Global Withholding Tax Alert

For Immediate Action

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TURKEY: DETAILS OF NEW TREATY WITH SPAIN

An English version of the income tax treaty ("treaty") and accompanying protocol between the governments of Turkey and Spain, which were signed on July 5, 2002, was recently made available. This is the first income tax treaty concluded between the two countries. The treaty and protocol will enter into force after each country has notified the other that the domestic law procedures for ratification have been complied with. Its provisions will have effect beginning on or after the first day of January of the year following the entry into force.

For *Global Withholding Tax Reporter* (GWTR) purposes, Turkey is covered as a Country of Investment only.

The terms "State" and "Contracting State," as used below, refer generally to Spain or Turkey, as the case may be. For *GWTR* purposes, the salient points of the treaty and protocol follow:

<u>Taxes Covered</u>: Article 2 of the treaty includes, on the part of Turkey, the “Gelir Vergisi ve Kurumlar Vergisi szerinden Alinan Fon Payi.” This is the 10% “fund surtax,” as described in footnote (a), Turkey Statutory Rates, of the GWTR. Please know that the “fund surtax” was abolished as of January 1, 2004. However, should Turkey ever reinstate this tax, Swedish beneficial owners would be protected by the treaty. (This means that the “fund surtax” could not be imposed if the tax rate in question, before the “fund tax,” is equal to or greater than the beneficial owner’s relevant treaty rate).

<u>Definition of Resident</u>: Article 4 of the treaty defines the term “resident” as “any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, legal head office, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof.”

Article 3 of the treaty states that the term “person” includes “an individual, a company and any other body of persons; the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes.

<u>Dividends</u>**:** Article 10 provides a general withholding tax rate of 15% provided the income recipient is the beneficial owner.

In the case of Turkey, a 5% withholding tax rate applies to the extent that the dividends are paid out of profits that have been subject to tax at the full rate (Kurumlar Vergisi) and are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the paying corporation. For this purpose, the protocol to the treaty states that the term “full rate” is understood to mean the general corporation tax rate provided for in the Turkish Corporation Tax Law.

In the case of Spain, a 5% withholding tax applies if the dividends are paid to a company (other than a partnership) that holds directly at least 25% of the capital of the company paying the dividends.

Note that Turkish domestic law provides that dividends paid from Turkish corporations to nonresident shareholders are not subject to withholding tax at the shareholder level. Please refer to footnote (a), Turkey Statutory Rates, in the GWTR for more information.

Interest: Article 11 of the treaty provides a general 15% withholding rate provided the income recipient is the beneficial owner. A reduced rate of 10% applies if the interest is derived from a loan of whatever kind granted by a bank or if the interest is paid in connection with the sale on credit of merchandise or equipment to an enterprise of a Contracting State. The protocol to the treaty states that the term "bank" includes, in the case of Spain, saving banks.

Note that Spanish domestic law provides several tax exemptions with respect to interest income. Please refer to footnote (c) and footnote (d), Spain Statutory Rates, in the GWTR for more information.

Capital Gains: Article 13(4) of the treaty provides generally that gains from the alienation of portfolio investments shall be taxable only in the Contracting State of which the alienator is resident, which means that gains are not taxable in the country of investment.

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