

Financial Services Tax News

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PwC Japan Tax Newsletter

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New Independent Agent Guidelines for Investment Managers

The Nikkei Shimbun, Japan's leading business newspaper, has reported that, in an attempt to lure foreign investment, the government will issue new regulations to clarify the application of Japan's new "independent agent" rules to investment funds.

OECD Standard

Although the details have not been publicly released, the guidance is expected to follow the OECD standard – to be an independent agent, the agent must: (i) be legally independent; (ii) be economically independent; and (iii) when providing the services, must be acting in the ordinary course of its business.

Expected Standard

Further, the guidance is expected to provide that an independent investment manager must satisfy the following four tests:

- the investment manager must have discretionary authority;
- more than half of the investment manager's directors and officers cannot also be directors, officers or employees of the fund;
- the investment manager must be appropriately compensated, perhaps with performance fee payments; and
- the investment manager must not be dependent on a particular overseas investor and must be able to diversify its business.

Issues to be Resolved

Although not in the Nikkei article, there are a number of issues that need clarification, including: (i) the scope of the guidance (that is, the type of funds and investments covered); (ii) whether the investment manager must have a discretionary investment management license in Japan; and (iii) the ability of investment managers to receive advance rulings on their independence.

Next Steps

We understand that the new regulations are expected to be issued by the end of June. This is a critical issue for many investment managers and PwC will be issuing additional reports once the guidance is issued and more information becomes publicly available.

For additional background information, please see our December 2007 and May 2008 newsletters.

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

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