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Revised Bill for the Amendment of the Real Estate Specified Joint Enterprise Law

Mori Hamada & Matsumoto
Eriko Ozawa
☎ +81 3 5220 1816
✉ eriko.ozawa@mhmjapan.com
Shigeki Okatani
☎ +81 3 5220 1862
✉ shigeki.okatani@mhmjapan.com

On March 29, 2013, the Cabinet submitted a bill (the "**Revised Amendment Bill**") for the amendment of the Real Estate Specified Joint Enterprise Law (the "**RESJEL**") to the Diet. This note offers a brief overview of the Revised Amendment Bill and related tax reform.

I. Overview of the Revised Amendment Bill

A similar bill to amend the RESJEL (the "**Previous Amendment Bill**") was previously submitted to the Diet in 2012. For the contents of the Previous Amendment Bill and the structure which would have been permissible under that bill, please see our Structured Finance Bulletin dated May 2012 titled *Proposed Reform of the Real Estate Specified Joint Enterprise Law - "GK-TK Structure" with a GK owning a real property in fee*. The Previous Amendment Bill was withdrawn because of the general election of the House of Representatives in December 2012.

Despite the change of Cabinet, the Revised Amendment Bill is substantially the same as the Previous Amendment Bill. As with the Previous Amendment Bill, the Revised Amendment Bill enables investors to set up a real estate investment structure in which a GK acquires and owns actual real property (*i.e.*, not in the form of trust beneficial interest) by financing the acquisition through TK investments.

However, the new Cabinet added several provisions to the Revised Amendment Bill to expand available administrative measures and strengthen penalties. For example, under the Revised Amendment Bill, the relevant authority may request not only the operator of a real estate specified joint enterprise licensed under the RESJEL, including a Category 3 Operator or a Category 4 Operator, but also its *business connections* and *subcontractors*, to report to that authority on the operation and assets of the operator. The relevant authority may also conduct an on-site inspection of *subcontractors'* premises (Article 40.1 of the Revised Amendment Bill).

II. Special Tax Measures

Bills[1] (the "**Tax Laws Amendment Bills**") for the amendment of tax laws to establish special tax measures for the investment structure that will become permissible under the Revised Amendment Bill were passed by the Diet ahead of the Revised Amendment Bill itself. The Tax Laws Amendment Bills were promulgated on March 30, 2013.

The Tax Laws Amendment Bills provide temporary reductions of the registration and license tax (*toroku menkyo zei*) and the real estate acquisition tax (*fudosan shutoku zei*) which are applicable when an Exempted Operator acquires real property that meets certain requirements. Under these special tax measures, the registration and license tax for the ownership transfer registration of real property is reduced to 1.3% (Article 83-3.1 of the amended Act on Special Measures concerning Taxation), and the registration and license tax for the ownership preservation registration of a newly-built or renovated building is reduced to 0.3% (Article 83-3.2 of the amended Act on Special Measures concerning Taxation). Further, half of the real estate value may be deducted in calculating the tax base for the real estate acquisition tax (Article 11.14 of the supplementary provisions of the amended Local Tax Act).

In terms of savings on the registration and license tax and the real estate acquisition tax, the new investment structure permitted by the Revised Amendment Bill in which an Exempted Operator acquires an actual real property is not as tax efficient as the structure in which real property is entrusted to a trustee and an investor acquires the trust beneficial interest. On the other hand, the tax efficiency of the new structure is equivalent to that of a TMK (*tokutei mokuteki kaisha*) structure in terms of the registration and license tax, but in terms of the real estate acquisition tax, it is generally less favorable than, but may sometimes be almost equivalent to, that of a TMK.

However, we should note that these special tax measures are applicable only to limited cases, such as (a) a case in which an Exempted Operator builds or rebuilds a building which, under applicable cabinet order, is a building which improves city function (the "**Specified Building**"); and (b) a case in which an Exempted Operator makes extension, renovation or remodeling work specified in an applicable cabinet order in order to change a building into a Specified Building. Although drafts of those cabinet orders have not been released, we assume that the special tax measures will be available only to cases that fit the purpose of the Revised Amendment Bill, that is, "promoting private-sector investment in the anti-seismic reinforcement of buildings and renovation of old buildings in order to revitalize local economy and overcome asset deflation."

[1] The Act for Partial Revision of the Local Tax Act (Act No. 3 of 2013), and the Act for Partial Revision of the Income Tax Act, etc (Act No. 5 of 2013).

III. Outlook

It is still not certain whether the Revised Amendment Bill will be passed at the current Diet session. Even if the Revised Amendment Bill is passed, investors and asset managers should pay attention to amendments to current cabinet orders and ordinances following the Revised Amendment Bill. Nonetheless, as we noted in our Structured Finance Bulletin of May 2012, the passage of the bill will surely bring a welcome development to the real estate investment market. We will continue to watch closely both the Diet's and the authorities' next moves on the proposed reform of the RESJEL.

News

- 55 lawyers from our firm were selected for the fourth edition of "The Best Lawyers in Japan" by the Best Lawyers survey.

  Structured Finance: Masanori Sato, Noboru Suwa, Atsuko Matsui, Toshifumi Ueda, Eriko Ozawa, Takahiro Kobayashi

- Several Mori Hamada & Matsumoto practice groups, including Structured Finance, have been awarded top rankings by the 2013 editions of Chambers Global and Chambers Asia, and a number of our lawyers have been recommended as leaders in these areas.

- As of February 18, 2013, MHM welcomed Mr. Tony Grundy, as a Senior Of Counsel in our Singapore office. Mr. Tony Grundy is an international finance and corporate lawyer with over 30 years experience in capital markets, banking, structured finance and corporate recovery, advising financial institutions, borrowers and trustees located in many jurisdictions throughout the world including Asia. He is admitted in England and Wales and in Hong Kong.

（Contacts）
Public Relations
email　mhm_info@mhmjapan.com
tel　81-3-6212-8330