

# Japan: Inbound Tax Alert

## JCT on Digital Services – New guidance issued

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As reported in our [January 2015, No. 10](#) edition of the Inbound Tax Alert, digital supplies made by foreign enterprises to Japanese customers will be subject to Japanese Consumption Tax (“JCT”) from 1 October 2015. Although the amended JCT law reflecting the change was enacted on 31 March 2015, there had been much uncertainty as to how to interpret and address the new rules. In late May and early June, the National Tax Agency published new JCT basic circulars and related guidance to provide some clarification on these new JCT rules. The below are the highlights of these publications.

**Scope of digital services**

The new law provides that a “digital service” is any service provided via a telecommunications network. The circulars and guidance provided the following examples of digital services and non-digital services.

Digital Services	Non-digital Services
<ul style="list-style-type: none"> <li>• Online distribution of e-books, e-journals, music, videos, software, mobile apps, etc.</li> <li>• Cloud software and storage</li> <li>• Online advertising</li> <li>• Online marketplace or auction websites for selling products</li> <li>• Online English lessons</li> <li>• Consultation services continuously provided via phone or email*</li> </ul>	<ul style="list-style-type: none"> <li>• Telecommunication services (e.g. telephone, facsimile, etc.)</li> <li>• Software development</li> <li>• Management of assets located outside Japan (including internet banking)</li> <li>• Data collection and analysis</li> <li>• Support for lawsuits filed outside Japan</li> </ul>

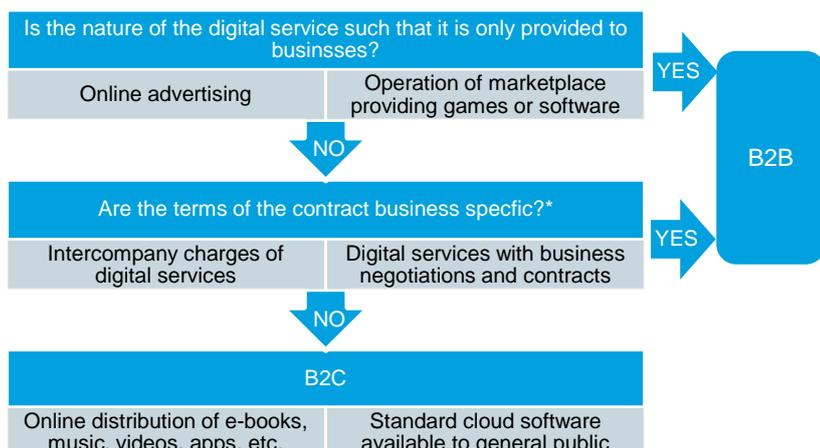
\*We understand that this category of digital services is expected to include, among others, e-learning services or online exam services. Further, if this category is to be interpreted broadly, services such as help desk services, call centers, and email-based legal advisory could be considered digital services. However, it is not expected to include consultation services that culminate into a report that is delivered via email (e.g. the delivery of a business strategy report supplied by a foreign consultancy firm). Further guidance is awaited to clarify this point.

**Classification as B2B or B2C services**

Under the new JCT rules, different JCT implications arise depending on whether a service is a B2B (“business to business”) service or a B2C (“business to consumer”) service. It should be noted that the classification as B2B or B2C should be made based on the nature of the service provided, or the terms of the specific service contract, rather than the recipient’s status as a business or as an individual.

The term B2B services is defined as digital services that are exclusively supplied to businesses given their nature or contract terms. B2C services on the other hand are defined as digital services other than B2B services.

The following chart illustrates how to determine whether a service should be considered a B2B service or B2C service.



\*Even when the relevant terms clearly state that the services are exclusively intended for businesses, the distribution of e-books, music, software and games, etc., via the internet should be treated as a B2C supply, if it is not practically possible for the supplier to prevent purchases by individuals. In other words, basically all digital services that are available to individual consumers (e.g. downloadable software) would be treated as B2C services, even if businesses are the main consumers of such service.

### Voluntary registration as a foreign supplier

The registration is not mandatory. However, JCT paid by a business consumer on a B2C supply from a non-registered foreign supplier will not be claimable and therefore will be a cost to the business consumer.

Applications for registration will be accepted from 1 July 2015, and the [application form](#) is available for download on the NTA website. Currently the form is provided in Japanese only, and there is no e-filing option. Although suppliers must be JCT taxpayers to be registered, once registered they will have a JCT filing/payment obligation.<sup>1</sup>

### Other considerations

Other notable clarifications that may be relevant to foreign suppliers include the following:

- Whether a consumer is located in Japan should be determined using reasonable and objective means, such as matching the address provided by the customer with the country where the customer's credit card was issued, or the customer's IP address or billing address, etc.
- For a supplier providing digital services to a Japanese branch of a foreign company, the supply should be considered to take place outside of Japan, and therefore outside the scope of JCT.

### Deloitte's view

The recently issued guidance from the NTA has been helpful in clarifying how to classify between B2B and B2C digital services by providing examples. It also raises some additional questions, especially regarding the types of services that will be categorized as "consultation services continuously provided by phone or email". Since it is uncertain whether additional guidance will be provided prior to the effective date of these new rules, foreign suppliers that provide services that might fall within this category should discuss the implications of providing these services with their tax advisor.

Also, regarding the classification of a B2B or B2C supply, foreign suppliers should note that since Japan's rules focus on the nature of the service or the terms of the service contract (with a narrow scope of what should be considered a B2B supply) rather than the status of the consumer, they may discover that their services are considered B2C supplies even though they mainly provide digital services to business consumers, which will require that they charge JCT.

B2C supplies will impact not only tax, but also business operations, pricing strategy and systems, all of which will require time to consider and take appropriate action. With the effective date only a few months away, foreign suppliers should start reviewing their digital service offerings in Japan and work with their tax advisors to assess how they will be impacted by the new JCT rules.

<sup>1</sup> Generally speaking, an enterprise is a JCT taxpayer and has a JCT filing/payment obligation if the enterprise has JCT taxable sales of more than JPY 10 million in its base period (i.e., the fiscal year two fiscal years prior to the current fiscal year).

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