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The International Comparative Legal Guide to:

Corporate Tax 2017

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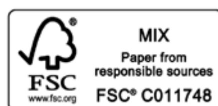

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Japan

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1 Tax Treaties and Residence

1.1 How many income tax treaties are currently in force in your jurisdiction?

There are 66 income tax treaties applicable to 100 jurisdictions currently in force in Japan as of October 1, 2016, including 10 tax information exchange agreements and the Convention on Mutual Administrative Assistance in Tax Matters.

1.2 Do they generally follow the OECD Model Convention or another model?

Yes. Most of the income tax treaties currently in force in Japan generally follow the OECD Model Convention with certain deviations.

1.3 Do treaties have to be incorporated into domestic law before they take effect?

No. Once treaties are ratified by the Diet (the Japanese Parliament) and are promulgated in Japan, such treaties take effect domestically in Japan in accordance with those treaties, without being incorporated into domestic law.

1.4 Do they generally incorporate anti-treaty shopping rules (or "limitation on benefits" articles)?

No, although the new modernised tax treaty with the United States entered into force on March 30, 2004 (the "Japan/US Treaty") and some other recent treaties do incorporate certain limitation on benefits clauses. The Japan/US Treaty is the first income tax treaty executed by Japan in which fairly comprehensive limitation on benefits clauses of general application are included, and have been followed, with certain variations, in the most recent modernised tax treaties. Those treaties that have similar limitation on benefits clauses include the treaties with Australia, France, New Zealand, Sweden, Switzerland and the United Kingdom. The amended Japan/Germany Treaty, signed on December 17, 2015, introduced a principal purpose test in its Article 21, Paragraph 8, for anti-avoidance in line with BEPS Action 6, "Preventing the Granting of Treaty Benefits in Inappropriate Circumstances", which will enter into force on October 28, 2016.

Some treaties or agreements (other than the above-mentioned modernised tax treaties) also include a simple anti-treaty shopping clause (examples of which are Article 22, Paragraph 2 of the tax agreement between Japan and Singapore and Article 26 of the tax agreement between Japan and Hong Kong).

1.5 Are treaties overridden by any rules of domestic law (whether existing when the treaty takes effect or introduced subsequently)?

No. It is a well-established constitutional principle in Japan that no treaty is overridden by any rule of domestic law (whether existing at the time the treaty takes effect or enacted subsequently).

1.6 What is the test in domestic law for determining corporate residence?

The applicable test is "the location of head or principal office" test. Under Japanese domestic tax law, a corporation is treated as a Japanese corporation (having a corporate residence in Japan) if such corporation has its head office or principal office in Japan.

2 Transaction Taxes

2.1 Are there any documentary taxes in your jurisdiction?

Yes. Japan has Stamp Tax, which is imposed on certain categories of documents that are exhaustively listed in the Stamp Tax Act, including, for example, real estate sales agreements, land leasehold agreements, loan agreements, transportation agreements, merger agreements, promissory notes, articles of incorporation and bills of lading.

2.2 Do you have Value Added Tax (or a similar tax)? If so, at what rate or rates?

Yes. Japan has Consumption Tax which is a Japanese version of Value Added Tax, consisting of a national consumption tax and a local consumption tax. The current aggregate tax rate is 8% (national 6.3% and local 1.7%), effective on or after April 1, 2014. Although an additional increase to 10% was planned to be effective originally on October 1, 2015, the current administration decided to defer the increase until October 1, 2019 for fear of negative impacts on the economy.

2.3 Is VAT (or any similar tax) charged on all transactions or are there any relevant exclusions?

Generally, yes. Taxable transactions, for the purposes of Consumption

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Tax, are broadly defined to mean those transactions conducted by a business enterprise (including any resident and non-resident companies and individuals, regardless of whether they have any permanent establishment in Japan) to transfer or lease goods or other assets or to provide services, for consideration, within Japan. However, certain specified categories of transactions, such as, for example, transfers and leases (other than for certain temporary purposes) of land, housing leases (other than for certain temporary purposes), transfers of securities, extension of interest-bearing loans, provision of insurance, deposit-taking and certain other specified categories of financial services, and provision of certain specified medical, social welfare or educational services, are excluded from taxable transactions for the purposes of Consumption Tax. With respect to imported goods, they are, when they are released from a bonded area, subject to Consumption Tax, except for certain specified categories of imported goods.

2.4 Is it always fully recoverable by all businesses? If not, what are the relevant restrictions?

Generally, yes. At present, Consumption Tax that is charged on taxable transactions and incurred by a business enterprise is generally recoverable in full, by way of a tax credit or refund. By way of exception: (i) if the ratio of a taxpayer's revenue from taxable transactions over the taxpayer's total revenue from transactions within Japan is less than 95%; or (ii) if a taxpayer's revenue from taxable transactions in the relevant fiscal year exceeds 500 million yen, such taxpayer would recover only the Consumption Tax incurred from the taxable purchases that correspond to its taxable sales.

2.5 Does your jurisdiction permit "establishment only" VAT grouping, such as that applied by Sweden in the *Skandia* case?

No, this is not permitted.

2.6 Are there any other transaction taxes payable by companies?

Yes. There are some transaction taxes in Japan, including, but not limited to, Registration and Licence Tax, Real Property Acquisition Tax and Automobile Acquisition Tax.

2.7 Are there any other indirect taxes of which we should be aware?

Yes. There are various indirect taxes in Japan such as Tonnage Tax, Special Tonnage Tax, Liquor Tax, Tobacco Tax and Gasoline Tax.

3 Cross-border Payments

3.1 Is any withholding tax imposed on dividends paid by a locally resident company to a non-resident?

Generally, yes. Under Japanese domestic tax law, generally, a non-resident shareholder (either a non-resident company or a non-resident individual) of a Japanese company is subject to Japanese withholding tax with respect to dividends it receives from such Japanese company at the rate of 20.42%; however, if the Japanese company paying the dividends to a non-resident shareholder is a listed company, this withholding tax rate is reduced to 15.315%, except for the dividends received by a non-resident individual shareholder holding 3% or more of the total issued shares of such listed Japanese company, to whom the rate of 20.42% is applicable.

However, most of the income tax treaties currently in force in Japan generally provide that the reduced treaty rate at the source country shall be 15% or 10% for portfolio investors and 10% or 5% for parent and other controlling shareholders. Furthermore, under the Japan/US Treaty and a certain limited number of other modernised tax treaties recently executed by Japan (including those with Australia, France, the Netherlands, Sweden, Switzerland and the United Kingdom), the withholding tax rate is reduced to 10% for portfolio investors and 5% or 0% for parent and other controlling shareholders.

3.2 Would there be any withholding tax on royalties paid by a local company to a non-resident?

Generally, yes. Under Japanese domestic tax law, royalties relating to patents, know-how or copyrights used for any Japanese company's business carried on in Japan and paid by the Japanese company to a non-resident licensor (either a non-resident company or a non-resident individual) are subject to Japanese withholding tax at the rate of 20.42%, with certain exemptions.

Most of the income tax treaties currently in force in Japan provide that the withholding tax rate for royalties generally be reduced to 10%. Furthermore, under the Japan/US Treaty and a certain limited number of other modernised tax treaties recently executed by Japan (including those with France, the Netherlands, Sweden, Switzerland and the United Kingdom), an exemption from source country taxation with respect to royalties may be available.

3.3 Would there be any withholding tax on interest paid by a local company to a non-resident?

Generally, yes.

(1) (a) Interest on corporate bonds issued by a Japanese company that is paid to a non-resident bondholder (either a non-resident company or a non-resident individual) was generally subject to Japanese withholding tax at the rate of 15.315%. (b) Also, under Japanese domestic tax law, with respect to a certain specified scope of discount corporate bonds issued by a Japanese company (except for certain qualified short-term discount bonds), such Japanese company was required to withhold, at the time of the issuance of the discount corporate bonds, 18.378% (or 16.336% for certain bonds), as the case may be, of the amount equivalent to the difference between the face value and the issue price thereof (original issue discount). There were important exceptions to the foregoing (a) and (b): (i) corporate bonds issued outside Japan by Japanese corporations; and (ii) book-entry corporate bonds.

The 2013 Tax Reform, which came into force on January 1, 2016, introduced, among others, a new rule for withholding tax to be applied to discount corporate bonds. Under such new rule, a withholding tax at the time of the issuance of discount corporate bonds was lifted, and a withholding tax at the time of the redemption was introduced. An issuer company of discount corporate bonds is generally required to withhold, at the time of the redemption of such discount corporate bonds, 15.315%, as the case may be, of the amount equivalent to (i) 0.2% of the amount of the redemption (if the term of the bond in question is one year or less), and (ii) 25% of the amount of the redemption (if the term of the bond in question is more than one year).

(2) Interest on bank deposits and other similar deposits deposited by a non-resident depositor (either a non-resident company or a non-resident individual) with any office of a bank or other institution in Japan is generally subject to Japanese withholding tax, under Japanese domestic tax law, at the rate of 15.315%.

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(3) Interest on loans extended by a non-resident lender (either a non-resident company or a non-resident individual) to a Japanese company in relation to such company's business carried on in Japan is generally subject to Japanese withholding tax, under the Japanese domestic tax law, at the rate of 20.42%, with certain exemptions.

(4) As an exception to the foregoing, if a certified non-resident company makes a deposit or extends a loan to certain qualified financial institutions through a special Japan Offshore Market account, such non-resident company would be exempt from Japanese withholding tax with respect to interest to be paid on such deposit or loan.

(5) Most of the income tax treaties currently in force in Japan provide that the withholding tax rate for interest (regardless of whether it is interest on bonds, deposits or loans) is reduced generally to 10%. It is worth noting that under the modernised tax treaties, beginning with the Japan/US Treaty, certain specified categories of financial or other qualified institutions (the scope of which may slightly vary from treaty to treaty) which are residents of the contracting states, may be exempt from source country taxation with respect to interest, subject to certain requirements.

3.4 Would relief for interest so paid be restricted by reference to "thin capitalisation" rules?

No. The payor company of interest may be denied a deduction of the interest which it paid to a non-resident recipient for its own corporation tax purposes, due to the application of the "thin capitalisation" rules under Japanese domestic tax law. The Japanese thin capitalisation rules deny deductibility of interest expenses paid to the payor company's foreign affiliates when such company's annual average ratio of debt to equity exceeds 3:1, subject to an exemption available based on a certain alternative parameter. However, even when the deductibility is denied under the thin capitalisation rules, the relief under a treaty (i.e., the reduced treaty rate) available to the non-resident recipient of such interest, would nevertheless not be restricted.

3.5 If so, is there a "safe harbour" by reference to which tax relief is assured?

No. This is not applicable. Please see question 3.4.

3.6 Would any such rules extend to debt advanced by a third party but guaranteed by a parent company?

Yes. Under the thin capitalisation rules in Japan, debt advanced by a third party and guaranteed by a parent company would generally be treated as related party debt, subject to the thin capitalisation rules.

3.7 Are there any other restrictions on tax relief for interest payments by a local company to a non-resident?

Yes. Japan has earnings stripping rules, under which deduction for net interest payments (as defined in these rules) to certain related persons (as defined in these rules) in excess of 50% of an adjusted taxable income (as defined in these rules) will be disallowed, and the disallowed amounts may be carried forward for seven ensuing business years. If the disallowed interest amount under these rules is smaller than the amount disallowed for deduction under the thin capitalisation rules, then only the thin capitalisation rules will be applied, and *vice versa*.

Even if deductibility is denied under the earnings stripping rules, the relief under a treaty (i.e., the reduced treaty rate) available to the non-resident recipient of such interest, would nevertheless not be restricted.

3.8 Is there any withholding tax on property rental payments made to non-residents?

Generally, yes. Rental fees for leasing real property or rights to real property located within Japan and paid by a Japanese company to a non-resident (either a non-resident company or a non-resident individual) are subject to Japanese withholding tax at the rate of 20.42%, subject to certain exemptions.

3.9 Does your jurisdiction have transfer pricing rules?

Yes. Japanese transfer pricing rules are applicable to both a Japanese company and a Japanese branch of a non-resident company if either of them engage in transactions with any of their "foreign-related persons" (measured by, in principle, a direct or indirect 50%-or-more share ownership).

4 Tax on Business Operations: General

4.1 What is the headline rate of tax on corporate profits?

The nominal rate of Corporation Tax (national tax) is 23.4%, and the effective corporation tax rate – national and local combined – is: (a) approximately 31% for large companies (i.e., companies with a stated capital of more than 100 million yen); and (b) approximately 35% with a 22–24% favourable rate for up to the first 8 million yen for small-and-medium sized companies (i.e., companies with a stated capital of 100 million yen or less), operating in Tokyo for the fiscal year beginning on or after April 1, 2016.

4.2 Is the tax base accounting profit subject to adjustments, or something else?

Yes. The tax base for corporation tax is the net taxable income; such net taxable income is calculated based on the results reflected in the taxpayer company's financials, prepared in accordance with Japanese generally accepted accounting principles.

If a taxpayer company's stated capital is more than 100 million yen, the tax base for the local Enterprise Tax is determined by certain factors, specifically, by a combination of the net taxable income, the amount of value added as determined by the compensation paid to employees, the net interest paid, the net rental fees paid and the net profit or loss in each fiscal year, and the capital of such taxpayer company, with certain exceptions for electricity, gas and insurance businesses.

4.3 If the tax base is accounting profit subject to adjustments, what are the main adjustments?

The main differences include, but are not limited to, the treatment of donations and entertainment expenses. Donations, including any kind of economic benefit granted for no or unreasonably low consideration, are generally deductible only up to a certain limited amount. The deductibility of entertainment expenses is subject to certain qualifications and a certain ceiling. Also, see questions 5.2 and 5.3.

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4.4 Are there any tax grouping rules? Do these allow for relief in your jurisdiction for losses of overseas subsidiaries?

Yes. There are two categories of tax grouping rules under Japanese tax law: (a) the consolidated tax return rules and (b) the group taxation rules.

(a) A group of Japanese companies, where a Japanese parent company directly, or indirectly through other Japanese companies, owns 100% of other Japanese subsidiaries, can elect to file, subject to the approval of the Commissioner of the National Tax Agency, a consolidated tax return. The consolidated tax is calculated on the basis of the aggregate net taxable income of the parent company and all consolidated subsidiaries.

(b) Separate from the above-mentioned consolidated tax return system, there are special rules for intra-group transactions (the "Group Taxation Rules"), which apply to group companies in a 100% group (companies that have a direct or indirect 100% shareholding relationship), even if they do not elect to file a consolidated tax return. The Group Taxation Rules apply to Japanese companies wholly owned by a foreign or Japanese company or an individual. The Group Taxation Rules include the following rules, among others: (i) deferral of capital gains/losses from transfer of certain assets between Japanese companies in a 100% group; and (ii) denial of deduction and exclusion of income on donations between Japanese companies in a 100% group.

In Japan, neither the consolidation rules nor Group Taxation Rules allow for relief for losses of overseas subsidiaries.

4.5 Do tax losses survive a change of ownership?

Generally, yes. A change of ownership does not restrict a corporation from utilising its accumulated tax losses that the corporation incurred in prior years, in general. However, for a company under certain specified events which shall take place within five years from the date of the ownership change (measured, in principle, by more-than-50% of the issued and outstanding shares), utilisation of the tax losses of the company may be restricted. The restriction applies, for example, (i) when a company was dormant before the ownership change and begins its business after the ownership change, or (ii) when a company ceases its original business after the ownership change and receives loans or capital contributions, the amount of which exceeds five times the previous business scale. In respect of a merger, a surviving company is able to utilise the carried-forward losses of a merging company (i) if the merger falls under a "qualified merger", and (ii) if, (a) the merger takes place five years after there is a relevant more-than-50% change in issued and outstanding shares, or (b) the merger satisfies "joint-business" requirements.

In general, the tax losses in the past fiscal years can be carried forward to offset the taxable income of the current fiscal year, while such deduction is limited to a maximum of 80% (to be amended to 65% from April 1, 2015, and to 50% from April 1, 2017) of the taxable income before the deduction for nine years (or ten years from April 1, 2017). Please note that these limitations are not applicable to a small and medium-sized company as defined in the law, which is a company with stated capital of 100 million yen or less that is not a wholly-owned subsidiary of a company (Japanese or non-Japanese) with stated capital of 500 million yen or more.

4.6 Is tax imposed at a different rate upon distributed, as opposed to retained, profits?

Tax is generally imposed at the same rate upon all corporate taxable profits regardless of whether such profits are distributed or retained, with the exception that a certain additional surtax may be imposed on certain types of so-called family companies' retained profits. However, there are certain special qualified corporate entities used for investment purposes that can deduct as expenses dividends paid to their shareholders if they distribute more than 90% of their distributable profits.

4.7 Are companies subject to any significant taxes not covered elsewhere in this chapter – e.g. tax on the occupation of property?

Yes. Among local taxes, other than those already mentioned above, Prefectural Inhabitant Tax *per capita* levy, Municipal Inhabitant Tax *per capita* levy, Fixed Assets Tax and Automobile Tax may be of general application to the business operations in general of a company in Japan.

5 Capital Gains

5.1 Is there a special set of rules for taxing capital gains and losses?

Generally, no. For purposes of income taxes imposed on a company (not an individual) in Japan, generally all of the taxable income of a company is aggregated, regardless of whether such income is classified as capital gains or ordinary/business profits.

5.2 Is there a participation exemption for capital gains?

There is no participation exemption for taxation on capital gains. However, with respect to dividends paid to a Japanese company by its foreign subsidiary, a participation exemption from Japanese income taxation is granted for a 95% portion of such dividends if the Japanese company owns at least 25% of such foreign subsidiary's issued and outstanding shares or voting shares for at least six months. The 25% threshold requirement may be altered if a tax treaty explicitly so provides or if a particular taxpayer is eligible for treaty benefits under an applicable tax treaty in which a lower threshold is required for a treaty-based indirect foreign tax credit eligibility (for example, a 10% shareholding threshold is provided under the Japan/US Treaty).

5.3 Is there any special relief for reinvestment?

Generally, yes. Dividends received by a Japanese company from another Japanese company may be either 100%, 50% or 20% (subject to certain adjustments) excluded from the recipient company's taxable income, depending on whether or not the recipient Japanese company owns more than a third, more than 5%, or 5% or less of the total issued and outstanding shares of the dividend-paying Japanese company. These qualifications and exclusions are applicable to dividends received on or after April 1, 2015. Such dividend-received exclusion is also available to a Japanese branch of a foreign corporation with respect to dividends received by such branch from any Japanese company.

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5.4 Does your jurisdiction impose withholding tax on the proceeds of selling a direct or indirect interest in local assets/shares?

Generally, no. However, Japan imposes withholding tax on the proceeds of selling a direct interest in real property located within Japan. See questions 8.1 and 8.2 below.

6 Local Branch or Subsidiary?

6.1 What taxes (e.g. capital duty) would be imposed upon the formation of a subsidiary?

In order to form a Japanese subsidiary, the articles of incorporation of such subsidiary must be prepared, which is subject to Stamp Tax in the amount of 40,000 yen. Further, such subsidiary must be registered in the commercial register kept at the competent office of the legal affairs bureau of the Ministry of Justice, subject to Registration and Licence Tax at the rate of seven-thousandths (7/1,000) of its stated capital amount.

If a non-resident company forms a subsidiary in Japan (i.e., establishing a company incorporated under the laws of Japan) by making a capital contribution in cash, the formation of the subsidiary is not a taxable event for corporation tax purposes.

6.2 What is the difference, if any, between the taxation of a locally formed subsidiary and the branch of a non-resident company?

If a foreign parent forms a Japanese subsidiary which is a corporation, such Japanese subsidiary will be treated as a Japanese taxpayer and will be subject to Japanese corporation tax on its worldwide income in the same manner as any other domestic Japanese corporation, subject to 95% exclusion of dividends from certain foreign subsidiaries (see question 5.2 above). A branch of a non-resident corporation, by contrast, is generally only subject to Japanese corporation tax on the profits attributable to its permanent establishment in Japan under an applicable tax treaty (or under the Japanese domestic tax law applicable from fiscal years beginning on or after April 1, 2016).

6.3 How would the taxable profits of a local branch be determined in its jurisdiction?

Under the Corporation Tax Act, if a non-resident company which has its branch in Japan earns "profits derived from business carried on within Japan", or "profits attributable to its permanent establishment in Japan" (from a fiscal year beginning on or after April 1, 2016), such business profits constitute Japanese source income taxable in Japan in line with the Authorised OECD Approach. The rules similar to the transfer pricing regulations for foreign-related persons are applicable to the branch. With respect to the question of how the amount of such business profits should be determined, certain specific rules are provided in the relevant regulations. With respect to the detailed method of calculating taxable income, the rules applicable to a Japanese company are, in principle, also made applicable to a branch of a non-resident company, *mutatis mutandis*. In calculating the taxable income of a branch, only such expenses as are necessary for earning Japanese source income, are treated as deductible expenses.

6.4 Would such a branch be subject to a branch profits tax (or other tax limited to branches of non-resident companies)?

No. There is no branch profits tax or other similar tax to which a branch of a non-resident company, but not a subsidiary, is subject.

6.5 Would a branch benefit from double tax relief in its jurisdiction?

A branch of a company which is a resident in such treaty country can benefit from the treaty provisions to some extent. However, with respect to the treaty relief given to passive income such as dividends, interest and royalties, because most of the income tax treaties currently in force in Japan include provisions similar to Articles 10(4), 11(4) and 12(3) of the OECD Model Convention, a branch of an non-resident company would not be allowed to enjoy such treaty relief.

6.6 Would any withholding tax or other similar tax be imposed as the result of a remittance of profits by the branch?

Generally, no.

7 Overseas Profits

7.1 Does your jurisdiction tax profits earned in overseas branches?

Yes. A Japanese company is generally subject to Japanese corporation taxes with respect to its worldwide income, with exclusion of a 95% portion of dividends from certain overseas subsidiaries. See question 7.2 below.

7.2 Is tax imposed on the receipt of dividends by a local company from a non-resident company?

The 95% portion of the dividends paid to a Japanese company by its overseas subsidiaries is excluded from Japanese corporation tax, subject to certain shareholding threshold and holding period requirements. See question 5.2 above.

7.3 Does your jurisdiction have "controlled foreign company" rules and, if so, when do these apply?

Yes. Japan has its own CFC rules and if such CFC rules are applied to any particular overseas subsidiary, such CFC subsidiary's net profits (but not its net losses) shall be deemed to constitute the Japanese parent company's taxable income in proportion to their shareholding percentages, regardless of whether or not such profits are distributed to the parent. These apply to Japanese companies which own 10% or more of shares in a certain overseas subsidiary more-than-50% owned by Japanese resident individuals or companies directly or indirectly, and located in a jurisdiction where its effective tax rate is less than 20% (applicable for relevant subsidiaries' fiscal year beginning on or after April 1, 2015, amended from "20% or less"). The Japanese CFC rules are expected to be overhauled in 2017 in line with BEPS Action 3, "Designing Effective Controlled Foreign Company Rules".

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8 Taxation of Real Estate

8.1 Are non-residents taxed on the disposal of real estate in your jurisdiction?

Generally, yes. If real property (land or any right on land or any building or auxiliary facility or structure) which is located within Japan is alienated by a non-resident (either a non-resident individual or a non-resident company), the gross amount of the consideration received by such non-resident from such alienation is subject to Japanese withholding tax at the rate of 10.21% if it is paid, or deemed paid, within Japan, with certain exceptions and exemptions.

Regardless of the imposition of the aforementioned withholding tax, if a non-resident (either a non-resident individual or a non-resident company) alienates real property located within Japan, such non-resident alienator is required to file a tax return in Japan and is subject to Japanese income tax or corporation tax, as the case may be, with respect to any capital gains derived from such alienation. In the case where such non-resident alienator is subject to the aforementioned withholding tax, the amount of such withholding tax may be deducted from such income tax or corporation tax, subject to certain procedural requirements.

8.2 Does your jurisdiction impose tax on the transfer of an indirect interest in real estate located in your jurisdiction and, if so, what constitutes an indirect interest?

Yes. When a non-resident individual or a non-resident company and his/her/its special related parties, in aggregate, hold: (i) more than 5% of the shares issued by a company with 50% or more of its assets value attributable directly or indirectly to real property (land or any right on land or any building or auxiliary facility or structure) which is located within Japan ("Real Property Related Company") where such shares are either listed on a stock exchange or traded over-the-counter; or (ii) more than 2% of the shares issued by a Real Property Related Company not so listed, the special rules apply. When the special rules are applicable, if the non-resident individual or the non-resident company transfers the Real Property Related Company shares, such non-resident company or the non-resident individual is required to file a tax return in Japan and is subject to Japanese income tax or corporation tax, as the case may be, with respect to any capital gains derived from such transfer.

8.3 Does your jurisdiction have a special tax regime for Real Estate Investment Trusts (REITs) or their equivalent?

REITs structured in Japan ("J-REITs") are generally structured in the form of a company, although it is legally possible to structure J-REITs in the form of a trust under Japanese law. Thus, dividends from J-REITs are, practically, subject to the same taxation as dividends paid by a local resident company to a non-resident (please see question 3.1 above), and transfers of investment equity to J-REITs are subject to the same taxation as transfers of Real Property Related Company shares (please see question 8.2), in general. J-REITs are often structured in the form of certain special qualified corporate entities established under Japanese law, which can deduct as expenses dividends paid to their shareholders if they distribute more than 90% of their distributable profits.

9 Anti-avoidance

9.1 Does your jurisdiction have a general anti-avoidance or anti-abuse rule?

No. Japanese tax law does not have a general anti-avoidance rule. However, Japanese tax law includes a so-called "specific" anti-avoidance rule for a family company (i.e., a company where more than 50% of its shares are held by three or fewer shareholders and certain related persons). Japanese tax law also has specific anti-avoidance rules that involve corporate reorganisation transactions and consolidated tax return filing. In addition, an anti-avoidance rule was introduced for transactions regarding income attributable to a permanent establishment of overseas corporations, which is applicable to, among others, internal dealings between a non-Japanese company and its Japanese branch (from fiscal years beginning on or after April 1, 2016).

9.2 Is there a requirement to make special disclosure of avoidance schemes?

No. Japanese tax law does not have a disclosure rule that imposes a requirement to disclose avoidance schemes. However, it is said that the Japanese tax authorities are planning to introduce mandatory disclosure rules as early as 2018, in line with BEPS Action 12.

10 BEPS and Tax Competition

10.1 Has your jurisdiction introduced any legislation in response to the OECD's project targeting Base Erosion and Profit Shifting (BEPS)?

Yes. Japan has introduced legislation in response to Action 2 of the BEPS project, which denies exclusion for dividends received from 25%-owned non-Japanese companies (see question 5.2) as long as they are deductible in the payer country, including dividends on Mandatory Redeemable Preference Shares ("MRPS") issued in Australia and dividends from a Brazilian company. The new rules are effective for any dividends received by a Japanese corporate taxpayer whose fiscal year begins on or after April 1, 2016, subject to a certain grandfathering rule.

In addition, in response to Action 13, "Guidance on Transfer Pricing Documentation and Country-by-Country Reporting", the Japanese government introduced new legislation to adopt the three-tiered documentation approach consisting of a country-by-country report, a master file and a local file, which is applicable as early as a fiscal year beginning on or after April 1, 2016. See question 10.3.

10.2 Does your jurisdiction intend to adopt any legislation to tackle BEPS which goes beyond what is recommended in the OECD's BEPS reports?

No. The Japanese tax authorities appear to intend to adopt legislation to tackle BEPS in line with the OECD's BEPS reports. In addition to the new rules in line with the Actions 2 and 13 set forth in question 10.1 above, the Japanese government is expected to introduce new CFC rules in line with BEPS Action 3, "Designing Effective Controlled Foreign Company Rules" and revise the current transfer

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pricing regulations in line with the revised OECD Transfer Pricing Guidelines under BEPS Actions 8–10, "Aligning Transfer Pricing Outcomes with Value Creation", although the new rules have yet to be seen as of October 1, 2016.

10.3 Does your jurisdiction support public Country-by-Country Reporting (CBCR)?

In line with BEPS Action 13, in 2016, the Japanese government introduced new legislation in which it adopted the three-tiered documentation approach, under which a separate 'master file' and a 'local file' as well as a "country-by-country report" are required. Any Japanese corporations and foreign corporations with permanent establishments in Japan that are a constituent entity of a multinational enterprise ("MNE") group with total consolidated revenues of 100 billion yen or more in the previous fiscal year ("Specified MNE Group") are subject to the new documentation rules. Such corporations must file (i) notification as to the ultimate parent entity, (ii) a country-by-country report, and (iii) a master file with the tax authority online ("e-Tax"). The local file is mandated for transactions with a certain foreign-affiliated person, with whom (1) the sum of payments and receipts is 5 billion yen or more, or (2) the sum of payments and receipts for intangible transactions is 0.3 billion yen or more, in the previous fiscal year. In the master file, a taxpayer is required to report the items as described in Annex I to Chapter 5 of the revised OECD Guidelines, which includes a description of the businesses of the MNE, the MNE's intangibles, the MNE's intercompany financial activities, and the MNE's financial and tax positions. In the country-by-country report, a taxpayer is required to report the items as described in Annex III to Chapter 5 of the revised OECD Guidelines, which includes an overview of allocation of income, taxes and business activities by tax jurisdiction, and a list of all the constituent entities of the MNE group included in each aggregation per tax jurisdiction. In the local file, a taxpayer is required to report the items as described in Annex II to Chapter 5 of the revised OECD Guidelines, which includes a description of the local entity, a description of controlled transactions, and financial information.

Notification as to the ultimate parent entity (to be filed by the last fiscal day of the ultimate parent), a master file and a country-by-country report (to be filed within one year of the last fiscal day of the ultimate parent) are applicable for fiscal years of the ultimate parent beginning on or after April 1, 2016. The new rules for a local file (to be filed by the filing of a corporation tax return) will be effective for corporation tax in fiscal years beginning on or after April 1, 2017.

10.4 Does your jurisdiction maintain any preferential tax regimes such as a patent box?

No. Japan does not maintain any preferential tax regimes such as a patent box.

Japanese tax law does, however, provide for special tax credits and deductions on certain research and development costs.

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