



JAPAN LEGAL UPDATE

Tax

Outline of the New Tax Agreement Between Japan and Germany

On October 28, 2016, the new tax agreement between Japan and Germany ("Agreement between Japan and the Federal Republic of Germany for the Elimination of Double Taxation with Respect to Taxes on Income and to Certain Other Taxes, and the Prevention of Tax Evasion and Avoidance"; hereinafter referred to as the "New Agreement") came into force following the completion of all necessary procedures. The New Agreement applies to taxes for any taxable year beginning on or after January 1, 2017 (in the case of taxes levied on the basis of a taxable year) and to taxes levied on or after the same date (in the case of taxes not levied on the basis of a taxable year).

The New Agreement wholly amends the previous tax agreement between Japan and Germany (hereinafter, the "Former Agreement"). While [the December 2015/January 2016 issue of this Update](#) briefly mentions the New Agreement, this article shall provide more detail.

New Provision Regarding Taxation of Business Profits. With respect to the taxation of business profits attributable to a permanent establishment ("PE") such as a branch of a foreign corporation, under the New Agreement, the "arm's-length principle" must be applied in a stricter manner for the calculation of profits attributable to the PE. Among other areas, internal dealings between the head office and its branch should be recognized in calculating attributable profits in principle (Article 7).

Expansion of the Exemptions from and Mitigation of Source-Country Taxation. The New Agreement expands the exemptions from and mitigation of source-country taxation on investment income (i.e., dividends, interest and royalties).

Specifically, (i) as for dividends, while under the Former Agreement the applicable tax rate in a source-country was 10 percent of the gross amount of dividends payable between certain affiliates and 15 percent for other dividends, the New Agreement relaxes source-country taxation rules to allow for three scenarios: either (a) the dividends are tax exempt if the beneficial owner of the dividends directly owns 25 percent or more of the voting shares of the paying company for at least 18 months, (b) the applicable tax rate is 5 percent of the gross amount of the dividends if the beneficial owner of the dividends owns 10 percent or more of the voting shares of the paying company for at least six months, or (c) the applicable tax rate is 15 percent in all other cases (Article 10).

In addition, (ii) as for interest and royalties, while both of them were generally subject to a tax of 10 percent in a source country under the Former Agreement, the New Agreement makes both payments tax exempt (Articles 11 and 12).

It should be noted that the benefits set forth in (i) and (ii) above are subject to satisfaction of the requirements under the limitation on benefits clause as described below and the completion of certain procedures as provided in Article 27.

Introduction of the Limitation on Benefits Clause. A resident of a contracting state is entitled to a benefit under the New Agreement only if such resident is considered a "qualified person" or otherwise objectively satisfies alternative requirements. Notwithstanding the above, a benefit under the New Agreement will be denied if it is reasonably concluded that, with regard to all relevant facts and circumstances, obtaining the benefit was one of the principal purposes of the relevant transaction (Article 21).

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As seen above, the New Agreement substantially changes the existing tax treatment under the Former Agreement and thus is worthy of attention when Japanese companies with a parent, subsidiary, or branch in Germany, or those companies having a counterparty in Germany, carry out transactions going forward.

Labor

Tokyo High Court Decision Recognizing a Breach of a Company's Duty of Care in Connection with the Occurrence of an Employee's Depression Due to Overwork

On August 31, 2016, the Tokyo High Court issued a decision ordering a company to pay an aggrieved employee approximately 60 million JPY (with such amount being more than twice the amount ordered in the original decision of the case before it was remanded). The case concerned an employee who was notified of her dismissal during a leave of absence due to depression. The employee made a claim for damages against the company on the grounds of a violation of the duty of care the company owed her, alleging that her depression was caused and aggravated by overwork. In awarding damages, the Tokyo High Court reasoned that the company failed to exercise due care to reduce the amount of work for the plaintiff. In the original decision on February 23, 2011, the Tokyo High Court had reduced the amount of compensation by 20 percent from the amount of damages otherwise found by the Tokyo High Court, on the grounds that the plaintiff had failed to provide the company with information regarding her mental health, such as her visits to a psychiatrist. However, on March 24, 2016, the Supreme Court, holding that the amount of compensation should not be reduced for such reason, overruled the Tokyo High Court's decision concerning the amount of compensation and remanded the case to the court for further exploration on the issue. This series of decisions is noteworthy as it indicates that companies must pay attention to overwork and that a heightened level of the duty of care may be imposed on companies in relation to depressed employees.

Disputes

Establishment of Debtor Account Identification System through the Court

On September 12, 2016, the Minister of Justice consulted with the Legislative Council of the Ministry of Justice to discuss amendments to the Civil Execution Act, including the establishment of a system by which a court could request that financial institutions disclose debtor account information, among other things. Currently, even if an enforceable judgment is granted, it is practically difficult to attach accounts, which are the assets against which judgments should be the most enforceable, as there is no way to forcibly obtain from financial institutions the information of the accounts of the debtor. At the very least, holders of enforceable judgments are required to identify the names of the appropriate financial institutions and the appropriate branches in order to implement attachment of debtor accounts. If the new system is established, the enforcement of judgments against debtor accounts is expected to be more easily facilitated. Attention should be paid to further discussions.

Corporate

Enforcement of the Japanese Class Action System

The Act on Special Measures Concerning Civil Court Proceedings for Collective Redress for Property Damage Incurred by Consumers, under which the so-called "Japanese Class Action System" was introduced, came into force on October 1, 2016. For details on the Act, please see the [December 2015/January 2016](#) issue of this newsletter.

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