The Legal 500 Country Comparative Guides

Japan: Tax

This country-specific Q&A provides an overview of tax laws and regulations applicable in Japan.

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1. **How often is tax law amended and what are the processes for such amendments?**

   Major national tax laws in Japan such as the Corporation Tax Act, the Income Tax Act (mainly for individuals), the Consumption Tax Act, and some parts of the Local Tax Act concerning local taxes similar to those above mentioned, are amended generally once a year.

   In particular, each summer, the Cabinet Office and each ministry (agency) examine the requests for tax reform for the following year from each industry group, and, based on those examinations, submit requests for tax reform to the Ministry of Finance (“MOF”).

   The MOF organizes the requests for tax reform in September and October. At the same time, the Research Commission on the Tax System, which is an advisory body for inquiry from the Prime Minister of Japan, discusses tax reform for the next year. The outline of the next year’s tax reform approved by the Japanese cabinet is announced by the MOF around December every year.

   Subsequently, the Diet approves the tax reform bill in around March, and the tax reform laws are enacted on 1 April.

   The Ministry of Internal Affairs and Communications handles the tax reform process for local taxes. The flow of local tax reform is generally the same as for national tax reform.

2. **What are the principal procedural obligations of a taxpayer, that is, the maintenance of records over what period and how regularly must it file a return or accounts?**

   As an example, in principle, corporate taxpayers are required to file a final tax return for corporation taxes (i.e., corporate income taxes) and consumption taxes no later than two months after the end of the fiscal year (e.g., if the end of fiscal year is 31 March, the deadline will be 31 May.). Certain corporate taxpayers are also required to file an interim return for those taxes.

3. **Who are the key regulatory authorities? How easy is it to deal with them and how long does it take to resolve standard issues?**

   In Japan, the National Tax Agency (NTA) is responsible for the enforcement of national tax laws. In particular, the 12 Regional Taxation Bureaus and 524 tax offices that are under the supervision of the NTA impose and collect taxes in their general jurisdictions based on individual addresses or corporate registered offices. Each Regional Taxation Bureau is responsible for taxes for companies capitalized at 100 million yen or more, while each tax office is responsible for other companies.

   National tax audits are generally conducted every one to three years for large companies,

and every five years for mid- and small-sized companies. A tax audit generally takes approximately several months (including several days for site investigations), but may take over one year in complex cases (including audits for transfer pricing).

Local governments are responsible for the enforcement of local tax laws, and generally impose and collect local income taxes based on the filed tax returns or the results of national tax audits. Therefore, local governments are not generally recognized as key regulatory authorities.

4. **Are tax disputes capable of adjudication by a court, tribunal or body independent of the tax authority, and how long should a taxpayer expect such proceedings to take?**

In relation to national taxes, tax disputes may be adjudicated by the National Tax Tribunal or a court.

A taxpayer who is dissatisfied with a disposition made by the district director of a tax office may elect one or both of the following administrative procedures no later than three months after the date on which the taxpayer received the notice of disposition: (1) "Request for Re-investigation" with the district director of the tax office; or (2) "Request for Examination" with the National Tax Tribunal.

In general, a taxpayer must have completed one (i.e., "Request for Examination") or both of these administrative procedures prior to filing a claim with the court to cancel the disposition (i.e., tax lawsuit).

The National Tax Tribunal, which is independent from taxation bureaus or offices, investigates, and rules on, tax disputes. The National Tax Tribunal has set a standard period of one year for the screening process, and most disputes (98% in 2019) were completed within this standard period.

If a taxpayer is dissatisfied with a determination from the National Tax Tribunal, the taxpayer may file a tax lawsuit with the court no later than six months after the day on which the taxpayer received the notice of determination. Tax lawsuits are categorized as administrative lawsuits and are determined in a three-tier court system. The average trial period for administrative lawsuits in 2018 was approximately 14.5 months in the first instance, approximately 6.1 months in the second instance, and approximately 3.2 or 3.5 months in the third instance (depending on the form of appeal).

Further, the process of tax disputes for local taxation is almost similar to that of national taxes, except for the following points:

– there is no procedure corresponding to "Request for Re-investigation" of national taxes; and

– “Request for Examination” is not with the National Tax Tribunal, but with the local governments.

5. **Are there set dates for payment of tax, provisionally or in arrears, and what happens with amounts of tax in dispute with the regulatory authority?**

Tax payment due dates are specified. As an example, the due date for payment of corporation taxes and consumption taxes is the due date for filing a final return form, which is no later than two months after the end of the fiscal year.

In addition, taxpayers who meet certain conditions are required to pay corporation taxes and consumption taxes related to an interim tax return, by no later than the deadline for filing the interim return.

Furthermore, in principle, even if an appeal has been filed, the disposition by the tax authority remains valid, and additional taxes (penalties) and delinquent taxes will be imposed until taxpayers complete payment of all taxes due. Therefore, as a practical matter, a taxpayer should file an appeal only after paying all of the taxes that were imposed. If the taxpayer is successful in a lawsuit, the amount of taxes paid will be returned to the taxpayer with statutory interest.

6. **Is taxpayer data recognised as highly confidential and adequately safeguarded against disclosure to third parties, including other parts of the Government? Is it a signatory (or does it propose to become a signatory) to the Common Reporting Standard? And/or does it maintain (or intend to maintain) a public Register of beneficial ownership?**

Taxpayer data is recognised as highly confidential and adequately safeguarded by law. A public officer engaged in tax affairs has a duty of confidentiality, and if the public officer violates that duty, the public officer may be punished by imprisonment for not more than two years or a fine of not more than one million yen.

National and local tax authorities share certain information contained in tax returns or statutory reports with each other, but there are no laws or regulations generally authorising the tax authority to cooperate, or share information, with other government agencies. The Supreme Court has not issued a clear position on this matter, so Japanese law remains uncertain.

Japan is a signatory to the Common Reporting Standard (“CRS”) of OECD, and has already promulgated and enforced domestic legislation to implement the CRS.

There is no public register of beneficial ownership in Japan. However, the NTA has been gathering certain information relating to beneficial ownership through the statutory reports

from trustees.

7. **What are the tests for residence of the main business structures (including transparent entities)?**

In Japan, business entities primarily use corporate forms such as joint-stock companies (Kabushiki-Kaisha) and limited liability companies (Godo-Kaisha).

Pursuant to the Japanese tax laws, a corporation that has its head office or principal office in Japan is generally treated as a domestic corporation, and any other corporation is treated as a foreign corporation. Further, the residence of a corporation is determined not by the principal place of management and control, but by the corporate registration, and therefore, as a practical matter, the residence is determined by the governing laws of the place of incorporation. However, the domestic rule of residence may be superseded by certain tax treaties, if applicable. Tax treaties entered into by Japan may determine a tax payer's domicile based on the location of the corporation's head office or principal office, the location of its substantial management, the place where it was established, and any other relevant factors.

In addition, partnerships (Kumiai) or investment limited partnerships (Toshi-Jigyo-Yugensekinin-Kumiai) are primarily used as transparent entities in Japan. However, these corporate forms are mainly used for investment vehicles rather than for general business entities. The residence of a transparent entity is determined based on whether the entity is treated as a "corporation" for Japanese tax purposes. If not, the residence of a transparent entity is determined based on the address or dwelling location of each partner or investor.

Please refer to Question 15 for detailed criteria as to the meaning of "corporation" for foreign entities.

8. **Have you found the policing of cross border transactions within an international group to be a target of the tax authorities' attention and in what ways?**

Recently, cross-border transactions within an international group have been one of the most important issues facing Japanese tax administrations. According to the 2020 NTA report, the NTA has continually focused on cross-border tax avoidance by collecting information through the statutory reports, exchanges of information pursuant to tax treaties, CRS regulations, and transfer price documentation.

9. **Is there a CFC or Thin Cap regime? Is there a transfer pricing regime and is it possible to obtain an advance pricing agreement?**

Japanese tax laws include a CFC regime, a Thin Cap regime and a transfer pricing regime. In addition, taxpayers may obtain an advance pricing agreement (APA).

(1) CFC

Briefly, the Japanese CFC regime applies to Japanese residents (i.e., individuals) and domestic corporations (collectively, “domestic taxpayers,” the same hereinafter) if all of the following requirements are met:

(i) Domestic taxpayers directly or indirectly hold more than 50% of the total shares of a foreign corporation (“Foreign related corporation”), or substantially control the Foreign related corporation as though more than 50% of its total shares are held as above; and

(ii) (a) the direct or indirect ownership ratio of the domestic taxpayers in the Foreign related corporation’s shares is 10% or more; (b) the domestic taxpayers have a substantial controlling interest in the Foreign related corporation; (c) a foreign corporation substantially controlled by the taxpayers holds 10% or more of the shares of the Foreign related corporation; or (d) the taxpayers belong to a family shareholder group whose direct or indirect ownership ratio in the Foreign related corporation’s shares is 10% or more.

In general, if these requirements are met, the entire or some part of gross income of the Foreign related corporation is added to the calculation of the domestic taxpayer’s income. However, if all of the following conditions are met (“Economic Activity Test”), only passive income (i.e., dividends, capital gains from shares, interest on deposits and loans, etc.) of the Foreign related corporation must be added to the income of the taxpayer:

(i) Business Purpose Test

The major business of the Foreign related corporation is not shareholding, provision of intangible assets, or lease of vessels or aircraft, etc;

(ii) Substance Test

The Foreign related corporation has an office, etc. necessary for its principal business in the state of the head office;

(iii) Administration and Control Test

The Foreign related corporation itself conducts the management, control, and operation of its principal business in the state of the head office; and

(iv) Unrelated Party Test / Country Location Test

The Foreign related corporation conducts:

(a) any of the following businesses in which more than 50% of customers are other than affiliated persons: wholesale business, banking business, trust business, financial instruments business, insurance business, water transportation business, air transportation business or goods leasing business; or

(b) any other business mainly conducted in the state of the head office.

In addition, a taxpayer will be exempt from the CFC regime if one of the following conditions applies:

(i) the rate of the tax burden of the Foreign related corporation for each business year is 20% or more (30% or more if the Foreign related corporation is a shell company or a cash-box-company); or

(ii) the gross amount of the income of the Foreign related corporation does not exceed JPY 20 million or 5% of net income before tax, and the Economic Activity Test has been satisfied.

(2) Thin Cap regime

If a domestic corporation pays interest on debt to a foreign controlling shareholder (i.e., non-resident or foreign corporation that holds, directly or indirectly, 50% or more of the shares of the domestic corporation), or to a fund provider that is related to the domestic corporation, the portion of the interest shall be disallowed as a non-deductible expense if both of the following ratios exceed 3:1:

(i) The average total interest bearing debt amount as compared to the equity amount; and

(ii) The average interest bearing debt amount from a foreign related shareholder as compared to the equity amount attributable to the foreign controlling shareholder or the fund provider.

Corporate taxpayers in Japan should also pay attention to the earning stripping rules under Japanese tax laws.

(3) Transfer Pricing Regime

Japanese tax laws provide a transfer pricing regime for corporate taxpayers, which is based on the OECD transfer pricing guidelines. In particular, the applicable method for calculating the arm’s length price in Japan is in line with the method approved in the OECD guidelines.

Details of the Japanese transfer pricing regime are contained in the guidelines published by the NTA.

There are two types of APA in Japan: (i) an APA by the Japanese authorities alone (Unilateral APA); and (ii) an APA based on mutual agreement with foreign authorities (Bilateral APA). The NTA actively promotes Bilateral APA. In principle, an APA is valid for the three to five fiscal years, and taxpayers may request renewal of an APA.

In addition, the following four types of transfer price documentation are required: (i) a NUPE (Notification for Ultimate Parent Entity) form; (ii) a CbCR (Country-by-Country Report); (iii) a master file; and (iv) a local file.

The first three types of documentation are applicable to subsidiaries or branches in Japan that are constituent entities of a specified multinational enterprise (MNE). The local file is applicable to all corporate taxpayers engaging in transactions with foreign affiliates.

10. **Is there a general anti-avoidance rule (GAAR) and, if so, in your experience, how would you describe its application by the tax authority? Eg is the enforcement of the GAAR commonly litigated, is it raised by tax authorities in negotiations only etc?**

Japanese tax laws provide four types of general anti-avoidance rules ("GAAR") for the disallowance of acts or calculations:

(1) by family corporations;

(2) in relation to reorganization (corporate restructuring);

(3) by corporate groups of the group calculation framework; and

(4) in relation to foreign entity profits that are attributable to a permanent establishment.

The first two types of GAAR generally apply to taxpayers.

A Supreme Court decision dated 29 Feb 2016 established the evaluation criteria applicable to the GAAR for reorganization (Corporation Tax Act, section 132-2) as follows:

- whether the corporation's act or calculation in question is of an unusual nature (e.g., the corporation selected numerous complicated or roundabout structures for organizational restructuring); and
- whether the corporation had any business objective or other factor, other than reduction of the tax burden, that could be a reasonable ground for performing the act or calculation; and, if so, whether the act or calculation in question may be deemed to have

been performed in an attempt to reduce the tax burden by taking advantage of organizational restructuring and to be aimed at seeking or avoiding the application of the provisions of the tax system for organizational restructuring in a manner that deviates from the original purposes and objectives of those provisions.

In evaluating the GAAR for the disallowance of acts by family companies, several lower courts will consider whether the acts or calculations would be unreasonable or unnatural if taken by a truly independent person (i.e., non-related party) when viewed from an economic and reasonable standpoint.

Although several courts have addressed the enforcement of the GAAR, the evaluation criteria for these rules have not been made sufficiently clear to taxpayers. Therefore, future cases will be expected to provide further precedents for the application of the GAAR.

11. **Have any of the OECD BEPs recommendations been implemented or are any planned to be implemented and if so, which ones?**

Many of the OECD BEPS recommendations have already been implemented as follows:

(1) BEPS Action 1: Addressing the Tax Challenges of the Digital Economy

The Consumption Tax Act was amended as part of the 2015 tax reform to enable the imposition of consumption taxes on digital services (e.g., publication of E-books or distribution of online music) provided from overseas to Japanese residents;

(2) BEPS Action 2: Neutralising the Effects of Hybrid Mismatch Arrangements

As stated in Question 22, in general, 95% of the dividends received by domestic corporations from related foreign corporations are exempt from corporate taxes under certain circumstances. Pursuant to the 2015 tax reform, the exemption does not apply to dividends that are deductible from the income of foreign corporations under local tax laws;

(3) BEPS Action 3: Designing Effective Controlled Foreign Company Rules

The Japanese CFC regime has been drastically amended, particularly as part of the 2017 tax reform. Question 9 contains the current rules for the Japanese CFC regime;

(4) BEPS Action 4: Limiting Base Erosion Involving Interest Deductions and Other Financial Payments

The Japanese earnings-stripping rules were amended as part of the 2019 tax reform. Importantly, the maximum amount of interest to be deducted was amended from 50% to 20%

of the adjusted income;

(5) BEPS Action 6: Preventing the Granting of Treaty Benefits in Inappropriate Circumstances

Japan had a Limitation on Benefit ("LOB") or Principal Purpose Test ("PPT") clause in its tax treaties with some countries at the time of the publication of the 2015 BEPS final report. Subsequently, Japan signed the "The Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting" ("MLI"), and chose to apply PPT to tax treaties with other countries.

In addition, as part of the 2015 tax reform, Japan introduced an exit tax, which was noted as a preventive measure against tax avoidance in the 2015 BEPS final report;

(6) BEPS Action 7: Preventing the Artificial Avoidance of Permanent Establishment Status

The permanent establishment rules were amended as part of the 2018 tax reform. In particular, the concept of agent PE was amended to expand the taxation basis for commissionaire or non-preparatory activities;

(7) BEPS Action 8-10: Aligning Transfer Pricing Outcomes with Value Creation

The Japanese transfer pricing rules were amended as part of the 2019 tax reform based on the OECD transfer price guideline as reflected in BEPS Action 8-10. This amendment clarified the concept of intangibles and provided for the application by corporate taxpayers of the DCF method to the price calculation for transactions of intangibles that have no comparable transaction;

(8) BEPS Action 13: Guidance on Transfer Pricing Documentation and Country-by-Country Reporting

The transfer pricing documentation rules were introduced as part of the 2015 tax reform. Question 9 contains the current rules for transfer price documentation; and

(9) BEPS Action 15: Developing a Multilateral Instrument to Modify Bilateral Tax Treaties

As mentioned above, Japan signed the MLI in 2018. As of 22 July 2020, Japan has chosen 41 countries (areas) as the applicable areas for MLI.

12. **In your view, how has BEPS impacted on the government's tax policies?**

We believe that the BEPS has had, and will continue to have, a significant impact on Japanese tax laws and administration. The next concern in Japan may be the tax challenges of the digital economy based on the discussion of G20.

13. **Does the tax system broadly follow the recognised OECD Model? Does it have taxation of; a) business profits, b) employment income and pensions, c) VAT (or other indirect tax), d) savings income and royalties, e) income from land, f) capital gains, g) stamp and/or capital duties. If so, what are the current rates and are they flat or graduated?**

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If so, what are the current rates and are they flat or graduated?

The Japanese tax system broadly follows the recognized OECD model. Most tax treaties that Japan enters into with other countries have essentially been based on the OECD model tax treaty.

In addition, as mentioned in Question 12, Japan has reformed its tax laws and regulations to be suitable for BEPS Actions.

(1) Taxation of Business Profits

As of 1 April 2020, business profits earned by Japanese residents are subject to: (a) income taxes at the progressive tax rate, which is a maximum of 45% of the yearly gross income; (b) special reconstruction taxes at the rate of 2.1% of the amount of income taxes; (c) local residence taxes at the rate of 10% of the gross income; and (d) local business taxes, the tax rate of which depends on the type of business.

In addition, business profits earned by Japanese domestic corporations are subject to: (a) corporate taxes; (b) local corporate taxes; (c) local residence taxes; and (d) local enterprise taxes. For the business years starting on or after October 1, 2019, the effective tax rate applied to Japanese domestic corporations located in Tokyo with paid-in capital exceeding JPY 100 million will be approximately 30.62%.

However, in general, non-residents (i.e., individuals) and foreign corporations (collectively, “foreign taxpayers,” the same hereinafter) shall be subject to Japanese taxes only on business profits attributable to their Japanese permanent establishment. If those taxpayers have no permanent establishment, only business profits accrued from domestic sources in Japan will be subject to withholding taxes.

(2) Taxation of Employment Income and Pensions

Pursuant to Japanese tax laws, employment income is generally classified as salary income and, as described above, is subject to: (a) income taxes; (b) special reconstruction taxes; and (c) local residence taxes. However, a retirement allowance is usually categorized as retirement income, which is subject to preferred tax treatment.

Individual taxpayers who gain employment income in an amount of less than JPY 20 million per year from only one employer, and have no other income for which they should file tax returns, are not generally required to file tax returns, because their salary is subject to withholding taxes.

Pensions are usually classified as miscellaneous income and subject to the above three types of taxes. Theoretically, pension earners may be required to file tax returns if the amount of their income exceeds the statutory amount.

Employment income paid to non-residents for their work in Japan as well as pensions are generally subject to withholding tax at the rate of 20.42%.

(3) VAT (or other indirect tax)

Under Japanese tax laws, both individual and corporate business operators that engage in selling products, renting assets, or providing services in exchange for consideration as a business in Japan (“Taxable Transactions”) are generally subject to consumption taxes (Japanese VAT) at the rate of 10% of the trade prices on the Taxable Transactions.

In general, a business operator is not required to pay consumption taxes if the aggregate amount of the trade prices for the Taxable Transactions during the base year (i.e. the business year that is prior to the year immediately preceding the relevant year) is JPY 10 million or less.

(4) Taxation of Savings Income and Royalties

Savings income for Japanese residents (i.e., individuals in Japan) is usually classified as interest income. This income is subject to withholding taxes at the flat tax rate of 20.315%, separately from other income. In addition, royalties are generally classified as business income or miscellaneous income, and are subject to taxation in almost the same way as business profits described above.

Savings income and royalties for Japanese domestic corporations are subject to taxation in the same way as business profits.

However, savings income and domestic royalties for foreign taxpayers are subject to withholding taxes at the rate of 15.315% (savings income) or 20.42% (royalties for intellectual property), if those foreign taxpayers are without Japanese permanent establishments. The tax rate depends on the applicable tax treaties that may exempt, or reduce, the withholding taxation.

If foreign taxpayers have Japanese permanent establishments, taxation is basically the same as for domestic taxpayers.

(5) Taxation of Income from Land

In connection with taxation of income from Land, the taxation for rent and for capital gains differ depending on individual income.

(i) Rent

Rental income of Japanese residents from land is usually categorized as business income or real estate income. Both are taxed at the progressive tax rate.

Rental income of domestic corporations is taxed in the same way as business profits.

However, domestic rental income of foreign taxpayers is generally subject to withholding taxes at the rate of 20.42%, unless the taxation is exempt or reduced pursuant to the applicable tax treaty. If a foreign taxpayer has a Japanese permanent establishment, taxation will be basically the same as for a domestic taxpayer.

(ii) Capital Gains

Japanese residents and non-residents are both subject to income taxes on capital gains from the transfer of land at a flat rate, separately from other income.

The tax rate for capital gains is generally 39.63% of the gross income, but is 20.315% for an individual taxpayer that has owned the land for five years or more as of January 1 of the year in which the land is transferred.

Further, if a non-resident without Japanese permanent establishment transfers land in Japan to a Japanese taxpayer, withholding taxes will be imposed on the purchase price for the land at the rate of 10.21%.

However, Japanese domestic corporations and foreign corporations are both subject to taxation on capital gains in the same way as business profits. Further, as with non-residents,

withholding taxes will be imposed on the purchase price paid to foreign corporations without Japanese permanent establishments.

(6) Taxation of Capital Gains

In general, Japanese residents will be subject to the taxes on capital gains from the transfer of securities at the flat rate of 20.315%, separately from other income. Japanese corporations are subject to taxation in the same way as business profits.

However, unless otherwise exempt under the applicable tax treaties, foreign taxpayers without Japanese permanent establishments are subject to taxes on capital gains relating to shares of a Japanese corporation only in certain cases as follows:

(i) the taxpayer owns, directly or indirectly, 25% or more of the shares of the sold domestic corporation sometime during the three-year period prior to the end of the business year, and sold 5% or more of the shares during the business year; or

(ii) the domestic corporation is a real estate-holding corporation (i.e., a domestic corporation of which 50% or more of assets consists of real estate, etc).

If a foreign taxpayer has a Japanese permanent establishment, taxation is basically the same as for a domestic taxpayer.

(7) Stamp and/or Capital Duties

Japanese tax laws impose stamp taxes on certain types of documents executed in Japan. The amount of stamp taxes is determined based on the type of document and the amount of trade prices stated in that document.

There are no capital duties in Japan, although registration taxes are imposed on the amount of paid-in capital registered on the commercial registry at the flat rate of 0.7%.

14. **Is the charge to business tax levied on, broadly, the revenue profits of a business as computed according to the principles of commercial accountancy?**

Corporate taxes are levied on, broadly, the revenue profits of a business, as calculated according to the Generally Accepted Accounting Principles (“GAAP”) in Japan. However, GAAP for purposes of Japanese tax laws differ from GAAP for purposes of Japanese accounting standards. For Japanese tax purposes, certain adjustments will be needed.

15. **Are different vehicles for carrying on business, such as companies, partnerships,**

trusts, etc, recognised as taxable entities? What entities are transparent for tax purposes and why are they used?

As mentioned in Question 7, business entities in Japan generally use corporate forms, such as joint-stock companies (Kabushiki-Kaisha) and limited liability companies (Godo-Kaisha). Under Japanese tax laws, all types of corporations are recognized as taxable entities.

However, transparent entities, such as partnerships (Kumiai) or investment limited partnerships (Toshi-Jigyo-Yugensekinin-Kumiai), are mainly used for investment vehicles. Foreign partnerships, such as US Limited Partnerships, are also used for the same purpose. However, foreign partnerships are not always deemed to be transparent for Japanese tax purposes.

A Supreme Court decision dated 17 July 2015 concerning a Delaware Limited Partnership held that the question of whether a foreign entity is fiscally transparent for Japanese tax purposes is determined by the following two criteria:

– Whether a legal status equivalent to that of a Japanese corporation has been granted to the foreign entity under the laws of the jurisdiction in which it was established, considering the provisions and framework of the law; and

– Whether the foreign entity assumes rights and obligations on its own account. In other words, whether the foreign entity can be a party to legal actions, and whether the legal effects of its actions can be attributed to it.

Even after the Supreme Court decision, the criteria for transparency are still vague and not easily applied. Therefore, careful consideration is still necessary when considering the transparency of entities for Japanese tax purposes.

16. **Is liability to business taxation based upon a concepts of fiscal residence or registration? Is so what are the tests?**

As mentioned in Question 13, the range of liabilities for business taxation differs depending on whether taxpayers are domestic or foreign.

In addition, as stated in Question 7, the test for residence of a corporation is not based on fiscal residence or registration, but, as a practical matter, on the jurisdiction of incorporation.

An individual business operator is treated the same as a corporation in that its residence is not decided by fiscal residence or registration, but rather by address or dwelling location.

17. **Are there any special taxation regimes, such as enterprise zones or favourable tax regimes for financial services or co-ordination centres, etc?**

Japan has a National Strategic Special Zones system and an International Strategic General Special Zones system.

Pursuant to the former system, Japan has designated ten regions as National Strategic Special Zones in which special tax measures (e.g., tax credit for investment in certain facilities) apply to certain corporations engaging in certain types of businesses.

Under the latter system, for example, the Tokyo Metropolitan Government has established Asian region headquarters special zones in which foreign corporations that incorporate subsidiaries may be entitled to special depreciation or tax credits.

18. **Are there any particular tax regimes applicable to intellectual property, such as patent box?**

There are no particular tax regimes applicable to intellectual property under Japanese tax laws. Japan does not have a patent box regime.

19. **Is fiscal consolidation employed or a recognition of groups of corporates for tax purposes and are there any jurisdictional limitations on what can constitute a group for tax purposes? Is a group contribution system employed or how can losses be relieved across group companies otherwise?**

Japanese tax laws provide two main systems for group taxation: (1) the full controlling interest system; and (2) the group calculation system.

The former system applies forcibly to intra-group transactions among domestic corporations in which all companies in the group are wholly owned (whether directly or indirectly) by the ultimate parent of the group, regardless of whether the ultimate parent is a foreign or domestic company, or individual. Under this system, a taxation on intra-group profits from transfers of certain kinds of assets is deferred until those assets are transferred to a third party. Additionally, intra-group contributions, donations, and dividends are disregarded.

The latter system was introduced in the 2020 tax reform to replace an older system (the consolidated return system), and will be effective for any business year starting on or after 1 April 2022. With the prior approval of the NTA, this system only applies to groups in which all corporations are wholly owned (whether directly or indirectly) by the ultimate parent of the group and all corporations of the group are domestic. Under this system, corporation taxes are calculated on a group-wide basis (i.e., offsetting all profits and losses among the group), but paid by each group corporation.

20. **Are there any withholding taxes?**

Under Japanese tax laws, as mentioned above, taxpayers are subject to withholding taxes according to the types of income received or the types of transaction conducted.

As in other jurisdictions, withholding tax is a significant means by which the NTA collects national taxes from non-residents (i.e., individuals) or foreign corporations without permanent establishments. Unless otherwise stated in tax treaties, these foreign taxpayers are subject to withholding tax on broader types of income sourced in Japan (e.g., interest on loans or royalties from intellectual property).

21. **Are there any recognised environmental taxes payable by businesses?**

Japanese tax laws do not provide for environmental taxes payable by businesses.

However, from 2012, as a global warming countermeasure, certain rates were added to the rates of petroleum and coal taxes. In addition, in October 2019, laws on light vehicle taxes were revised so that light vehicles producing less exhaust are treated favorably for tax purposes.

22. **Is dividend income received from resident and/or non-resident companies exempt from tax? If not how is it taxed?**

To summarize briefly, Japanese tax laws provide that dividends among related domestic corporations and their ultimate individual shareholders are subject to income taxation twice: (1) at the corporate level; and (2) at the individual shareholder level.

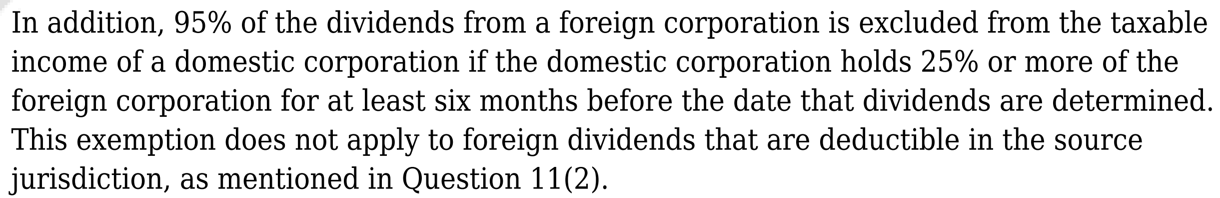
In particular, the rate of dividends excluded from taxable income of domestic corporations is generally as follows:

– if a recipient corporation holds 100% of the dividend-paying corporation for the period (if this period is longer than 1 year) in which the dividends are calculated:100%;

– if a recipient corporation holds more than 33.3% of the dividend-paying corporation for the period (if this period is longer than six months) in which the dividends are calculated: 100% (less the interest expense allocated to the dividends of the recipient corporation);

– if a recipient corporation holds more than 5%, but 33.3% or less of the dividend-paying corporation, or holds more than 33.3%, but for less time than the applicable calculation period: 50%; and

– if a recipient corporation holds 5% or less of the dividend-paying corporation: 20%



In addition, 95% of the dividends from a foreign corporation is excluded from the taxable income of a domestic corporation if the domestic corporation holds 25% or more of the foreign corporation for at least six months before the date that dividends are determined. This exemption does not apply to foreign dividends that are deductible in the source jurisdiction, as mentioned in Question 11(2).

23. **If you were advising an international group seeking to re-locate activities from the UK in anticipation of Brexit, what are the advantages and disadvantages offered by your jurisdiction?**

We assume that an international group would rarely plan to re-locate activities from the UK to Japan in anticipation of Brexit.