

LEGAL AND TAX ASPECTS OF DOING BUSINESS IN TURKMENISTAN 2009



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Section I. LEGAL PRESENCE IN TURKMENISTAN

1. Introduction

The foreign investors may establish either a limited presence, in the form of a representative office or a branch of foreign legal entity, or a full presence as Turkmen legal entities in the form of an enterprise with foreign participation that is co-owned as a joint venture with Turkmen or foreign partner(s) of Azerbaijan legal entities.

2. Representative office and branch of foreign legal entity¹

Representation office is a separate division of a legal entity located outside of its original location and performing representation of the interests of a legal entity, concluding contracts and conducting other activities on behalf of a legal entity.

Branch is a separate division of a legal entity located outside its original location and performing all or part of its functions, including representation.

A representative office or a branch of a foreign legal entity, being a resident in Turkmenistan, does not have the status of a legal entity in Turkmenistan. A representative office performs preparatory and auxiliary activities and is authorized to conclude contracts on behalf of its parent company. A branch is a division of a foreign legal entity, which may fulfill all or part of the functions of its parent company, including conducting business activities that generate income.

A branch is the preferred way for foreign companies to operate in Turkmenistan. Both representative offices and branches act on the basis of a “Regulation” (similar to a charter or by-laws) and are managed by an individual authorized by the parent company under a power of attorney.

2.1 State Registration of Branches and Representations of an Enterprise²

Branches and representations of enterprises are subject to state registration as per the rules established for enterprises and shall be entered into the State Register of legal entities.

The following documents should be presented for the registration of a branch or representation office:

- Application form for opening branch or representation office
- Board Resolution on establishing a branch/representative office
- Regulation on the founded branch or representation office
- Statute of branch/representative office
- Personal form of the Head of branch/representative office
- Copy of the Charter of an enterprise establishing a branch/representative office
- Resolution on appointment of the head of a branch/representative office
- Incorporation certificate/extract from company register of an enterprise establishing a branch/representative office
- Bank reference – “good standing” letter from bank
- Brief company overview
- Document confirming existence of legal address
- Copies of contract or intention letter or engagement letter related to business in Turkmenistan.

3. Forming a local legal entities³

The Civil Code as well as other legislative acts of the Azerbaijan Republic regulates activities of Azerbaijan legal entities.

¹ Civil Code, Article 56

² *Ibid.*, Article 23

³ *Ibid.*, Article 52

Turkmen legislation provides the following types of legal entities:

- state unitary enterprise;
- individual enterprise;
- cooperatives;
- enterprise of social organizations;
- business societies; and
- joint stock companies (closed and open).

Business societies and joint stock companies are the types of legal entities most often having foreign participation.

The principal laws regulating the principals of establishment and operations of an enterprise in Turkmenistan are the Civil Code [*The “Civil Code of Saparmurat Turkmenbashi” effective as of 1 March 1999, introduced by the Turkmenistan Law “On Adoption and Introduction of The Civil Code of Turkmenbashi” dated 17 July 1998*], the Law “On Joint Stock Companies” [*Turkmenistan Law “On Joint Stock Companies” dated 23 November 1999*] and the Law “On Enterprises” [*Turkmenistan Law “On Enterprises” dated 15 June 2000*], enacted in 1999 and 2000 respectively. The Law “On Enterprises” contains miscellaneous provisions for registration of an enterprise, including an exhaustive list of the documents required for such registration, basic requirements for foundation documents of an enterprise, and a definition of subsidiaries.

Under Turkmenistan legislation a company is considered a subsidiary of another company if more than 50% of its property or participation interest belongs to the other company. Therefore, since business societies and joint stock companies must have at least two founders, foreign companies wishing to establish a subsidiary in Turkmenistan can only do so by creating a joint venture with a Turkmen partner or another foreign partner, with such partner’s share being less than 50%.

3.1 Enterprise

Enterprise is an independent entity of economic activity established in accordance with the Law “On Enterprises” for production, sale of goods, performance of works and provision of services in order to satisfy needs of community and earn profits¹ and in accordance with the Law “On Joint Stock Companies”.

3.1.1 Attributes of an Enterprise²

An enterprise has its own name, legal address and stamp.

3.1.2 Incorporation of an Enterprise³

Enterprise is incorporated based on the decision of its founders.

Incorporation Agreement is a base for incorporation and activity of an enterprise which should specify:

- decision on incorporation of an enterprise, its name and location;
- list of founders, names, legal addresses and bank details of legal entities; and names, home addresses and passport details of physical persons;
- order of establishment of an enterprise;
- conditions of performance of activities related to creation of an enterprise;

¹ Law of Turkmenistan on Enterprises, Chapter I, Article 1

² *Ibid.*, Article 5

³ *Ibid.*, Chapter II

- determination of authorities of founders as well as other persons authorised to represent the interests of the enterprise in the process of its establishment and registration;
- the amount of an authorized capital;
- information on the amount and terms of payment of cash contribution of each founder or on money value of contribution in-kind or in the form of interests;
- order with respect to decision making on additional contribution to the authorized capital, as well as untimely payment of contributions;
- decision on approval of the authorized capital;
- order of distribution of profits;
- order of withdrawal of founders of the enterprise;

Charter of an enterprise is a document determining its legal status, and it shall contain:

- name and legal address of an enterprise;
- list of founders, names, legal addresses and bank details of legal entities; and names, home addresses and passport details of physical persons;
- purposes and types of activities of the enterprise;
- information on the amount of authorized capital, shares of founders and property of enterprise;
- order of transfer of shares;
- information on management and control bodies of the enterprise, order of their formation and competencies;
- order of profits distribution and compensation of losses;
- conditions of reorganization and dissolution

3.1.3 State Registration of Enterprises¹

State registration of enterprises shall be performed by the Registration Services of Turkmenistan based on the resolutions issued by its divisions in velayats² and Ashkhabad city.

Upon completion of the state registration Certificate of State Registration shall be issued and the name shall be entered into the State Register of the legal entities.

Decision on approval or refusal of the registration of an enterprise shall be made within 2 weeks from the moment of submittal of an application along with the other appropriate documents.

3.1.4 Documents required for the state registration of an enterprise³

The following documents are required for the state registration of an enterprise:

- Application signed by a founder(s) or an authorised person to incorporate the enterprise;
- Incorporation documents;
- Document confirming the payment of a statutory registration fee.⁴
- Document on valuation of investment if such investment is made in non-pecuniary form;
- Document confirming the partial payment of the authorized capital of an enterprise.

3.1.5 Re-registration of an Enterprise⁵

If any changes or amendments to the incorporation documents, then the enterprise should inform Registration Service of Turkmenistan within 1 week after such changes are made.

3.1.6 Cancellation of Registration of an Enterprise⁶

¹ Law of Turkmenistan on Enterprises, Chapter III

² Local administrative divisions

³ *Ibid.*, Article 17

⁴ Amount of the Statutory Registration Fee is determined by the Cabinet of Ministers of Turkmenistan

⁵ *Supra*, n 1, Article 21

⁶ Law of Turkmenistan on Enterprises, Chapter III, Article 22

Upon completion of the procedures related to liquidation of an enterprise, bankruptcy procedure, as well as in cases of incorrect registration or court decision on invalidity of registration of the enterprise, the body performing statutory registration should cancel registration of an enterprise.

Registration may also be cancelled based on the court decision as a result of the court action instituted by any of the founders or any third party.

Cancellation of registration will result in exclusion of the enterprise from the State Register of legal entities.

3.1.7 State Unitary Enterprise¹

State enterprise is an enterprise established at the cost of State funds and is owned and managed by the State.

3.1.8 Individual enterprise²

An individual enterprise is an enterprise owned by one physical person.

Minimum amount of the authorized capital for an individual enterprise is 25 minimum monthly salary rates for Turkmenistan.

Owner of an individual enterprise is personally accountable for enterprise's liabilities.

3.1.9 Cooperatives³

Property of cooperative enterprise is formed from pecuniary and property contributions of its members as well as income and other sources not prohibited by the legislation of Turkmenistan.

Minimum share capital of cooperative enterprise is 50 minimum monthly salary rates for Turkmenistan.

Cooperative enterprise is accountable for its liabilities within the limits of its property.

3.1.10 Enterprise of Social Organization⁴

This is an enterprise established by public, religious, charitable and other organizations, unions, funds etc.

Activities of these enterprises should be related to performance by the founder organization, its duties and tasks.

Minimum authorized capital of the enterprise is 100 minimum monthly salary rates for Turkmenistan.

Enterprise of public organization is not accountable for its liabilities, but the owner of an enterprise is accountable for the liabilities of an enterprise by the property of enterprise and his own property.

3.2 Business Societies⁵

Business Community is an association of two or more physical and/or legal persons for the purpose of joint activity.

¹ Law of Turkmenistan on Enterprises, Chapter IV, Article 25

² *Ibid.*, Article 26

³ *Ibid.*, Article 27

⁴ *Ibid.*, Article 28

⁵ *Ibid.*, Article 29

Minimum amount of share capital of business community is 100 minimum salary rates in Turkmenistan.

Depending on the form of accountability members of business community may be accountable for liabilities of community within the limits of their shares or fully accountable with their own property.

3.3 Joint Stock Company (JSC)¹

A Joint Stock Company is an enterprise, where contributions of physical and/or legal persons form the charter capital divided by the fixed number of shares, confirming liabilities and rights of its members with regards to the Joint Stock Company.

An Open Type Joint Stock Company is a JSC where shares may be distributed publicly. Shareholders of such JSC may sell their shares without the shareholders' approval.

A number of shareholders in Open Type JSC is not limited.

A Closed Type Joint Stock Company is a JSC where shares may be distributed only to the members of JCS or other listed number of persons.

A number of shareholders in Closed Type JSC is limited to 50.

JSC cannot have a legal entity as a shareholder where that legal entity is a sole shareholder.

Minimum share capital of JSC is 200 minimum salary rates in Turkmenistan.

¹ Law of Turkmenistan on Joint Stock Companies

Section II. LICENSING OF BUSINESS ACTIVITIES IN TURKMENISTAN

1. Introduction

The primary law regulating licensing is the Law “On Licensing of Specific Activities”.

Licenses may be granted to citizens registered as individual entrepreneurs and to legal entities. Separate licenses are issued for each individual type of activity. A licensee may not transfer the license to another legal entity or individual entrepreneur. Period of validity of specific licenses are established by regulations on licensing of each individual type of activity. An individual license is valid within the territory of Turkmenistan.

The following types of activities shall be licensed:

- Audit activity;
- production of construction materials, articles and structures;
- import, production, trade of alcohol products, spirit of all types, tobacco goods and vehicles;
- medical activities;
- pharmaceutical activities;
- medical-technical activities;
- insurance activity;
- legal assistance to legal and physical persons;
- transportation, forwarding activities on marine and internal waters transport;
- transportation, forwarding activities on auto transport;
- cultural and art activities;
- veterinary activities;
- disinfection, disinsection and deratization works;
- public demonstration and distribution of cinema, audio and video films;
- tourism activity;
- totalizators and gambling establishments;
- publishing;
- printing;
- education and vocational training;
- seed-farming activities;
- industrial fishing, catching of other water animals;
- standardization and metrology activities;
- communication activities;
- banking;
- aviation activity;
- construction activity;
- geodesy and cartographical activity;
- livestock breeding, production and selling of karakul;
- use of natural resources and protection of the environment;
- selling oil products and fuels and lubricants;
- production and selling of food and forage;
- organization of food post for people and delivery of ready food;
- industrial safety activity, design and building of dangerous constructions and transportation of dangerous goods;
- fire safety activity;
- electric power activity;
- import, production and selling of chemical production;
- health-improving physical training and sport services activity;
- professional activity in equity market;
- assessment activity;
- realtor activity;
- activity related to precious metals and jewel;
- activity in the field of customs regimes and rendering of customs services;
- activity for turnover of narcotic drugs, psychotropic substances and precursors;
- activity related to recruitment of citizens abroad, etc.

2. Applying for a License

An applicant must submit all necessary documents specified by the relevant agency.

The applicant will also be required to pay an application fee. If the applicant meets all the requirements, the license is supposed to be issued within one month of the date of submitting the application. In the event of the reorganization of the legal entity holding a license, change of its name or legal address, the legal entity or its successor must immediately reapply for a license. An individual entrepreneur must immediately reapply for a license in the event of a change of their first or last name, as well as in the event of changing their address. A new license will be issued within fifteen days of submission of the application.

Section III. FOREIGN INVESTMENTS IN TURKMENISTAN¹

Legal entities with foreign investments may perform all types of activities which are not prohibited by the legislation of Turkmenistan.

There are numerous laws affecting foreign investment in Turkmenistan, guided principally by the Law “On Foreign Investments”.² This Law provides the legal and economic foundation for attracting foreign investment. The most important provisions in the Law provide foreign investors with specific guarantees and the right to equal protection under Turkmen law.

These protections extend to investments made by:

- foreign legal entities;
- foreign nationals, stateless persons;
- foreign states; and
- international organizations and associations.

For registration of a legal entity with foreign investments the following documents are required:

- Application of founders;
- Permission on investment in the economic of Turkmenistan;
- Agreement on establishing of joint venture (in original and national languages);
- Charter (in original and national languages);
- Document confirming financial status of foreign investor

Legal regime for the foreign investments and foreign investor’s activity may not be less favourable than the regime for similar activities of the legal entities and citizens of Turkmenistan.

Foreign investments are not allowed in the objects, development and usage of which do not meet the health, ecological and other norms set forth the by legislation of Turkmenistan.

¹ Law on Foreign Investments

Section IV. LABOUR REQUIREMENTS

1. Introduction

The employment of nationals and foreign citizens in Turkmenistan is regulated by the Labor Code of Turkmenistan, as amended.

Under the Labor Code, labor relations are regulated by both a collective agreement (if applicable) and individual employment agreements and contracts.

2. Working Time

Normal duration of working day should not exceed 8 hours. The regular workweek is 40 hours, less for certain groups of people as invalids, pregnant women, etc.

When concluding the Employment Contract as well as being in the process of labor relationship and upon obtaining mutual consent, employer and employee may agree on a part time work.

3. Overtime

Normally, overtime is not allowed. However, overtime works may be requested by the employer only in extraordinary cases provided by the legislation and, provided that permission of trade union of the enterprise or the other body representing the employees is obtained.

Only for the purposes of prevention of natural calamities, force majeure circumstances, production accidents and other extraordinary events and/or liquidation of their consequences, and also for the purpose of provision of external medical care overtime work could be required without an agreement of an employee.

The duration of overtime work should not exceed 4 hours during two consecutive days and 120 hours during the year. Overtime is compensated at 200%.

4. Rest Time

Employees must be allowed to have a break for rest and lunch. Duration of rest time should not be less than 1 hour and more than 2 hours.

5. National Holidays

The official public holidays in Turkmenistan are the followings:

1 January	- New year;
12 January	- Memorial Day;
18 February	- Holiday of National Flag of Turkmenistan;
8 March	- Women's Day;
21 March	- Novruz Holiday;
9 May	- Victory day over fascism;
18 May	- Day of Renascence, Unity and Poetry of Makhtumkuli Fraqi;
6 October	- Memorial Day;
27-28 October	- Independence Day;
12 December	- Neutrality Day;
as per President Degree	- Gurban Holiday;
as per President Degree	- Oraza Holiday

6. Vacation Entitlement

The minimum paid annual vacation is 30 calendar days and must be provided to all employees.

For the following categories of employees duration of annual vacation must not be less than 45 calendar days:

- Teachers and officials of all types of educational institutions and children's home;
- Disabled people.

It must be noted that the certain categories of employees, especially the ones working in hazardous conditions, offshore workers, etc., shall be entitled to additional vacation days up to 15 days.

7. Maternity Leave

Women should be entitled to a paid maternity leave for 112 calendar days. Compensation during maternity shall be paid at 100% from the Social Security Fund.

8. Statutory sickness payments requirements

Employees should be entitled to certain compensations for the period of their illness at the rate at from 60% to 100% to be paid from Social Security Fund. Such compensations would depend on the length of the service of an employee, existence of under-age children, etc.

9. Employment Termination

Employer may terminate the Employment Contract for the following reasons:

- 1) liquidation of an enterprise, reduction in the number of employees or staff;
- 2) non compliance of an employee with his or her position due to insufficient competency, qualification (professionalism);
- 3) failure to execute labor function or obligations as determined in the Employment Contract by the employee or gross violations of labor obligations in the cases as specified in the Labor Code;
- 4) absence from work without a good reason for 3 working hours during one working day;
- 5) absence from work due to disability for a period more that 4 months, exclusive pregnancy leave, provided that more continuous term of reservation of place of employment (position) is not determined by legislation for certain illnesses. Positions of employees disabled as a result of labour injury or occupational disease are reserved until termination of disability;
- 6) restoration on work of employee, who kept the position before;
- 7) presence at work place in a state of alcoholic, narcotic or toxic intoxication;
- 8) theft at a work place confirmed by court or another body authorized to impose admin fines

Termination of the employment as per the closes 1, 2 and 6 above may be made only in cases when transfer of an employee to the other position, subject to his agreement, is impossible.

Termination of an employment during period of disability (apart from the close 5 above) and vacation, apart from the complete dissolution of the employer company, is prohibited.

9.1 Employment Termination/Special Considerations

- 9.1.1 If an Employment Agreement is terminated pursuant to the clause (2) of the Article 42 ("reduction in the number of employees"), Employer must officially inform Employee about the termination of contract not later than two months in advance;
- 9.1.2 The following allowances must be paid to the Employees upon termination of their employment:
 - Termination allowance in the amount of not less than one average monthly salary;
 - Average monthly salary for the second month from the date of termination and before starting a new job;
 - Average monthly salary for the third month from the date of termination and before starting a new job (if the Employee has registered himself with the Employment Fund

within two weeks after termination and has not been employed);

- 9.1.3 In cases of employee's draft or entrance to military service or refusal of an employee to move with the employer to another location of work, as well as refusal to continue work due to significant changes in the work conditions or termination of employment contract by employee due to breach of law by the employer, termination allowance in the amount of not less the 2 weeks average income should be paid to the employee.

9.2 Employee Resignation¹

- 9.2.1 An employee may terminate the Employment Contract upon serving two (2) calendar month prior written notice to the Employer;
- 9.2.2 Upon expiration of one calendar month from the date of the notice, the Employee is entitled to his severance pay and shall leave work accordingly;
- 9.2.3 If an Employee retires for the reason of old age or disability, enters an educational institution to continue education, moves to a new place of residence and in other cases provided by the legislation, then the Employment Contract may be terminated from the date specified in the termination notice.
- 9.2.4 Before expiration of a notification period, an Employee may revoke termination notice or upon serving of other notice may announce the latter invalid. In that case the Employment Contract may not be terminated.

10. Licensing of a foreign labor²

Normally the Cabinet of Ministers of Turkmenistan along with the District or City Municipalities are responsible for issuance of Work Permits to companies and foreign employees operating in Turkmenistan under the Agreements with the State or private enterprises that are legally established in Turkmenistan.

An employer should obtain permission from the appropriate body to employ temporarily foreign employees (Commission on control of compliance with the rules of invitation of foreign employees for temporary work in Turkmenistan), and then the employees should obtain a work permit. It should also be noted that there is a limit of 30% for the employment of foreign employees from the total amount of the workers.

Foreign employees and their employers shall apply along with all the necessary documents to the relevant authority of Turkmenistan with a petition to obtain Work Permits. In their turn, the State Authority would have to review the presented documents and shall have the right to audit submitted paperwork within 10 days from the date of submittal of such an application.

State Fee for obtaining of Work Permits shall be made to the Central Bank of Turkmenistan in the amount of 1,500,000.00 Turkmenistani for each foreign employee. Submitted applications will be under review and consideration during 30 calendar days from the date of presentation of the documents by employer.

Should the above State authority decide that any additional information is required then the final decision shall be taken within 15 days from the date of receiving of such additional information.

¹ Labour Code, Articles 41, 42

² President's Decree #6135 dated 21/02/2003

Section V. FOREIGN CURRENCY CONTROL

All operations with foreign currencies should be performed via authorized banks.

All payments in Turkmenistan should be made in Turkmenistani manats.

Residents receiving payments in foreign currency as a result of operations with non-residents have to repatriate all the funds received in Turkmenistan. There is a requirement to sale a certain part of proceeds in foreign currencies to the Central Bank of Turkmenistan. The amount of funds in foreign currencies to be sold is determined by the Central Bank of Turkmenistan.

Physical persons – residents of Turkmenistan may open and operate bank accounts with the offshore banks only during their presence abroad.

Non-residents of Turkmenistan may expatriate capital imported in the territory of Turkmenistan and declared according to customs legislation.

Central bank of Turkmenistan has a right to bound transfers of cash in order to execute international liabilities according to the Charter of The United Nations Organization.

Section VI. TAXATION IN TURKMENISTAN

1. Introduction

Since 1 November 2004, taxation matters in Turkmenistan have been governed by the new Tax Code and other regulatory legal acts adopted on the basis of the Tax Code.

Having adopted the Tax Code, Turkmenistan now has regulated and detailed tax legislation. It should be noted that the Tax Code does not regulate relations arising when charging customs payments. It further does not apply to oil contractors in accordance with the Law “On Hydrocarbon Resources” (the tax regime for such entities is determined by oil contracts).

2. Registration with the Tax Authorities

A taxpayer registers on the basis of an application to be filed with a tax agency within 10 days of the date of state registration in the case of a legal entity (separate division) or an individual who is an individual entrepreneur or a legal entity (separate division), and in the case of other persons within 10 days of the date of occurrence of circumstances under which tax obligations arise.

In the case of a joint venture, the 10-day period starts on the date of entering into a joint venture agreement.

Person who work under employment agreements (contracts) or civil-law contracts are subject to registration as taxpayers in the procedure established by the State Chief Tax Service.

3. Persons to be registered with the tax authority

The following persons should be registered with the Tax Authority of Turkmenistan:

- i. Physical persons – individual entrepreneurs;
- ii. Legal entities – registered in accordance with legislation of Turkmenistan, including foreign legal entities which have registered branch or representative offices in Turkmenistan;
- iii. Legal entities which are not covered by the close b) above, but which form permanent establishments by performing activities in the territory of Turkmenistan
- iv. Physical persons – if they work based on employment or civil contracts in Turkmenistan, - should be registered by their employers;
- v. Physical persons - not covered by the closes a) and d) above if their activities result in tax liabilities as per tax legislation of Turkmenistan;

4. Requirements for registration with the tax authority

Physical persons – entrepreneurs and legal entities have to apply for registration with the Tax Authority within 10 days of the day of state registration.

All the other persons should register with the Tax Authority within 10 days from the date when obligation to pay taxes arises.

5. Certificate on registration with tax authority

Tax Department registers persons applying for the registration at the date of application and issues Certificate of Tax Registration within 3 days upon submission of all the necessary documents¹.

6. Labour taxes and contributions

Individual Income Tax²

Citizens of Turkmenistan, foreign citizens and persons without citizenship are payers of Individual Income Tax in Turkmenistan.

For the purpose of Individual Income Tax those persons who stay in Turkmenistan 183 or more days in the calendar year are considered to be tax residents.

Tax residents in Turkmenistan are liable for individual income tax on income received in the territory of Turkmenistan and abroad.

Non-residents in Turkmenistan are liable for the individual income tax only on the income received from Turkmenistan sources.

Personal Income Tax should be calculated and paid in Turkmenistani Manat.

Turkmenistan has a marginal personal income tax rate of 10%.

6.1.1 Taxation of personal income received from employment

Income received from employment with legal entities and individual entrepreneurs in Turkmenistan should be taxed at source of payment at the rate of 10%. Calculation of tax is based on cumulative annual income and should be done on monthly basis.

Tax withheld from employees should be paid to the State Budget of Turkmenistan not later than the date when income is actually paid.

Information concerning revenues paid to employees and Individual Income Tax withheld shall be submitted by employer to the relevant Tax Authorities not later than 25th of the month following the reporting period.

6.1.2 Taxation of personal income not related to employment

Regular Tax Regime

The following physical persons should pay tax on the income not related to employment:

- persons receiving income from other physical persons who are not tax agents (persons required to withhold tax);
- residents of Turkmenistan who receive income from overseas sources;
- individual entrepreneurs and physical persons receiving income under civil contracts;
- persons receiving income not taxed at source by tax agents.

² Tax Code of Turkmenistan, Chapter 6

Rate of tax for all kinds of income, apart from income received from gambling industry is determined at 10%. Income received from gambling industry should be taxed at special rates provided in the Attachment 1.

Tax should be transferred to the State Budget of Turkmenistan not later than the 10th day of the second month following the reporting period.

Personal Income Tax Declaration should be filed not later than 25th of the month following the reporting period.

Simplified Tax Regime

Instead of personal income tax, individual entrepreneurs engaged in certain types of business are subject for simplified tax system.¹

Persons engaged in the subject activities are liable for fixed patent fee² and also additional patent fee calculated at the rate of 1% of the gross revenues of the taxpayer.

Simplified Tax Declaration should be filed not later than 25th of the month following the reporting period.

6.1.3 Tax and Reporting Periods³

Tax period is defined as a calendar year.

Reporting period is defined as a calendar year. For some kind of revenues reporting periods are determined as first six months of a calendar year and a calendar year.

6.2 Social Insurance Contributions

The State Social Insurance contributions should be made by a Legal entity that employs local individuals and applied on Gross earnings, such as salaries, wages or any other types of remunerations (paid in cash and/or in kind).

Thus, Employer is liable for 20% of the State Social Insurance contribution on Employee's gross income that is normally withheld on the day of payment.⁴

There is no compulsory state pension or medical insurance contributions as far as the employee is concerned. However, the employer may withhold such contributions from the employee's remuneration based on the voluntary written application submitted by the employee.⁵

7. VALUE ADDED TAX⁶

7.1 Determination of VAT Amount

The amount of Value Added Tax to be paid to the State Budget (Treasury) is defined as the difference between the amounts of VAT received for the goods sold, works and services provided and the amounts of VAT paid to suppliers of goods, works or services.

¹ List of subject activities is determined by the Cabinet of Ministers of Turkmenistan.

² Patent fees for each type of subject activities is determined by the Cabinet of Ministers of Turkmenistan.

³ Tax Code of Turkmenistan, Article 191.

⁴ Regulation on the methods of payment of the State Social Insurance contributions to the Budget approved by the Resolution of the President of Turkmenistan #4828 dated September 8th, 2000

⁵ Resolution of the President of Turkmenistan #5109 dated February 26th, 2001 On payment of contributions to the Public Pension and Medical Insurance

⁶ Tax Code of Turkmenistan, Part II, Chapter 1

7.2 Filing VAT Declaration

VAT Declaration shall be submitted to the Tax Department not later than 20th day of the month following the reporting period.

7.3 Payment of VAT

Terms of payment of VAT to the State Budget of Turkmenistan are defined as:

- For legal entities and partnerships (if at least one of partners is a legal entity) - 25th day of the month following the reporting period. Additionally, advance payments in amount of 1/3rd of the tax calculated of the previous reporting period should be paid on 13th and 23rd days of the reporting month and on 3rd day following the reporting month.
- For physical persons and partnerships (if all partners are physical persons) - 1st Rukhnama (September) of the current year for the reporting period from 1st Turkmenbashi (January) to 30 Oguz (June) and 1st Novruz (March) for the reporting period from the 1st Gorkut (July) to 31st Bitaraplik (December).

7.4 Rate of VAT

Rate of VAT is determined at 15% for all taxable operations.

7.5 Tax and Reporting Period

Tax and reporting periods are defined as:

- For legal entities and partnerships (if at least one of the partners is a legal entity) - a calendar month
- For physical persons and partnerships (if all the partners are physical persons) - from the 1st Turkmenbashi (January) till the 31th Oguz (June) and from the 1st Gorkut (July) to the 31st Bitaraplik (December).

8. PROFIT TAX¹

8.1 Subject to tax

Gross (balance sheet) profit of enterprise is subject to corporate profit tax.

Residents of Turkmenistan are taxable on all profits earned both in the territory of Turkmenistan and outside.

Non-residents are taxable only on profits earned in the territory of Turkmenistan.

Gross (balance sheet) profit is determined as the difference of income received from the sale of goods, assets, works and services provided as well as other non-sales transactions, gains or losses less allowed deductible expenses.

8.2 Profit Tax Rates

Profit Tax rates are as follows:

- 8% for legal entities - residents of Turkmenistan
- 20% for other legal entities

¹ Tax Code of Turkmenistan, Part II, Chapter 5

- 15% on dividends and other distributions to shareholders of legal entities (172 of NK)
- profits from gambling industry activities are set at the rates provided in the Attachment 1

8.3 Terms of Tax Payments

Taxpayers should make advance payments of profit tax on 13th and 28th of each month of tax year. Additional payments should be made as per the results of the first quarter, six months, nine months and a tax year within 5 days after the fixed date of submission of Profit Tax declaration.

8.4 Tax and Reporting Periods

Tax period is determined as calendar year. Reporting periods are determined as first quarter, first six months, nine months and calendar year.

Tax and reporting periods for entities engaged in gambling industry are determined as a calendar month.

8.5 Reporting Requirements

Profit Tax Declaration should be filed to the Ministry of Taxes in the terms provided for filing of financial reporting.

Persons engaged in gambling industry activities should file profit tax declaration by the 20th day of each calendar month.

Persons paying dividends and other similar income to legal entities should provide tax authorities with information on such payments, entities receiving them and taxes paid and transferred to the State Budget in respect of these payments by the 20th day of the month following the month when the income was paid.

8.5 Taxation at Source of Payment

The following types of income of non-resident legal entities are subject to withholding tax at the source of payment:

- Dividends and other means received from shareholding in legal entities - residents in Turkmenistan, interests, rental, insurance payments, royalties, provision of services and rendering of works, sale of immovable property, fines and interests received for breach of contracts, international transportation – 15%;
- Income received from rent of marine vessels and aircrafts - 6%;

Withholding tax from the source of payment should be withheld from the gross income by the legal entities of Turkmenistan, the representative offices of non-resident legal entities, individual entrepreneurs paying such income directly to the non-resident legal entities performing their activities in the territory of Turkmenistan without setting up a permanent establishment.

The tax should be paid within 5 days from the date when it was withheld.

Report should be submitted to the Tax Authority not later than 20th of the following month when the payment was made.

9. Property tax¹

The following assets are subject to property tax:

For legal entities - residents of Turkmenistan: operational fixed and tangible current assets located both in the territory and outside of Turkmenistan.

For legal entities - non-residents of Turkmenistan performing their activities in Turkmenistan through branch or representative offices, or permanent establishments: operational fixed and tangible current assets located in the territory of Turkmenistan and belonging to the branch, representative office or permanent establishment in Turkmenistan.

For legal entities - non-residents of Turkmenistan which do not form branch, representative office or permanent establishment: immovable property of operational purposes located in the territory of Turkmenistan

9.1 Tax rate and payment deadline

The property tax rate is 1% of the taxable base for tax period. Tax should be paid not later than 25th day of month following the reporting period.

9.2 Tax and reporting periods

Tax period is a calendar year. Reporting periods are - first quarter, first half a year, nine months and a calendar year.

9.3 Tax Declaration

Tax Declaration should be presented to the Tax Department not later then 20th day of the month following the reporting period.

10. Excise tax²

The following goods are subject to excise tax

Commodity Code according to Foreign Economic Activities Classification	Description	Rate of tax
Goods Produced in Turkmenistan		
220300	Beer	10%
From groups 2204,2205,2205	Wines, strong alcohol drinks (except for must) with percentage of alcohol: - up to 20% - from 20% to 30% - more then 30%	15% 30% 40%
271000250, 271000260, 271000270, 271000290, 271000320, 271000340, 271000360	Petrol	40%
271000590, 271000610, 271000690	Diesel Oil	40%

¹ Tax Code of Turkmenistan, Part II, Chapter 4

² Tax Code of Turkmenistan, Part II, Chapter 2

Imported Goods		
220300	Beer	-50% from the customs value, but not less than 20 thousand manats per 1 litre
From groups 2204, 2205, 2208	Wines and other alcohol drinks with alcohol content: - up to 20% - more than 20%	-100% from customs value, but not less than \$100 thousand manats per 1 litre - 100% from customs value, but not less than 150 thousand manats per 1 litre
From groups 2207, 2208	Spirit used for preparation of alcohol drinks	- \$4 per 1 litre
2402	Tobacco goods	- 30% of customs value, but not less than \$0.5 per 1 package
2403	Other industrially produced tobacco and industrial substitutes of tobacco	- \$10 per 1 kg
From group 8703	Cars (apart from ambulance cars and special cars for disabled people)	\$0.3 per m ³ of engine

10.1 Tax and Reporting Period

Tax and Reporting period is a calendar month.

10.2 Tax Declaration and Payment of Tax

Excise Tax Declaration should be provided not later than 20th day of the month following the reporting period.

Payment of tax should be made not later than 25th day of the month following the reporting period.

11. SUB-SURFACE TAX¹

11.1 Tax payers

Physical and Legal resident and non-resident entities extracting minerals, extracting and using subsurface and overground water for extraction of chemical elements and compounds in the territory of Turkmenistan are the payers of Sub-surface Tax.

11.2 Taxable base

Taxable bases for calculation of the tax are:

For hydrocarbon resources (crude oil and natural gas) – revenue from sale of hydrocarbon resources before VAT.

For other minerals, chemical elements and compounds – profit of their sales.

11.3 Tax rates

Rates of tax are defined as follows:

¹ Tax Code of Turkmenistan, Part II, Chapter 3

a) For extracted and sold hydrocarbon resources:

Crude oil – 10%

Natural and oil gas - 22%

b) Other minerals, chemical elements and compounds depending on the level of profitability:

Level of Profitability	Tax rate (%)
Less than or equal 15	0
More than 15, but less than or equal 17	30
More than 17, but less than or equal 19	32
More than 19, but less than or equal 21	35
More than 21, but less than or equal 23	40
More than 23, but less than or equal 25	45
More than 25	50

12. Tax and reporting periods

Tax and reporting periods are a calendar quarter.

13. Filing of tax declaration and payment of tax

The tax should be paid to the State Budget within 25 days following the calendar quarter.

Persons engaged in activities with hydrocarbon resources should make advance payments of tax in amount of 1/3rd of tax calculated for the previous tax period. Advance payments should be made each month not later than 25th day of the month.

Tax Return should be filed within 20 days following the calendar quarter.

14. Municipality taxes and duties

14.1 Advertisement duty¹

Physical persons and legal entities that deal with the advertisement of commercial nature via mass media, advertisement agencies or on their own on fixed boards are payers of advertisement duty.

14.1.1 Rates of Advertisement duties

Rates of the advertisement duty are as follows:

- For persons dealing with advertisement via mass media and advertisement agencies – 5% of the cost of advertisement paid to the subject companies
- For persons placing advertisement on their own:
 - 5% of the cost of advertisement in Ashkhabad city;
 - 4% of the cost of advertisement in cities – centres of velayats;
 - 3% of the cost of advertisement in other settlements

14.1.2 Tax and Reporting Periods

Tax and reporting periods are a calendar quarter.

14.1.3 Filing of Declaration and Payment of advertisement duties

¹ Tax Code of Turkmenistan, Part II, Chapter 7, Paragraph 1

Declaration on advertisement duty shall be submitted not later than 20th day of the month following the reporting period.

Advertisement duty should be paid not later than 25th of the month following the reporting period.

15. Area Development Duty¹

The following persons are the payers of Area Development Duty:

- a) Physical persons working for legal entities incorporated in Turkmenistan or branches or rep offices of foreign legal entities based on employment contracts or any other civil contracts related to fulfilment of labour duties;
- b) Physical persons receiving income individually from scientific, creative and other activities;
- c) Individual entrepreneurs physical persons;
- d) Legal entities incorporated in Turkmenistan and foreign legal entities performing business activities in Turkmenistan via permanent establishments.

15.1 Rates of Area Development Duty

- a) Physical persons-entrepreneurs - 03% of gross revenue, but not less than 10 000 manats per month.
- b) Other Physical persons – 10 000 manats per month.
- c) Farm Associations – 0.5% of the profit
- d) Other Legal Persons – 1% of profit

16. Tax on sale of vehicles²

Legal and physical persons selling vehicles in the territory of Turkmenistan are payers of the Tax on Sale of Vehicles. Tax rate is defined at 5% of the market value of sold vehicle.

a. Dog Owner Duty³

Physical persons - owners of dogs (apart from war-dogs) living in cities are liable to pay the Dog Owner Duty.

The rate of the dog owner duty is 0.4% of computation index per year.

b. Tax on the Owners of Car Parks⁴

Payers of Duty

Legal and physical persons using land spots for cars parking business are the payers of tax on the Owners of Car Parks.

16.1 Rates of Duty

Tax rates are defined per 1 square metre of the car park depending on the location as follows:

- 150 000 manat – Ashkhabad city
- 120 000 manat - centres of velayats and cities Turkmenbashi and Abadan
- 100 000 manat – other settlements (212 of NK)

¹ Tax Code of Turkmenistan, Part II, Chapter 7, Paragraph 2

² *Ibid*, Paragraph 4

³ Tax Code of Turkmenistan, Part II, Chapter 7, Paragraph 5

⁴ *Ibid*, Paragraph 3

16.2 Tax and Reporting Period

Tax and reporting period is a calendar quarter.

16.3 Filing of Declaration and Payments of Duty

Tax declaration should be submitted to the Tax Authorities not later than 20th of the month following the reporting period. Payment should be made not later than 25th of the month following the reporting period.

Section VII. LEGAL AND TAX REQUIREMENTS PROVIDED BY THE LAW OF TURKMENISTAN ON HYDROCARBON RESOURCES

The Law of Turkmenistan on Hydrocarbon Resources regulates relationship evolved from performance of petroleum works in the territory under jurisdiction of Turkmenistan including sea and territorial waters, licensing, making and execution of contracts on performance of such works, regulates authorities, rights and responsibilities of government bodies and companies performing petroleum works.

Provisions of the said Law have a prevailing force over the provisions of other legal acts of Turkmenistan in case any contradictions arise between them.¹

1. Licensing of petroleum works²

The Law “On Hydrocarbon Resources” establishes a legal framework for the exploration, development and other activities related to the production of hydrocarbon resources in Turkmenistan. The Turkmenistan Law “On Hydrocarbon Resources” includes provisions relating to the licensing of petroleum operations. Under the Law “On Hydrocarbon Resources”, a mineral license is defined as a legal instrument instituted in the form of a legal act, and, when issued by the competent authority of Turkmenistan, grants its holder the right to conduct all or any specific type of Petroleum Operations.

Under the Regulations on the Competent Body for the Use of Hydrocarbon Resources, the Competent Body represents an administrative agency which has an exclusive authority to conduct negotiations, issue mineral licenses and conclude agreements, as well as to monitor the implementation of agreements relating to the use of hydrocarbon resources in Turkmenistan.

The following types of licenses are provided by the current law:

License on Exploration

License on Extraction

License on Exploration and Extraction

All types of licenses are granted based on results of tender or direct negotiation.

All licenses are issued for a period of up to 6 years.

Foreign legal entity and a physical person may be granted a license only if registered in Turkmenistan as an individual entrepreneur or as a branch office or as a participant of a joint venture.

Pursuant to Article 8 of the Law “On Hydrocarbon Resources”, all three types of licenses may be issued either by:

- tender proceedings; or
- direct negotiations carried out by the Competent Body with a prospective contractor.

2. Agreements

The following types of agreements may be concluded for the purpose of petroleum works:

- Production Sharing Agreement;
- Agreement on Joint Activities.

¹ Law of Turkmenistan on Hydrocarbon Resources dated 30 December, 1996, Article 2

² *Ibid.*, Chapter 3

3. Royalty on Petroleum Production

Pursuant to Article 48 of the Law “On Hydrocarbon Resources”, the rates of royalty payments are to be established by agreement, that is, through negotiations between the parties. The model production sharing agreement (Article 34.1) provides for royalty payments calculated on the basis of daily oil and gas production. According to this model agreement, such payment should be made within 15 days of the end of each calendar quarter.

4. Finance and tax regime¹

4.1 Operations in Foreign Currencies

Rules on use of foreign currencies are provided by the current legislation of Turkmenistan. Payments for sale of relevant part of hydrocarbon resources may be transferred to the contractors’ accounts at any bank in Turkmenistan or abroad. In any case contractors are responsible for obtaining and keeping of the appropriate bank statements for the control and submittal to the relevant government authorities of Turkmenistan.

4.2 Customs Regime

All materials and equipment imported for the performance of petroleum works are exempt from the customs duties and shall not be registered with the Commodity Exchange of Turkmenistan.

4.3 Taxes and Duties

Contractors and sub-contractors for the petroleum works are liable only for the following taxes and duties:

- Profits Tax. Amount of tax is determined by the legislation of Turkmenistan. Rules of determination of taxable profit is determined by the relevant agreement;
- Royalty for extraction of hydrocarbon resources. Rate of the royalty is determined by the relevant agreement.

Also, payment of one-time bonus may be provided by the relevant agreement.

Employees of contractors and sub-contractors are liable for the Personal Income Tax in accordance with the current legislation of Turkmenistan.

If the new taxes and duties are imposed by the current legislation of Turkmenistan after signing of the contract, contractors and sub-contractors would be liable for only those taxes that substitute the taxes which had been paid by contractor or sub-contractor before the date when the changes in legislation took place.

4.4 Accounting and Audit

Turkmen legislation requires every legal entity, including representative offices and branches of foreign legal entities, to maintain accounts according to Turkmen accounting standards set out by the Law “On Accounting”.¹⁶ The accounting period is the calendar year. An enterprise with foreign participation is required to submit its annual financial reports to its owners as well as to state statistics, tax and monitoring agencies.

There are also additional accounting standards for the oil and gas industry, which define accounting and financial reporting requirements associated with the exploration and production of oil and gas.

¹ Law of Turkmenistan on Hydrocarbon Resources dated 30 December, 1996., Chapter 9

Contractors and sub-contractors shall keep their accounting records with regards to remunerations and social benefits provided to Turkmenistani employees in accordance with the current legislation of Turkmenistan.

For the purpose of determination of revenues and costs and taxable profit of contractors accounting records should be kept in accordance with the international accounting practices applicable for the petroleum industry and according to the provisions of the relevant agreement. Records should be kept in a hard currency.

Regular and annual reporting should be transferred to the national currency of Turkmenistan at the official exchange rate of the Central Bank of Turkmenistan.

Accounting records may be audited by the competent government bodies as per the terms stipulated by the relevant agreement.

Section VIII. DOUBLE TAX TREATIES

Turkmenistan has entered into the Double Tax Treaties with the following countries:

- Slovak Republic;
- Russian Federation;
- Ukraine;
- Republic of Armenia;
- Georgia;
- Republic of Kazakhstan;
- Republic of Uzbekistan;
- Republic of Turkey;
- Islamic Republic of Iran;
- Islamic Republic of Pakistan;
- Republic of India;

Double tax treaties with the following countries are inherited from the former USSR:

- United States of America;
- Federal Republic of Germany;
- United Kingdom of Great Britain and Northern Ireland;
- Japan;
- Austrian Republic;
- Malaysia;
- Kingdom of Belgium;
- France Republic.

Section IX. COURT SYSTEM

1. Court System

The Turkmen court system consists of three levels: (1) the Supreme Court of Turkmenistan (Turkmen Supreme Kazyyet); (2) six regional (velayat) courts (including one for the city of Ashgabad); and (3) 61 local city and district courts.

In 2000, new legislation was passed eliminating a separate system of State Commercial courts and creating the Turkmen Arbitration Court (Turkmen Arachy Kazyyet) as a part of Turkmen system of courts of general jurisdiction.³³ The Arbitration Court became the court of first instance for the hearing of commercial disputes. Its decisions can be appealed in the Supreme Court of Turkmenistan.

District (city) courts are courts of original jurisdiction. Velayat level courts, and their city court equivalent, exercise control over district courts and function as courts of appeal for some district court decisions. They are also courts of first instance for a determined number of cases.

The Supreme Court is the highest court in Turkmenistan. It acts as a court of appeal with regard to cases heard by the lower courts, a collegium of the Supreme Court, and as a court of original jurisdiction. There are several bodies in the Supreme Court, including the Plenum of the Supreme Court, the Presidium, and the collegia on Civil, Criminal and Arbitration cases.

Unfortunately, Turkmenistan's court system is extremely unpredictable and many judges are inexperienced in the issues involved in complex commercial disputes.

Court hearings are conducted issues in accordance with the rules of the Codes on Arbitration Procedure and Civil Procedure.

2. Judges

In accordance with the Constitution, all court judges are appointed by the President without legislative review, with the exception of the Chairman of the Supreme Court.

Judges are appointed to office for a five-year term.

9.3 International Arbitration

The Law "On Foreign Investments" provides that disputes between foreign investors, individuals and legal entities should be resolved by either the judicial bodies of Turkmenistan or by arbitration if agreed to by the parties. This may include international arbitration at a forum selected by agreement.

The Law "On Hydrocarbon Resources" provides for the parties to resort to international arbitration between the contractor and the Government on disputes concerning issue or refusal to issue operating licenses and implementation of the contract. All other disputes should be settled by judicial bodies of Turkmenistan unless otherwise provided for in the relevant production sharing or joint venture agreement between the Government and the contractor.

Attachment 1**Rates of Tax Applicable to the Income Received from Gambling Industry**

Type of Income	Tax Rate, Turkmenistani Manats per day
Each slot-machine	400,000
Each Play-table	5,000,000
Each Seat	100,000 or
Each Square Meter of Gambling Premises	40,000 or
Each Receipt of Cash from Cash Register	500,000