

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY
INVESTMENT TRUSTS ASSOCIATION, JAPAN]

7 June 2011

Internal Revenue Service
CC:PA:LPD:PR (NOT-121556-10)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Comments and Requests regarding Notice 2011-34

Dear Sir/Madam:

I. Preface

The Investment Trusts Association, Japan (“JITA”) appreciates the opportunity to provide these comments in response to Notice 2011-34 published by the Internal Revenue Service (“IRS”) on April 8, concerning regulatory and administrative interpretation and implementation of the Foreign Account Tax Compliance Act (“FATCA”), which was enacted on March 18, 2010 as part of the Hiring Incentives to Restore Employment (HIRE) Act (Pub: L. 111-147).

JITA was established in July 1957 under a license of the Minister of Finance, which was the governing authority at that time, for purposes of protecting investors and promoting sound development of investment trusts in Japan. ETA is positioned as “Authorized Financial Instruments Firms Association” under the Financial Instruments and Exchange Act of Japan, and the purposes and the scope of business of JITA are defined by the Act. JITA comprises of 123 full members including investment trust management companies, and 22 supporting members including securities companies and custodian banks.

Investment trust companies in Japan have been duly performing their obligations as Qualified Intermediaries (“QIs”) since the existing QI regime was implemented. Also, JITA sufficiently understands the legislative history of FATCA.

However, we are seriously concerned about some requirements of FATCA as they are so inconsistent with the domestic regulatory framework and industry practice that none of our members would be able to comply.

JITA understands that, within the framework of Organization of Economic Cooperation and Development (“OECD”), the needs for international cooperation to prevent tax evasion have been increasing. Such frameworks as proposed by FATCA should be realized through the processes that each country establishes its own domestic laws cooperatively with other countries, with the international consensus made through discussion among the governments. Therefore, when making elaborated guidelines (e.g. the Notices the IRS has recently published) for FATCA, we would like the IRS to utilize not only discussion between the IRS and financial institutions of each country but also the frameworks of discussion between the IRS and the authorities of other countries.

JITA strongly requests the following points to be considered by the IRS regarding Notice 2011-34, which was published on April 8, 2011.

II. Specific Requests

1. Investment Trusts in Japan should be exempt from FATCA.

We believe that investment trusts in Japan fall under the definition of Section 1471(f)(4), “any other class of persons identified by the Secretary for purposes of this subsection as posing a low risk of tax evasion” by U.S. persons. Accordingly, investment trusts in Japan should be exempt from FATCA because they pose extremely low risk of tax evasion by U.S. persons.

(1) Publicly Offered Investment Trusts

- Investment trusts in Japan inherently pose a very low risk of being used for tax evasion by U.S. persons for the following reasons. Since the IRS can secure measures to prevent and cope with the risk of tax evasion in Japan by U.S. persons with the help of the Japanese domestic tax laws (as described far below) and the application of U.S.-Japan tax treaties, we would like investment trusts in Japan to be exempt from FATCA.
- They are established under Japanese domestic laws (Act on Investment Trust and Investment Corporations) and regulated by the Financial Services Agency of Japan.
- Statutory filing documents such as registration statements and prospectus, etc. are written in Japanese and submitted to the competent authorities in Japan.
- Only securities companies and registered financial institutions which are approved by notifying the competent authorities under Financial Instruments and Exchange Act (the “distributors”) can undertake sales and purchases of interests in investment trusts.
- In reality, Japanese investment trusts are traded only in the securities market in Japan and can be purchased only in Japanese Yen.

- Net asset values (“NAV”) of investment trusts are calculated in compliance with the rules set by JITA, and only such values are permitted for use.
- NAV information on publicly offered investment trusts is submitted to the distributors and major media companies. JITA provides all NAV data of publicly offered investment trusts to rating agencies and also makes them available to the public.
- Purchases and redemptions of interests which are notified by distributors are processed electronically on a daily basis through the book-entry transfer system implemented by Japan Securities Depository Center, Inc. and electronically documented in “beneficial interests in investment trusts.”
- Specifically, distributors selling investment trusts over the counter execute trades as “account management institutions” under the book-entry transfer system, which is already built in the mechanism to strictly comply with withholding and information reporting requirements under the Japanese tax law.
- Investment trusts in Japan treat residents and nonresidents separately for tax purposes, and distribution of income gain from funds are subject to withholding at separate tax rates and reporting based on required documentation under the Japanese tax law.
- There is a tax treaty between Japan and the U.S., and the Information Exchange Article is included in the Treaty.
- Investment trusts in Japan do not fall under the definition of financial accounts under FATCA, and based on all of the above, should fall under the exempt recipient within the meaning of Section 1471(f).

(2) Privately Placed Investment Trusts

The characteristics of publicly offered investment trusts described above (except for disclosure of information to the public) are also applicable for privately placed investment trusts. Accordingly, we request that the following privately placed investment trusts be exempt from FATCA.

a) Privately Placed Investment Trusts Owned Exclusively by Retirement Plans

- Certain investment trusts are privately placed only for pension funds established under the relevant Japanese laws, and play a key role in the Japanese pension systems. As these investment trusts are integral part of pension plans in a long span, they cannot be established as a tool to evade U.S. tax.
- Furthermore, these privately placed investment trusts meet the three criteria described in Section II C in the Notice 2010-60, and therefore should be treated as posing a low risk of tax evasion. There is no risk of being used by U.S. persons as a tool to evade U.S. tax.

b) Privately Placed Investment Trusts Owned by Exclusively by Qualified Institutional Investors

- Certain investment trusts are privately placed only for Qualified Institutional Investors as defined by Section 2(3)(1) of the Financial Instruments and Exchange Act.
- The concept of “Qualified Institutional Investors” is similar to the concept of “Sophisticated Investor” defined by the U.S. Securities and Exchange Commission. From this viewpoint, Qualified Institutional Investors are considered to pose a low risk of tax evasion.

c) Privately Placed Investment Trusts Owned by a Small Number of Investors

- Among privately placed investment trusts owned by a small number of investors described in Section 2(3)2(c) of the Financial Instruments and Exchange Act, we request that investment trusts which have restriction provisions on sales to U.S. persons be exempt from FATCA.
- Among the privately placed investment trusts owned by a small number of investors, if it is confirmed by investigation conducted by distributors that there are no U.S. investors, those trusts should be exempt from FATCA.

2. Requests Regarding Passthru Payments

- The basic concept of “passthru payment” is proposed in the Notice 2011-34. Having analyzed the proposed concept, however, we are extremely disappointed at the proposed guidance as it does not seem to be practically feasible.
- By definition, investment trusts do not fall under the definition of “financial accounts” under FATCA. Accordingly, investment trusts should not be subject to calculation and disclosure of passthru payment percentage.
- According to the Notice, an FFI is required to calculate its passthru payments percentage using not only U.S. assets which the FFI owns but also to use other FFIs' passthru payment percentages in a case where the FFI invests in stocks or bonds which other FFIs issue. The Notice provides that U.S. assets include interests of financial accounts which are non-custody accounts opened at other FFIs. However, investment trusts in Japan do not fall under the category of financial accounts as previously explained. Accordingly, they should be excluded from the definition of passthru payments.
- In a case where an investment trust holds several hundreds of assets, for every single asset, we need (1) to determine if it is classified as an FFI under FATCA, and if it is classified as an FFI, (2) to collect information to determine if it is a participating (or deemed-compliant) FFI or a nonparticipating FFI, and (3) to obtain passthru payment percentages which participating FFIs (including deemed-compliant FFIs) make available to the public.

- We have no choice but to collect information manually. That imposes tremendous work load to even one investment trust. It is unrealistic and impossible to perform such procedures for several hundreds of investment trusts managed by investment trusts management companies.
- In reality, it is difficult to obtain correct and updated passthru payment percentages of FFIs to which investment trusts invest, because portfolio of investments frequently changes. If implementation of system should be introduced by FFIs, that would result in tremendously extensive investment in system development.

Under FATCA, payments that are obviously non-U.S. source income (e.g. interests and dividends generated by securities issued by securities companies and banks in Japan and distributions of income gain from investment trusts which invest in publicly-traded Japanese companies and Japanese government bonds) are included in the definition of passthru payments and therefore subject to withholding. We can not find any legal ground under the Japanese law for such withholding. We would like to have a clear understanding in the rationale and legal basis as to why such payments are subject to U.S. taxing power.

III. Conclusion

Investment trusts management companies in Japan have been duly performing their duties as QIs. Also, to our best knowledge, tax evasion by U.S. persons committed through Japanese investment trusts have never occurred in Japan.

Notwithstanding, the requirements provided by Notice impose tremendous burden on investment trusts management companies in Japan, and we regret to say that it is impossible for us to comply with the requirements.

We are also afraid that Japanese investors, including Japanese investment trusts, would be discouraged to invest in U.S. debt and equity securities, should FATCA be implemented as it is proposed today.

We sincerely expect the IRS to develop the framework feasible by reflecting our comments and requests as explained above. We are willing to continue to have discussion in order to make FATCA work smoothly if the IRS respects our comments and requests and takes action for further improvement.

Yours sincerely,

/s/

Kazutoshi Inano

Chairman

The Investment Trusts Association, Japan

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