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Austria / Turkey: English Version of Treaty Available

As previously reported in Tax Alert 2008/28, Austria and Turkey signed a tax treaty and accompanying protocol (the “treaty”) on May 25, 2007, which entered into force on October 1, 2009. This treaty replaced the previous tax treaty, which was signed on November 3, 1970. The provisions of the treaty took effect on January 1, 2010.

The terms "State" and "Contracting State" as used below, refer generally to Austria or Turkey, as the case may be.

For *Global Withholding Tax Reporter (GWTR)* purposes, the salient points of the treaty are:

Definition of Resident: Article 4 (Resident) defines the term "resident of a Contracting State" 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. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

For comparison purposes, the previous treaty did not include legal head office or "the State and any political subdivision or local authority" under the definition of "resident." Further, the previous treaty and protocol did not specifically exclude from the definition of "resident," any person who is liable to tax in that State in respect only of income from sources in that State.

As with the previous treaty, Article 3 defines the term "person" as an individual, a company, and any other body of persons. The term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes.

Dividends: Please refer to Footnotes (a) and (b), Austria Statutory Rates, and Footnote (a) Turkey Statutory Rates, in the *GWTR* for information concerning domestic law withholding tax rates applicable to dividend income paid to non-residents. Article 10 (Dividends) of the treaty provides a 15% general withholding tax rate. However, the treaty also provides that, in the case of Austria, dividends will be subject to withholding tax of 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividend. In the case of Turkey, the treaty states that dividends will be subject to withholding tax of 5% of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25% of the capital of the company paying the dividend, provided that such dividends are exempt from tax in Austria. *(Please note that information regarding significant shareholdings is not covered by the GWTR currently)*.

For comparison purposes, the previous treaty provided a 35% general withholding tax rate on dividends, and a 25% withholding tax rate for beneficial owners holding directly at least 25% of the capital of the company paying the dividend.

Interest: Please refer to Footnotes (c) and (d), Austria Statutory Rates, and Footnotes (b) and (c) Turkey Statutory Rates, in the *GWTR* for information concerning the domestic law withholding tax rates applicable to interest income paid to non-residents. As with the previous treaty, Article 11 (Interest) provides a 15% general withholding tax rate. However, the treaty also provides a 5% withholding tax rate of the gross amount of the interest paid in respect of a loan or credit made, guaranteed or insured for the purposes of promoting export by the Oesterreichische Kontrollbank AG or a Turkish public entity, the object of which is to promote the export. The treaty also provides a 10% withholding tax rate of the gross amount of the interest if the interest is derived by a bank. Further, the treaty provides that, notwithstanding the above, interest will be exempt from tax in the Contracting State in which it arises if it is paid to the other Contracting State or the Central Bank of that other State.

For comparison purposes, the previous treaty did not provide the 5% rate on interest paid in respect of a loan, or the 10% rate on interest derived by a bank, or the exemption for tax in the Contracting State if it is paid to the other Contracting State or Central Bank of that State.

Capital Gains: Please refer to Footnote (e), Austria Statutory Rates, and Footnotes (h) through (j) Turkey Statutory Rates, in the *GWTR* for information concerning the domestic law withholding rates applicable to capital gains. As with the previous treaty, Article 13 (Capital Gains) generally provides that gains derived by a resident of a Contracting State from the alienation of immovable property and situated in the other Contracting State may be taxed in that other State.

Note that Turkish domestic law does not tax currently capital gains derived by a non-resident

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