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Finland / Turkey: New Treaty and Protocol Signed

On October 6, 2009, the governments of Finland and Turkey signed a new income tax treaty and accompanying protocol ("treaty"). This treaty amends the previous treaty signed in 1986 ("1986 treaty"). Pursuant to Article 28, both countries are to notify one another of the completion of the procedures required by their domestic laws for bringing the treaty into force. The treaty will enter into force thirty days after the date of the later of the notifications between the two countries. Its provisions shall have effect in Finland with respect to taxes withheld at source, on income derived on or after January 1 in the calendar year next following the year in which the Agreement enters into force. With respect to other taxes on income for taxes chargeable for any tax year beginning on or after January 1 in the calendar year next following the year in which the Agreement enters into force. In the case of Turkey, the provisions will have effect for taxes with respect to every taxable period beginning on or after the first day of January of the year following that of entry into force of the Agreement.

The terms "State" and "Contracting State" as used below, refer generally to Finland 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, place of incorporation, place of management or any other criterion of a similar nature, and also includes that State and any statutory body 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 1986 treaty did not include "the State or any statutory body" under the definition of "resident." Further, the 1986 treaty 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.

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. The 1986 treaty does not differ from the new treaty with respect to the definitions of the terms "person" and "company."

Dividends:Footnotes

Please refer to footnote (a) through (d), Finland 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. In the case of Turkey, the term "dividend" shall also include income derived from an investment fund and investment trust. For comparison purposes, the 1986 treaty provided a 20% withholding tax rate on dividends.

Interest: Please refer to footnote (e), Finland Statutory Rates, and footnotes (b) through (i), Turkey Statutory Rates in the *GWTR*, for information concerning the domestic law withholding tax rates applicable to interest income paid to non-residents.

Article 11 (Interest) of the treaty provides a general withholding rate of 15%. However, if the interest is derived by a bank, the withholding tax rate is 10%. For comparison purposes, the 1986 treaty also provided a general withholding rate of 15% on interest income. However, it provided an exemption for interest income paid to the central bank (i.e., Bank of Finland and Central Bank of Turkey).

Finnish domestic law provides several exceptions to the 15% treaty withholding rate and the 28% statutory rate on interest income derived by a non-resident. Please refer to footnote (e), Finland Statutory Rates, for more information. Turkish domestic law also provides exceptions to the 15% treaty and statutory rates. Please refer to footnote (d), Turkey Statutory Rates.

Capital Gains: Please refer to 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 1986 treaty, Article 13 (Capital Gains) of the new treaty 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. Generally, gains from the alienation of any property are taxable only in the Contracting State of which the alienator is a resident. However, the capital gains derived from the other Contracting State may be taxed in the other Contracting State if the time period does not exceed one year between acquisition and alienation.

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

If you have any questions about this Tax Alert, please contact any of the following *GWTR* tax professionals:

Danielle Clark (203) 674-3693 danielle.clark@ey.com

Lillian Chin (212) 773-2679 lillian.chin@ey.com

Shalini Natesan (617) 585-1964 shalini.natesan@ey.com