



# Financial Services Tax News

Financial Services Tax Group

November 2005

Tax Practice of PricewaterhouseCoopers Japan (Zeirishi-Hojin ChuoAoyama) is the largest professional tax corporation in Japan with more than 300 professionals. Our Financial Services Tax Group is comprised of approximately 70 professionals, dedicated specifically to advising the financial services industry. PricewaterhouseCoopers ([www.pwc.com](http://www.pwc.com)) provides industry-focused assurance, tax and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 130,000 people in 148 countries work collaboratively using Connected Thinking to develop fresh perspectives and practical advice.

This Tax News is provided for general guidance only, and does not constitute the provision of advice or professional consulting of any kind. Before making any decision or taking any action, you should consult your usual PwC contact with all the pertinent facts relevant to your particular situation.

**PricewaterhouseCoopers**  
**(Zeirishi-Hojin ChuoAoyama)**  
**Financial Services**

Kasumigaseki Bldg., 15F  
2-5 Kasumigaseki 3-chome  
Chiyoda-ku, Tokyo 100-6015  
Telephone: 81-3-5251-2400  
<http://www.pwc.com/jp/tax>

\*connectedthinking

© 2005 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity. \*connectedthinking is a trademark of PricewaterhouseCoopers LLP.

## Withholding tax on distributions from partnerships conducting business in Japan

After the Japanese 2005 Tax Reforms, when a non-resident individual or corporate investor invests in a partnership and receives profit distributions, the distribution is subject to 20% withholding tax if the non-resident individual or corporate investor has a permanent establishment (“PE”) in Japan. The term “partnership” in this context includes a Nini-Kumiai as defined under the Japan Civil Code, an Investment Limited Liability Partnership, a Limited Liability Partnership and foreign partnerships similar to the above.

In this issue we summarize the applicability of this withholding tax rule based on the new *Income Tax Law Basic Circular* (“ITLBC”) issued in June 2005.

### 1. Non-resident partner with a PE

When a non-resident individual or corporate investor invests in a partnership and receives profit distributions, the distribution is subject to 20% withholding tax if the non-resident investor has a PE in Japan. Under ITLBC, it is interpreted that whether a non-resident individual partner is a non-resident individual prescribed in Article 164 of the *Income Tax Law* (“ITL”), from item 1 to item 3 should be considered based on the assumption that each non-resident partner carries on partnership business in Japan directly because a partnership business is treated as a joint business of partners.

Therefore, it is considered that each non-resident partner would be treated as having a PE in Japan when it should be treated as having a PE in Japan on the assumption that each non-resident partner directly carries on partnership business in Japan, even if the non-resident partner does not have a PE for other than partnership business.

## 2. Scope of profit to be subject to withholding tax

Under ITLBC, it is interpreted that domestic source income subject to withholding tax means all profit derived from a partnership business conducted in Japan and includes all profit arising from domestic source income as prescribed in Article 161 of ITL.

## 3. Withholding tax obligation

In the case of profit distributions from partnership business, who makes the distribution is required to withhold tax on the distribution. Under ITLBC, it is interpreted that since a payer of profit distributions proceeds with the distribution according to the contract of a partnership, all the partners of the partnership are obliged to withhold tax on the distribution. It is also interpreted that the partner who is obliged to withhold tax assumes a joint liability prescribed in Article 9 of the *General National Tax Law*.

\* \* \* \* \*

This new withholding tax rule was introduced by the Japanese 2005 Tax Reforms, and therefore, some treatments in practice are not yet clear. Accordingly, we recommend that taxpayers consult with their professional tax advisor when they consider whether or not a non-resident partner has a PE in Japan in connection with partnership business conducted in Japan.

### For further information, please contact:

<b>Partner</b>	Sachihiko Fujimoto	81-3-5251-2423	sachihiko.fujimoto@jp.pwc.com
	Katsuyo Oishi	81-3-5251-2565	katsuyo.oishi@jp.pwc.com
	Yuka Matsuda	81-3-5251-2556	yuka.matsuda@jp.pwc.com
	Tetsuo Iimura	81-3-5251-2834	tetsuo.iimura@jp.pwc.com
	Akemi Kitou	81-3-5251-2461	akemi.kitou@jp.pwc.com
	Raymond Kahn	81-3-5251-2909	raymond.a.kahn@jp.pwc.com
<b>Managing Director</b>	Stuart Porter	81-3-5251-2944	stuart.porter@jp.pwc.com
<b>Senior Manager</b>	Hiroshi Takagi	81-3-5251-2788	hiroshi.takagi@jp.pwc.com
<b>Manager</b>	Kimihito Takano	81-3-5251-2698	kimihito.takano@jp.pwc.com
	Hiroko Suzuki	81-3-5251-2156	hiroko.suzuki@jp.pwc.com
	Shunji Suzuki	81-3-5251-2483	shunji.suzuki@jp.pwc.com
	Kenji Nakamura	81-3-5251-2589	kenji.nakamura@jp.pwc.com
	Yoko Kawasaki	81-3-5251-2450	yoko.kawasaki@jp.pwc.com
	Marc Lim	81-3-5251-2867	lim.marc@jp.pwc.com
	Miyuki Kajiwara	81-3-5251-2520	miyuki.kajiwara@jp.pwc.com
Nobuyuki Saiki	81-3-5251-2570	nobuyuki.saiki@jp.pwc.com	
Yoji Kiyomiya	81-3-5251-2303	yoji.kiyomiya@jp.pwc.com	