Global Withholding Tax Alert

For Immediate Action

Ref: *2006/9*

Date: *1/15/06*

Published by: *Elaine Sullivan Marino and Stephanie Atkinson- Ernst & Young LLP, Stamford*

TURKEY: TEMPORARY ARTICLE 67 PROVIDES TAX CHANGES FROM JANUARY 1, 2006

Law 5281, which was published in the Official Gazette on December 31, 2004, provided changes that affected the withholding tax applicable to income and gains derived from marketable securities and other stock market instruments. These changes were implemented by Temporary Article 67 of the Income Tax Code. A draft communiqué concerning Temporary Article 67 was published on the official web page of the Turkish Revenue Administration on December 6, 2005, as reported in *Global Withholding Tax Reporter (GWTR)* Tax Alert 2005/60. This draft communiqué included the prospective amendments of Temporary Article 67 to be enacted. Although such amendments were approved under "Law Concerning Several Amendments on Miscellaneous Laws" (which included the amendments to Temporary Article 67), the president of Turkey vetoed the law due to other reasons not related to Temporary Article 67. Thus, there was a delay in the implementation of Temporary Article 67.

During this delay, Temporary Article 67 was further amended by Law 5436, which was promulgated in the Official Gazette on December 24, 2005. Temporary Article has effect from January 1, 2006 until December 31, 2015.

Please find below the salient points of Temporary Article 67.

Parties Responsible to Calculate and Withhold Tax:

1. Banks conducting activities in Turkey in accordance with Banking Law 4389, and the Turkish Central Bank;

2. Financial intermediaries conducting activities in Turkey in accordance with the Capital Market Law 2499.

The following income is subject to withholding tax pursuant to Temporary Article 67:

a) the difference between the purchase price and sale price of marketable securities and other stock market instruments, for which the aforementioned institutions have acted as intermediaries for the purchase and sale;

b) in the case of redemption of marketable securities and other stock market instruments, for which the aforementioned institutions acted as intermediaries for the purchase, the difference between the purchase price and redemption amount (Editor's Note: generally, the redemption of securities with the issuer is outside the scope of the *GWTR*); and

c) periodic income (e.g., interest), for which the aforementioned intermediaries collect such income (i.e., from marketable securities and other stock market instruments).

For the purposes of Temporary Article 67, the terms "marketable securities" and "other stock market instruments" mean:

- Securities and other stock market instruments issued in Turkey, which have been registered with the Capital Markets Board and/or traded on stock exchanges and derivative exchanges in Turkey.

- All other types of marketable securities and other stock market instruments, which are issued by the Turkish Treasury or other public legal entities even if such securities are not registered with Capital Markets Board or are not traded on stock exchanges and derivatives exchanges in Turkey.

Gains derived from the trade or redemption of marketable securities and other stock market instruments, other than those mentioned above, are not subject to withholding tax within the scope of Temporary Article 67.

Income Not Subject to Withholding Tax Pursuant to Temporary Article 67:

a. Income derived by exchange traded funds and pension investment trusts established in accordance with the Capital Market Law;

b. Income derived from the redemption of mutual fund participation certificates of the fund itself (excluding exchange traded funds), where such fund is established in accordance with Capital Market Law;

c. Income derived from the trading of share certificates of mutual trusts;

d. Income derived on sale of shares of resident corporations, which are quoted in Istanbul Stock Exchange (ISE) and which are held for more than one (1) year; and

e. Dividends from shares (Note: dividends may be subject to 10% withholding tax under certain conditions, which are discussed later in this Alert).

The taxation of the following financial instruments will be made in accordance with the rules in effect before January 1, 2006:

a. Income derived from the holding or disposal of bonds, treasury bills, and securities issued by the Housing Development Administration, the Public Participation Administration, and the Privatization Administration, which were issued before January 1, 2006;

b. Income derived from the holding or disposal of marketable securities and other stock market instruments, which were acquired before January 1, 2006; and

c. Income derived from instruments that are not within the scope of the Temporary Article 67 and which were acquired before January 1, 2006.

The Determination of Tax Basis for Purchase-Sale Transactions:

The tax basis for computing gains is the difference between the purchase price (acquisition) and sale price (disposal)/redemption amount. Commission payments and bank and insurance transactions tax (BITT) will be considered to determine the tax basis. Expenses other than commission payments and BITT will not be deemed as a deductible expense to determine the tax basis.

i) The disposal of the same marketable securities or other stock market instruments acquired at different times:

If lots of the same marketable securities or other stock market instruments, which have been acquired at different times, are disposed of, the first-in-first-out method will be used to determine the tax basis. However, if the purchase-sale occurs on the same day, the weighted average method may be used for such transactions to determine the tax basis.

ii) The disposal of marketable securities or other stock market instruments realized before their acquisitions:

If marketable securities or other stock market instruments are disposed of before their acquisition (in other words, as a result of short selling), the initial purchase price after the disposal will be taken into consideration to determine the tax basis. [Editor's Note: this topic is outside the scope of the *GWTR*.]

Note that the corporate income tax rate was reduced from 30% to 20% for the year 2006.

Below please find a table that summarizes the withholding tax rates applicable to non-resident beneficial owners receiving Turkish income from January 1, 2006. Please note that the withholding tax rates can be reduced under treaties, if applicable. Also, note that the term "NRIF" refers to the Non-Resident Investor Fund regime, which provided for “Type A” and “Type B” Funds before 1/1/2006.) Further, the rates below assume that the securities have been held through a Turkish sub-custodian or other Turkish intermediary such as a broker-dealer.

	NON-RESIDENT CORPORATION	**NON-RESIDENT INDIVIDUAL**
1A) DIVIDENDS PAID FROM 1/1/06, DERIVED FROM SHARES PURCHASED BEFORE 1/1/2006, FOR NON-RESIDENTS WITH NRIF STATUS AS A “TYPE A” FUND OR “TYPE B” FUND BEFORE 1/1/06	- Not subject to withholding tax.* *Non-resident participated in NRIF tax regime prior to 1/1/06 and continues to hold the shares in the same portfolio. Gains from a “Type A” Fund prior to 1/1/06 are not subject to tax when disposed of after 12/31/05. However, gains from a “Type B” fund are subject to 10% withholding when disposed of after 12/31/05 unless non-resident is exempt from tax under domestic law.	- Not subject to withholding tax.* *Non-resident participated in NRIF tax regime prior to 1/1//06 and continues to hold the shares in the same portfolio. Gains from a “Type A” Fund prior to 1/1/06 are not subject to tax when disposed of after 12/31/05. However, gains from a “Type B” fund are subject to 10% withholding when disposed of after 12/31/05 unless the non-resident is exempted from tax under domestic law.
1B) DIVIDENDS PAID FROM 1/1/06, DERIVED FROM SHARES PURCHASED BEFORE 1/1/06, TO NON-RESIDENTS WITHOUT NRIF STATUS BEFORE 1/1/06	- 10% withholding tax.	- 10% withholding tax
1C) DIVIDENDS FROM SHARES PURCHASED ON OR AFTER 1/1/06 FOR ALL NON-RESIDENTS	- 10% withholding tax.	- 10% withholding tax
2) DIVIDENDS DERIVED FROM MUTUAL FUNDS AND TRUSTS PAID ON OR AFTER 1/1/06	- Regardless of whether gains are distributed as dividends, gains from investment funds are subject to 15% withholding tax.	- Regardless of whether gains are distributed as dividends, gains from investment funds are subject to 15% withholding tax.
3A) INTEREST DERIVED FROM GOVERNMENT BONDS AND TREASURY BILLS ISSUED BEFORE 1/1/06	- Subject to withholding tax (0% or variable rate based on bond issue date).	- Subject to withholding tax (0% or variable rate based on bond issue date).
3B) INTEREST DERIVED FROM GOVERNMENT BONDS AND TREASURY BILLS ISSUED ON OR AFTER 1/1/06	- Subject to 15% withholding tax.	- Subject to 15% withholding tax.
4A) INTEREST DERIVED FROM CORPORATE BONDS ISSUED BEFORE 1/1/06	- Subject to 10% withholding tax.	-Subject to 10% withholding tax.
4B) INTEREST DERIVED FROM CORPORATE BONDS ISSUED ON OR AFTER 1/1/06	- Subject to 15% withholding tax.	- Subject to 15% withholding tax.
5) DEPOSIT INTEREST DERIVED ON OR AFTER 1/1/06	- Subject to 15% withholding tax	- Subject to 15% withholding tax.

6A) GAINS DERIVED FROM SHARES ACQUIRED ON OR AFTER 1/1/06	- Gains from shares of companies quoted on the ISE, which are held for less than one year, are subject to 15% withholding tax. - Gains from shares of companies quoted on the ISE, which are held more than one year, are not subject to withholding tax. Furthermore, income after corporate tax is subject to withholding tax at a rate of 10%. The tax must be declared through special tax return, within 15 days of the execution.	- Gains from shares of companies quoted on the ISE, which are held for less than one year, are subject to 15% withholding tax. - Gains from shares of companies quoted on the ISE, which are held for more than one year, are not subject to withholding tax. .
7A) GAINS DERIVED FROM GOVERNMENT BONDS AND TREASURY BILLS ISSUED BEFORE 1/1/06	- Not subject to withholding tax - Subject to corporate tax. - Income after corporate tax is subject to 10% withholding tax.	- Not subject to withholding tax. - NTL 191,089.20 of the aggregate amount of the interest and capital gains derived from government bonds and Treasury bills issued between 7/26/2001 and 12/31/2005 is exempt from income tax. - Gains derived from bonds issued before 7/26/2001, along with other capital gains, that exceed NTL 13,000 shall be declared on an income tax return. - Gains are subject to income tax on progressive income tax rates corresponding to relevant income bracket effective in 2006. The tax must be declared on a special income tax return within 15 days.
7B) GAINS DERIVED FROM GOVERNMENT BONDS AND TREASURY BILLS ISSUED ON OR AFTER 1/1/06	- Subject to 15% withholding tax.	- Subject to 15% withholding tax.
8A) GAINS DERIVED FROM CORPORATE BONDS ISSUED BEFORE 1/1/06	- Subject to corporate tax, - Income after corporate tax is subject to withholding tax at a rate of 10% if that the non-resident did not have access to NRIF regime before 1/1/06.	- The gains will be subject to income tax on progressive income tax rates corresponding to relevant income bracket effective in 2006. The tax must be declared on an income tax return within 15 days, - Gains that exceed the exemption amount, along with other capital gains, must be declared on an income tax return.
8B) GAINS DERIVED FROM CORPORATE BONDS ISSUED ON	- Subject to 15% withholding tax.	- Subject to 15% withholding tax.

OR AFTER 1/1/06		

If you have any questions about this Tax Alert, please contact your *GWTR* professionals:

Contact:	*Elaine Sullivan Marino*	*Stephanie Atkinson*
Telephone:	*(203) 674-3608*	*(617) 375-1249*
Fax:	*(203) 674- 3225*	*(203) 674- 3225*
E-mail:	*elaine.marino@ey.com*	*stephanie.atkinson@ey.com*