

## PwC Japan Tax Newsletter

The Tax Practice of PricewaterhouseCoopers Japan (Zeirishi-Hojin PricewaterhouseCoopers) is one of the largest professional tax corporations in Japan with more than 580 professionals. Within this practice, our Financial Services Tax Group is comprised of approximately 100 professionals, dedicated specifically to advising the financial services industry. In addition to tax compliance services our tax professionals are experienced in providing tax consulting advice in all aspects of domestic/international taxation including financial and real estate, transfer pricing, M&A, group reorganization, global tax planning, and the consolidated tax system to clients in various industries.

The firms of the PricewaterhouseCoopers global network ([www.pwc.com](http://www.pwc.com)) provide industry-focused assurance, tax and advisory services to build public trust and enhance value for clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions 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.

Zeirishi-Hojin PricewaterhouseCoopers  
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

## Proposed 2009 Japanese Tax Reforms Impact on the Financial Services Industry

On December 12, 2008, the Liberal Democratic Party released its proposed 2009 Tax Reform package ("2009 Tax Reform Proposal"). We previously summarized the proposed change in taxation in relation to investment into certain partnerships and the 25/5 Rule in a prior Newsletter issued on the date of release.

This Newsletter provides a general summary in relation to the following proposed changes included within the 2009 Tax Reform Proposal:

- international taxation;
- taxation relating to finance and corporate securities;
- Tokutei Mokuteki Kaisha ("TMK") and Japanese Real Estate Investment Corporation ("J-REIT"); and
- real property taxation.

The highlights of these changes from the perspective of supporting the development and enhancement of the Japanese financial services industry include:

1. Introduction of Foreign Dividend Exemption System replacing the existing indirect foreign tax credit and the affect on cash and tax planning and deployment strategy of Japanese companies with foreign subsidiaries; and
2. Expanding of the scope of what qualifies as an institutional investor and related rules assisting the range of structuring options for securitizations of TMK bonds/loans and reorganization of J-REITs.

Overall, the 2009 Tax Reform Proposal represents a significant and major reform for Japanese taxation. A general summary of the changes applying the financial services industry is summarized below.

## International Taxation

### 1. Introduction of Foreign Dividend Exemption System and abolishment of indirect foreign tax credit regime

Dividends received from a Foreign Subsidiary (as defined) by a Japanese corporation ("Foreign Dividend") will be primarily excluded from its taxable income. The indirect foreign tax credit regime will be abolished with certain transitional measures.

"Foreign Subsidiary" is defined as a foreign corporation where 25% or more of its shares is directly owned by the Japanese corporation for the period of six months or more continuously from the date when the payment obligation of dividend is fixed.

Where the Japanese corporation excludes the Foreign Dividend from its taxable income, 5% of the Foreign Dividend will not be excluded from its taxable income as an expense related to the Foreign Dividend. Withholding tax on the Foreign Dividend imposed in foreign jurisdiction will not be treated as a deductible expense and foreign tax credits for Japanese tax purposes will no longer apply to the Foreign Dividend.

The above amendment will apply to the Foreign Dividend received by Japanese corporations in fiscal years beginning on or after April 1, 2009.

### 2. Special rules on income taxation with regard to a Special Foreign Subsidiary of a Japanese corporation (referred to as the "Anti-tax Haven Rules")

The following amendments are proposed to take account of the change from a foreign dividend credit regime to an exemption system as described above in 1.

- (1) Dividends paid by specified foreign subsidiary corporation will not be deductible in calculating the added taxable amount of the Japanese corporation under Anti-tax Haven Rules.
- (2) Certain dividends received by specified foreign subsidiary corporation will be deductible in calculating the added taxable amount of the Japanese corporation under Anti-tax Haven Rules.

The above amendment will apply to the calculation of added taxable amount with regard to fiscal years of the specified foreign subsidiary corporation beginning on or after April 1, 2009.

### 3. Taxation in relation to foreign investment in certain Japanese partnerships (Determination of direct PE) and application of the 25/5 Rule to certain foreign partners

Please refer to our prior Newsletter issued on December 12, 2008.

## The Tax System on Finance and Corporate Securities

### 1. The following reforms are proposed to continue the existing concessionary treatment to be extended until December 31, 2011.

- (1) taxation related to dividend income and capital gains on listed stocks; and
- (2) extension of withholding tax rate, applied to a "Special Account" for individuals.

### 2. Taxation of covered warrant for individuals

Capital gains derived from the sale of covered warrants listed on the financial instrument exchange ("Listed Covered Warrant") and income arising from the net settlement on Listed Covered Warrant will fall within the category of other income derived from forward transactions which is subject to separate taxation for Japanese income tax purposes.

The above amendment is to apply to the disposal and net settlement of Listed Covered Warrant on or after January 1, 2010.

## Taxation related to TMK and Investment Corporation

### 1. Revision of the scope of Institutional Investor

A TMK is not included in the scope of an Institutional Investor for Japanese tax purposes ("QII"). Under the 2009 Tax Reform Proposal, if a TMK securitizes specified bonds issued by, or specified loan borrowed by other TMK backed by real property, the TMK conducting the securitization will be included in the scope of a QII in determination of the following conditions when applying the dividend deductibility rules:

- (1) specified bonds are entirely underwritten by QII; and
- (2) specified loans are entirely financed by QII.

### 2. Revision of the 90% test for dividend deductibility

TMK or J-REIT are required to pay dividends in excess of 90% of "distributable taxable income" to meet the dividend deductibility test under the existing tax rule. This definition will be revised to "distributable profit" for accounting purposes under the 2009 Tax Reform Proposal. However, there will be certain adjustment measures to be introduced, for example, where negative goodwill is recognized, the negative goodwill will be excluded from the "distributable profit" in the fiscal year of the date of recognition.

### 3. The treatment of cash delivered due to merger corresponding to dividends

The treatment of cash delivered due to merger (*Gappei Kofu-kin*) between J-REITs will be clarified so that *Gappei Kofu-kin* corresponding to dividends is included in the scope of deductible dividends for J-REIT.

## Real Property Taxation

Additional taxation for capital gain (both ordinary term and short term) on disposal of land by corporations, which is currently suspended, will extend the suspension a further five years. Other tax reforms in relation to real property are also proposed, such as extension of some of the current concessionary transfer tax rates.

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

**Zeirishi-Hojin PricewaterhouseCoopers**

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>

<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
	Hiroshi Takagi	81-3-5251-2788	hiroshi.takagi@jp.pwc.com
	Raymond Kahn	81-3-5251-2909	raymond.a.kahn@jp.pwc.com
	Stuart Porter	81-3-5251-2944	stuart.porter@jp.pwc.com
<b>Managing Director</b>	Marc Lim	81-3-5251-2867	lim.marc@jp.pwc.com
<b>Senior Manager</b>	Kenji Nakamura	81-3-5251-2589	kenji.nakamura@jp.pwc.com
	Yoko Kawasaki	81-3-5251-2450	yoko.kawasaki@jp.pwc.com
	Kimihito Takano	81-3-5251-2698	kimihito.k.takano@jp.pwc.com
	Nobuyuki Saiki	81-3-5251-2570	nobuyuki.saiki@jp.pwc.com
<b>Manager</b>	Akiko Hakoda	81-3-5251-2486	akiko.hakoda@jp.pwc.com
	Mami Sasaki	81-3-5251-2471	mami.sasaki@jp.pwc.com
	Kyoko Imamura	81-3-5251-2855	kyoko.imamura@jp.pwc.com
	Satoshi Matsunaga	81-3-5251-2586	satoshi.matsunaga@jp.pwc.com
	Soichi Toyama	81-3-5251-6212	soichi.toyama@jp.pwc.com
	Takashi Nonaka	81-3-5251-2417	takashi.nonaka@jp.pwc.com
	Hiroko Suzuki	81-3-5251-2156	hiroko.x.suzuki@jp.pwc.com
	Kotaro Fujino	81-3-5251-2036	kotaro.fujino@jp.pwc.com
	Koichiro Ito	81-3-5251-6525	koichiro.ito@jp.pwc.com
	Nobuyoshi Hiruma	81-3-5251-2871	nobuyoshi.hiruma@jp.pwc.com
Daniel Lutz	81-3-5251-6640	daniel.lutz@jp.pwc.com	