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Financial Services Tax News

Outline of FSA's FY 2013 tax reform submissions

September 2012

The FSA announced its submission to the Cabinet Office for the fiscal year 2013 tax reform proposals. This Newsletter outlines the FSA's submission.

The Financial Services Agency (**FSA**) announced its submission for the fiscal year 2013 tax reform proposals on its website on September 7, 2012, as referred to below:

FSA Website (in Japanese):
http://www.fsa.go.jp/

This Newsletter outlines the FSA's submission, focusing on the proposals in regard to cross-border investments and real estate securitization.

Proposals to encourage cross-border investments

1. J-BIEM (for permanent measure / revenue bonds)

The 2010 Tax Reforms introduced J-BIEM (Japanese Bond Income Tax Exemption Scheme), i.e., if a foreign investor without a permanent establishment (**PE**) in Japan invests in certain book-entry Japanese corporate bonds (Tokutei Furikae Shasai) and receives interest / profit from redemption on such bonds, the foreign investor can be exempt from Japanese income tax imposed on such income. The FSA proposes, as this exemption is limited to bonds issued on or before March 31, 2013, that this should be a permanent measure.

In addition, whereas profit linked bonds are generally excluded from the aforementioned tax exemption, the 2012 Tax Reforms introduced a specific exemption applicable to certain profit linked bonds issued by a wholly owned subsidiary of designated local governments as defined in the Earthquake Reconstruction Zones Law (so called "Japanese version of revenue bonds," designed as similar to U.S. revenue bonds). The FSA proposes the expansion of the Japanese version of revenue bonds such that this exemption should be applicable to a wholly owned subsidiary of any local government.

2. Principle of international taxation / PE exemption for automatic ordering server

Similar to last year, the FSA proposes: (1) change in the principle of international taxation from the force of attraction rule to the attribution rule, i.e., such that the scope of taxable income for a foreign entity is limited to income attributable to the PE; and (2) exclusion of an automatic ordering server located in Japan from the definition of a PE.

3. Simplification of treaty application procedures

The FSA proposes simplification of tax treaty application procedures. The reduced withholding tax rate on dividends on listed stock which is due to expire on December 31, 2013, will increase from the current 7% to 15.315% (including a surtax scheduled to be imposed under the Restoration Funding Act, effective from January 1, 2013) on or after January 1, 2014. It is therefore expected that foreign investors' tax treaty application for the reduced withholding tax rate on the dividends would increase, and thus simplification of the treaty application procedures should be encouraged to alleviate administrative burden.

Proposals to expand real estate securitization

1. Measures for J-REIT

The FSA proposes revisions to the legislation on Investment Trust and Investment Corporation, including permitting a J-REIT to be able to hold 50% or more of the shares in foreign SPCs holding real estate in its country of residence (whereas it cannot do so in order to satisfy the current dividend deductibility test).

Also, same as last year, the FSA proposes revisions to the dividend deductibility test such that J-REITs can apply for special measures, i.e., roll-over relieves in replacement of business assets.

2. Extension of preferential treatment of registration tax / real estate acquisition tax for real estate securitization

It is proposed that the following preferential treatment of the registration tax and real estate acquisition tax, due to expire after March 31, 2013, should be extended:

- Registration tax on entrustment of ownership of the land: 0.3% (standard rate: 0.4%)
- Registration tax on the acquisition of real properties (excluding warehouse and the associated land) acquired by TMK (Tokutei Mokuteki Kaisha)/J- REIT: 1.3% (standard rate: 2.0%)
- Real estate acquisition tax on the acquisition of certain real properties acquired by TMK/J-REIT: Exclusion of 60% of real estate price from the tax basis

3. Introduction of preferential treatment of registration tax / real estate acquisition tax for special entrepreneurs

It is proposed that the preferential treatment of registration tax and real estate acquisition tax should also be introduced for special entrepreneurs [typically a TK (Tokumei Kumiai) operator] as defined in the amended Real Estate Specified Joint Enterprise Act (currently, this Act is under Diet deliberation).

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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