

Financial Services Tax News

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PwC Japan Tax Newsletter

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Abolition of Intermediate Corporations (Chukan Hojin) - Enforcement of the new General Corporations Law and the tax effects for a bankruptcy remote vehicle in the asset and liquidation business

In structuring Japanese asset liquidation and securitization transactions, a Cayman Islands' charitable trust or a limited liability Chukan Hojin were generally used as bankruptcy remote vehicles acceptable to lenders and originators.

A limited liability intermediate corporation (yugen sekinin chukan hojin) ("Chukan Hojin") was a corporation established in accordance with the Chukan Hojin Law that came into force on April 1, 2002. A Chukan Hojin did not have certain characteristics similar to a public interest corporation or a commercial corporation. In particular, as the contributors of funds or capital (kikin) to a Chukan Hojin were not necessarily granted voting rights, it was possible to prevent the contributors from exercising any control. Accordingly, the Chukan Hojin became widely used and accepted as a Japanese bankruptcy remote vehicle.

The Chukan Hojin Law was abolished due to, and with effect from, the enforcement of the Law Concerning General Corporations and General Foundations (the "General Corporations Law") on December 1, 2008; and existing Chukan Hojin are now treated as, or converted to, General Corporations (ippan shadan hojin). Accordingly, the impact of the legal and tax treatment of this conversion from a Chukan Hojin when used as a bankruptcy remote vehicle was a topic of discussion of many investment managers and lenders alike. However, since many of the regulations related to the conversion from Chukan Hojin to a General Corporation were generally eased by the enforcement of the General Corporations Law, it is thought that a change to existing structures should not be necessary.

This newsletter provides a summary of the tax consequences related to the transition from a Chukan Hojin to a General Corporation.

Ordinary corporation and not-for-profit corporation

Under the Corporate Tax Law, a Chukan Hojin was treated as an ordinary corporation, whereas a General Corporation is treated as an ordinary corporation or a not-for-profit corporation depending on the profile of its business. Hence, a General Corporation converted from a prior Chukan Hojin is now treated as an ordinary corporation under the Corporate Tax Law if it does not meet the requirements of a not-for-profit corporation. On the other hand, if the requirements of a not-for-profit corporation are met as enumerated in Article 3 of the Corporate Tax Law Cabinet Order, income subject to corporate tax would only be income generated from profit-generating business. However, it is generally considered that almost all of the Chukan Hojins used as vehicles for bankruptcy remoteness do not meet the requirements of a not-for-profit corporation, and so are now be treated as an ordinary corporations.

Deemed taxable year

As noted above, where a former Chukan Hojin is not treated as a not-for-profit corporation under the Corporate Tax Law it is treated as an ordinary corporation for corporate tax purposes. In addition, the articles of incorporation of former Chukan Hojins are deemed to be that of a General Corporation.

One effect of this deeming mechanism for Japanese tax purposes is that a taxable year end does not occur for the former Chukan Hojin upon conversion to an ordinary corporation.

Registration and tax reporting regarding change of corporate name as a General Corporation

Since Chukan Hojins were converted to General Corporations from December 1, 2008, it was necessary to change the articles of incorporation (for example, to change name, etc.) at the first ordinary members' meeting and register the changes.

This registration will not be subject to registration and license tax in accordance with Article 27, Paragraph 2, Item 3 of the supplementary provision, enforced on April 30, 2008, of the Registration and License Tax Law. Moreover, tax reports regarding the change of corporate name should be filed with the appropriate national tax offices and local tax offices as soon as possible after registration is made.

For more detailed information, please do not hesitate to contact your financial tax services representative or any of the following members:

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