



## Tax

### Outline of Japan's 2018 Tax Reform Proposal (International Taxation)

On December 22, 2017, the Japanese Cabinet approved the 2018 Tax Reform Proposal. With respect to international taxation, the following are two key amendments to provisions concerning permanent establishments ("PEs"):

1. The definition of "PE" will be revised to prevent companies from artificially avoiding being treated as having a PE. For example, under the revised definition, a person who habitually plays the principal role leading to the conclusion of contracts in Japan on behalf of a foreign enterprise, and who satisfies certain other requirements, will be treated as a PE for that foreign enterprise, even if the person is not authorized to conclude contracts in Japan. In addition, places of business used solely for such activities as storage, display, and delivery will not constitute PEs as long as such activities are "of a preparatory or auxiliary character."
2. A new provision will be established to reconcile the definitions of "PE" under tax treaties and under domestic tax law.

The amendment described in 1. above is being conducted in accordance with the OECD/G20 base erosion and profit-shifting ("BEPS") project proposal and reflects the multilateral convention against BEPS ("MLI") that includes similar provisions, as mentioned in the [July 2017 issue](#) of this newsletter. However, amendment 2. above will clearly prescribe that as to the definition of "PE," bilateral tax treaties will prevail over domestic tax law. Therefore, amendment 1. above will not apply where the applicable bilateral tax treaty maintains the existing PE definition and such definition is not modified by the MLI.

Going forward, foreign enterprises carrying on business in Japan will need to consider the risks of PE treatment after taking into account domestic tax law, bilateral tax treaties, and the MLI.

## Antitrust

### First Supreme Court Decision on the Extraterritorial Application of the Antimonopoly Act

On December 12, 2017, Japan's Supreme Court (Third Petty Bench) issued a decision that, for the first time, recognized the extraterritorial application of the Act on Prohibition of Private Monopolization and Maintenance of Fair Trade ("Antimonopoly Act"). This was the final appeal in a case in which the Japan Fair Trade Commission ("JFTC") had fined a manufacturer and seller of cathode ray tubes ("CRT Manufacturer") for its participation in a price-fixing cartel in Southeast Asian countries that fixed the price of CRTs sold to Japanese manufacturers and sellers of televisions ("Japanese Manufacturers").

The CRT Manufacturer appellant claimed that the Antimonopoly Act did not apply to the cartel because foreign subsidiaries of the Japanese Manufacturers purchased the CRTs outside of Japan and because the agreements were made outside of Japan. However, the Supreme Court held that even if a price-fixing cartel is established outside of Japan, if the cartel damages the competitive functioning of the domestic Japanese market, then this would constitute a violation of free competition in Japan, and so the

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Antimonopoly Act would apply. The Supreme Court ruled that the Japanese Manufacturers and their foreign subsidiaries could be considered to have purchased the CRTs together, and that therefore the cartel in this case damaged the competitive functioning of the market of transactions involving the Japanese Manufacturers. The Supreme Court rejected the appellant's claim and thus recognized the extraterritorial application of the Antimonopoly Act.

The decision upheld the JFTC's position that the Antimonopoly Act applies where illegal conduct that takes place outside of Japan has effects on the Japanese market.

## Finance

### FSA Clarifies Regulatory Position on Initial Coin Offerings and Warns of Risks

On October 27, 2017, the Financial Services Agency of Japan ("FSA") released a statement on initial coin offerings: "Initial Coin Offerings (ICOs)—user and business operator warning about the risks of ICOs."

In its statement, the FSA clarified that ICOs may be regulated under Japanese law, including by the Payment Services Act and the Financial Instruments and Exchange Act. The FSA also emphasized that investors will need to fully understand the risks associated with ICOs and will be responsible for their ICO participation.

For more information, please see the Jones Day *Commentary*, "[Japan's FSA Clarifies Regulatory Position on Initial Coin Offerings, Warns of Risks.](#)"

## Aerospace

### Commencement of Applications under the Satellite Act

On November 15, 2017, the Cabinet Office began accepting applications for the "permission to launch an artificial satellite" and the "permission to manage an artificial satellite," among others, under the Act on Launching and Managing Artificial Satellites ("Satellite Act"). The Cabinet Office also publicized screening standards and guidelines under the Satellite Act. The Satellite Act was enacted in November 2016 and, together with the Act on Securing Proper Handling of Satellite Remote Sensing Records enacted at the same time, promotes and regulates the development and utilization of outer space. The recent acceptance of applications is expected to lead to even further progress with respect to Japanese private-sector participation in activities related to outer space.

## Civil Code

### Enforcement Date of the Amendment of the Civil Code Announced

On December 20, 2017, the Cabinet Order to Specify the Enforcement Date of the Amendment to the Civil Code was promulgated. The Amendment to the Civil Code will comprehensively reform the Civil Code provisions relating to obligations for the first time in more than 120 years and will come into force on April 1, 2020. For more information, please see the [May 2017 issue](#) and the [June 2017 issue](#) of this newsletter. [\[back to the top\]](#)

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