COVID-19 implications and the latest tax developments in Japan, the U.S., Hong Kong, Australia and the Netherlands.

June 2020

The Family Consulting tax and regulation newsletter is a bulletin to keep you updated on the latest and relevant tax news that we consider to be important to our clients in Japan and those focused on key jurisdictions abroad that may affect you as an individual, your family or your business. The newsletter is prepared by the tax professionals of Deloitte Tohmatsu Tax Co. and is published in English and Japanese.

COVID-19 (previously known as the novel coronavirus or nCoV) has impacted individuals and businesses globally at unprecedented levels, the below articles look at its global tax implications. We also outline the other important tax developments in Japan, the United States, Hong Kong, Australia and the Netherlands.

Country/Regional updates

1. Global

OECD secretariat analysis of tax treaties and the impact of the COVID-19 crisis
On Friday 3 April 2020, the Organization for Economic Cooperation and Development (OECD) Secretariat published its view on the application of tax treaty provisions in the context of the COVID-19 pandemic. In summary, the OECD Secretariat noted that:

- **Corporate tax residence**
  The COVID-19 crisis may raise concerns about a potential change in the place of effective management of a company as a result of a relocation, or inability to travel, of chief executive officers or other senior executives.

- **Permanent establishment (PE)**
  Some businesses may be concerned that their employees who are located in countries other than the country in which they regularly work, or working from their homes during the COVID-19 crisis will create a PE for them in those countries, which would trigger tax filing requirements and tax obligations.

  *Fixed place of business PE*: During the COVID-19 crisis, individuals who stay at home to work remotely are typically doing so as a result of government directives. Such situation comprises *force majeure* and does not arise from an enterprise's requirement.

  *Dependent agent PE*: A similar question may also arise whether the activities of an individual temporarily working from home for a non-resident employer could give rise to a dependent agent PE.

- **Individual tax residence**
  Despite the complexity of the rules and their application to a wide range of potentially affected individuals, it is unlikely that the COVID-19 situation will affect individuals’ treaty residence position due to the way in which the tiebreaker provisions typically work.


2. Japan

Overview of anti-dividend stripping rules under the 2020 tax reform

Under Japanese tax law, capital gains are fully taxable at the corporate shareholder level, while certain qualified dividends are tax-exempt. To mitigate potential double taxation, corporate shareholders often choose to "strip" the retained earnings of subsidiaries by paying tax-exempt dividends prior to share transfers to reduce the share value and capital gain. However, as a
result of new anti-dividend stripping rules introduced as part of Japan’s 2020 tax reform, such dividend stripping may no longer be feasible. Under certain conditions, the tax basis of the shares in the hands of the corporate shareholders must be reduced by the tax-exempt portion of dividends paid, thus nullifying the benefit of paying the dividends.


3. Netherlands

Treaty between Belgium and The Netherlands; Court of Appeal rules refusal to refund dividend withholding tax to non-resident director/substantial shareholder compatible with treaty and the functioning of the European Union (TFEU)

The Court of Appeal’s-Hertogenbosch decided that the refusal to grant a director-substantial shareholder resident in Belgium a refund of dividend withholding tax is compatible with the Belgium - Netherlands Income and Capital Tax Treaty (2001) (as amended through 2009). The taxpayer, who resides in Belgium, is the director-substantial shareholder of a limited liability company established in the Netherlands. On 31 December 2012, the company distributed dividends to the taxpayer on which 15% dividend withholding tax was withheld. Due to the fact that Belgium does not grant a credit for dividend withholding tax, the taxpayer claimed a refund for the withholding tax paid in the Netherlands. This claim was denied by the tax inspector.

Source: Netherlands; Belgium - Treaty Between Belgium and The Netherlands; Court of Appeal Rules Refusal to Refund Dividend Withholding Tax to Non-Resident Director/Substantial Shareholder Compatible with Treaty and TFEU (1 May 2020), News IBFD (accessed 8 June 2020).

Appeals Court holds Dutch subsidiary not beneficial owner of dividends – no set off of dividend withholding tax

On 12 May 2020, the Amsterdam Court of Appeal decided that a Dutch subsidiary of American banking group may not offset dividend withholding tax against corporate tax. The reason was that it was not properly documented that the taxpayer was the legal owner of the shares at the time of dividend distribution. Therefore, the taxpayer could also not be regarded as the beneficial owner of those dividends nor receive credit for the dividend withholding tax levied on the dividend distributions.


4. United States

IRS updates Publication 515 – withholding of tax on non-resident aliens and foreign entities

The US Internal Revenue Service (IRS) has released revised Publication 515 (Withholding of Tax on Non-resident Aliens and Foreign Entities).

Publication 515 provides guidance for withholding agents who pay income to foreign persons, including non-resident aliens, foreign corporations, foreign partnerships, foreign trusts, foreign estates, foreign governments and international organizations.


5. Australia

Federal government announces significant foreign investment approval changes

In light of the ongoing COVID-19 pandemic, on 29 March 2020, the Australian Treasurer, Josh Frydenberg, announced major temporary measures effective immediately “to protect Australia’s national interest as we deal with the economic implications arising from the spread of the coronavirus.”

- All foreign investments into Australia subject to the Foreign Acquisitions and Takeovers Act 1975 (Cth) (FATA) will require approval from the Foreign Investment Review Board (FIRB) “regardless of value or the nature of the foreign investor;”
- Extension of the review period for applications from 30 days to up to six months.

Source: https://www.taxathand.com/article/13231/Australia/2020/Federal-government-announces-significant-foreign-investment-approval-changes

6. Hong Kong

IRD issues updated guidance on taxation of e-commerce transactions and digital assets

On 27 March 2020, Hong Kong’s Inland Revenue Department (IRD) issued a revised Departmental Interpretation and Practice Notes No. 39 (Revised DIPN 39) setting out the taxation principles that broadly apply to electronic commerce (e-commerce) transactions and digital assets.
Revised DIPN 39 discusses in detail how an e-commerce business would be regarded as being carried on in Hong Kong, including whether a server permanent establishment (PE) exists.

Revised DIPN 39 remains the discussions and updates the examples on characterization of income (i.e. business receipts or royalties) which are relevant in considering if the payer has any withholding tax obligation. It also provides an overview of the relevant transfer pricing concepts, and sets out the profits tax treatment for digital assets.


COVID-19 key tax updates by country

<table>
<thead>
<tr>
<th>Country</th>
<th>COVID-19 Tax Update</th>
<th>Link to COVID-19 Tax Update</th>
</tr>
</thead>
</table>

Useful resources

<table>
<thead>
<tr>
<th>Deloitte Information</th>
<th>Governmental Organizations</th>
<th>Independent Research Organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>· Deloitte Tohmatsu Japan Inbound Tax &amp; Legal Newsletter</td>
<td>· The Organisation for Economic Co-operation and Development (OECD)</td>
<td>· International Bureau of Fiscal Documentation (IBFD)</td>
</tr>
<tr>
<td>· Deloitte tax@hand</td>
<td>· Internal Revenue Service (IRS)</td>
<td>· Australian taxation Office (ATO)</td>
</tr>
<tr>
<td></td>
<td>· Inland Revenue Department (Hong Kong)</td>
<td>· National Tax Agency (NTA)</td>
</tr>
</tbody>
</table>

All of resources presented above are publically available. The inclusion of these resources is not an endorsement, nor a guarantee of their accuracy made by Deloitte Touche Tohmatsu Limited.
About Deloitte Private Japan and Family Consulting

Deloitte helps private companies, their owners, and individuals with substantial assets apart from businesses they operate to understand, plan and execute effective business and tax strategies — adjusting course when needed to respond appropriately to potential tax consequences of new legislation and evolving market conditions.

To this end Family Consulting offers four services directly to families who own and manage business and family assets:

- Family governance;
- Contingency planning;
- Family successor training service;
- Family office services.

For more information, visit our website at: www.deloitte.com/jp/family-consulting-en

The Family Consulting team eliminates the question "I don't know who to ask..." by acting as the relationship manager of our clients, supporting the prosperity of their families through a unified contact point for inquiries, no matter how compounded the matter may be and to do this Family Consulting works closely with our colleagues across Deloitte Private domestically and globally to assist families and their businesses with:

- Income tax advisory and compliance services;
- Owner and family wealth planning;
- International tax and estate consulting;
- Family enterprise consulting;
- Succession Advisory Services;
- Cross-border Succession and Reorganization Support
- Family Governance and Council Support for Owner Family

Newsletter archives

This is a free newsletter. To see past issue, visit our website. www.deloitte.com/jp/family-consulting-newsletter-en

Contacts

Please contact one of the tax professionals as shown below for any questions or comments regarding your specific situation if you have.

Deloitte Tohmatsu Tax Co.

Family Consulting, Deloitte Private Japan

Emi Kono, Partner

Marunouchi Nijubashi Building, 3-2-3 Marunouchi, Chiyoda-ku, Tokyo 100-8362, Japan

Tel +81 3 6213 3800

email tax.cs@tohmatsu.co.jp

Deloitte Tohmatsu Group (Deloitte Japan) is a collective term that refers to Deloitte Tohmatsu LLC, which is the Member of Deloitte Asia Pacific Limited and of the Deloitte Network in Japan, and firms affiliated with Deloitte Tohmatsu LLC that include Deloitte Touche Tohmatsu Limited ("DTTL"), its global network of member firms, and their related entities (collectively, the "Deloitte organization"). DTTL (also referred to as "Deloitte Global") and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind another in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited and their related legal and financial entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Seoul, Shanghai, Singapore, Sydney, Taipei and Tokyo.

Deloitte is a leading global provider of audit and assurance, consulting, financial advisory, risk advisory, tax and related services. Our global network of member firms and related entities in more than 150 countries and territories (collectively, the "Deloitte organization") serves four out of five Fortune Global 500® companies. Learn how Deloitte’s approximately 312,000 people make an impact that matters at www.deloitte.com.

All of the contents of these materials are copyrighted by Deloitte Touche Tohmatsu Limited, its member firms, or their related entities, including, but not limited to, Deloitte Tohmatsu Tax Co. (collectively, the "Deloitte Network") and may not be reprinted, duplicated, etc., without the prior written permission of the Deloitte Network under relevant copyright laws. These materials describe only our general and current observations about a sample case in accordance with relevant tax laws and other effective authorities, and none of Deloitte Network is, by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. The opinions expressed in the materials represent the personal views of individual writers and do not represent the official views of Deloitte Network. No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this publication.