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TURKEY: NEW TREATY WITH LUXEMBOURG SIGNED

An English version of the new income tax treaty ("treaty") and accompanying protocol between the governments of Luxembourg and the Republic of Turkey, which were signed on June 9, 2003, were recently made available. This is the first income tax treaty concluded between these 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 in respect of taxes withheld at source for income derived on or after January 1 in the year next following that in which the treaty enters into force.

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

Please note that the terms "a Contracting State" and "the other Contracting State," as used below, refer generally to Luxembourg or to Turkey, as the case may be.

For *GWTR* purposes, the salient points of the treaty are:

Definition of Resident: Article 4 of the treaty 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 (registered office), place of management or any other criterion of a similar nature.”

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

Dividends**:** Article 10 provides the following withholding tax rates:

a) In the case of Turkey:

i) 10% 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 dividends;
ii) 20% in all other cases.

b) In the case of Luxembourg:
i) 5% 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 dividends;
ii) 20% in all other cases.

With respect to Turkey, domestic law provides that dividends paid from Turkish corporations to nonresident shareholders are not subject to withholding tax at the shareholder level. Please be reminded that for purposes of the GWTR, Turkey is covered as a Country of Investment only. Therefore, the taxation of Turkish residents receiving dividends from a Luxembourg company is not discussed.

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 paid on a loan made for a period of more than two years.

Please refer to footnotes (d) through (h), Turkey Statutory Rates, of the GWTR for domestic law exemptions on interest income paid to nonresident investors.

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. However, this exemption is not applicable if the holding period of the investment does not exceed one year.

Exclusion of Certain Companies: Article 29 provides that treaty benefits are not available to holding companies (societes holding) within the meaning of special Luxembourg laws, currently the Act (loi) of July 31, 1929 and the Decree (arête grand-ducal) of December

17, 1938. In addition, treaty benefits will not apply to income derived by a resident of Turkey from such holding companies nor to shares or other rights in such companies owned by a Turkish resident. This language is understood to apply to Luxembourg SICAVs, SICAFs, and FCPs.

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