New taxation rules aimed at stimulating foreign investment in funds that invest in equities

Resource type: Legal update: archive

Status: Published on 15-Sep-2009

Jurisdiction: Japan

This article is part of the PLC Global Finance August e-mail update for Japan.

Atsumi & Partners

Speedread

In a bid to stimulate foreign investment in funds by foreign investors (both corporate and individual) the Japanese Diet has introduced new tax rules applicable to capital gains on the sale of shares sold on or after 1 April 2009 where such shares are held through limited partnership-type funds.

In a bid to stimulate foreign investment in funds by foreign investors (both corporate and individual) the Japanese Diet has introduced new tax rules applicable to capital gains on the sale of shares sold on or after 1 April 2009 where such shares are held through limited partnership-type funds. The amendments comprise two pillars, as follows:

The first pillar applies to non-Japanese persons that are limited partners (LPs) of limited partnerships which have a permanent establishment, such as a general partner (GP), a fund manager or an office in Japan.

Japanese tax law imposes capital gains tax on the sale of shares in Japanese companies through limited partnerships where the LP has a permanent establishment in Japan. The applicability of this rule has been modified such that LPs are deemed to have no permanent establishment in Japan if they meet certain criteria, including (but not limited to) that:

- the partnership is a Japanese limited partnership or non-Japanese equivalent;
- the LPs do not manage the business of the partnership;
- the LPs' share in the partnership's property is less than 25%; and
- the LPs have no relationship with the GP of the sort which is specified in the tax rules.

The result is that the capital gain generally is not taxable.

The second applies to non-Japanese entities that are LPs of foreign limited partnerships which have no permanent establishment in Japan.

Prior to the amendments, any capital gain on the sale of shares in Japanese companies was taxable when the limited partnership held 25% or more of the relevant company's shares (the 25% test) and the partnership sold 5% or more of the company's outstanding shares.

This rule has been amended such that the 25% test applies not at the level of the limited partnership but at the level of each LP investor, provided that certain criteria are met, including (but not limited to):

- prior continuous holding of the shares for one year or more;
- similarity of the limited partnership to a Japanese limited partnership; and
- the LPs are not involved in the management of the business of the partnership.

Resource information

Resource ID: 6-500-2326

Published: 15-Sep-2009

Products: PLC Cross-border, PLC Global Finance, PLC US Law Department

Related content

Topics

Cross-border: finance (http://corporate.practicallaw.com/topic7-200-1612)

© Practical Law Publishing Limited 1990-2011 (http://www.practicallaw.com/0-207-4980). Terms of use (http://www.practicallaw.com/9-103-0884) and privacy policy (http://www.practicallaw.com/jsp/privacy.jsp). Subscription enquiries +44 (0)20 7202 1220 or email subscriptions@practicallaw.com The reference after links to resources on our site (e.g. 2-123-4567) is to the PLC Reference ID. This will include any PDF or Word versions of articles.