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Global Withholding Tax Alert

For Immediate Action

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Luxembourg / Turkey: New Protocol Signed

On September 30, 2009, a new protocol (“protocol”) was signed between the governments of Luxembourg and Turkey. This is the first protocol to amend the treaty (“treaty”) signed in 2003. Pursuant to Article 2 of the protocol, both countries are to notify one another in writing of the completion of the procedures required by their domestic laws for bringing the protocol into force. The protocol will enter into force on the date of the latter of the notifications. The provisions of this protocol shall have effect with regard to tax years beginning on or after January 1 of the calendar year next following the year of the entry into force of this protocol.

The term “Contracting State” as used below, refers generally to Luxembourg or Turkey, as the case may be.

The protocol incorporates the exchange of information standard reflected in the

Organization for Economic Cooperation and Development (OECD) Model Tax Convention, which generally provides for full exchange of information upon request for all types of taxes without regard to a domestic tax interest requirement or domestic bank secrecy rules, and provides for safeguards of the confidentiality of the information exchanged.

Before amendment by the protocol, Article 26 of the treaty, Exchange of Information, did not specifically require the competent authority in one country to supply the information requested by the other country, even if the first country has no domestic interest in the information. In addition, the provision did not specifically require the competent authority to provide information regardless of whether a bank or other financial institution or a fiduciary holds such information, or whether it relates to ownership interests in a person.

The new protocol requires Luxembourg and Turkey to collect and exchange information that is relevant for carrying out the provisions of the protocol or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, as long as the taxation is not contrary to the Agreement.

The protocol also requires the competent authority in one country to gather information requested by the other country, even if the first country has no domestic interest in the information. Further, the competent authority may not decline to provide information solely because such information is held by a bank or other financial institution or a fiduciary, or because it relates to ownership interests in a person. It further provides that any information so obtained shall be kept confidential, and treated as information obtained under domestic law, and may only be disclosed to persons or authorities (including courts and administrative bodies) involved in tax assessment, collection, or administration and tax enforcement. Authorities may disclose the information in public court proceedings or in judicial decisions.

For GWTR purposes, the protocol does not amend the dividends, interest and capital gains rates as reflected under the 2003 Treaty. Please refer to the GWTR for the current withholding tax rates provided under statutory laws as well as the rates provided for under the existing tax treaty.

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