JAPAN

Overview

Nagashima Ohno & Tsunematsu, Taxand Japan

Taxand Japan is renowned for its broad coverage of a variety of tax-related matters, ranging from tax planning for various commercial transactions to tax disputes and tax litigation cases arising from differences in opinion with the tax authority.

Taxand Japan has been highly evaluated by domestic and international clients, peers and third party research institutes. Notably, over the past year, our firm received remarkable evaluations as follows:

- Ranked in the top group (Tier 1) in The Legal 500 Asia Pacific 2025
- Ranked in the top group (Band 1) in the 2025 edition of Chambers Asia-Pacific
- Awarded "Japan Tax Disputes Firm of the Year" at International Tax Review's Asia
- Tax Awards 2024
- Awarded "Law Firm of the Year" for the category of Tax Law by The Best Lawyers in Japan 2022
- Recognized as an "Outstanding" firm in Tax in Japan by asialaw 2024

As a part of its broad coverage of tax-related services, Taxand Japan offers transfer pricing services ranging from planning to disputes and controversy.

General: Transfer Pricing Framework

Transfer pricing legislation is provided in Article 66-4 of the Special Tax Measures Act "STMA" and the provisions of the Cabinet Order and the Ministerial Ordinance provided thereunder (the "TP Legislation"). Consistent with the TP Legislation, transactions between related parties must take place on an arm's-length basis. The transfer pricing rules and arm's length principle are generally in line with the OECD Guidelines.

Accepted Transfer Pricing Methodologies

The OECD Guidelines are not incorporated into Japanese legislation, however the transfer pricing methods described in the TP Legislation are substantially similar and, notably, center on the arm's length principle. There is also no explicit hierarchy of transfer pricing methods, as the "best method" rule requires that a transfer pricing method is selected that provides for most reliable assessment of the arm's length dealing.

In the TP Legislation, the following methods are specifically listed as transfer pricing methods: the Comparable Uncontrolled Price ("CUP") method, the Resale Price ("RP") method, the Cost Plus ("CP") method, the Profit Split ("PS") method (specifically, the Comparable Profit Split method, the Contribution Profit Split method and the Residual Profit Split method), the Transactional Net Margin Method ("TNMM") and the Discount Cash Flows ("DCF") method. Any other method similar to the methods listed above can be applied if such method leads to an arm's length principle.

Transfer Pricing Documentation Requirements

Article 66-4, paragraph 6 of the STMA requires a taxpayer to prepare and maintain a local file for all intra-group company transactions except transactions with a group company with which the taxpayer had less than JPY 5 billion-worth transactions (less than JPY 300 million-worth transactions for transactions involving intangibles) in total in the previous fiscal year. As there is no threshold based on overall revenues for this obligation, this can also apply to small and medium sized companies depending on the size of transactions with its group companies. Information to be kept in the local file includes information on the intra-group transactions and the arm's length price for those transactions.

In addition to the local file obligations generally applicable, the master file and country-by-country reporting obligations are enacted in Articles 66-4-4 and 64-4-5 of the STMA. Under Article 66-4-4 of the STMA, a country-by-country report is required to be submitted for MNE's that exceed the JPY 100 billion annual revenue threshold if the ultimate parent entity or the surrogate parent entity of the MNE's is a resident of Japan or a country which has not implemented the country-by-country reporting system, has no agreement with Japan to exchange information reported in country-by-country reports or is designated by the Japanese tax authorities as a country not expected to provide Japan with information contained in country-by-country reports. Under Article 66-4-5 of the STMA, master file documentation is required to be submitted for any member entity of MNE's exceeding the JPY 100 billion annual revenue threshold that is a resident of Japan or has a permanent establishment in Japan.

Local Jurisdiction Benchmarks

Benchmarking helps to demonstrate that transfer prices are at arm's length. Comparability criteria to be followed in Japan are considered to be in line with those provided in the OECD TP Guidelines.

Although there is no specific requirement to update the benchmark searches every year, it is recommended to do so in order to make the result of benchmarking reliable. However, in practice, most taxpayers do not undertake a full update of their benchmark searches on an annual basis. It is provided in a guidance issued by the Japanese tax authorities that benchmarks can be updated every three years unless the business conditions relating to the intra-group transactions or the benchmarks are changed.

Advance Pricing Agreement "APA"/Bilateral Advance Pricing Agreement "BAPA" Overview

Japan has a program for APAs since the last century. Currently, the Transfer Pricing Administrative Guidelines set out the requirement for seeking an APA, materials that need to be submitted in seeking an APA, and the procedures by which the cases will be handled. It is provided in the Transfer Pricing Administrative Guidelines that if the taxpayer requesting a unilateral APA is willing to submit the matter to a MAP, the tax authority shall urge the taxpayer to apply for a MAP thereby seeking a BAPA.

In principle, an APA/BAPA has a term in the range of 3 to 5 years and may under certain circumstances be "rolled back" to previous tax years where the statute of limitations remains open.

Transfer Pricing Audits

The Japanese tax authorities can perform audits at random and all companies are subject to audit for any open period. The statute of limitations period for transfer pricing matters is seven years. When the local file is requested in an audit, it is then to be presented within a period designated by the examiner not exceeding forty-five (45) days, that is why in practice it is important to maintain regular documentation.

The Burden of Proof in Transfer Pricing: Theory versus Practice

In the Japanese tax system, the allocation of the burden of proof is pivotal in determining the outcome of disputes. In Japan, the burden of proof in transfer pricing matters is, in principle, straightforward: if the tax authorities consider that the prices set by a taxpayer are not at arm's length and wish to make an assessment on the taxpayer by using prices which the tax authorities consider are at arm's length, the tax authorities bear the responsibility of demonstrating that the prices used by them, rather than the prices set by the taxpayer, are at arm's length.

However, if (a) a taxpayer fails to present one of certain important documents regarding transactions for which a local file shall be prepared or a document forming a part of the local file, each in accordance with a request (including a timeframe reasonably set) from the tax authorities, or (b) a taxpayer fails to present one of certain important documents regarding transactions for which a local file needs not be prepared in accordance with a request (including a timeframe reasonably set) from the tax authorities, the tax authorities are allowed to make an assessment by using prices calculated based on a simplified method using more easily accessible information and such prices are presumed to be at arm's length (i.e., the taxpayer bears the burden of proof that such prices used by the tax authorities are not at arm's length).

Transfer Pricing Penalties

Fines up to a maximum of JPY 300,000 can be imposed on the taxpayer for non-compliance with filing obligations for country-by-country reporting or master file.

Local Hot Topics and Recent Updates

In a case in which it was disputed whether prices calculated based on TNMM and used by the tax authorities in a tax assessment were at arm's length or not, the Tokyo District Court ruled that the benchmarks adopted by the tax authorities in the application of TNMM were not in fact sufficiently comparable to the taxpayer's transaction. This is the first case in which the way the tax authorities have applied TNMM in a specific case is denied by a court in Japan and it will likely affect the way TNMM is applied in the future. .

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Documentation threshold

Master file	Turnover JPY 100 billion
Local file	N/A
CbCR	Turnover JPY 100 billion

Submission deadline

Master file	Submission within 12 months after end of fiscal year.
Local file	Should be available in the taxpayer's administration upon due date for filling corporation tax
CbCR	Submission within 12 months after end of fiscal year.

Penalty Provisions

Documentation – late filing provision	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting or master file.
Tax return disclosure – late/incomplete/no filing	N/A
CbCR – late/incomplete/no filing	Fines up to a maximum of JPY300,000 can be imposed on the taxpayer for non-compliance with filing obligations for CbCR reporting.

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