of the institutional environment relating to the implementation and enforcement of relevant EU legislation
- Up-to-date knowledge and current experience in the respective field of project activity
- Experience in “Advance Pricing Agreements” system in the field of transfer pricing with at least two examples of EU Member States APA procedure
- Knowledge of Mutual Administrative Procedure (MAP)

Component 3 Leader - "Administrative supervisory mechanisms in the field of transfer pricing regulation"

Qualification and skills

- A University degree in economics/law or another relevant discipline
- Good command of written and spoken English

General Professional Experience

- At least 3 years' experience in the relevant field
- Working experience in foreign countries would be an asset

Specific Professional experience:

- Familiarity with current EU-policies, existing structures and methods in the tax sector
- Good knowledge of the institutional environment relating to the implementation and enforcement of relevant EU legislation
- Up-to-date knowledge and current experience in the respective field of project activity
- Ability to develop a Transfer Pricing methodology based on the OECD TP Guidelines, recommendations on the relevant issues included to BEPS and the best practices on the implementation of TP in the EU member states

3.6.4 Profile and tasks of other short-term experts:

All required EU institutional and technical expertise will be covered by the short-term experts. The short-term experts should have good experience in the relevant subject matter. They should have worked in the required fields for not less than 3 years and have appropriate qualifications and necessary skills to implement the above mentioned activities.

There should be a pool of short-term experts to ensure smooth implementation of the project. The STEs should be identified by the Project Leader/RTA and will be agreed with the Beneficiary Administration.

Indicative profile of the short-term experts:

Qualification and skills

- Relevant university degree
- Good command of written and spoken English

General Professional Experience

- At least 3 years' proven experience in the relevant field
- Working experience in foreign countries would be an asset

Specific professional experience

- Up-to-date knowledge and current experience in the respective field of project activity
- Project and training experience would be an asset

Indicative fields of experience for the short-term experts:

- Income/corporate tax laws and regulations in transfer pricing and schemes of international tax avoidance and evasion.
- Experience in development and use of relevant data bases
- Taxation policies and strategies
- Corporate Tax and transfer pricing auditing in Large Business Audit departments
- Profiling of horizontal monitoring processes
- Development and implementation of risk analysis systems

4. Budget

Maximum Budget available for the Grant 1,200,000 Euro

5. Implementation Arrangements

5.1 Implementing Agency responsible for tendering, contracting and accounting (AO/CFCE/PAO/European Union Delegation/Office):

Delegation of the European Union to the Republic of Azerbaijan

The persons in charge of this project at the Delegation of the European Union to the Republic of Azerbaijan are:

Mr Jeroen WILLEMS

Head of Cooperation

Delegation of the European Union to the Republic of Azerbaijan

Landmark III, 11th Floor, 90A, Nizami str.,

AZ 1010 Baku, Republic of Azerbaijan

Tel. +994 12 497 20 63 (ext. 853)

Fax +994 12 497 20 69

E-mail: Jeroen.Willems@eeas.europa.eu

Website: <http://eeas.europa.eu/delegations/azerbaijan>

5.2 Institutional framework

Ministry of Taxes of the Republic of Azerbaijan

The Ministry of Taxes of the Republic of Azerbaijan was set up by the Decree of the President of the Republic of Azerbaijan No 281 on 11 February 2000.

The activity of the Ministry is based on the Constitution of the Republic of Azerbaijan, the Tax Code of the Republic of Azerbaijan and other laws, decrees and orders of the President of the Republic of Azerbaijan, the decisions and the orders of the Cabinet of Ministers of the Republic of Azerbaijan, and also on these regulations.

The Ministry of Taxes is the authority of central power which realizes the state tax policy within the limits of the united financial and budgetary policy, providing timely and full receipt in the state budget of taxes and other deductions and carrying out the state control in this sphere.

To carry out its functions, the Ministry of Taxes is currently structured in a Central Administration, 3 Main Departments under the Ministry of Taxes, territorial tax departments and rayon tax sectors, a Training Centre and includes the Ministry of Nakhchivan Autonomous Republic.

See the organisational structure of the Ministry of Taxes and the Central Administration of the Ministry of Taxes in Annex 2.

The staff working within the Ministry of Taxes is composed by 3015 staff members of whom approx. 400 are managers of senior and middle levels.

Main Focal Points of the beneficiary institution for the project implementation are:

- International Relations and Tax Monitoring in Financial Institutions Main Department
- Tax Policy and Strategic Research Main Department
- Tax Risks Analysis and Control Main Department
- Tax Audit and Operative Control Department
- Taxes Department №1 under the MoT

5.3 Counterparts in the Beneficiary administration:

The PL and RTA counterparts will be staff of the Beneficiary administration and will be actively involved in the management and coordination of the project.

5.3.1 Contact person:

Mr Eldar BABAZADA

Head of International Practice and Innovation Division

International Relations Department

Ministry of Taxes of the Republic of Azerbaijan

L.Landau st. 16, Baku, AZ 1073, Azerbaijan

Tel: (+99412) 4038116

Fax: (+99412) 4936425

E-mail: eldar.b@taxes.gov.az

Website: www.taxes.gov.az

5.3.2 PL counterpart

Mr. Zaur FATIZADE

Director of International Cooperation and Tax Monitoring at Financial Institutions Main Department

Ministry of Taxes of the Republic of Azerbaijan

L.Landau st. 16, Baku, AZ 1073, Azerbaijan

5.3.3 RTA counterpart

Mr Eldar BABAZADA

Head of International Practice and Innovation Division
International Relations Department
Ministry of Taxes of the Republic of Azerbaijan
L.Landau st. 16, Baku, AZ 1073, Azerbaijan

6. Duration of the project

The execution period of the project is 24 months.

7. Sustainability

The Twinning project will have to seek sustainable solutions and approaches based on the adoption of best practices and thus prepare the grounds for Azerbaijani enhanced compliance with the selected EU Acquis and specifically best European practices in the field of accreditation of conformity assessment bodies.

Sustainability is highly dependent of the commitment of the Beneficiary Administration. Therefore the nomination of a responsible person within the Beneficiary Administration, for each component of the Twinning project, is highly recommended. This person will coordinate and promote the activities during the implementation of the project. The “**component leader**” will then ensure, for her/his component that the actions and works are in line with the results of the projects after its completion.

Besides, in the final report, twinning partners will include specific recommendations and strategies for consolidating and safeguarding the achievement of mandatory results in the beneficiary administration.

To ensure sustainability, Beneficiary Administrations should be provided with the training materials (all handovers) in both languages, English and Azerbaijani. That means that a budget for the translation of Guidelines, Handbooks, Glossaries, Methodology Manuals, etc. developed within the project should be foreseen.

8. Crosscutting issues (*equal opportunity, environment, climate etc...*)

8.1 Equal opportunity

The proposed project will comply with EU equal opportunity policies. Equal treatment of women and men in project implementation at all levels will be one of the most important principles in the project management and implementation. The beneficiaries are already equal opportunity employers. In particular, great attention will be given to the equality principle in the training of personnel and the recruitment of the STEs. Of course, appropriate professional qualifications and experience will be the main decisive factors in personnel recruitment and evaluation but, subject to that, both women and men will have identical prospects.

8.2 Environment

The principle of implementation of this Twinning project is based on a paperless work environment. This means, in particular, minimising paper use during project implementation by the maximum feasible use of emails and, if available, project web-site and/or project electronic data base for co-operation between partners.

Documents are automatically saved in electronic format.

9. Conditionality and sequencing

Not applicable.

10. Indicators for performance measurement

Not applicable.

11. Facilities available

The Azerbaijani beneficiary administration will provide the RTA and other MS experts with office space in its main building in Baku, equipment (computers, printer, telephone and internet access) and other provisions as stated in the Common Twinning Manual.

ANNEXES TO PROJECT FICHE

1. Logical framework matrix in standard format (compulsory)
2. Structure of the Ministry of Taxes of the Republic of Azerbaijan

ANNEX 1: Logical Framework Matrix*

<p>Support to the Ministry of Taxes of the Republic of Azerbaijan in Transfer Pricing and developing Anti-Tax Avoidance measures</p>	<p>Programme name and number: ENPI AAP 2013</p>	<p>AZ/13/ENPI/FI/01/17 (AZ/50)</p>
<p>Ministry of Taxes of the Republic of Azerbaijan</p>	<p>Contracting period expires: 26/12/2017 Total budget: 1.2 million EUR</p>	<p>Disbursement period expires: 26/12/2020</p>

	Objectively Verifiable Indicators	Sources of Verification	Assumptions
<p>Overall objective:</p> <ul style="list-style-type: none"> To introduce and implement an efficient Transfer Pricing Legislation and Transfer Pricing Auditing by the Ministry of Taxes of the Republic of Azerbaijan 	<ul style="list-style-type: none"> A new Transfer Pricing system is in place and ready for use 	<ul style="list-style-type: none"> Annual Reports of the Ministry of Taxes ENP AP Progress report Azerbaijan 	
<p>Project purpose:</p> <ul style="list-style-type: none"> To support the Ministry of Taxes of the Republic of Azerbaijan in aligning Transfer Pricing law with European standards and establish resources for best practice auditing processes 	<ul style="list-style-type: none"> The MoT applies state-of-the-art methods for Transfer Pricing and auditing processes Tax audit force of 10-15 people established to implement transfer pricing mechanism at the MoT 	<ul style="list-style-type: none"> Orders of the Minister of Taxes Regular reports of international organisations Project Interim Reports Project Final report 	<ul style="list-style-type: none"> The Government of Azerbaijan maintains its commitments regarding adoption of methodologies, tools, techniques and governance structures for transfer pricing in accordance with best European practices and models There is political will at the top management of the MoT to promote introduction of the Transfer Pricing system Possible institutional changes do not affect the existing roles and responsibilities of related institutions and departments The MoT retains its key staff who possess relevant knowledge,

			competences and skills to continue implementing the transfer pricing mechanism
Mandatory Results:			
1. Effective transfer pricing legal framework is developed in line with best EU standards	<ul style="list-style-type: none"> • At least 2 examples of EU Member States Transfer Pricing provisions presented • Recommendations on amendments of relative legislation for the implementation of Transfer Pricing in Azerbaijan prepared and accepted by beneficiary • Recommendations on amendments of relative legislation for the interest deduction system prepared and accepted by beneficiary • Recommendations on implementation of administrative guidance and monitoring processes 	<ul style="list-style-type: none"> • List of needed revisions of the legal and normative framework • Recommended texts of revised laws, decrees and bylaws • STEs' mission reports • Project Interim Reports 	<ul style="list-style-type: none"> • The MoT has a good knowledge of best practises of EU countries and different type of Transfer Pricing provisions • Collaboration and cooperation among the stakeholders are good • Strong involvement and commitment of MoT staff at all levels • Coordination between departments and institutions connected with the Project is ensured • Access to indispensable information and documents is ensured • Required data are available
2. “Advance Pricing Agreements” system in the field of transfer pricing is developed.	<ul style="list-style-type: none"> • At least 2 examples of EU Member States Advance Pricing Agreements and horizontal monitoring procedures • Study visits to EU Member States with a view of understanding and considering transfer pricing mechanisms that can be applied in the Ministry of Taxes implemented • New administrative approach to dispute prevention and conflict resolution in transfer pricing developed • Recommendation for development of an appropriate Advance Pricing Agreements and horizontal monitoring procedures for 	<ul style="list-style-type: none"> • Concept of “Advance Pricing Agreements” system • Texts of developed Advance Pricing Agreements and horizontal monitoring procedures • Reports on the study visit(s) with involvement of relevant MoT staff • STEs’ mission reports 	<ul style="list-style-type: none"> • Capacity of beneficiary is sufficient to absorb the projects results • Collaboration and cooperation among the stakeholders are good • Strong involvement and commitment of MoT staff at all levels • Sufficient staff at MoT in terms of qualification, quantity and availability • Coordination between departments and institutions connected with the Project is ensured • Access to indispensable information

	<p>Azerbaijan prepared</p> <ul style="list-style-type: none"> • “Advance Pricing Agreements” system in the field of transfer pricing is in place and ready for use • Administrative approach to MAP process developed • At least 2 examples of EU Member States best practices related to the implementation of MAP in the BEPS framework 	<ul style="list-style-type: none"> • Project Interim Reports 	<p>and documents is ensured</p> <ul style="list-style-type: none"> • Required data are available
<p>3. Setting up the administrative supervisory mechanisms in the field of transfer pricing regulation in compliance with the EU standards and increase an institutional capacity of MoT in this area</p>	<ul style="list-style-type: none"> • Relevant procedures introduced to tackle harmful e-commerce schemes and is ready for implementation • Procedures to tackle an abusive tax haven schemes and tax fraud improved and are ready for implementation • Liaison with customs authorities improved • Exchange of information with EU MS countries in Transfer Pricing enhanced • Usage of domestic and international databases, knowledge management platform for transfer pricing purposes improved • Transfer pricing audit methodology developed and implemented • Risk management and analysis procedures developed and implemented • Transfer Pricing Risk management strategy developed and implemented • Transfer pricing program and roadmap designed • Taxpayers' rights and obligations defined 	<ul style="list-style-type: none"> • Transfer pricing audit methodology • Texts of risk management and analysis procedures • Texts of procedures to tackle relevant e-commerce schemes • Texts of procedures to tackle an abusive tax haven schemes and tax fraud • Training needs assessment report • Training programme/strategy • Reports on delivered trainings with involvement of relevant MoT staff and other institutions • Reports on the 	<ul style="list-style-type: none"> • MoT establishes appropriate cooperation and information exchange links with other relevant EU MS institutions • MoT establishes appropriate information exchange links with State Customs Committee on transfer pricing issues • Capacity of beneficiary is sufficient to absorb the projects results • Collaboration and cooperation among the stakeholders are good • Strong involvement and commitment of MoT staff at all levels • Sufficient staff at MoT in terms of qualification, quantity and availability • Coordination between departments and institutions connected with the Project is ensured • Access to indispensable information and documents is ensured

	<ul style="list-style-type: none"> • At least 5 staff members of the MoT completed the Training of Trainers (ToT) courses on General and Industry tailored Transfer Pricing Training courses • MoT trainees perform pilot transfer pricing audits under supervision by STE to ensure their capacity • Internship to EU Member State for up to 5 MoT audit trainees to work alongside transfer pricing auditors in EU country and encompass the study of methods and electronic means that MS use in audits implemented 	<ul style="list-style-type: none"> • internship with involvement of relevant MoT staff • Scoping documents for the pilot project • STEs' mission reports • Project Interim Reports 	<ul style="list-style-type: none"> • Required data are available
	Means	Costs	
Visibility actions			
0.1. Kick-off meeting			
0.2. Quarterly meetings of the Steering Committee			
0.3. Final conference			
Activities to achieve result 1:			
1.1. Present two or more EU-countries' approaches defining the "control" of related parties for transfer pricing purposes	RTA, STEs		
1.2. Present the EU TPD and two or more EU-countries' legal documentation requirements	RTA, STEs		
1.3. Present the legal stipulations of the OECD and EU-implementation of the Country by Country reporting including IT implementation aspects, in the context of BEPS Action 13 report/DAC 4.	RTA, STEs		
1.4. Present two or more EU-countries' Transfer Pricing provisions	RTA, STEs		
1.5. Review the relevant Azerbaijani legislation to	RTA, STEs		

assess their compatibility with EU and international legal norms			
1.6. Provide a report with table of concordance and list of recommended primary and secondary legislative acts and amendments, including amendments to Tax code.	RTA, STEs		
1.7. Provide the assistance of legal experts to the MoT on the drafting of new laws, amendments and secondary instruments	RTA, STEs		
1.8. Conduct a legal review of the interest deduction system and provide adjustment plans for the legislation	RTA, STEs		
1.9 Draft recommendations on implementation of administrative guidance and monitoring processes	RTA, STEs		
Activities to achieve result 2:			
2.1. Present at least two examples of EU Member States Advance Pricing Agreements procedure	RTA, STEs		
2.2. Present at least two examples of EU Member States horizontal monitoring procedures	RTA, STEs		
2.3. Determine an administrative approach to dispute prevention and conflict resolution in transfer pricing.	RTA, STEs		
2.4. Identify and develop an appropriate “Advance Pricing Agreements” system in the field of transfer pricing	RTA, STEs		
2.5 Develop administrative approach to MAP process	RTA, STEs		
2.6 Present at least two examples of EU Member States best practices related to the implementation of MAP in the BEPS framework	RTA, STEs		
Activities to achieve result 3:			
3.1. Develop a Transfer Pricing methodology based on the OECD Transfer Pricing Guidelines, recommendations on the relevant issues included	RTA, STEs		

to Base Erosion and Profit Shifting (BEPS) and the best practices on the implementation of transfer prices in the EU member states			
3.2. Conduct the comprehensive training sessions	RTA, STEs		
3.3. Improve relevant e-commerce and digital economy procedures	RTA, STEs		
3.4. Improve the procedures to tackle an abusive tax haven schemes and tax fraud	RTA, STEs		
3.5. Draft Secondary adjustments	RTA, STEs		
3.6. Improve liaison with customs authorities	RTA, STEs		
3.7. Improve Exchange of information with EU MS countries	RTA, STEs		
3.8. Improve the usage of domestic and international databases, knowledge management platform for transfer pricing purposes	RTA, STEs		
3.9. Capacity building to implement transfer pricing mechanism at the MoT	RTA, STEs		
3.10. Improve risk management and analysis procedures	RTA, STEs		
3.11 Develop a Transfer Pricing Risk management strategy and draft recommendation on its implementation (incl. governance aspects)	RTA, STEs		
3.12 Design a Transfer pricing program and roadmap	RTA, STEs		
3.13 Define the taxpayers' rights and obligations	RTA, STEs		

** - This Logical Framework Matrix is tentative. The Twinning partners shall revise the content of the Logical Framework Matrix, mainly measurable indicators / benchmarks basis of commonly agreed activities and outputs during the drafting of the work plan for this project*

ANNEX 2: Structure of the Ministry of Taxes of the Republic of Azerbaijan

Apparatus of Ministry of Taxes

