

Transfer Pricing Country Profile

(to be posted on the OECD Internet site www.oecd.org/ctp/tp/countryprofiles)

Name of Country: JAPAN Date of profile: 25 October 2011

1. Reference to the Arm's Length Principle

Para 1 Article 66-4 of Special Taxation Measures Law ("STML")

2. Reference to the OECD Transfer Pricing Guidelines (if any)

1-2(3) of Commissioner's Directive on the Operation of Transfer Pricing ("CDOTP").

It prescribes that the Guidelines shall be referred to in the course of examination or APA evaluation.

3. Definition of related parties

Para1 Article 66-4 STML.

Para 1-4 Article 39-12 Cabinet Order on the STML.

"A foreign-related person" is defined as a foreign corporation having an "associated relationship" with another corporation. A corporation is treated as "associated" with the other if it holds 50 percent or more of the total number of issued stocks or the amount of investment of the other corporation. The Cabinet Order prescribes the other cases to be treated as having an "associated relationship".

4. Transfer pricing methods

Para. 2 Article 66-4 STML. Para. 8 Article 39-12 Cabinet Order on the STML.

Arm's length price is calculated by the use of one of the following methods:

- a) Comparable uncontrolled pricing method
- b) Resale price method
- c) Cost plus method
- d) Methods equivalent to a)- c), and other methods (profit split method and transactional net margin method) prescribed by Cabinet Order

From the above methods, the most appropriate method should be selected, considering the facts and circumstances of each controlled transaction, including function performed and risk assumed.

5. Transfer pricing documentation requirements

In Article 22-10 and 22-74 of the Ministerial Order for STML, it is clearly specified which documents are required to submit to the tax authorities in order for them to evaluate whether or not the estimated taxation clause should be applied, which might be implemented only when taxpayers do not show/submit necessary documents to the tax authorities which is enough to calculate the arm's length price. The order is supplemented by 2-5 of the CDOTP.

6. Specific transfer pricing audit procedures and / or specific transfer pricing penalties

(Specific transfer pricing audit procedures)

Para. 7 Article 66-4 STML- Requirement to keep books and documents by a foreign-related person.

Para. 8 Article 66-4 STML- inquiry and inspections power to third parties in the same industry.

(Specific transfer pricing penalties)

There are no specific transfer pricing penalties.

7. Relevant regulations on Advance Pricing Arrangements

Chapter 5 CDOTP

8. Link to relevant Government Internet sites

- Commissioner's Directive on Interpretation of Special Taxation Measures Law (in relation to Corporation Tax Law)/Chapter 12
- Commissioner's Directive on the Operation of Transfer Pricing (Administrative Guidelines): http://www.nta.go.jp/foreign_language/07.pdf
- Supplement - Reference Case Studies on Application of Transfer Pricing Taxation: http://www.nta.go.jp/foreign_language/08.pdf
- Commissioner's Directive on Mutual Agreement Procedures: http://www.nta.go.jp/foreign_language/00.pdf
- APA Program Report 2010 <http://www.nta.go.jp/kohyo/press/press/2010/APA/01.pdf>

9. Other relevant information

N/A.