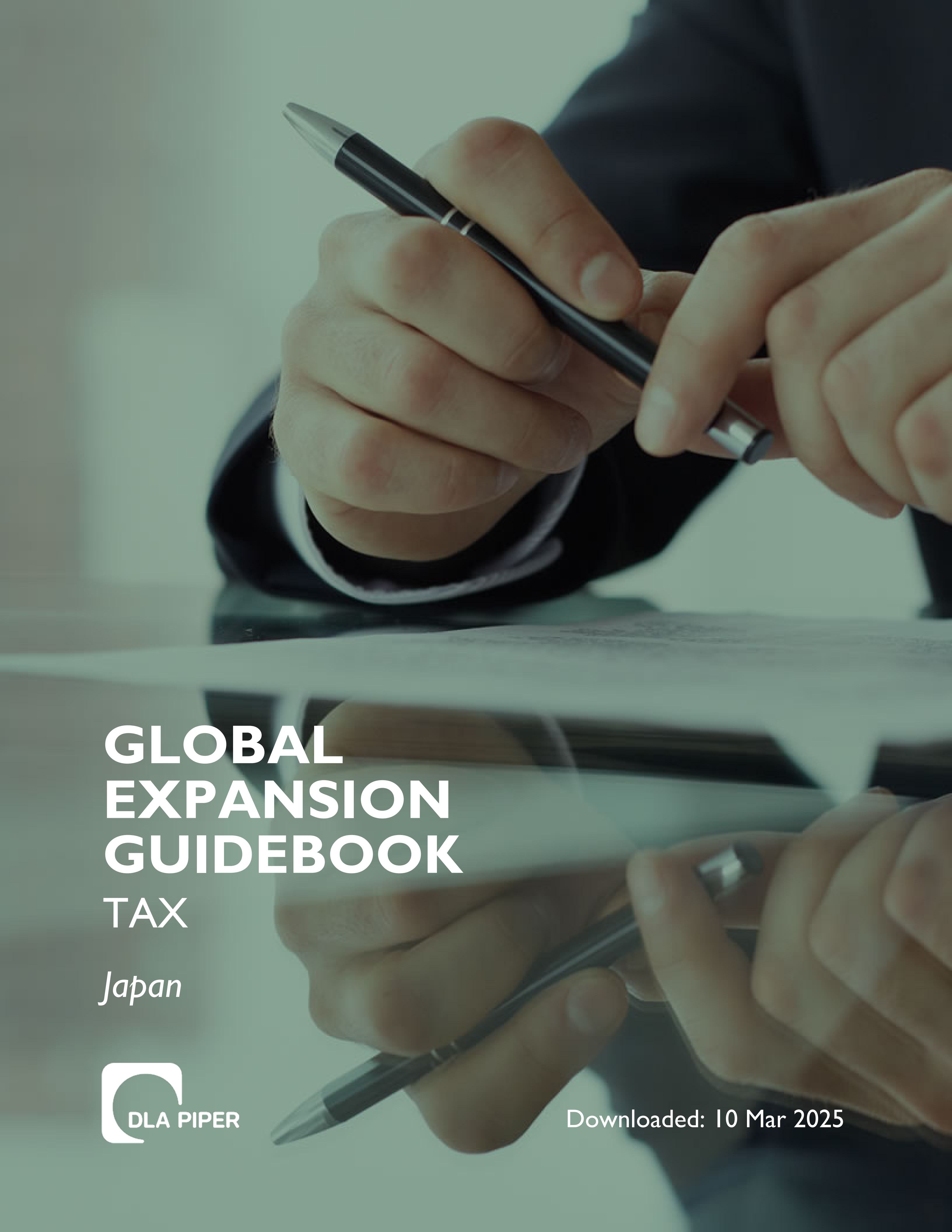

GLOBAL EXPANSION GUIDEBOOK

TAX

Japan

DLA PIPER

INTRODUCTION

Welcome to the 2024 edition of DLA Piper's *Global Expansion Guidebook – Tax*.

GLOBAL EXPANSION GUIDEBOOK SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics companies need to know.

The *Global Expansion Guidebook* series reviews business-relevant corporate, employment, intellectual property and technology, global equity and tax laws in key jurisdictions around the world.

TAX

Multinational companies continue to expand globally at an ever faster pace. Successful expansion depends, in part, on strategic and effective tax planning and compliance. This guide, brought to you by DLA Piper's Tax group summarizes the key features of tax laws in 41 popular jurisdictions.

This guide addresses common tax questions, by jurisdiction, including:

- Taxation of resident companies and non-resident companies
- Availability of tax holidays, rulings, and favorable tax regimes
- Ability to use losses to offset income
- Anti-deferral (ie CFC) rules
- Withholding taxes
- Employment tax issues

With more than 300 tax lawyers and economists in offices throughout the Americas, Europe and Asia Pacific, DLA Piper's global tax advisory services help multinational companies address the complex challenges of international commerce and business operations as well as manage and resolve tax audits. Our global tax group also assists clients in structuring a wide range of transactions, from private equity deals to corporate acquisitions and disposals. We provide these tax services across our global platform, while at the same time offering clients the benefits of the attorney-client and work-product privileges.

The information in this guide is an accessible, high-level summary of the tax laws in each jurisdiction. This is not a substitute for legal or tax advice. If you have specific questions or require detailed advice, we encourage you to contact one of the attorneys listed in the contributors section of this guide.

We hope that you find this guide valuable and we welcome your feedback.

This publication is provided to you as a courtesy, and it does not establish a client relationship between DLA Piper and you, or any other person or entity that receives it.

This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

DLA Piper and any contributing law firms accept no liability for errors or omissions appearing in this publication and, in addition, DLA Piper accepts no liability at all for the content provided by the other contributing law firms. Please note that tax law is dynamic, and the legal regime in the countries surveyed could change.

JAPAN

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RESIDENCE AND BASIS FOR TAXATION

A corporation having its head office or main office in Japan will be treated as a domestic corporation.

Domestic

A domestic corporation is subject to Japanese corporate tax on its worldwide income.

Foreign

A foreign corporation is subject to Japanese corporate tax only on income derived from sources in Japan. However, tax treaties can reduce or eliminate these taxes. If a foreign corporation has a permanent establishment in Japan, such foreign corporation is subject to Japanese corporate tax on income attributable to its permanent establishment in Japan.

TAXABLE INCOME

Domestic

Taxable income of a domestic corporation is equal to all gross income less applicable deductions.

Foreign

The scope of taxable income for a foreign corporation depends on the existence of its permanent establishment in Japan. If a foreign corporation does not have a permanent establishment in Japan, the tax liability of the foreign corporation is usually settled solely through a withholding tax. Under Japanese tax laws, if a foreign corporation has a permanent establishment in Japan, corporate tax is imposed on its income derived from sources in Japan, such as the taxable income of a domestic corporation. However, tax treaties may exempt a foreign corporation from taxation on industrial or commercial profits earned in Japan to the extent that the income is not attributable to its permanent establishment in Japan.

TAX RATES

r corporate tax, the basic national corporate tax rate is 23.2 percent for taxable years commencing from April 1, 2018 or later. Corporations are also subject to local taxes, which increase the standard effective tax rate to 30.62 percent (if the office is located in Tokyo). Since April 2016, the amended Corporation Tax Act has come into force, and corporate tax on a foreign corporation with a permanent establishment in Japan is imposed on its income attributable to the permanent establishment in Japan. For small and medium-sized enterprises, the lowered 19 percent national corporate tax rate is applicable for the income equal to or less than 8 million yen per annum. Until the taxable years commencing before April 1, 2025, such rate is further lowered to 15 percent for a corporation which average taxable income for the last 3 fiscal years is not exceeding JPY1.5 billion.

TAX COMPLIANCE

Corporate tax is paid through a self-assessment system, by which taxpayers determine and pay their own tax obligations. If a taxpayer makes an incorrect or intentionally false tax return, the tax authority may order resubmission of a corrected tax return and payment of a penalty.

Tax return documentation must be submitted within 2 months from the day after the ending date of each fiscal year. However, the due date of a tax return filing can be extended for up to 3 months. For certain corporations, an interim tax return filing is also required.

ALTERNATIVE MINIMUM TAX

Under Japanese tax law, there are no taxes that are equivalent to the Alternative Minimum Tax. Also, the Qualified Domestic Minimum Top-up Tax (QDMTT) is not introduced yet.

TAX HOLIDAYS, RULINGS AND INCENTIVES

Tax holidays

Not applicable for this jurisdiction.

Tax rulings

The National Tax Agency provides a procedure for obtaining an advance ruling on the tax treatment of a completed or future transaction if the law at issue has not previously been clarified, but this process must occur before the tax return filing deadline for the tax period in which such transaction is carried out.

Tax incentives

There are various tax incentives for specific activities, including R&D credits and special depreciation rules.

CONSOLIDATION

The consolidated taxation system was applicable to a group of Japanese corporations in which a Japanese corporation directly or indirectly owns 100 percent ownership of other Japanese corporations, and it was optional for applicable corporations. However, this system has been transformed into the group relief system from the taxable year commencing on or after April 1, 2022, under which each group company is treated as a separate taxpayer, but profits and losses are adjusted and offset among the group companies.

PARTICIPATION EXEMPTION

Under Japanese tax law, there is no participation exemption for dividends received from, or capital gain recognized on the stock of, foreign subsidiaries. However, there is an exemption for dividends received from foreign subsidiaries (the so-called 95 percent foreign dividend exemption rule). Under this rule, if a Japanese shareholder has held 25 percent or more of the interest of a foreign company (the percentage could be lowered if a relevant tax treaty is applicable) for at least 6 months prior to the dividend determination date, 95 percent of dividends received from such foreign company, excluding the portion deductible in the foreign company's residing country, may be exempt from taxable income.

CAPITAL GAIN

Generally, capital gain recognized by a corporation is taxed at the same rate as ordinary income. Capital loss may reduce capital gain but not ordinary income. However, with respect to share transfers in certain types of reorganizations, no capital gain is recognized.

DISTRIBUTIONS

Distributions paid by a corporation are treated as dividends to shareholders, which are not deductible, unless a corporation fulfills requirements set forth under the Asset Liquidation Law or similar special laws.

LOSS UTILIZATION

Net operating losses may be carried forward 10 years. Only small and medium-sized enterprises with capital of JPY100 million or less and whose parent's capital is less than JPY500 million can carry back its losses to the preceding year. Also, except for small and medium-sized enterprises, the utilization of the net operating loss carried forward is subject to the following caps: 80 percent of the taxable income for the fiscal years beginning on or after April 1, 2012; 65 percent for the fiscal year beginning on or after April 1, 2015; 60 percent for the fiscal year beginning on or after April 1, 2016; 55 percent for the fiscal year beginning on or after April 1, 2017; and 50 percent for the fiscal years beginning on or after April 1, 2018.

TAX-FREE REORGANIZATIONS

If a corporation transfers its assets to another corporation pursuant to a corporate division, a merger, an investment in kind, a dividend in kind or a share transfer (reorganization), and the reorganization is a “qualified reorganization” for corporate tax purposes, the recognition of the gains and losses on the transfer of the assets will be deferred.

ANTI-DEFERRAL RULES

The CFC Rules are subdivided according to the income tax rates levied on a foreign subsidiary as follows:

- When the tax burden on a foreign subsidiary is 27 percent (lowered from 30 percent under the 2023 tax reform) or higher, the CFC Rules are not applicable. When the tax burden on a foreign subsidiary is between 20 percent and 27 percent, the CFC Rules are applicable to the domestic corporation if the foreign subsidiary falls into any of certain designated categories, such as a shell company, a cash-box company or a company located in blacklisted country or territory.

- When the tax burden on a foreign subsidiary is under 20 percent, the CFC Rules are applicable to the domestic corporation if the foreign subsidiary does not satisfy certain requirements or if it earns passive income, such as income derived from interest, dividends, securities lending, leases of tangible property or excessive profits compared to capital.

FOREIGN TAX CREDITS

The foreign taxes levied on a Japanese domestic corporation in the ordinary course of its business may be credited against Japanese corporate tax.

SPECIAL RULES APPLICABLE TO REAL PROPERTY

Capital gain on sales of real estate in Japan accruing to a foreign corporation is subject to Japanese corporate tax at regular corporate tax rates. In addition, if a foreign corporation sells shares of a Japanese corporation of which 50 percent or more of its assets are real estate assets, the capital gain on the sale of shares will be included in taxable income subject to regular corporate tax, unless otherwise stated under the applicable tax treaty.

TRANSFER PRICING

When a corporation sells to, purchases from, provides services for or carries on other transactions with a foreign related person with which it has a special relationship, and its taxable income is less than the amount calculated under arm's-length principles, these transactions will be deemed to have been conducted at arm's-length prices, and the differential amount either will be included in, or will not be deductible from, the taxable income of the corporation.

WITHHOLDING TAX

Dividends, royalties, interest, rents, service fees, etc.

Items of income (including dividends, royalties, interest, rent and service fees) paid to a foreign corporation are generally subject to Japanese withholding income tax at a rate of 20.42 percent (15.315 percent for bond interest). However, double tax treaties may grant a special concession to a resident individual or a resident corporation in a foreign jurisdiction. Some double tax treaties provide that a person with dual residence may be determined to be a person with single residence by mutual agreement between competent authorities. In order to enjoy benefits under double tax treaties, an application form must be filed with the relevant tax office before the first payment between parties is made.

CAPITAL DUTY, STAMP DUTY AND TRANSFER TAX

Upon incorporation of a company or an increase in registered capital, a certain amount of the registration tax is required that is based on the capital amount. Stamp duty may be imposed depending on the types of the documents or agreements. With respect to transfer taxes, an acquirer (a new owner) of real estate must pay the real estate acquisition tax, and the fixed asset tax must be paid by the publicly registered owner of fixed assets by January 1 of each year. Also, the registration tax is required for a real estate registration in order to perfect the transfer.

EMPLOYMENT TAXES

An employer must withhold certain amounts on salary payments to employees. Under the withholding tax system, an employee does not pay the income tax directly to the tax authority. Instead, the employer is required to withhold a certain amount of money and pay that amount to the tax authority on behalf of the employee. Most Japanese employees do not file a tax return because their income tax has already been paid by withholding from their salary income. It is possible to get a tax refund by filing a tax return if the amount of income withheld exceeds the income tax that should have been imposed. The tax return made by employees is relatively rare because employers frequently adjust withholding tax in the later months of the year to account for their employees' deductible expenses.

OTHER TAX CONSIDERATIONS

The standard Consumption Tax rate is 10 percent, while the reduced rate (8 percent) applies to certain food and beverages and daily newspapers. In addition, as of October 1, 2023, the invoice system has been introduced, under which the qualified invoice issued by the qualified issuer is generally required to claim the input tax credit for taxable purchases.

KEY CONTACTS

Keitaro Uzawa
Of Counsel
DLA Piper
keitaro.uzawa@dlapiper.com
T: +81 3 4550 2833
View bio