

ANNUAL REVIEW

Global tax

REPRINTED FROM
ONLINE CONTENT
APRIL 2018

© 2018 Financier Worldwide Limited
Permission to use this reprint has been granted
by the publisher



PREPARED ON BEHALF OF

Deloitte.

FINANCIER
WORLDWIDE corporatefinanceintelligence



JAPAN

YUTAKA KITAMURA
DELOITTE TOHMATSU TAX CO.



Q COULD YOU OUTLINE WHAT YOU CONSIDER TO BE THE KEY DEVELOPMENTS RELATING TO TAX REGULATIONS THAT YOU HAVE SEEN IN JAPAN OVER THE LAST 12-18 MONTHS?

KITAMURA: In line with the Organisation for Economic Co-operation and Development's (OECD) BEPS project, Japan has legislated a series of tax reforms in terms of guidance on transfer pricing documentation and country-by-country reporting, designing effective controlled foreign company rules and preventing the artificial avoidance of permanent establishment status, among others. In addition, Japan has signed the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting. Simultaneously, the Japanese tax authority is preparing measures for collecting information using tax treaties, agreements for the exchange of information, the convention on mutual administrative assistance and the common reporting standard. Accordingly, it is expected that the Japanese tax authority will conduct tax audits more effectively and efficiently, based on amended tax regulations aligned with the BEPS project and using the related information collected.

.....

Q WHAT FACTORS ARE DRIVING THE POLITICAL AGENDA ON TAX-RELATED DECISIONS? DOES THERE SEEM TO BE A MOTIVATION TO GET TOUGHER ON TAX ENFORCEMENT, FOR EXAMPLE?

KITAMURA: Faced with pressure from the general public, the Japanese tax authority is getting tougher on the tax enforcement of wealthy individuals by using the above information and personal tax identification numbers. At the same time, as the importance of corporate governance is now widely recognised in Japan, the Japanese tax authority is encouraging large corporations to introduce corporate governance related to tax matters and relaxing tax audits against those corporations which are voluntarily enhancing their governance regarding tax compliance. Consequently, the Japanese tax authority tends to focus more on cases of tax evasion and excessive tax planning, in which large tax amounts are at stake.

.....



Q TO WHAT EXTENT IS TRANSFER PRICING A KEY CHALLENGE FOR MULTINATIONAL ENTERPRISES? ARE TOO MANY COMPANIES UNDERESTIMATING THE IMPORTANCE OF COMPLIANCE AND RISK MANAGEMENT IN THIS AREA?

KITAMURA: In accordance with guidance on transfer pricing documentation, most multinational enterprises in Japan have prepared transfer pricing policies. In addition, the advance pricing agreement and mutual agreement procedure are widely used by Japanese companies, as the Japanese tax authority is actively negotiating with other countries. However, the challenge for them is BEPS Actions 8-10, that is, aligning transfer pricing outcomes with value creation. Most of them have not prepared related-party contracts in accordance with BEPS Actions 8-10, even though those contracts provide the starting point for a transfer pricing analysis. In this sense, the importance of compliance and risk management, by way of related-party contracts, is still being underestimated.

.....

Q HOW WOULD YOU DESCRIBE THE TAX LAWS IN JAPAN AS THEY RELATE TO FOREIGN ENTITIES? HAS THERE BEEN AN EFFORT TO TIGHTEN LAWS AND CRACK DOWN ON ISSUES SUCH AS OFFSHORE TAX JURISDICTIONS?

KITAMURA: In line with BEPS Action 3, Japan has tightened its control of foreign company rules, imposing Japanese tax on the incomes of foreign companies to the extent that they are paper companies which are not independent from their parents physically and functionally. Further, Japan has actively entered into agreements for the exchange of information relating to tax matters with offshore tax jurisdictions, such as Panama, the Bahamas and the British Virgin Islands. Using those measures, the Japanese tax authority is attempting to crack down on cases of tax evasion and excessive tax planning through the use of foreign entities.

.....



“Japanese companies tend to take a conservative tax position, which is a good thing. However, it may be beneficial to start considering more effective tax planning.”

Q HAVE YOU SEEN AN INCREASE IN TAX DISPUTES IN JAPAN? WHAT LESSONS CAN COMPANIES LEARN FROM THEIR OUTCOME?

KITAMURA: Traditionally the Japanese tax authority tends to recommend that a taxpayer amend its tax return voluntarily after a tax audit, instead of issuing a corrective order against them. Following tax reforms designed to make the tax audit process more transparent, which took effect five years ago, it has taken more time for the Japanese tax authority to conduct tax audits and the number of tax audits has decreased. As a result, the number of filings with the National Tax Tribunal and the court has decreased thus far. However, it may be the case that the taxpayer’s position has rationale, even if the Japanese tax authority recommends a voluntary amendment of its tax return. Thus, it is recommended that a taxpayer analyse whether its tax position is reasonable when it is requested to amend its tax return.

Q IF A COMPANY DOES FIND ITSELF THE SUBJECT OF A TAX-RELATED AUDIT, INVESTIGATION OR ENQUIRY, WHAT STEPS SHOULD IT TAKE TO MANAGE ITS RELATIONSHIP WITH TAX AUTHORITIES?

KITAMURA: The first step to take is to analyse whether the company’s tax position has rationale or not. In other words, the company should consider whether its tax position would be reasonably upheld in the court. Then, the company should have a discussion with tax auditors in terms of whether its tax position has rationale. In order to establish a healthier and more transparent relationship with the Japanese tax authority, it is important for the company to have a reasonable discussion with the authorities, not just following its recommendation or suggestion to amend the company’s return.



Q WHAT GENERAL ADVICE WOULD YOU GIVE TO COMPANIES ON EFFECTIVE TAX PLANNING? HOW IMPORTANT IS IT TO CREATE TAX EFFICIENT STRUCTURES AND IMPROVE INTERNAL FUNCTIONS AND PROCESSES ACROSS THE ORGANISATION?

KITAMURA: Currently, most companies are preparing transfer pricing documentation and it therefore becomes easier for them to understand to what extent their tax position is globally effective. Japanese companies tend to take a conservative tax position, which is a good thing. However, it may be beneficial to start considering more effective tax planning through their transfer pricing documentation. It is also now expected that each country's tax authority will conduct more tax audits than ever, utilising information collected through the global tax authorities' networks. Therefore, it is recommended that companies' headquarters periodically monitor and manage the tax audits and controversies that their foreign related parties are dealing with in other jurisdictions.

.....

Deloitte.



www2.deloitte.com

Yutaka Kitamura

Director
 Deloitte Tohmatsu Tax Co.
 +81 (0)70 3192 5611
yutaka.kitamura@tohmatu.co.jp

Yutaka Kitamura is an attorney at law admitted in Japan and the State of New York, and a Certified Public Tax Accountant. In June 2017, he joined Deloitte Tohmatsu Tax Co. and has participated in the tax controversy team, supporting clients in managing tax controversy issues regarding overall foreign and domestic tax matters.