



JAPAN LEGAL UPDATE

Energy

Proposed Revision to Japanese Renewable Energy Act Would Have Major Industry Impact

On October 22, 2018, the Agency for Natural Resources and Energy ("Agency") published an "Overview on Draft Ministerial Order on Partial Revision of Ordinance for Enforcement of Act on Special Measures Concerning Procurement of Electricity from Renewable Energy Sources by Electricity Utilities" ("Proposal"). The Proposal was subject to public comment through November 21, 2018.

Under the Proposal, the feed-in-tariff (or FIT) price for certain projects will reset to the current FIT price, which is significantly lower than the legacy rates, unless the applicable utility accepts an interconnection construction application ("Application") from the developer by April 1, 2019. Affected projects include those originally certified on or prior to March 31, 2015, and solar power for which the interconnection agreement between the developer and the applicable utility was executed on or prior to July 31, 2016 ("Targeted Projects"). The Proposal indicates that in order for the utilities to accept the Application by this date, the developer would need to submit the Application by the end of January 2018.

Although the Proposal did not include detailed information on the newly introduced Application, the Proposal suggests that the developer must satisfy certain conditions prior to submitting the Application, such as: (i) securing use of the relevant land; (ii) obtaining necessary approvals for development and implementation of the project (including those for forest development and diversion of agricultural land); and (iii) completing an environmental impact assessment, if required. Furthermore, the developer may not make changes after the submission of the Application in respect of the approved projects.

Since it will be difficult for many developers to satisfy these conditions in such a short time frame, the Proposal, if enacted, would result in drastically lower FIT prices for many of the Targeted Projects. It would also greatly impact not only the developers, but also suppliers, investors, and lenders, among other stakeholders in the solar power industry.

In the near future, the Agency will likely publish the results of the public comment session and a revised draft of the ordinance. All stakeholders are encouraged to pay close attention to this issue as it develops.

Tax

Supreme Court Judgment on Notification of Withholding Tax Payment on Employment Income

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On September 25, 2018, the Third Petty Bench of the Supreme Court overruled the lower court's decision in a case challenging a notification of payment concerning withholding tax on employment income. While the original court had dismissed the taxpayer's assertion of nullification by a mistake in an element of the underlying act (cancellation of debt) after the statutory due date, the court held that there is no reason for the taxpayer to be barred from asserting the mistake after the expiration of the statutory due date. Although the Supreme Court dismissed the appeal because the appellant did not allege loss of any economic benefit resulting from the cancellation of debt as a result of nullification, this decision paves the way for a litigant to challenge a notification of tax payment by alleging a mistake after the statutory due date. It should be noted, however, that a concurring opinion emphasizing the importance of careful consideration of all specific facts where reversal of taxation is sought due to nullification because of a mistake implies that it will remain difficult to reverse taxation for that reason.

MLI Comes into Force

The "Multilateral Convention to Implement Tax Treaty-Related Measures to Prevent Base Erosion and Profit Shifting" ("MLI"), as discussed in the [July 2017 issue](#) of this newsletter, will take effect in Japan on January 1, 2019. The MLI modifies the application of certain tax treaties among jurisdictions that are parties to the MLI, where both jurisdictions have designated that the same treaty be covered and the MLI comes into force in both jurisdictions. On or after January 1, 2019, the MLI will apply to tax treaties to which Japan is a party when the above-mentioned requirements are satisfied.

Corporate

METI Revises Practical Guidelines for Corporate Governance Systems

On September 28, 2018, the Ministry of Economy, Trade and Industry of Japan ("METI") revised the Practical Guidelines for Corporate Governance Systems ("CGS Guidelines"). The CGS Guidelines provide guidance on corporate governance and summarize practical matters companies should consider when implementing principals provided under the Corporate Governance Code adopted by the Tokyo Stock Exchange ("CG Code"). In light of revisions to the CG Code in June 2018, as described in the [July 2018 issue](#) of this newsletter, the revised CGS Guidelines have restated the importance of ensuring objectivity and transparency with respect to the appointments of president and CEO and the related succession plans. It is important for listed companies and their investors to understand not only the CG Code but also the CGS Guidelines.

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