

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

August 27, 2010

Internal Revenue Service  
CC:PA:LPD:PR (NOT-112379-10)  
Courier's Desk  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

RE: Comments on Foreign Account Tax Compliance Act Provisions

Dear Sir/Madam:

The Investment Trusts Association, Japan ("JITA") appreciates the opportunity to provide these comments in response to *Announcement 2010-22* 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 of 2010 (Pub. L. 111-147). Japanese investment trusts are managed by investment trust management companies acting as Qualified Intermediaries ("QI"s) who fulfill the U.S. reporting requirements. As we have observed the development of FATCA, we understand the purpose of the legislation; however, in light of the types of transactions and information subject to FATCA, we would like to request the following to prevent Japanese financial institutions including the investment trust management companies from facing excessive administrative burden.

### **Application of the Exemption**

It is especially difficult for nonresident investors living outside of Japan to establish a new account at the institutions distributing Japanese investment trusts in Japan. It is often the case that business departments of these distributors refuse to establish a new account for a nonresident investor as there are legal issues regarding the Foreign Exchange and Foreign Trade Act in Japan and tax laws<sup>1</sup>. Especially, as the tax issue would also exist in the investor's resident country, financial institutions have to make an effort to promote an understanding of these issues to nonresident investors and, therefore, inevitably exhibits negative attitude toward nonresident investors in light of various compliance responsibilities associated with them. In addition, once an existing Japanese-resident investor (in principal, a person with Japanese citizenship) has become nonresident under the provisions of the Foreign Exchange and Foreign Trade Act or Income Tax Act of Japan, the financial institution will generally reclassify the account through necessary administrative procedures and separately manage the account for the nonresident investor. Accordingly, the account management for nonresident investors is strictly implemented and has more administrative burden than the account management for resident investors.

In addition, as of June 30, 2010, the total net asset balance of Japanese investment trusts is 88.2 trillion yen, including publicly offered investment trusts of 59.4 trillion yen and privately offered investment trusts of 28.8 trillion yen. Ninety-seven percent of the investment trusts are classified as open-end type, which can be issued or redeemed at any time and is similar to the mutual funds in the U.S. Accordingly, issuance and redemption of trusts are frequently recorded: during the month of June 2010, the amount of total sales was 5.2 trillion yen, including publicly offered trusts of 4.6 trillion yen and privately offered trusts of 0.6 trillion yen, and the amount of total redemptions were 4.7 trillion yen, including public offered trusts of 4.1 trillion yen and privately offered trusts of 0.6 trillion yen. As beneficial owners of the investment trusts are replaced each time the issuance or redemption of the trusts occur, it would take considerable effort to keep track of all owners and requires frequent administrative procedures that would be burdensome.

In Japan, all of the investment trust management companies have entered into QI agreements after the QI regime was implemented on January 1, 2001. These companies acting as QIs verify and maintain necessary documentation regarding the investment trusts they manage in accordance with the agreements with the IRS. In addition, Japanese trust banks acting as upstream QIs separately submit documentations regarding the investment trusts as well. Furthermore, securities companies and certain other financial institutions selling Japanese investment trusts are also acting as QIs. This means that the Japanese investment trust market is essentially comprised of QIs, and thus it is highly unlikely that U.S. person can utilize Japanese investment trusts for the purpose of tax avoidance. From these perspectives, we would like to request that Japanese investment trust management companies acting as QIs and the investment trusts issued by these companies be listed as a class of institutions as described in *Sec. 1471(b)(2)(B)*.

As previously stated, the total net asset balance of Japanese investment trusts is 88.2 trillion yen, which includes the investment by publicly offered investment trusts in U.S. financial assets of 9.5 trillion yen. If the current FATCA provisions are to be implemented as they are today, the impact on the Japanese investment trusts market would be considerable, and we cannot deny the negative consequence including disinvestment in U.S. securities by the investment trust management companies and other Japanese financial institutions. Accordingly, we request that the U.S. Treasury and the IRS to consider pragmatic and fair solutions in implementing the FATCA.

Lastly, we look forward to working with you throughout the implementation of the FATCA provisions and remain at your disposal for a meeting or call to expand further on the above considerations.

Yours sincerely,

Kazutoshi Inano  
Chairman  
The Investment Trusts Association  
Tokyo, Japan

**FOOTNOTES:**

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For example, the Japanese tax law provides distinct sets of withholding rules for resident account holders and non-resident account holders and financial institutions tend to be reluctant to open account for non-resident customers due to the significant administrative burden.