

Doing Business Guide Turkmenistan

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*Guide to doing business and investment
in Turkmenistan*

2010 Edition

The information in this book is based on tax law and legislative proposals . It is intended to provide a general guide only on the subject matter and is necessarily in a condensed form. It should not be regarded as a basis for ascertaining the tax liability in specific circumstances. Professional advice should always be taken before acting on any information in the booklet.

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1 Turkmenistan profile and investment climate

Investor considerations

- Turkmenistan is situated in the centre of Central Asia
- The country is divided into five provinces
- The government structure is highly concentrated in the hands of the President
- The economy is under continuous reform

1.1 Introduction

Map



Geography and climate

Turkmenistan (also known as Turkmenia) is a country in Central Asia. The name Turkmenistan is derived from Persian/Sanskrit, meaning "land of the Turkmen". Until 1991, it was a constituent republic of the Soviet Union, the Turkmen Soviet Socialist Republic. It is bordered by Afghanistan to the southeast, Iran to the southwest, Uzbekistan to the northeast, Kazakhstan to the northwest, and the Caspian Sea to the west.

According to the CIA World Factbook 2008 figures, Turkmenistan ranks 7th in the world in terms of its GDP growth rate. (Source: <http://en.wikipedia.org/wiki/Turkmenistan>) Although it is wealthy in natural resources in certain areas, most of the country (over 80%) is covered by the Karakum (Black Sands) Desert.

At 188,457 mi² (488,100 km²), Turkmenistan is the world's 52nd-largest country. It is slightly smaller than Spain, and slightly larger than the US state of California.

The centre of the country is dominated by the Turan Depression and the Karakum Desert. The Kopet Dag Range, along the south-western border, reaches 2,912 meters (9,553 ft). The Turkmen Balkan Mountains in the far west and the Kugitang Range in the Far East are the only other significant elevations. Rivers include the Amu Darya, the Murghab, and the Hari Rud.

The climate mostly consists of an arid subtropical desert, with little rainfall. Winters are mild and dry, with most precipitation falling between January and May. The area of the country with the heaviest precipitation is the Kopet Dag range.

The Turkmen shore along the Caspian Sea is 1,768 km long. The Caspian Sea is entirely landlocked, with no access to the ocean.

The major cities include Ashgabat (capital), Türkmenbaşy (formerly Krasnovodsk) and Daşoguz.

Turkmenistan is divided into five provinces or welayatlar (singular - welayat) and one independent city:

Province	Capital City	Population
Ahhal	Annau	722,800
Balkan	Balkanabat	424,700
Dasoguz	Dasoguz	1,059,800
Lebap	Turkmenabat	1,034,700
Mary	Mary	1,146,800

(Source:
[www://en.wikipedia.org/wiki/Turkmenistan](http://en.wikipedia.org/wiki/Turkmenistan))

History

Turkmenistan, once part of the Persian Empire, was a territory where rule and governors changed several times in the ancient times. It is believed that the roots of the Turkmen people trace back to the Altay Mountains. From the 4th century BC through the 11th century AD, this territory was invaded by Alexander the Great, the Parthian Kingdom, the Arabs, and the Turks of the Seljuk Empire.

In the 12th century, the horse-breeding Turkmen people fell under the reign of Genghis Khan. After his death, the territory of Turkmenistan passed, over the subsequent 7 centuries, into the hands of different empires, suffered wars, and lacked unity and centralised control.

The Russian Empire started to dominate the area by the end of the 19th century. As a consequence of the Soviet Revolution in the Russian Empire, in 1924, Turkmenistan became a part of the Soviet Union as the Turkmen Soviet Socialist Republic.

On 27 October 1991, Turkmenistan became a sovereign state under Saparmurat Niyazov's presidency (under a lifelong term) with its capital, Ashgabat, located in south central Turkmenistan.

The country has a single-party system and was ruled by the President Saparmurat Niyazov until 21 December 2006, when he died of cardiac arrest. Presidential elections were held on 11 February 2007. Gurbanguly Berdimuhammedov was declared the winner with 89% of the vote. He was sworn in on 14 February 2007. The new president has promised to continue the policies of his predecessor but also to introduce reforms, including unlimited access to the internet, better education and higher pensions. (Source: http://news.bbc.co.uk/1/hi/world/asia-pacific/country_profiles/1298497.stm).

1.2 Government structure and legal system

Formally, the Turkmenistan Constitution declares the country a democratic presidential republic with independent legislative, judicial, and executive branches of power. The rule-of-law, democratic freedoms, and political rights are also formally proclaimed in the Constitution. In reality, power is highly centralized and is characterised by a strong presidency.

In September 2008 Turkmenistan adopted a new constitution designed to improve the isolated Central Asian state's democratic credentials and assure investors of its economic openness.

Under the constitutional changes Turkmenistan abolished a Niyazov-era legislative body Khalk Maslahaty (People's Council) whose 2,500 delegates were hand-picked by the president. The People's Council's main functions were transferred to the President, Mejlis (Parliament), Cabinet of Ministers and Supreme Court of Turkmenistan.

The new constitution vows to respect property rights and market economy principles -- a welcome signal for Western investors seeking a share of its energy resources.

The new constitution fixes the presidential term at five years and gives the Turkmen leader some of the powers previously held by the disbanded legislative body, such as appointing regional governors.

Although, Turkmenistan is a single-party political system, according to the Government, it has begun a transition towards a multi-party system

The President

The head of state, executor of power, and the highest official in Turkmenistan is the President. According to the Constitution, the President is a guarantor of Turkmenistan's national independence, neutrality status, territorial integrity, and observance of the Constitution and international agreements. The President

is also the Supreme Commander of Turkmenistan's Armed Forces. Subject to consent of the Majlis, the Constitution entitles the President to appoint and dismiss the Chairman of the Supreme Court, the General Prosecutor, the Minister of Internal Affairs, and the Minister of Justice. The new Constitution fixes the presidential term at five years and gives the Turkmen leader some of the powers previously held by the disbanded legislative body (Khalk Maslahaty), such as appointing regional governors, lead the State Security Council and to select its members..

According to the new Constitution, certain rights of the Khalk Maslahaty such as amending and adopting the Constitution, conducting referendums, announcing Presidential and Parliamentary elections, ratifying and denouncing international treaties, and addressing issues of border delimitation and territorial division within Turkmenistan are delegated to the expanded 125-member parliament, namely Majlis.

The Majlis (Parliament)

The Majlis is the legislative authority of Turkmenistan.

New Constitution, adopted in September 2008 has enlarged it to 125 seats from previous 65.. The Majlis has the following functions and rights:

- adopt, interpret, amend, and monitor the enforcement of laws;
- schedule elections of the President and Majlis;
- review and approve the Cabinet of Ministers' action programs, the

state budget of Turkmenistan, and the budget implementation report;

- review proposals from the President of Turkmenistan to appoint and dismiss the Chairman of the Supreme Court, the General Prosecutor, the Minister of Internal Affairs, and the Minister of Justice.

The Cabinet of Ministers

The Cabinet of Ministers is the executive and administrative authority in Turkmenistan, formed and headed by the President. The Cabinet of Ministers includes the Deputy Chairmen of the Cabinet of Ministers and ministers. According to the Constitution, the Cabinet of Ministers organises the enforcement of the laws of Turkmenistan, the legal acts of the President of Turkmenistan; implements measures to secure and protect citizens' rights and freedoms, and to safeguard property, public order, and national security; and manages the activities of government institutions, state enterprises, and organisations and can repeal decisions of ministers and other agencies.

The Supreme Court

Judicial authority in Turkmenistan is exercised by the Supreme Court of Turkmenistan and other courts. The Chairman of the Supreme Court reports to the President concerning the performance of the judicial system. The judges of the courts are appointed by the President.

1.3 People

Population

Turkmenistan is a relatively large but sparsely inhabited country (approximately five million people). The majority of Turkmenistan's citizens are ethnic Turkmen with sizeable minorities of Russians, Persians and Uzbeks. Smaller minorities include Kazakhs, Azeris, Balochis, Armenians, Koreans, and Tatars. Turkmen is the official language of Turkmenistan, though Russian still is widely spoken as a "language of inter-ethnic communication".

The name Turkmen, both for the people and for the nation itself, is said to be self-referential from the period the Russians first encountered the people, parsing as Trk-men, or "I am Trk."

Religion

There is no state religion, but about 89% of the population is Muslim, primarily Sunni, with strong elements of local shamanism and Sufi mysticism included in its practices.

Although the constitution provides for religious freedom, the Law on Freedom of Conscience and Religious Organizations, which was amended in 1995 and again in 1996, also provides for significant government control of religion. For example, religious congregations are required to register with the government in order to hold gatherings and proselytise. A congregation must have at least 500 members within the locality in which it is registering. This restriction has caused problems for a number of minority religions, especially the Baha'i faith. Baha'is have been prevented from conducting services since 1997 and have been questioned by Interior Ministry authorities for holding private prayer meetings in their homes.

Ethnic Turkmen, Uzbeks, and Kazakhs are nominally Sunni Muslim. Ethnic Russians, who account for about 4% of the population (2003), are largely members of the Russian Orthodox Church. There are small communities of Roman Catholics, Pentecostal Christians, Seventh-Day Adventists, Baptists, Hare Krishnas, Lutherans, and Jews; however, none of these faiths are legally able to maintain churches.

Education

The Government had somewhat weakened Turkmenistan's education system. Mandatory secondary education was reduced from 10 to 9 years under President Niyazov, but, in February 2007, the newly-elected President, Gurbanguly Berdimuhammedov, announced the reinstatement of 10 years' mandatory education starting with the 2007-2008 academic year. The new President also increased higher education to five years and medical training to six years.

Teaching English and other foreign languages also had been significantly reduced in most schools' curricula, but in 2006, English language instruction was officially reinforced again in school programs. The general lack of foreign language learning has hampered the ability of students to study outside Turkmenistan and work with international companies.

The adult population of Turkmenistan was relatively well-educated under the Soviet system, but lacked various marketable skills, including foreign languages and computer literacy. The lack of quality educational institutions and the government's unwillingness, until recently, to support technical training has impeded the development of a work force capable of supporting high-tech foreign investment projects. Lack of familiarity with modern technology and business practices has been an additional weakness within the available labor pool, but the recent reforms should begin to address these shortcomings.

1.4 Economy

General description

Turkmenistan is said to possess the world's fifth-largest reserves of natural gas and substantial oil resources. Also half of the country's irrigated land is planted with cotton, making the country the world's tenth-largest producer of it. With the 2007 harvest of 920,000 tons, Turkmenistan is the second-largest cotton producer in the former Soviet Union after Uzbekistan. However, the crop yield has been steadily declining since independence because of poor irrigation and management practices.

Turkmenistan's economy depends vitally on production of natural gas, oil, petrochemicals and, to a lesser degree, cotton and textiles. The country is the second largest gas producer in the former Soviet Union. Production figures have been consistently climbing since 1998 when Turkmenistan was virtually cut off from all outside markets by Russia. Turkmenistan's

2007 output was an estimated 72 billion cubic meters (bcm); the bulk of which (50 bcm) went to Russia. Turkmenistan's 2007 oil production increased by almost a million tons to 9.8 million tons. Among other major exports are liquefied natural gas (LNG) and polypropylene. In accordance with the National Program for development of the oil and gas industry of Turkmenistan it is planned to increase gas production up to 250 bcm and oil production to 110 bcm.

All other existing industrial production, with the exception of food processing, needs substantial development. The country's key industries are still state-owned. According to independent estimates (European Bank of Reconstruction and Development EBRD Transition Report 2005), the private-sector share in GDP is 25%, mostly concentrated in retail trade, services and food processing.

Between 1998 and 2002, Turkmenistan suffered from the continued lack of adequate export routes for natural gas and from obligations on extensive short-term external debt. At the same time, however, the value of total exports has risen sharply because of increases in international oil and gas prices.

Turkmenistan relies almost exclusively on Russia for its energy export routes because most of the pipeline network is laid on Russian territory. Turkmenistan currently holds a contract with Gazprom (Russian state gas giant) to supply annually 50 bcm. In the first half of 2008, Turkmenistan received \$130 per 1,000 cubic meters from Gazprom; that figure increased to \$150 per 1,000 cubic meters on July 1 and is subject to further increase from 2009 based on the principle of market-based price formation in the framework of long-term gas purchases by Gazprom in Turkmenistan. Turkmenistan has contracted to provide China 30 bcm per year, beginning in 2010 when a new pipeline (Turkmenistan-Uzbekistan-Kazakhstan-China) is due to be completed. Turkmenistan also exports to Iran about 8 bcm a year.

According to the decree of the Peoples' Council of 14 August 2003, electricity, natural gas, water and iodised salt will be provided free of charge to citizens up to 2030; however, shortages are frequent.

The Government recognizes the need to diversify the economy by promoting private sector development and investment in non-hydrocarbon activity, and launched several structural reform measures in 2008.

The exchange rate unification, removal of limits on foreign exchange transactions, and redenomination of the manat are positive steps. It is also gradually liberalizing the financial sector. In June 2008, it issued new foreign exchange regulations, which enable the central bank to provide banks with ready access to foreign exchange and allow commercial banks to open correspondent bank accounts to facilitate trade finance.

The newly adopted constitution highlights the protection of private property rights. The Government has also passed new laws and legal reforms on foreign investments, licensing, special economic zones; amended the tax code; abolished import duties on some foodstuffs; and lowered import duties on some other products. In addition, in October 2008, the president signed a decree permitting the Ministry of Finance to establish a stabilization fund as a cushion against the impact of the global slowdown.

Limited exposure to international financial markets, a small external debt, and strong fiscal and external balances have kept Turkmenistan relatively protected from the global crisis. Favorable contractual prices for its gas exports shall boost further the country's fiscal revenues and external reserves. This positive outlook provides a great opportunity to deepen and accelerate the economic reforms, which were initiated in 2008 with the successful unification of the exchange rate.

Economic performance continued to be strong, in spite of the global economic crisis. Real GDP growth of 10.5 percent in 2008 was supported by large public investments in construction and infrastructure and high activity in transportation, communication, and retail. Inflation peaked at 18.9 percent in July 2008, due to price adjustments for petroleum products and transportation, high international food prices, and some impact of the May 2008 unification of the exchange rate. However, it moderated to 9 percent by year-end, due to declining international food prices, cuts in tariff rates, and improved access to foreign exchange that facilitated access to competitively priced imports.

The 2008 state budget closed with a surplus of 11.25 percent of GDP on account of strong revenue performance and the slow execution of investments. Hydrocarbon revenues were boosted by high oil and gas prices and the impact of the unification of the exchange rate. Improvements in tax and customs administration raised the buoyancy of non-hydrocarbon revenues. Staff estimates that a large positive balance from off-budget operations brought the overall fiscal surplus to about one third of GDP.

The new President Berdymukhammedov's election platform included plans to build a gas line to China, to complete the Amu Darya railroad bridge in Lebap province, and to create special border trade zones in southern Balkan province - a hint that the new post-Niyazov government will work to create a friendlier foreign investment environment.

While there are some initial positive changes that have occurred under Berdymukhammedov the switch in presidents does not change the overall economic policy outlook for Turkmenistan. Official data continues to be clearly manipulated. The government has long reported overall economic growth levels at more than double what most outside observers estimated true expansion was in Turkmenistan.

Hydrocarbon exploitation remains the cornerstone of Turkmenistan's economic policy, with energy export revenues remaining the pillar for government revenues.

2 Foreign investment

Investor considerations

- Economy is highly regulated by the State
- The country's key industries are state-owned
- Turkmenistan adopted a number of Laws regulating foreign investment, however the laws have not been effectively implemented
- Foreign investors generating revenue in foreign currency do not generally have problems with repatriating their profits

2.1 Foreign investment

Investment climate

The government regularly proclaims its wish to attract foreign investment, but its state-control mechanisms and restrictive currency-exchange system have created a stiff foreign-investment climate.

Historically, the most promising areas for investment are in the oil and gas sector. Other industries where the government has been most receptive to foreign investment are the textile and construction sectors, which all acutely need modern technology, knowledge of international markets and experience in international business practices. The national program entitled "Economic, Political and Cultural Development Strategy for Turkmenistan for the period to 2020" specifies government plans for the petroleum, chemical, power generation, mining, metallurgy, textiles, construction, agriculture, transportation, communication and other industries. In October 2006, Turkmenistan adopted the Oil and Gas Development Plan for 2007-2030. All investment proposals are screened for compliance with these government priorities.

Until recently, foreign companies have largely shunned investment in Turkmenistan's energy sector, despite the country's estimated 600 million barrels in oil reserves and 100 trillion cubic feet (Tcf) in gas reserves. In comparison to neighboring Caspian states Kazakhstan and Azerbaijan, Turkmenistan's hydrocarbon base – particularly its liquid hydrocarbons, which are more transportable than gas and thus more marketable from the landlocked Central Asian region – is much smaller, and in competition with Kazakhstan and Azerbaijan for international oil company investment dollars in the 1990s following the collapse of the Soviet Union, Turkmenistan came in a distant third.

Until recently, only a handful of foreign energy investors have active assets in the country, including the Arab Emirates' Dragon Oil, Malaysia's Petronas, and the UK's Burren Energy. However, there is renewed interest among foreign energy companies, both national oil companies and the "majors", with several signing new deals and others evaluating new opportunities.

In addition to the country's comparative dearth of oil reserves, Turkmenistan's geographic location on the eastern side of the Caspian has also proven a deterrent to foreign investment. Not only does the country lack access to an open water port to deliver its to world markets, but it has no real pipeline infrastructure to export its output. Turkmenistan's ability to export its gas production is limited by the fact that the country is essentially surrounded by competing gas-producing states and only has one major export pipeline system.

Finally, the lack of established rule of law, inconsistent regulatory practices, and unfamiliarity with international business norms are major disincentives to foreign investment.

However, the changes in leadership in Turkmenistan may mark an opportunity for international oil companies. Berdymukhammedov has begun to respond to inquiries by IOCs, reciprocating their interest in Turkmenistan by making a breakthrough invitation in May 2007 to Chevron to invest in the Central Asian republic. Several other companies, including TNK-BP and LUKoil, have also held meetings with the Turkmen leader with regard to possible investments in Turkmenistan, with LUKoil apparently coming away with the rights to develop three undisclosed blocks in the Turkmen sector in Caspian Sea. (Source: Global Insight Report dated 16 July 2007)

Since independence in 1991, Turkmenistan has received an estimated \$2.86 billion in foreign direct investment (FDI) (EIU Turkmenistan Country Report, October 2006). In October 2006, the Government stated

that Product Sharing Agreement (PSA) operators (Petronas, Burren Energy, Maersk/Wintershall Consortium, Mitro (Panama)/Turkmennebit Consortium) had invested \$1.34 billion in their local operations. The EBRD Transition Report Update (May 2006) projected net FDI for 2006 to total \$308 million.

The financial crisis has had only a limited effect on the Turkmen economy so far. The banking system continues to be government controlled and is not integrated into the global financial system. Demand for the main source of revenue and growth – natural gas – has not declined. Rather, interest is increasing, with positive price developments on the country's long-term commitments.

The business environment needs to improve further if private sector activity is to increase outside the hydrocarbon sector.

Strengthening administrative capacity is vital to encourage more firms to enter the small business sector and improve access to finance. Substantial resources must be committed to the regions to reverse the under-investment in physical infrastructure.

Regulatory legislation

The ongoing legislative reforms are aimed to improvement of investment climate.

In addition to changes made to Constitution of Turkmenistan, in October 2008 Turkmenistan passed new edition of Law "On Foreign Investment". Adopted Law slightly liberalizes tightly closed economy of Turkmenistan. New edition of Law allows foreigners to acquire real estate and enterprises. Foreign investors will also have the right to form joint enterprises and to form their own enterprises. The national currency has been redenominated as well. The changes are cosmetic, however.

.Foreign-investment activities are affected by appropriate bilateral or multilateral investment treaties, the Law on Enterprises of 2000, the Law on Business Activities (last amended in 1993), and the Land Code approved in 2004. The Law on Foreign Investment, as amended in 2008, is the primary legal instrument defining the principles of investment. The law also provides for protection of foreign investors.

Foreign investment in the oil and gas sector is subject to the Law on Hydrocarbon Resources (new edition effective 20 August 2008). The Law on Hydrocarbon Resources regulates offshore and onshore petroleum operations in Turkmenistan, including petroleum

licensing, taxation, accounting and other rights and obligations of state agencies and foreign partners. The Law on Hydrocarbon Resources supersedes all other legislation pertaining to petroleum activities, including the Tax Code.

The 2000 Civil Code defines what constitutes a legal entity in Turkmenistan, as well as requirements for registration. According to the Land Code, foreign companies or individuals are permitted to lease land for non-agricultural purposes, but only the president has the authority to grant the lease. Foreign companies may own real estate property, other than land.

Although Turkmenistan has adopted a number of laws designed to regulate foreign investment, the laws have not been consistently or effectively implemented. The concentration of power in the office of the president has undermined the rule of commercial law. Legislation is regularly made -- or overturned -- by presidential resolution.

Restrictions on foreign investments

Turkmenistan is constantly moving towards opening of investment climate. However, decisions to allow foreign investment are still politically driven; companies from "friendly" countries are more successful in winning tenders and signing contracts. The country has significantly reduced its foreign borrowing, particularly from international donor organisations, because of leadership fears that overseas loans may lead to political dependency on foreign states.

The government of Turkmenistan has a history of capricious and arbitrary expropriation of the property of local businesses and individuals. The government has frequently refused to pay any compensation, much less fair market value, when exercising "the right of eminent domain."

Foreign investors are required to adhere to the sanitary and environmental standards of Turkmenistan. Foreign investors' products should be of equal or higher quality than prescribed by the national standards. Assets and property of foreign investors should be insured with the State Insurance Company of Turkmenistan (Article 55 of the Law on Hydrocarbon Resources, Article 3 of Insurance Law). National accounting and financial reporting requirements also apply to foreign investors. There is a general requirement for foreign investors that 70% of the company's personnel be local. The government can make exceptions for foreign construction companies executing large-scale turnkey projects.

Investment incentives

Tax and investment incentives can be negotiated on a case-by-case basis. The President may issue special resolutions granting taxation exemptions and other privileges to specific investors while recouping the initial investment.

Equipment purchased by the investor as part of the registered capital, other assets to be used in production, as well as personal household effects of investors' personnel, are duty free.

The government mostly favors long-term investment projects that do not require regular hard-currency purchases of raw materials from foreign markets. Textile factories operated by Turkish companies using domestic resources and labor serve as model investment projects supported by the government; these companies encounter relatively few currency conversion problems and enjoy tax holidays. Otherwise, there are no set requirements for local sourcing or exporting specific percentages of output.

Under the Law on Hydrocarbon Resources, PSA concessions have been made to 5 foreign energy companies: 3 offshore and 2 onshore concessions for 20-25 years. All of the existing concessions are in the oil sector.

Turkmenistan, while not a member of the World Trade Organization (WTO), has enacted a number of laws in key areas relevant to the WTO: investment, banking, intellectual property rights, customs, and privatisation. However, the legislation is not enforced uniformly. Turkmenistan is not a signatory to and is not in compliance with the Agreement on Trade-Related Investment Measures (TRIMS).

Foreign Exchange Issues

Turkmenistan achieved considerable success in putting in place economic reforms, especially those relating to the efficient management of the new foreign currency regime which resulted from exchange rate unification, as well as the successful introduction of a redenominated national currency at the start of 2009.

The exchange rate unification was completed on 1 May 2008 at the rate of 14,250 manat per US dollar, a level broadly consistent with the country's strong external position. The central bank is committed to supporting the fixed rate and is ensuring the banking sector has ready access to foreign exchange.

Turkmenistan has redenominated its national currency, the manat as of 1 January 2009. In the redenominated

currency, one new manat equals 5,000 old ones. It is hoped that the new manat will eliminate the black market and create a single-system currency exchange rate.

The exchange of old banknotes will be carried out until December 31, 2009. In this period old and new banknotes will be used as a legal means of payment in all forms of cash payments.

Foreign bankers consider this newly-permitted currency-exchange system to be a modest step towards overall liberalisation of the foreign exchange market. The Central Bank is known to control the unofficial rate by releasing large quantities of U.S. dollars into the unofficial (but legal) exchange market.

Turkmenistan imports the vast majority of its industrial equipment and consumer goods. The government's foreign-exchange reserves pay for the industrial equipment and various investment projects. The demand for hard currency in Turkmenistan's private retail sector seems to be satisfied by the unofficial but legal exchange market and the newly-introduced possibility to also buy dollars in banks at the "near-unofficial" rate.

3 Banking, Finance and Insurance

Investor considerations

- All banks, including commercial banks, are controlled by the state
- Commercial banks are prohibited from providing services to state enterprises
- There is no capital market in the country
- The State Commodity and Raw Materials Exchange was established as the state regulation body for export-import transactions and wholesale market for goods

3.1 Banking system

Banking market

In late 2008 money demand contracted while the Central Bank of Turkmenistan (CBT) undertook large policy lending operations. To satisfy a spike in foreign exchange demand and sterilize the large liquidity injection from its lending operations, the CBT intervened heavily in the foreign exchange market. The successful introduction of the new manat in January 2009 and a stable exchange rate have raised confidence in the currency and demand for manat money has been growing during the first quarter of 2009.

Turkmenistan's financial system significantly hinders the free flow of financial resources. Most numerous and largest in size are the six state banks: State Bank for Foreign Economic Relations (Vnesheconombank), Dayhanbank, Turkmenbashi Bank, Turkmenistan Bank, Halk Bank, and President Bank. These state banks have narrow specialisations-- foreign trade, agriculture, industry, society, savings and mortgages, respectively. Two additional commercial banks, one joint (with Ziraat Bank) Turkmen-Turkish bank, and a branch of the National Bank of Pakistan also operate in Turkmenistan.

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The U.S. Export Import (EXIM) Bank is not currently considering short and medium-term U.S. export financing for projects in Turkmenistan, although a number of U.S. companies have used EXIM Bank funds or guarantees in the past to finance their exports to Turkmenistan. State banks mostly serve state enterprises and allocate credit on subsidised terms to the state enterprises. Foreign investors are only able to get credit on the local market through EBRD equity loans.

3.2 Capital Markets

There is no capital market in Turkmenistan, although the 1993 Law on Securities and Stock Exchanges outlines the main principles for issuing, selling and circulating securities. The Law on Corporations further provides for issuance of common and preferred stock, and bonds and convertible securities in Turkmenistan, but in the absence of a stock exchange or investment company, there is no market for securities. In the mid 1990's, the government turned some nearly bankrupt state-run enterprises into corporations. Foreign entities may theoretically purchase shares in these companies, but have shown no interest in so doing.

The State Commodity and Raw Materials Exchange was established in 1994 as the state regulation body for export-import transactions and wholesale market for goods. It undertakes control over the prices, volumes and kinds of goods imported and exported as well as duly execution of all agreements and contracts concluded.

Foreign trade contracts for export-import of certain listed goods should be registered at the State Commodity and Raw Materials Exchange and the contract parties are required to pay a commission fee in the amount of 0.2% of the contract amount.

4 Importing and Exporting

Tips for importers/exporters

- Turkmenistan is not a member of any free trade agreements and is not a member of the Commonwealth of Independent States customs union
- In practice, the excise tax system applies higher rates to imported goods than domestic
- There are ten foreign trade zones in the country
- Customs duty rates are decreased for certain imported goods

4.1 Trends in customs policy

Amendments were recently introduced to the Customs Code of Turkmenistan providing relief and incentives to the consumers, entrepreneurs and travelers. Below are the most salient features.

As of 1 August 2008, the number of documents required for import and export transactions by the entrepreneurs – legal or natural persons – has been reduced. Procedure of payment for import and export duties has been simplified. Computerization of records at every step will save time. Changes to the customs legislation have been introduced, reducing or abolishing duties on many items.

Export of fertilizers, non-ferrous metals, their alloys, and products made of non-ferrous metals is prohibited. State enterprises often receive preferential treatment; for example, wool carpets produced at state factories are exempt from customs duties. In contrast, private carpet producers have to pay 100% customs duties for exporting carpets. (Source: <http://www.state.gov/e/eeb/afd/2007/80754.htm>)

Turkmenistan has very few free trade agreements (e.g. Georgia) and is not a member of the Commonwealth of Independent States customs union. It has signed trilateral agreements with Iran and Ukraine, Iran and Armenia, Iran and Bangladesh, and Iran and the Philippines and is pursuing more such agreements. Turkmenistan has most-favoured nation status with the United States and Austria. Duties run from 10% to 100%, the average being 30%.

4.2 Foreign Trade Zones

The Law on Economic Zones for Free Enterprise was enacted in 1993. The law guarantees the rights of businesses -- foreign and domestic -- to operate in these

zones without profit ceilings. The law forbids nationalisation of enterprises operating in the zones and discrimination against foreign investors. Other rights guaranteed include:

- Preferential tax status, including exemption from profit tax if profits are reinvested in export-oriented, advanced technology enterprises;
- Repatriation of after-tax profits;
- Exemption from customs duties, except on product of foreign origin;
- Export of products;
- Setting product prices.

There are ten such zones in Turkmenistan: Mary-Bayramaly, Ekerem-Hazar, Turkmenabat-Seydi, Bakharly-Serdar, Ashgabat-Anew, Ashgabat-Abadan, Saragt, Guneshli, Ashgabat International Airport, and Dashoguz Airport. The zones have not been successful in drawing increased economic activity. Despite the legal guarantees, the government continues to meddle in business decisions even for firms located in these zones. The zones have not been financially supported by the government and lack infrastructure, such as advanced telecommunications, to attract businesses. The infrastructure at Ashgabat International Airport is more developed and has modern cargo transit facilities.

In July 2007, President Berdimuhamedov announced the creation of the Avaza free tourist zone along 16 kilometers of the Caspian Sea coast. The Ministry of Economy and Finance (MOEF) promised exemption from MOEF registration fees and Value Added Tax (VAT) to contracting and management companies, full convertibility of all manat-denominated operations earnings into hard currency for amortization of foreign loans, payment for construction work or services, purchase of raw materials, equipment, and goods. This zone will have a special regime for making cash payments and overseas electronic transfers, and equipment and materials used in facility construction or management will be exempt from calibration fees in the zone. Amendments to the Land Code passed in October 2007 include a provision for 40-year land leases for construction of tourism facilities and five-year leases for retail and services points, warehouses and car parking lots. Tourism-related services such as catering and hotels -- but not casinos -- are also granted VAT exemption. Construction equipment used in the Zone will not be subject to the one percent property tax. In addition, the government will not levy income taxes related to tourist accommodations and catering for the first 15 years.

5 Business entities

Investor considerations

- Foreign private entities have the right to establish subsidiaries as well as representative and branch offices
- The government prohibits engagement in certain areas of commercial activity
- Government approval is necessary for acquisitions and mergers of certain enterprises, specifically those with state shares

Legal framework

Foreign and domestic private entities in Turkmenistan have the right to establish and own business enterprises, though this is associated with onerous bureaucratic requirements. The 2000 Law on Enterprises establishes state and private businesses in various legal forms (state enterprises, sole proprietorships, cooperatives, partnerships, corporations and enterprises of non-government organisations). The law also allows foreign companies to establish subsidiaries. The Civil Code of Turkmenistan and the Law on Enterprises provide for representative and branch offices to operate in Turkmenistan; these offices do not have legal entity status, but have to be registered at the Ministry of Economy and Finance.

The government prohibits engagement in certain areas of commercial activity, e.g. mass media. The 2008 Law on Licensing Certain Types of Activities (new edition) lists 44 types of activities that require government licenses. Currently, state entities do not require licenses. Often, private entities need to do more than public enterprises to access markets and credit.

The Law on Enterprises and the Law on Corporations provide for acquisitions and mergers. However, Turkmenistan's legislation is not clear about acquisitions and mergers involving foreign parties, nor does it have specific provisions for disposition of interests in business enterprises, both local and with foreign participation. Government approval is necessary for acquisitions and mergers of certain enterprises, specifically those with state shares. In 2005, a branch of a U.S. telecommunications company operating in Turkmenistan was sold to a Russian company. After disputes, and the threat to revoke the company's operating license, the government eventually recognised the new owner.

Legally, there are no limits on foreign ownership or control of companies. In practice, the government has

allowed fully-owned foreign operations only in the oil sector and, in one case, in cellular communications (MTS of Russia). There are various ways for the government to discriminate against disfavored foreign as well as domestic investors: excessive tax examinations, license extension denial, and customs clearance and visa issuance obstacles. Starwood Hotels and Resorts operated two Sheraton-franchise hotels in Ashgabat, but left Turkmenistan in 2006 as a result of disagreements over interpretation of their contract with the government.

In most cases, the government has insisted on maintaining a majority interest in any joint venture (JV). Foreign investors have been reluctant to enter JVs controlled by the government, as a result of competing business cultures and conflicting management styles. Foreign investors may only sell shares, or divest, with government permission, although there is no specific legislation. Coca-Cola Bottlers has been in Turkmenistan since the mid-1990s in a JV with the government.

5.1 Forms of business entities

The Law Concerning Enterprises allows for the creation of state, individual, cooperative, publicly held, and joint-stock companies, as well as other economic entities. Branches, subsidiaries, and representative offices of foreign entities are allowed, and the choice of structure depends on individual business needs and contractual provisions.

The Law sets out permitted activities for entities, procedures for registration and liquidations, accounting, reporting, and minimal capital requirements.

5.2 Registration requirements

Newly established entities are normally required to undergo legal (state), tax, and statistics registration. However, in practice, certain exceptions exist whereby a foreign entity can operate without registering its presence in Turkmenistan. Tax registration is a long and bureaucratic process in which certain documentation has to be collected, prepared and filed. Early planning to take into account the long process of tax registration is recommended.

Administrative fines apply for late registration. Such fines may become a personal liability of the responsible personnel. In certain instances, if a failure to register is associated with a considerable amount of income, particularly when this income is untaxed, administrative sanctions often become substantial. Cases exist where local Turkmenistan tax bodies have prosecuted tax claims against foreign companies through the competent authorities in foreign countries.

6 Labour relations and social security

Investor considerations

- Turkmenistan's regulations require that all vacancies be posted via special "labor exchanges"
- The government requires foreign companies to have 70% of the local workforce be local citizens
- The responsibility for arranging work permits and visas for expatriate personnel is borne by the host entity in Turkmenistan
- The social security program is financed by 20% contributions from employers, and a voluntary contribution of 4% or more from employees

6.1 Labour market

Labor matters are governed by the Labor Code of Turkmenistan, the Law on Leaves of Absence, the Law on Occupational Safety, the Law on Pensions and a number of regulations approved by presidential resolutions. Turkmenistan joined the International Labor Organization in 1993.

The official unemployment rate is understood to be considerably understated. Not only is the number of privately employed people gradually falling, but also the number of state employed people is declining due to budget cuts. Recently, a number of jobs have been cut in medical and agricultural industries, with the duties now being performed by soldiers (considered the cheapest workforce available).

Unemployment and underemployment are major problems. In 2007, the real unemployment rate was estimated to be as high as 60% (one of the worlds highest); the percentage of the population living below the poverty line was thought to be 58% a year earlier. Much unemployment has resulted from continual cuts in the public sector since independence.

Since 1997, Turkmenistan has introduced "labor exchanges" or employment offices, operating as self-sustaining entities under local government offices. Turkmenistan's regulations require that all vacancies be posted via such labor offices. Although most vacancies in the labor exchanges' databases are low-skilled jobs, employment offices have not been an effective tool in reducing unemployment. Finding suitable candidates via these offices is also problematic for international companies. Investors recruit directly, though candidates still pay a nominal fee to the relevant labor exchange.

Unions

The Association of Trade Unions of Turkmenistan -- successor to the Soviet-era system of government-controlled trade unions -- is the only trade union allowed in the country. The Association's unions are divided along both sectoral and regional lines, and all social and economical activities are limited.

6.2 Working Conditions

The normal workday in Turkmenistan is 8 hours, and the standard workweek is 5 days/40 hours less for

certain groups of people as invalids, pregnant women, etc.. In practice, many employees are required to work at least half a day on a sixth day. The minimum age for employment of children is 16. In a few heavy industries it is 18. The labor law prohibits 16-18 year-olds from working more than 6 hours a day, and only with parental and trade union permission. Health and safety regulations exist, but are commonly not enforced.

Overtime, normally, 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. 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%.

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.

compensation were introduced in 1998. Maternity leave at full pay is provided for 112 days. Compensation during maternity leave shall be paid at 100% from the Social Security Fund. Employees should be entitled to certain compensations for the period of their illness at the rate from 60% to 100% to be paid from Social Security Fund.

6.3 Foreign Personnel

Expatriate employees can work in Turkmenistan only if a work permit is obtained from the Turkmenistan government. The work permit is in addition to the required entry visa. The general procedure for obtaining a work permit includes the preparation of a formal invitation for foreign individuals by the host entity with approval by the competent authority. This procedure is bureaucratically burdensome, and may take considerable time, effort, and paperwork.

As a rule, the responsibility for arranging work permits and visas for expatriate personnel is borne by the host entity in Turkmenistan, which can be a Turkmenistan legal entity or a branch of a foreign legal entity. Thus expatriate personnel working for a foreign company with a short term contract in Turkmenistan may need to rely on an invitation by the Turkmen client.

Additionally, the Turkmenistan legislation envisages labour content rules whereby only 30 percent of total staff positions may be held by expatriate employees.

With the enactment of the new Tax Code effective from 1 November 2004, Turkmenistan began to recognise secondment arrangements as a form of providing foreign personnel.

6.4 Social security

Turkmenistan's current social security system was created in 1991, and provides old age, disability and survivor pensions to employed persons. A social pension is provided to those not eligible for employment-related pensions. Old age pensions are provided at age 62 for men who have 25 years of covered employment and at age 57 to women with 20 years of employment.

The social security program is financed by 20% contributions from employers, and a voluntary contribution of 4% or more from employees. Unemployment benefits are provided for up to one year. Sickness and maternity benefits and workers'

7 Accounting and Audit requirements

Investor considerations

- Local accounting standards applied
- Subsurface use contracts may allow other accounting standards

7.1 Accounting

The accounting system in Turkmenistan is in the stage of development. A number of steps have been taken towards implementation of accounting reform, beginning with an adoption of The Law of Turkmenistan on Accounting on 20 December 1996, which sets out the basis of the conduct of accounting and related requirements.

The Law Concerning Enterprises requires that companies registered in Turkmenistan maintain accounting books in compliance with Turkmenistan accounting standards. For reporting purposes, accounting records should be maintained in local currency and, where foreign currency transactions take place, conversion should be performed at the official exchange rate of the Central Bank of Turkmenistan as of the transaction date. Subsurface use contracts can contain accounting requirements that are different from the general Turkmenistan rules.

8 Tax System and Administration

Investor considerations

- Tax registration is a long and bureaucratic process in which certain documentation has to be collected, prepared and filed
- The application of the double tax treaty is problematic
- Few double tax treaties in force

8.1 Tax system

A new Turkmenistan Tax Code came into force on 1 November 2004 and was amended several times since then, but with most tax rates remaining unchanged. It is anticipated that, for some time, the local tax authorities will have a poor understanding of this new Tax Code. As such, tax legislation in practice is likely to be interpreted inconsistently or improperly by the tax authorities.

Registration Requirements

The Law Concerning Enterprises allows for the creation of state, individual, cooperative, publicly held, and joint-stock companies, as well as other economic entities. Branches, subsidiaries, and representative offices of foreign entities are allowed, and the choice of structure depends on individual business needs and contractual provisions.

Newly established entities are normally required to undergo legal (state), tax, and statistics registration. However, in practice, certain exceptions exist whereby a foreign entity can operate without registering its presence in Turkmenistan. Tax registration is a long and bureaucratic process in which certain documentation has to be collected, prepared and filed. Early planning to take into account the long process of tax registration is recommended.

Administrative fines apply for late registration. Such fines may become a personal liability of the responsible personnel. In certain instances, if a failure to register is associated with a considerable amount of income, particularly when this income is untaxed, administrative sanctions often become substantial. Cases exist where local Turkmenistan tax bodies have prosecuted tax claims against foreign companies through the competent authorities in foreign countries.

8.2 Principal Taxes

The following are the principal taxes in Turkmenistan:

- Profits Tax
- Taxes on profit repatriation
- Individual Income Tax
- Income Tax Withholding
- Value Added Tax
- Excise Tax
- Subsurface Use Tax
- Property Tax.

8.3 Tax Treaties

Currently, Turkmenistan has only a few double tax treaties in force. Turkmenistan is a successor to a number of double tax treaties concluded by the USSR, while some treaties were concluded and ratified by the government of Turkmenistan. The countries listed below are considered to have valid tax treaties with Turkmenistan:

Austria	Japan
Armenia	Kazakhstan
Belarus	Pakistan
Belgium	Russia
France	Slovakia
Great Britain	Turkey
Germany	Ukraine
Georgia	USA
India	Uzbekistan
Iran	

We are aware of cases where some countries with which a double tax treaty was not signed but officially recognised by Turkmenistan as inherited from the

Soviet era, refused to confirm validity of the treaty with Turkmenistan. Therefore, we suggest that the administrative procedures be started ahead of commencing activities in Turkmenistan.

The Turkmenistan Tax Code states that provisions of international agreements prevail over Turkmenistan legislation. However, the application of double tax treaties is not automatic, which in practice means that burdensome and time consuming administrative procedures for refund of tax could be followed if preliminary application for tax relief was not secured.

8.4 Tax Returns and payments

Tax Returns

According to the Tax Code, the Main State Tax Service of Turkmenistan together with the Ministry of the Economy and Finance of Turkmenistan are liable to elaborate and approve forms and procedures for the submission and completion of a tax declaration. Tax declarations shall be submitted by each taxpayer for each tax due to be paid by this taxpayer. Tax declarations shall be submitted to the tax service at the location of registration of the taxpayer and shall be signed by the taxpayer, and in appropriate cases – by its legal or authorised representative.

Tax declarations may be submitted personally by the taxpayer and also in the form of postal parcels. The tax service shall not have the right to reject acceptance of a declaration and shall be obliged, at the request of the taxpayer, to put a mark on a copy of the tax declaration of its acceptance and the date of its submission. When sending a tax declaration by mail, the date indicated on the post stamp of the location of sender shall be considered to be the date of its submission.

Payments

The duty to pay taxes is acquired by taxpayers from the time of occurrence of circumstances providing for payment of taxes in accordance with the requirements of the tax legislation of Turkmenistan.

The duty to pay taxes is discharged:

- by the payment of due amounts of taxes;
- by the death of a given taxpayer or his recognition as deceased in accordance with the procedure established by the Civil Code of Turkmenistan;
- pursuant to a Kazyet decision;

- with the liquidation of a given taxpayer legal entity because of insolvency (bankruptcy);
- with the occurrence of other circumstances by which the Tax Code conditions the discharge of the duty to pay taxes.

8.5 Assessments

The assessment of amounts of taxes is carried out by the taxpayer independently. The Tax Code stipulates cases where the assessment of the tax is entrusted to the tax agent, tax service and other authorised bodies participating in the tax relations.

Computation of amounts of tax for each type of tax is carried out in accordance with the procedure established by the Code or other acts of the tax legislation of Turkmenistan.

Confirming the amount of tax is the responsibility of the tax service based on the results of a cameral audit. When amounts of tax are assessed by tax agents, authorised bodies participating in legal tax relations, the assessed amount of tax is recognised as confirmed.

The following is recognised as the basis for confirming amounts of taxes:

- information contained in tax declarations of the taxpayer;
- accounting information on taxable items;
- materials of tax inspections, audit;
- other information which has significance for taxation.

Information for the assessment of tax received by violating the legislation of Turkmenistan may not serve as the basis for establishing amounts of tax.

Amounts of tax specified by the taxpayer in the tax declaration is recognised as confirmed, provided the tax service has not notified the taxpayer within the period of time established for the delivery of a notice resulting from a cameral review, of the necessity to introduce amendments to the assessed amount of tax.

The tax service should compute and confirm the valid amount of tax, if based on the actual facts revealed and the essence of the transactions carried out, which are significant for taxation, it follows that the legal form (type and content) of a given transaction or a series of transactions leads to evasion of tax payments.

The tax service has the right, in the case of facts evidencing the intention of the taxpayer to evade taxes, to carry out an advanced assessment and confirmation of the tax and demand its immediate payment.

8.6 Appeals

Complaints concerning decisions of the Tax Service (TS) and actions of the TS officials shall be filed by the taxpayers to the superior Tax Service or to the Kazyet.

A decision on a complaint may be appealed to the superior Tax Service unit within one month from the date of its receipt. In the case of failure to comply with said deadline due to a sufficient reason, that period may be extended by the superior Tax Service unit pursuant to the application of the person who filed the complaint.

The timing for the petition and handling of a complaint by the Kazyet is defined in accordance with the legislation of Turkmenistan.

According to the Tax legislation the complaint can be filed in writing and must contain the name, surname and address of the taxpayer, his tax number, date of the complaint, decisions to be challenged and acts of the

Tax Service, its officials or employees, as well as motivation of the complaint.

Appeals of decisions of the Tax Services, acts of its official persons or employees shall not suspend the implementation of the decision or act appealed, except for the cases provided for by the Tax Code.

The head (deputy head) of the tax service who is handling a complaint, where there are sufficient reasons to believe that the decision appealed or the act do not comply with the legislation of Turkmenistan, has the right fully or partially to suspend the implementation of a decision appealed or the act for the period of handling the complaint.

Where upon the results of handling a complaint a previously assessed amount of tax and applied financial sanctions as well as penalties are subject to change, a resolution previously adopted in accordance with the with the Tax Code in relation to the audit report, shall be subject to abolition and a new resolution shall be passed.

By Law the tax service considers and takes a decision on a complaint not later than one month after the date of its submission. The taxpayer who filed a complaint shall be informed in writing of the decision taken.

Appealing decisions of the tax service, acts of its official persons shall suspend the measurement of the statute of limitations for the actual period of the appeal procedures.

The Law also applies to the tax agent as well as other authorised bodies participating in tax legal relations, to officials and employees of those bodies.

8.7 Withholding Taxes

Turkmenistan source income generated by a foreign legal entity, which has no permanent establishment in Turkmenistan, is generally subject to withholding tax at the source of payment at 15% (6% for income from the lease of sea and air vessels). Double Tax Treaty relief may be available for withholding tax if a foreign entity is a resident of a country which has a valid double tax treaty with Turkmenistan and if the foreign entity complies with certain administrative procedures.

8.8 Tax audits

The tax service may carry out cameral (in-house) and documentary tax audits. A tax audit may cover not

more than six tax years of activities of a given taxpayer (tax agent) preceding the date of conducting an audit.

Re-audit of previously audited tax periods is carried out by the superior Tax Service on basis of a resolution of that service.

8.9 Penalties

Financial sanctions imposed are required to be paid within five days from the date of delivery of the resolution. Payment of financial sanctions imposed shall be carried out after the payment of the tax.

Financial sanctions may be imposed on physical persons committing tax violations from the age of sixteen years.

A tax violation committed due to unlawful acts (omission of act), written instructions, decisions and explanations of the authorised bodies participating in legal relations associated with taxes within their bounds of authority, shall not entail imposition of financial sanctions. There are certain requirements in the Tax Code where the penalties are not subject to charge.

When challenging amounts of tax assessed by the Tax Service (Customs Service), the duty of paying financial sanctions imposed must be executed by the taxpayer (tax agent) in respect of the non-challenged amount of the financial sanctions. An amount of financial sanctions which is challenged shall not be paid within the period of the tax service and the Kazyet handling the complaint, but for not more than six months from the date of their imposition.

In that case the tax service (customs service) shall have the right to require from the tax payer a pledge of assets (funds) or a suretiship in respect of the challenged amount of the financial sanctions. Where it is impossible for the taxpayer to comply with said requirements, the duty of paying financial sanctions must be implemented by the taxpayer also in respect of the amount which is challenged.

Adjustment of the established amount of tax shall entail alteration of the financial sanctions imposed previously on that amount of the tax.

Understatement of Amounts of Tax

Understatement of amounts of the assessed tax which emerged due to the understatement by the taxpayer of the tax base and other unlawful acts in respect of a tax assessment entails the imposition on the taxpayer of

financial sanctions in the amount of 40 per cent of the understated amount of the tax unpaid to the State Budget of Turkmenistan.

Failure of a Tax Agent to Perform the Duty of Withholding and Transferring Taxes

The failure of a tax agent to perform the duties entrusted to such agent by the Tax Code with regard to withholding from a taxpayer and transferring to the State Budget of Turkmenistan of amounts of taxes, entails the imposition upon the tax agent of financial sanctions in the amount of 40 per cent of the amount to be withheld and transferred.

Violation of the Prohibition Imposed On the Right to Dispose of Assets

Violation by a taxpayer (tax agent) of the prohibition of the right to dispose of assets which are subject to a tax claim entails the imposition upon the taxpayer (tax agent) of financial sanctions in the amount of 50 per cent of a fair market value of such assets.

Failure to Observe the Duty of Notifying of the Opening an Account in a Banking Institution

Failure of a banking institution to observe the duty of reporting to the tax service on the opening of accounts for physical persons who are individual entrepreneurs and legal entities (their separate units) entails the imposition upon a bank of financial sanctions in the amount of 10 per cent of total funds received in those accounts.

Failure of a Banking Institution to Comply with the Tax Service Decision to Suspend Transactions in Accounts of Taxpayers

The performance by a banking institution of expenditure transactions in accounts of physical persons and legal entities (their separate units) in violation of a decision of the tax service on suspending transactions accounts of a taxpayer entails the imposition upon the banking institution of financial sanctions in the amount of 10 per cent of total funds written off those accounts.

Violating the Procedure for the Inclusion of Taxpayers' Funds

The inclusion by a bank of funds from selling production (goods, work, services) into a loan, deposit or other accounts past the settlement account of a given taxpayer (tax agent), legal entity, entail the imposition of financial sanctions upon the bank in the amount of 10 per cent of the total amount included.

9 Taxation of corporations

Investor considerations

- Three-year tax loss carry forward
- Turkmenistan legal entity is allowed to repatriate funds through dividends
- The safe harbour under the related parties transactions is 20%

9.1 Corporate tax system

Taxable entities

The following entities are generally subject to profits tax in Turkmenistan:

- legal entities that are residents of Turkmenistan;
- legal entities which are non-residents of Turkmenistan carrying out activity in the territory of Turkmenistan through a permanent establishment or receiving income from sources in Turkmenistan.

The following entities are exempt from profits tax:

- the Central Bank of Turkmenistan;
- International Saparmurat Turkmenbashi Foundation.

Taxes on Profit Repatriation

For a Turkmenistan legal entity, repatriation of funds is allowed through dividends, which are subject to income tax withholding at the statutory rate of 15%. Double tax treaties may limit the local withholding tax rate applicable to dividends.

The Tax Code does not prescribe an additional tax on the net (after corporate income tax) profits of a branch (permanent establishment) of a foreign legal entity in Turkmenistan.

Territoriality

Turkmen legal entities, including entities with foreign investment and their branches outside the Republic are

taxable on worldwide profits. Foreign legal entities are taxed on their Turkmenistan source income only, which may include services provided outside of Turkmenistan.

9.2 Taxable Income

Tax Base

An entity operating in Turkmenistan is required to pay Profits Tax. The taxable base is gross revenue less certain allowed deductions, provided that the deductions relate to generating income and are supported with documents. Gross revenue represents not only the amount of income received by the taxpayer from sales of goods and provision of services, but also includes additional income, e.g. in the form of a positive foreign exchange difference, insurance payments, and other.

Tax period

The tax period for profits tax is a calendar year, and the reporting period is the first quarter, first half-year, nine months and a tax year.

Tax periods and reporting periods for tax on proceeds received from gambling is a given calendar month.

Ring fencing

A privileged tax regime may be applied only in respect of activity under authorized contracts/PSAs in accordance with special provision of the Turkmenistan legislation (e.g. the Law on Hydrocarbon Resources).

9.3 Deductibility of expenses

According to the Tax Code, the deductions shall be offset against related revenues as well as costs and losses associated with the business activity or another activity aimed at earning profits (income).

Allowable deductions include cost of sales (services), salary costs, depreciation, amortisation, property tax, social security payments, an allocation of head office costs, and other expenses.

Staff Remuneration

Salary paid to contracted employees is generally deductible. Material assistance, payments for travel to the place of work, costs of payments for certain leisure activities stipulated in the Tax Code are not deductible.

Depreciation

The Tax depreciation is based on accounting depreciation.

For the purposes of assessment of profits (income) tax, fixed assets which were acquired free of charge as well as assets of non-commercial legal entities, budget organisations and public associations are to be excluded from depreciable assets for the purposes of assessing profits (income) tax, even if they are used for earning income.

Depreciation assessments shall be carried out by the lessor (landlord) with regard to rented assets.

Interest

Interest expense associated with the manufacture and marketing of goods, performance of work, rendering of services is deductible in the form of interest on debt obligations of any type.

Financial lease

According to the Tax Code, the gross revenue of the lessor shall comprise the share of the lease payments in excess of the purchase price or construction, manufacture costs of the assets leased.

Deductions of the lessor shall comprise certain costs, except for purchase costs or construction, manufacture costs of assets leased.

The lessee shall deduct from gross revenues the portion of lease payments in excess of the purchase or construction costs, manufacture costs of assets leased. In that respect, depreciation assessments relating to fixed assets (property) received under leases shall be deducted from gross revenues of the lessee.

Losses

The excess of allowable deductions over gross revenues are defined as losses from activities of taxpayers.

Loss carry forward

Losses may be carried forward for subsequent tax (reporting) periods not more than three years and they shall be subject to deduction from gross revenues of the subsequent period.

9.4 Related party transactions

Turkmenistan legislation contains provisions concerning the state supervision of transfer pricing. The new Turkmenistan transfer pricing rules, enacted on 1 November 2004 as part of the Tax Code, include provisions which allow the tax authorities to monitor and adjust prices of certain transactions, including transactions between related parties, foreign trade operations, and transactions where the tax authorities perceive a deviation from the market price by more than 20%.

9.5 Tax Computations

Effective 1 November 2004, the Tax Code applies a profits tax rate of 8% for Turkmenistan legal entities and 20% for all other entities, including branches of foreign legal entities.

Although new, the Tax Code is abundant with uncertainty and ambiguity regarding the computation of profits tax. We recommend that companies undertake sufficient research to understand the true potential impact of profits tax to their specific business situation.

9.6 Other Taxes

Tax on subsurface use

Subsurface use taxpayers are legal entities and individual entrepreneurs extracting natural resources and using land or subsoil waters for the extraction of chemical products. This tax does not normally apply to contractors and subcontractors operating under the umbrella of the Law Concerning Hydrocarbon Resources. Taxable operations include the sale of natural resources extracted by taxpayers and utilisation of natural resources for own consumption. Tax rates vary depending on the goods being extracted. Natural or

associated gas extraction is taxed at 22%, and crude oil extraction is taxed at 10%.

The Petroleum Law also provides waiver from any licensing requirements for eligible subcontractors.

Excise tax

Excise tax is to be paid by all individuals and enterprises that produce and import excisable goods.

The Tax Code provides for a list of goods subject to excise taxes and the applicable rates (indicated as a percentage of the customs value), which vary from 10-40% of the goods value. Excise tax on goods is also calculated at 10-40%, with fixed rates for certain goods.

Property Tax

Taxpayers are legal entities owning property or operating it under a contract. This tax also extends to lease arrangements. Property tax is 1% of the average annual net book value of property used for business purposes.

Special Purpose Duty for Improvement of Urban and Rural Territories

A special duty, aimed at improving urban and rural territories, is imposed on registered entities (e.g., legal entities and branches). The duty applies at 1% of the taxable base for profits tax purposes. Generally, contractors operating under the umbrella of the Law Concerning Hydrocarbon Resources may be exempt from this duty.

9.7 Taxation under Petroleum Law

Law on Hydrocarbon Resources of 20 August 2008 (the Petroleum Law) establishes a legal framework for the exploration, development and other activities related to the production of hydrocarbon resources in Turkmenistan.

Petroleum Law regulates activities in oil & gas sector conducted under subsurface use agreements (PSA, Royalty Contracts, Service Contracts, etc.) between contractors and Turkmenistan Government. The Petroleum Law stipulates a preferential tax regime to contractors under the above agreements, whereby the contractors are only subject to CIT and other subsurface use payments and exempt from all other Turkmenistan taxes. The above preferential tax regime also extends to subcontractors under those agreements.

10 Taxation of individuals

Investor considerations

- Number of days residence criterion
- Non-residents are taxed on their Turkmenistan source income
- Under the Tax Code, no special rules apply to expatriates
- Persons employed by the entities carrying out activities under the Law “Concerning Hydrocarbon Resources” are subject to tax under the Tax Code and the provisions of the agreement for the performance of petroleum operations

10.1 Territoriality and residence

For tax purposes, a foreign individual qualifies as a resident in Turkmenistan if his/her presence in a tax year exceeds 183 days. If an individual is a resident of a treaty country, he/she may be protected from tax residency status in Turkmenistan, but not without adhering to certain administrative procedures. The local employer is required to register its expatriate personnel.

services through a permanent establishment located on the territory of Turkmenistan is subject to income tax.

Under the Tax Code a permanent establishment is understood as a permanent place through which an individual entrepreneur carries out his or her activities in full or in part. Professional services comprise independent scientific, literary, actor, education or teaching activity as well as independent activities of doctors (physicians), lawyers, engineers, architects, auditors and accountants.

10.2 Taxable income

Residents are taxed on their world-wide income, while non-residents are taxed on their Turkmenistan source income.

Income from insurance

Income from insurance payments in the case of a claim is subject to income tax in Turkmenistan.

Income from employment

Under the Tax Code, the remuneration for work performed under an employment agreement (contract) and agreements of a civil law type, as well as directors' emoluments and other similar payments receivable by board members of a legal entity is recognised as income from employment.

In addition to individual income tax, local entities and foreign companies operating in Turkmenistan through representative offices or branches should pay social security in respect of their local personnel (Turkmenistan citizens). Social security is 20% of the gross salary.

Income from entrepreneurial activity

Income associated with the performance of entrepreneurial activities, rendering of professional

10.3 Non-taxable income

The following is a representative list of items exempt from personal taxation:

- State allowances and pensions,
- Income in cash or in kind received from physical persons as a inheritance or gift,
- Compensation for work-related injuries,
- Alimony,
- Compensation for work-related injuries,
- Business trip allowance within the established norms,
- Proceeds from the sale of private property unless the sale relates to entrepreneurial activity,
- Bank interest from deposits with banks,
- Property received as collateral.

10.4 Deductions

Business

Individual entrepreneurs have the right to the tax deductions in amounts of expenditures relating to the earning of income actually incurred by them and confirmed by documents.

In addition, taxpayers who receive income from performance of work (rendering of services) under civil law agreements (in particular from rendering professional services), have the right to deduct the amounts of costs directly associated with the performance of that work (rendering of services), actually incurred by them and confirmed by documents.

10.5 Taxation of non-residents

Under the Tax Code, no special rules apply to expatriates. In calculating the Turkmenistan tax liability, for reporting purposes, expatriates who are normally remunerated in foreign currency should convert their foreign currency receipts into Manats at the official exchange rate on each payment date.

Double taxation

As mentioned earlier in this Guide, double tax treaties of the Republic of Turkmenistan prevail over the Turkmen domestic tax legislation. Turkmenistan has concluded a

number of treaties for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital. Therefore, foreign nationals of treaty countries working in Turkmenistan may take advantage of treaty protection.

Please note that the application of double tax treaties is not automatic, which in practice means that burdensome and time consuming administrative procedures may be followed. We suggest that the administrative procedures be started ahead of commencing activities in Turkmenistan.

In order to utilise the exemption provided by the Double Tax Treaty, non-residents may need to present a certificate from the relevant tax authority proving their tax residency in the home country in the relevant reporting period. Furthermore, these employees may have to present proof that they indeed spent less than 183 days in Turkmenistan, which can be identified from entry and exit stamps in the passport.

Depending on the provisions of particular double tax treaties, a tax credit or exemption may be claimed by such non-residents.

10.6 Tax compliance

Obligations of withholding agents

In accordance with the tax legislation, Turkmen legal entities paying out employment income are responsible for withholding the Income Tax and remitting it to the relevant tax authority. Turkmen employer is also responsible for reporting the amounts of income paid and withheld.

The assessment and payment of tax on income received by physical persons employed by persons carrying out activities in accordance with the Law of Turkmenistan «Concerning Hydrocarbon Resources» as contractors or subcontractors should be carried out in accordance with the Tax Code and the specific provisions of the agreement for the performance of petroleum operations.

Tax returns for individuals

An expatriate tax resident of Turkmenistan should file an income tax return with the Turkmen tax authorities by 1 April following the year of reporting/residence. The tax liability is due by 15 April of the year following the reporting year. Please note that in case of foreign nationals, the legislation assigns responsibility for the declaration of income and ensuring the payment of

related tax to individuals. However if the employment income of foreign national is paid by Turkmen local employer, such income would be subject to taxation at the source of payment. Responsibility for filing the tax declaration will remain.

Local employees do not have to file an annual individual income tax declaration unless they have more than one source of income.

10.7 Pension Law

The Law Concerning Pension was enacted on 25 January 2006. According to this law, Turkmenistan citizens, who participate in a pension plan (on voluntary basis), are generally required to pay at least 2% of their gross income as a pension contribution to the pension fund, which is deductible for individual income tax purposes. An employer is required to withhold pension contributions and remit them to the pension fund.

11 Value Added Tax

Investor considerations

- The Tax Code applies VAT to services provided by non-residents, if the place of supply is Turkmenistan
- Payments of VAT are made in the form of advance payments.

11.1 Introduction

Turkmenistan payers of VAT are legal entities and individual entrepreneurs trading goods and services. Contractors or subcontractors operating under the Law Concerning Hydrocarbon Resources might have certain privileges and exemptions with respect to VAT. The standard rate of VAT is 15%. Certain exceptions exist where state related transactions are concerned.

11.2 Scope of VAT

Place of supply for goods

The place of supply of goods is:

- The place of transferring goods if they are not shipped or transported;
- The location of the goods at the time of their shipment or transportation if they are shipped or transported by the supplier, recipient or another person;
- Assembly of goods if they cannot be delivered to the recipient in the assembled form due to technical reasons, and if assembling work is performed by the supplier.

Place of supply for work/services

The place of supply of work and services is generally deemed to be the place of the service provider's registration/location, unless the place of supply rules provide otherwise.

Works and/or services in respect of immovable property (such as construction, installation, repair, rent) are deemed to be supplied where the immovable property is located. The place of supply of works and/or services related to movable property is recognised as the actual place of supply of such works and/or services.

The place of supply of the following services is recognised as the place of incorporation of the buyer of services:

- Transfer, provision of patents, licences, trademarks, copyrights or other similar rights;
- Advertising;
- Consulting, legal, accounting, audit, engineering, management, data processing and provision of information, carrying out of exploration works;
- Finance, banking, insurance, including reinsurance, excluding services of safe rental;
- Provision of personnel;
- Rent of movable material property, excluding railway transport by legal entities whose main activity is the provision of transportation services;
- Provision of services (works) on software and databases development, installation and modification.
- Provision of the abovementioned services by an agent acting on behalf of and instead of other entity.

11.3 Taxable amount

According to the Tax Code the taxable amount is generally determined on the basis of the prices (tariffs) used by the taxpayer for the sale of goods (work, services).

11.4 Zero rating

Supplies that are zero-rated include but are not limited to the following:

- Export of goods, except the export of gas, oil, cotton and products of these goods;
- Transportation and freight services, including refuelling and other maintenance services in respect of international sea and aircraft used for international transportation;
- Sale of self-produced agricultural production;
- Supplies carried out for the entities defined as contractors and subcontractors under the Law Concerning Hydrocarbon Resources;
- Transportation, loading, unloading, shipment of exported goods, and transit of foreign goods through the territory of Turkmenistan.

11.5 Exempt supplies

Supplies that are exempt include but are not limited to the following:

- Insurance and re-insurance services;
- Certain other financial services;
- Sale of certain foodstuff;
- Educational services;
- Gambling;
- Certain medical services;
- Sale of medicine.

11.6 Non-recoverable input VAT

VAT charged by the supplier may only be offset if:

- A VAT invoice is issued in accordance with the established form;
- Documents confirming payment of supplier invoice are available.

Amounts of value-added tax on purchased goods (work, services) in the case of using those goods for the performance of the following operations are not subject to offset:

- The taxable transactions exempt from value-added tax as specified in the Tax Code;
- Transactions which are not taxable items in accordance with the Tax Code.

11.7 VAT compliance

Records

All source documents must be kept including:

- Commercial invoices,
- VAT invoices,
- Related contracts, and
- Customs documents.

The general rule is that a partially exempt person should maintain separate accounting for its taxable and exempt supplies.

The VAT records must be kept for at least five years and may be kept abroad but the originals of all documents and records should be readily available at the request of the tax authorities.

Whilst an entity may choose to keep records electronically, it must also keep the original hard copy versions for VAT record-keeping purposes.

Information in the VAT invoice

It is vital that a supplier of goods, works or services issues a VAT invoice or 'Schet Factura' according to the format approved by Ministry of Economy and Finance, as only then is the VAT on the invoice recoverable by the customer.

A VAT invoice should be issued within 5 days of the despatch of goods. For continuous supplies, an invoice for the apportioned part of the supply should be issued within the fifth day of the following month.

Returns and payments

The VAT accounting period is the calendar month. A tax registered legal person is required to file each VAT return by the 20th day following the reporting period.

Payments of VAT due must generally be made no later than the 25th day following the reporting period. Payments of VAT due should be made by bank transfer, although in rare cases a cash payment is also permitted.

Payments of value-added tax should be made in the form of advance payments. Amounts of advance payments shall be made as follows:

- in respect of 13th day of the reporting period, in an amount of the advance payment of the last period of the previous reporting period;
- in respect of 23rd day of the reporting month and 3rd day of the month following a reporting period, in an amount constituting one third of total value-added tax assessed in accordance with the tax return for the previous tax period.

Non-resident VAT

The Tax Code applies VAT to services provided by non-residents, if the place of supply is Turkmenistan. This VAT, payable via a withholding mechanism, is the obligation of the purchaser of services registered in Turkmenistan. The method of VAT withholding is not a reverse-charge mechanism as envisaged in the EU or Kazakhstan, and therefore, does not follow that generally accepted pattern.

12 Introduction to PricewaterhouseCoopers

12.1 PricewaterhouseCoopers worldwide organisation

PricewaterhouseCoopers (www.pwc.com), the world's largest professional services network of member firms, helps its clients build value, manage risk and improve their performance.

Drawing on the talents of more than 163,000 people in 151 countries, PricewaterhouseCoopers provides a full range of business advisory services to leading global, national and local companies as well as to public institutions.

These services include audit, accounting and tax advice; management, information technology and human resource consulting; financial advisory services including mergers and acquisitions, business recovery, project finance, and litigation support; business process outsourcing services; and legal services provided through a global network of affiliated law firms.

PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

12.2 PricewaterhouseCoopers in Turkmenistan

PricewaterhouseCoopers

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13 Appendices

Appendix A – Tips for the business visitor

Visitors' visas	Entry Visa Work Permit Working visa
Currency	Manat (TMM).
International time	GMT +5
Business hours	Working hours: 9 am – 6 pm
Statutory holidays	31 December – 1 January – New Year 12 January – Memorial day 19 February – State flag holiday 8 March – International Women's day 9 May – Victory day 18 May – Makhtumkuli Fragi day Last day of May – Turkmen carpet day 6 October – Commemoration day 27-28 October – Independence day 12 December – Neutrality day Two religious holidays are Kurban Bairam and Oraza – the dates of these holidays are changing year by year.
Weights and measures	kilograms and grams kilometres, meters and centimetres
Dates and numbers	10 January 2009: day, month, year (10/01/09)
Numbers	To denote thousands of the monetary units usually periods are used and to denote fraction – commas, e.g. TMM 1.500,59.

Appendix B – Useful sources of information

Government websites

www.tax.gov.tm

www.turkmenistan.gov.tm

Other useful addresses and websites

www.turkmenbusiness.org

www.en.wikipedia.org/wiki/Turkmenistan

www.eurasianet.org

www.nationsencyclopedia.com/Asia-and-Oceania/Turkmenistan.html

www.state.gov

<http://www.fco.gov.uk/en/about-the-fco/country-profiles/asia-oceania/turkmenistan?profile=economy&pg=2>

<https://www.cia.gov/library/publications/the-world-factbook/geos/tx.html>

<http://www.tfeb.gov.tm/eng/index.htm>

http://www.stat.gov.tm/Osn_pokaz/itogi_ru_god_2008.htm

<http://www.imf.org/external/np/sec/pn/2009/pn09107.htm>

Appendix C – Tax rates

Corporate Income Tax	8% - Turkmenistan legal entities, 20% - foreign legal entities and branches
Personal Income Tax	10%
Property Tax	1% of net book value
VAT	15%
Withholding Tax	15%; 6% - income from lease of sea and air vessels