



Financial Services Tax News

Financial Services Tax Group

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Scope of Qualified Institutional Investor for Tax Purposes

The scope of qualified institutional investor ("QII") as defined under the Financial Instruments and Exchange Law ("FIEL"), previously by the Securities and Exchange Law ("SEL"), has been broadened following the enforcement of the FIEL effective from September 30, 2007. In accordance with FIEL, the scope of QII under Special Taxation Measures Law ("STML") is determined under a Cabinet Order.

This Newsletter summarizes the scope of QII under the new Cabinet Order of STML.

1. Previous definition of QII under STML

Under the old STML Article 67-14 (special rules on *Tokutei Mokuteki Kaisha*), 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), QII was defined as "QII defined under SEL Article 2, Paragraph 3(1)".

In principle and generally, the scope of QII under STML is more restrictive than the scope of QII under FIEL following the issue of the Cabinet Order of STML.

2. Revised definition of QII under STML

The new definition of QII under STML as described under Cabinet Order issued on August 3, 2007 and Enforcement Regulation of STML issued on September 27, 2007 is as follows:

- (1) Financial instrument firms as defined under FIEL Article 2, Paragraph 9 which fall within (a) or (b) below.
 - (a) The person that operates the first financial instruments business as defined under FIEL Article 28, Paragraph 1, as further defined under the category of securities related business defined under FIEL Article 28, Paragraph 8 (“**First Financial Instruments Business**”).
 - (b) The person that operates investment management business as defined under FIEL Article 28, Paragraph 4 (“**Investment Management Business**”).
- (2) A person defined under Cabinet Office Regulations on Definition under FIEL Article 2 (“**CORD**”) Article 10, Paragraph 1 (2) to (8), (10) to (14), (16) to (20) and (26), excluding the corporate pension fund defined under CORD Article 10, Paragraph 1 (19). [Broadly, a bank, insurance company, investment company, *Toshi Jigyo Yugen Sekinin Kumiai*, etc.]
- (3) Credit cooperative associations, federation of credit cooperatives and federation of agricultural cooperatives who are able to operate deposit business or facilities business with regard to mutual aid.
- (4) A person defined under CORD Article 10, Paragraph 1 (15). [Broadly, an agricultural cooperative associations and the federation of fisheries cooperatives who are able to operate deposit business.]
- (5) A person:
 - (a) that files an annual securities report (*Yuka Shoken Hokokusho*) for each fiscal year;
 - (b) that has filed a report (legal report) to the chief of Financial Service Agency (“**FSA**”); and
 - (c) whose sum of securities and investment securities in their balance sheet as stated in their annual securities report for the two prior fiscal years before filing a report is JPY 10 billion or more.
- (6) A foreign person:
 - (a) that has filed a report (legal report) to the chief of FSA;
 - (b) that operates one of the following businesses in accordance with the applicable regulations in the jurisdiction where the business is conducted:
 1. First Financial Instruments Business;
 2. Investment Management Business;
 3. Banking business as defined under the Japanese Banking Law Article 2, Paragraph 2; or
 4. Insurance business as defined under the Japanese Insurance Business Law Article 2, Paragraph 1; and

(c) whose share capital for business described in item 6(b)1 to 4 above, at the time of reporting to the FSA, is equal to or more than the following (where each amount below will be applied to each business above respectively).

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|---|-----------------|
| 1. First Financial Instruments Business | JPY 100 million |
| 2. Investment Management Business | JPY 100 million |
| 3. Banking Business | JPY 2 billion |
| 4. Insurance Business | JPY 1 billion |

However, note that persons listed above [other than (4) above] exclude persons specified by the chief of FSA in accordance with the proviso of CORD Article 10, Paragraph 1 and that a person listed under (4) above is limited to a person that is specified by the chief of FSA in accordance with the proviso of CORD Article 10, Paragraph 1.

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