

NATIONAL FOREIGN TRADE COUNCIL, INC.

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November 9, 2005

Harry J. Hicks III
International Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
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Dear Mr. Hicks:

As you are almost certainly aware, the Japanese parliament has recently enacted a law that will abolish the business entity known as Yugen Kaisha (YK), a form of business entity commonly used by US businesses investing in Japan. All existing YKs will be mandatorily converted into Tokurei Yugen Kaisha (or "Special" YKs) as of the effective date of the new Corporation Law. Despite the presence of "YK" in their name, these Special YKs will in fact be treated as a form of Kabushiki Kaisha (KK) under Japanese corporate law, albeit with restrictions in their organizational form and on their transferability of shares. Alternatively, existing YK's may be converted into regular KK's. The new Corporation Law is due to come into effect in the Spring of 2006.

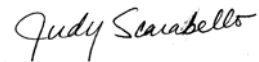
Under the "check-the-box" regulations of section 7701 of the Code, YKs are "eligible" entities, which may elect either pass-through or corporate treatment for US purposes. Kks, however, are per se corporations, which have automatic corporate status. To the extent that elections have been made for US tax purposes to treat YKs as pass-through entities (whether as partnerships or disregarded entities), we believe that it would be equitable to grandfather that treatment for such elections made before the new Corporate Law becomes effective. This would be consistent - in terms of honoring expectations - with grandfathering provided for the new types of entities brought into the class of per se entities on a number of occasions since the introduction of the original regulations. Given the corporate actions that would need to be taken if such YK pass-through elections were not to be grandfathered, we would respectfully ask that you issue a notice before the end of 2005 announcing your intention to issue regulations at a subsequent date that would provide for such grandfathering (or make clear that such a notice will not be issued).

As a matter of slightly less urgency, but one still important as regards giving US taxpayers flexibility in their dealings with one of our largest trading partners, we would ask you also to consider further Japanese law changes relating to the KK. It is our understanding that the new Corporate Law will introduce a new type of entity, a Godo Kaisha (generally translated as "LLC") and will distinguish a "closed" KK, with restrictions on transfer of all classes of its shares, from a "public" KK. In addition, another special law was recently enacted creating a new form of a partnership, a limited liability partnership. Based on details currently available, it appears that these entities are not of the type that would generally be classified as a per se entity. Therefore, when all the details of these entities are available, we would respectfully

request that you also consider amending the check-the-box regulations, as deemed necessary, to make clear that none of these entities are a per se entity. (We should point out that it does not appear that current YKs could be converted immediately into, for example, LLCs -- there would be time lag of at least a month -- so the need to grandfather even those YKs that might consider conversion into one of these entities still exists).

The NFTC would very much welcome the opportunity for a meeting with you to discuss this important matter affecting many of our largest members doing business in Japan.

Sincerely,



Judy Scarabello
Vice President for Tax Policy

cc: Eric Solomon
Patricia Brown
Steven Musher
Charles Besecky