

Tax Treatment of Foreign Investors Who Use Servers Located in Japan

June 16, 2011

Tokyo Stock Exchange, Inc.

Tokyo Stock Exchange, Inc. (hereinafter "TSE") submitted an inquiry to the National Tax Agency (hereinafter "NTA") entitled "Tax Treatment Related to Use of the TSE Co-Location Service by Foreign Investors," and announced on June 11, 2010¹ that NTA responded as follows: "if a foreign investor (limited to a non-resident individual or a foreign corporation having no permanent establishment in Japan; hereinafter the same shall apply) sets up and saves computer programs and other data to be used for placing orders to buy/sell stocks, etc. on the server of a Trading Participant located at TSE's Primary Site or Access Points pursuant to the terms of the TSE Co-Location Service (see Note) and operates such computer programs to place orders to buy/sell stocks, etc., solely on the basis of the facts stated in the inquiry, such foreign investor will not be treated as having a permanent establishment in Japan solely by reason of such activities."

(Note: The said Trading Participant means a Financial Instruments Business Operator (limited to a person who is registered to conduct business pertaining to the activities stipulated in Article 28, Paragraph 1, Item 1 of the Financial Instruments and Exchange Act (hereinafter "the Act")), an Authorized Transaction-at-Exchange Operator (meaning an Authorized Transaction-at-Exchange Operator prescribed in Article 60-4, Paragraph 1 of the Act), or a Registered Financial Institution (meaning Registered Financial Institutions prescribed in Article 2, Paragraph 11 of the Act), who in each case has obtained the relevant trading qualifications from TSE and is authorized to place orders and do other related activities with the financial instruments markets established by TSE.)

This inquiry dealt with use of Trading Participant's server for placing orders and other related activities with the financial instruments markets established by TSE, through the TSE Co-Location Service at the TSE data center. As such, this inquiry did not refer to other cases such as placing orders with financial instruments markets other than those established by TSE or use of data centers operated by institutions other than TSE. This time, a further inquiry was

¹ Date of Japanese release. Please refer to "Tax Treatment Related to Use of the TSE Co-Location Service by Foreign Investors" (English) (<http://www.tse.or.jp/english/rules/co-location/tax.html>)

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(Reference Translation)

submitted to NTA by the stock exchanges in Japan and the Japan Securities Dealers Association.

The stock exchanges in Japan and the Japan Securities Dealers Association have received a response from NTA upon such further inquiry on the tax treatment of cases of placing orders with financial instruments markets other than those established by TSE and use of data centers operated by institutions other than TSE. The response from NTA affirms that the tax treatment of such other cases will be the same as the response to TSE's initial inquiry.

A reference translation of the response from NTA to the subsequent inquiry is as follows:

If a foreign investor (including a foreign investor who operates through a foreign securities broker (meaning a foreign securities broker prescribed in Article 58 of the Act; hereinafter the same shall apply), a foreign securities broker, and a Remote Participant (meaning a foreign securities broker which has obtained the relevant trading qualifications from the stock exchange as an Authorized Transaction-at-Exchange Operator); hereinafter the same shall apply) sets up and saves computer programs and other data to be used for placing orders to buy/sell financial instruments, etc. and other related activities on the server that is owned or leased by another party and installed at a data center or other facility located in Japan which provides co-location services or proximity services, and operates such computer programs to place orders to buy/sell financial instruments, etc. and do other related activities, solely on the basis of the fact that "the foreign investor will not be entitled, at its discretion, to dispose of such server (e.g., sell, provide as collateral, destroy, etc.) or utilize and derive profit from such server (e.g., subleasing to third parties, converting for other purposes, etc.)," such foreign investor will not be treated as having a permanent establishment in Japan solely by reason of such activities.

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