



JAPAN LEGAL UPDATE

Tax

Outline of the 2017 Tax Reform Proposal (Corporate Income Tax and International Taxation)

On December 22, 2016, the Cabinet approved the 2017 Tax Reform Proposal. Noteworthy amendments pertaining to corporate income tax and international taxation contained in the 2017 Tax Reform Proposal include the following:

Tax Deferral on Spin-off. A spin-off (i.e., a transfer of a business line or division of a parent company to a newly established or existing subsidiary followed by distribution of shares of the subsidiary to the parent's shareholders) will qualify for tax deferral if it satisfies certain requirements such as a pro rata distribution of shares of the subsidiary.

In addition, the distribution of all shares of an existing wholly owned subsidiary will be subject to the same tax treatment as a divestiture. Further, even if a domestic corporation distributes only shares of its foreign subsidiary to foreign shareholders on a *pro rata* basis, the recipient foreign shareholders will, with certain exceptions, be deemed as having transferred the shares and will be subject to Japanese capital gains tax. This amendment should be taken into account in the planning of reorganizations going forward.

Amendment of CFC Rules. Major amendments include the following: (i) The existing method for calculating the shareholding ratio for the purposes of the definition of "controlled foreign corporation (CFC)" will be changed and a new substantive test will be introduced; and (ii) while the existing trigger tax rate (currently, an effective tax rate on income of a CFC of lower than 20 percent) will substantially be retained as a criterion for exemption, any income of a CFC that falls in any of the following three categories will be added to the taxable income of its parent company unless the effective tax rate is 30 percent or higher:

- A company without fixed assets or personnel,
- A company with a ratio of total passive income of certain types to total assets of higher than 30 percent; or
- A company that is situated in any country on the blacklist of Japanese tax authorities.

These amendments will apply for fiscal years of CFCs commencing on or after April 1, 2018. In particular, any domestic corporation with a foreign subsidiary that is subject to an effective tax rate in the applicable local jurisdiction of 20 percent or higher (but lower than 30 percent) should be mindful of a possible increase of tax burdens caused by this amendment.

Others. The trading of certain types of virtual currency specified under the Payment Services Act (which is currently treated as a taxable transaction for Japanese consumption tax purposes) will be treated as a nontaxable transaction on or after July 1, 2017.

All business enterprises should pay close attention to the recent tax reform, including the foregoing amendments, when engaging in business going forward.

General

Enactment of Casino Act

On December 15, 2016, the Act Concerning Promotion of Development of Integrated Resort Areas ("Casino Act") was enacted and promulgated, and on December 26, 2016, the Casino Act came into force (with the exception of the provisions related to the headquarters of the promotion of development of integrated resort areas). Under this Act, private business operators may establish and operate casino facilities integrated with recreation facilities, accommodations, etc. in an approved area designated by a competent minister upon application by a local government. While it is uncertain what kind of measures would be implemented regarding the establishment and operation of casino facilities, according to the report, activities aimed at attracting casino facilities have started around Japan, including in Tokyo, Osaka, and Yokohama. Future regulations by the central government and future invitations by local governments should both be closely monitored.

General

Diet Approved the Trans-Pacific Partnership on December 9, 2016

The Trans-Pacific Partnership ("TPP") was approved by the Diet, and the "Amendments to Relevant Acts Due to the Conclusion of Trans-Pacific Partnership" were enacted in order to reform relevant domestic laws. However, while ratification by the United States is crucial to the implementation of the TPP, President Trump has expressed his intention to withdraw from the TPP, and thus it is unclear whether the TPP will in fact be implemented.

Finance

Supreme Court Decision on Insider Trading (November 28, 2016)

Deciding on whether material nonpublic information (i.e., insider information) is deemed disclosed as a result of a so-called "scoop" by a news outlet, the Supreme Court (first petty bench) ruled that "even if the material information was reported, insider trading regulations are not lifted unless the source is identified." Therefore, the Supreme Court clarified that, even if a scoop based on an anonymous source covered insider information, an insider is still subject to insider trading regulations unless and until the insider information is officially disclosed in accordance with provisions of the Financial Instruments and Exchange Act. Thus, if trading shares in a listed company under such circumstances, an insider would still need to rely on an exemption from, or otherwise comply with, the insider trading regulations.

Intellectual Property

Determination of Date of Enforcement of the Amended Personal Information Protection Act and Publication of Guidelines

On December 20, 2016, the Cabinet decided to fully bring into force the Amended Act on the Protection of Personal Information, which was enacted in September 2015 (please see the [October 2015 issue](#)), on May 30, 2017. On November 30, 2016, the Personal Information Protection Commission published four sets of guidelines to the Act (the Guidelines on (i) the General Provisions, (ii) the transfer of personal information outside Japan, (iii) the obligations to confirm and record certain matters when transferring personal information to third parties, and (iv) the De-identified Information). These guidelines also will come into force on May 30, 2017. Companies are advised to review their internal handling of personal information and the relevant internal rules in light of these guidelines, which will provide practical guidance to measures that companies will need to take pursuant to the Act.

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