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Turkey: Tax Communiqué Requires Non-Residents to Submit a Certificate of Residence

Communiqué Serial No. 258 (“Communiqué”), which was published in the Official Gazette on September 30, 2006, requires non-resident investors seeking the 0% withholding tax rate applicable to capital gains and interest derived from shares, government and corporate bond interest, issued on or after January 1, 2006, to submit a Certificate of Residence (COR). As a reminder, Law 5527, which was published in the Official Gazette on July 7, 2006, decreased the withholding tax rate on capital gains and interest for certain securities from 15% to 0% (please refer to Turkey Statutory Rates, in the *Global Withholding Tax Reporter (GWTR)* and *GWTR Tax Alerts 2005/60, 2006/9, and 2006/52* for background information).

Ernst & Young Istanbul has confirmed that a COR for a non-resident corporation must be dated in calendar year 2006 and future years and, will be valid for three years from the year it is obtained. Because Temporary Article 67 is dated January 1, 2006 it is our understanding that a COR dated in calendar year 2005 will not be accepted. In the case of a non-resident individual, the COR will be valid for only one year. There will be a four

month grace period at the time of the COR's expiration for both non-resident individuals and corporations (i.e., the COR will be valid until the fourth month following the third year).

Currently, non-resident investors must apply for a Tax Identification Number ("Tax ID") from the Turkish tax authorities by submitting their Articles of Association, which should be translated into Turkish; or, if a Turkish copy is available then such copy should be approved by the Turkish Consulate in the non-resident corporation's country of residence. Pursuant to the Communiqué, if a Tax ID is in place currently, a non-resident corporation can benefit from the 0% withholding tax rate until December 31, 2006. Once a COR is submitted, the existing Tax ID number will be revised by the local authorities and given a special code corresponding to the investor's country of residence.

Ernst & Young Istanbul has concluded from the Communiqué that if a non-resident investor, with an existing Tax ID, fails to submit a COR by January 1, 2007; or, if the COR is rejected by the local tax office, then a 10% withholding tax will apply. It is important to note, however, that there is no information specifically referencing the 10% withholding tax rate in the Communiqué.

Ernst & Young Istanbul believes that a reclaim of excess withholding tax may be possible if a COR is submitted after January 1, 2007. However, reclaim procedures were not included in the Communiqué.

Please know that guidance has not been issued for entities that are not able to obtain a COR from their local authorities because of their legal structure and/or the fact that their country does not have a tax treaty in place with Turkey.

We will keep *GWTR* subscribers apprised as this situation develops.

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