

Financial Services Tax News

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PwC Japan Tax Newsletter

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Scope of Institutional Investor after 2008 Tax Reforms

As noted in our earlier Newsletter issued in October 2007, the definition of a qualified institutional investor ("QII") as defined under the Financial Instruments and Exchange Law ("FIEL") was modified for Japanese tax purposes under the Special Taxation Measures Law ("STML").

The 2008 tax reforms, as defined in the STML and more fully described below, amended the scope and definition of a "QII" for Japanese tax purposes and renamed the concept to be an "institutional investor" ("II").

This Newsletter summarizes the revised scope of an II under the STML after the 2008 tax reforms.

1. Revised Scope of an II under STML

The new definition of an II under STML Article 67-14 (special rules on *Tokutei Mokuteki Kaisha* ("TMK")), Article 67-15 (special rules on Investment Company), Article 68-3-2 (special rules on Special Purpose Trust) and Article 68-3-3 (special rules on Special Investment Trust) and Enforcement Regulation of STML is as follows: Outline

- (1) A person defined under the Cabinet Office Regulations on Definition under FIEL Article 2 ("CORD") Article 10, Paragraph 1 (1) to (9), (11) to (14), (16) to (22), (25) and (26) [Broadly, a person that operates a "first financial instruments business" as further defined under the FIEL category of securities related business ("First Financial Instruments Business"), a person that operates an investment management business, an Investment Company, a bank, an insurance company, a *Toshi Jigyo Yugen Sekinin Kumiai*, etc.].
- (2) A person defined under CORD Article 10, Paragraph 1 (15) [Broadly, an agricultural cooperative association and the federation of fisheries cooperatives who are able to operate deposit business].
- (3) A person defined under CORD Article 10, Paragraph 1 (23) (i) [Broadly, a corporation who has filed a report (legal report) to the Financial Service Agency ("FSA") stating that it holds securities of JPY 1 billion or more immediately before the filing of the report] that falls within any of the following;
 - (a) A person:
 - i) that files an annual securities report (*Yuka Shoken Hokokusho*) for each fiscal year; and
 - ii) whose sum of its securities and investment securities on its balance sheet as stated in its annual securities report for the two prior fiscal years immediately before filing the report is JPY 10 billion or more; or
 - (b) A Japanese corporation whose shares are solely held by certain foreign pension funds (excluding a TMK defined under Asset Liquidation Law Article 2, Paragraph 3 and an Investment Company defined under Investment Trust and Investment Corporation Law Article 2, Paragraph 12 in (b) and (c) below); or
 - (c) A Japanese corporation whose shares are solely held by a person defined under CORD Article 10, Paragraph 1 (26) [Broadly, a foreign government who has filed a report (legal report) to the FSA, etc.].

It should be noted that the persons listed above (other than (2) above) exclude persons specified by the FSA in accordance with the proviso in CORD Article 10, Paragraph 1. In addition, persons listed under (2) above are limited to persons specified by the FSA in accordance with the proviso in CORD Article 10, Paragraph 1.

2. Revised Points

The following points have been revised by the 2008 tax reforms regarding the scope of an II mentioned above.

- (1) Limitation of credit cooperative associations to those who have filed a report (legal report) to the FSA in accordance with FIEL.
- (2) Addition of a federation of mutual aid fisheries cooperatives.
- (3) Addition of a corporate pension fund whose net pension assets calculated as assets less current liabilities less payment reserve in its balance sheet for the last fiscal year is JPY 10 billion or more.
- (4) Addition of a trust company (excluding a management-type trust company) and a foreign trust company (excluding a management-type foreign trust company) who have filed a report (legal report) to the FSA in accordance with FIEL.

- (5) Addition of the Japanese corporation mentioned above in 1. (3) (b) and (c).
- (6) Reduction of the required minimum capital amount for the following foreign corporation from JPY 100 million to JPY 50 million;

A foreign corporation that operates the First Financial Instruments Business and investment management business in accordance with the applicable regulations in the foreign jurisdiction where the business is conducted and that has filed a report (legal report) to the FSA.

- (7) Addition of a foreign corporation that operates the trust business (excluding the management-type trust business) in accordance with the applicable regulations in the foreign jurisdiction where the business is conducted and that has filed a report (legal report) that its capital amount is JPY 100 million or more to the FSA in accordance with FIEL.

The 2008 tax reforms have narrowed the differences between the scope of a QII under FIEL and an II under the STML. However, note that the scope of an II under the STML still remains more restrictive than the scope of a QII under FIEL.

It should be noted that the above revisions are applicable to Japanese corporate tax for fiscal years ending on or after April 1, 2008, for TMKs, Investment Companies, trustee companies in connection with a Special Purpose Trust, and trustee companies in connection with a Special Investment Trust.

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

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