



## JAPAN LEGAL UPDATE

### Tax

#### First Supreme Court Decision on General Anti-Avoidance Rule Concerning Reorganization Transactions

On February 29, 2016, the Supreme Court (first petty bench) issued a decision describing the standards for applying the general anti-avoidance rule concerning reorganization transactions under Article 132-2 of the Japanese Corporate Tax Law (the "Anti-Avoidance Rule").

The Anti-Avoidance Rule authorizes tax authorities to disallow a taxpayer's act or calculation if "the corporate tax burden is determined to have been unduly decreased" due to reorganization transactions including, but not limited to, a merger. In this case, the surviving company (the "Taxpayer") in a tax-qualified merger claimed that it assumed the net operating losses of the acquired company and included the same in its deductible expenses. However, the relevant tax authority denied the above inclusion by applying the Anti-Avoidance Rule.

The Supreme Court held that the Anti-Avoidance Rule is applicable if the tax provisions concerning reorganization transactions are abused to decrease a corporate tax burden. According to the Supreme Court, abuse is found if the concerned act or calculation is intended to decrease the tax burden by exploiting reorganization transactions and such act or calculation applies (or avoids) the tax provisions related to reorganization transactions in a manner beyond the original purpose or underlying policy of the relevant provisions, taking into account circumstances such as: (i) whether the concerned act or calculation is unusual, and (ii) whether the concerned act or calculation has any reasonable purpose other than tax burden reduction.

In upholding the application of the Anti-Avoidance Rule in this case, the Supreme Court found that abuse of the tax provisions concerning reorganization transactions decreased the corporate tax burden. The Supreme Court reached this conclusion in light of the circumstances where the Taxpayer's act was unusual in formally satisfying the statutory requirements for utilization of net operating losses and lacked any reasonable purpose other than tax burden reduction.

Going forward, a taxpayer contemplating a reorganization transaction that would result in a tax burden reduction is advised to be prudent in understanding the underlying purpose of the relevant tax provisions and establishing a reasonable purpose for the transaction separate from tax burden reduction.

### Finance

#### Tightened Regulations on Managers of Professional Funds—The Amended Financial Instruments and Exchange Act Come into Force

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The amendments (the "Amendments") to the Financial Instruments and Exchange Act (the "FIEA"), which impose stricter regulations on professional funds, came into force on March 1, 2016.

In response to incidents where certain funds misused the FIEA exemption for professional funds (i.e., the Specially Permitted Business for Qualified Institutional Investors ("Special Business")) and caused losses to "layman" investors, the Amendments impose stricter regulations on Special Business operators (the "Operators"). These regulations include: (i) limiting which nonprofessionals may invest in funds; (ii) introducing grounds for Operator disqualification; (iii) expanding Operator conduct controls; (iv) expanding the amount of detail required in notifications filed by an Operator; and (v) broadening enforcement powers and criminal penalties.

The Amendments are important for fund managers who market or plan to market their funds to Japanese investors. Additionally, the Amendments require financial institutions and operating companies that invested, or plan to invest, in such funds to conduct a more thorough due diligence review to verify that funds are duly in compliance with Special Business regulations.

For more details, please see Jones Day *Commentary*, "[Tightened Regulations on Managers of Funds Marketed to Japanese Investors Will Come into Force Shortly.](#)"

## Trans-Pacific Partnership

### Signing of the Trans-Pacific Partnership

On February 2, 2016 (local time), the Japanese government signed the Trans-Pacific Partnership (the "TPP") in Auckland, New Zealand. Consequently, on March 8, 2016, the Japanese government submitted the "Bill on the Amendment of Relevant Acts Due to the Conclusion of Trans-Pacific Partnership" (the "Bill") to the Diet in order to implement the TPP and reform relevant domestic laws, together with a bill to seek the Diet's approval of the TPP. The Bill comprises amendments to 11 Acts, including the Copyright Act. The Bill will be deliberated at the Diet beginning in April 2016, and the deliberations will be keenly watched.

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