GEDİK & ERAKSOY

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Potential Turkish tax issue

Legal Alert

The Turkish tax authorities have issued a tax ruling (dated 10 February 2015) holding that Eurobond issuances by Turkish issuers are subject to reverse charge VAT. Accordingly, interest/coupon payments to noteholders outside of Turkey would be subject to VAT and the issuer would have to pay the VAT payable. (Payments to noteholders, which qualify as FI in their home jurisdiction, are exempt from VAT.)

As noteholders domiciled outside of Turkey are not tax liable in Turkey, the issuer would be responsible to pay, on behalf of the noteholders outside of Turkey, the VAT payable on interest/coupon payments. If notes are transferred, in a secondary sale, to noteholders domiciled in Turkey, then the VAT liability shifts from the issuer to the noteholder domiciled in Turkey.

As Turkish banks and insurance companies are exempt from VAT (but subject to Banking Insurance Transfer Tax instead,) the payment obligation could potentially create an issue for FI issuers, who may not have VAT receivables to set off the VAT payables.

In an older tax ruling from the year 2013, the tax authorities had held that notes offered, and interest/coupon payments made to or through, banks outside of Turkey are exempt from VAT. The new ruling does, however, not distinguish in that respect and appears to treat all noteholders equally. Hence, we should – until further clarification is obtained – assume that the differentiation does not make a difference.

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