



JAPAN LEGAL UPDATE

Finance

Japan's Multilateral Convention Against Base Erosion and Profit Shifting Signed

On June 7, 2017, Japan signed the "Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting" ("MLI"). The MLI is a part of the OECD/G20 base erosion and profit-shifting ("BEPS") package to counter tax avoidance by artificially shifting profits and is intended to be an implementation of the tax treaty-related measures proposed in the BEPS project that is designed for a multilateral, rather than a conventional bilateral, framework. Sixty-eight jurisdictions (including Japan) have signed the MLI, although the United States is not included as a signatory.

Each party to the MLI may generally: (i) identify which existing tax treaties will be covered by the MLI (Japan so far has designated tax treaties with 35 jurisdictions to be covered by the MLI); and (ii) reserve the right to have certain provisions in the MLI not apply to the existing tax treaties identified in (i) above. The provisions in the MLI may be used as alternatives for the provisions in an existing tax treaty only when both contracting jurisdictions of such tax treaty elect to do so via (i) and (ii) above.

Accordingly, one must look at each country's decisions with respect to (i) and (ii) above in order to see how each existing treaty will be affected by the MLI.

The following are some of the MLI provisions that Japan so far has not reserved the right to exclude:

Article 3: Transparent Entities. Income derived by an entity that is treated as fiscally transparent in either contracting jurisdiction shall be treated as income of a resident of a contracting state but only to the extent that the income is treated, for purposes of taxation by that contracting jurisdiction, as the income of a resident of that contracting jurisdiction.

Article 7: Prevention of Treaty Abuse. A treaty benefit is not granted in principle if it is reasonable to conclude that obtaining that benefit was one of the principal purposes of a transaction.

Articles 12 and 13: Artificial Avoidance of Permanent Establishment Status. For instance, an enterprise is deemed to have a permanent establishment if, among others, a person acting in a contracting jurisdiction on behalf of that enterprise plays the principal role leading to the conclusion of contracts, notwithstanding the lack of authority to conclude contracts on behalf of that enterprise.

The MLI will enter into force upon the expiration of a period of time following the deposit of the fifth instrument of ratification, acceptance, or approval. The MLI will allow for a simultaneous and efficient implementation of the treaty-related BEPS measures to come to fruition in a multilateral context. Considering the possible impact of the MLI, any enterprise engaging in transactions involving a covered jurisdiction should consider how to respond to the MLI, including possible changes to the transaction structures if necessary.

Antitrust

Amendments to the "Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act"

On June 16, 2017, the "Guidelines Concerning Distribution Systems and Business Practices under the Antimonopoly Act" ("Guidelines") were amended. The amendments are intended to make the Guidelines more comprehensible, versatile, and useful for business persons based on the changes in distribution systems and business practices in Japan that have occurred over the nearly 25 years since they were first drafted. The major points of the amendments are as follows: (i) general changes in structure of the Guidelines to classify vertical restraints as those between trading partners; (ii) clarification of the process of analyzing the legality of a specific vertical restraint; (iii) clarification of the legal criteria for vertical restraints concerning online transactions; and (iv) clarification of legal criteria by including citations to precedent cases decided by courts or the Japan Fair Trade Commission ("JFTC") or cases that the JFTC adjudicated upon consultation.

Life Sciences

Enactment of Next Generation Medical Infrastructure Act

The "Act Regarding Anonymized Medical Data to Contribute to R&D in the Medical Field" ("Next Generation Medical Infrastructure Act" or "Act") was enacted in Japan on April 28, 2017, and was promulgated on May 12, 2017. The Act establishes a system that certifies business operators that can properly and reliably anonymize medical data as certified medical data anonymization agencies ("certified agencies"), in order to promote advanced R&D and new business development relating to health and medical care through secure and proper use of anonymized medical data. For medical institutions, it will become possible to provide medical data to certified agencies if the medical institutions notify their patients in advance and their patients do not reject the provision of that medical data. This Act will come into force within one year from the date of promulgation.

Environmental, Health & Safety

Amendment to the Soil Contamination Countermeasures Act Enacted

The "Amendment to the Soil Contamination Countermeasures Act" was enacted on May 12, 2017, and was promulgated on May 19, 2017. This Amendment: (i) requires an owner of land, or other individual, that is subject to a suspended contamination investigation (due to the operation of a factory on the land, for example) to conduct an investigation in certain circumstances; (ii) establishes a system to issue orders for the submission or change of plans, considering that there is no measure currently in existence that allows for the correction of orders to remove pollution; and (iii) streamlines the regulations relating to the risks, including mitigating notification obligations in the event of change in the land's characteristics if there is no concern of a health hazard. This amendment will come into force no later than two years from the date of promulgation on a date to be specified by a Cabinet Order.

General

Enactment of Private Residence Lodging Business Act

The "Private Residence Lodging Business Act" ("Act") was enacted on June 9, 2017, and promulgated on June 16, 2017. Given that the law related to Japan's private residence lodging business (that is, the home-sharing services business) has been unclear despite a sharp rise in demand for these services, the Act introduces, among other things, a notification requirement for home-sharing service operators and a registration requirement for intermediaries who engage in this business. In addition to existing operators of private residence lodging businesses, any company that plans to enter into the field should carefully review the Act's provisions. The Act will come into force no later than one year from the date of promulgation on a date to be specified by a Cabinet Order.

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